2016 IL App (5th) 150071-U

NO. 5-15-0071

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 14-CF-13
	)	
HENRY L. DAVIS,	)	Honorable
	)	Robert B. Haida,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Trial judge's order granting the defendant's motion to suppress is affirmed where State stipulated to certain aspects of ruling, State does not contest other aspects, and ruling on remaining aspects is in accordance with the law.

¶ 2 The State appeals the order of the circuit court of St. Clair County that granted the motion to suppress filed by the defendant, Henry L. Davis. For the reasons that follow, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On January 6, 2014, the defendant was charged, by criminal complaint, with first-degree murder. The charge

resulted from the shooting death of Allen S. Templeton in Cahokia, on or about December 30, 2013. The defendant was subsequently indicted on the same charge. Additional pleadings not relevant to this appeal were filed. On December 1, 2014, the defendant filed what was styled a "motion *in limine*," in which he contended that he had been questioned by police "in three separate interviews" between January 2, 2014, and January 4, 2014. He contended that "[i]n the first two interviews[,] although he was presented with his 'Miranda' rights, [he] made no statements of probative value," and that, accordingly, any statements the State wished to introduce on the videotapes of the interviews "would be introduced purely for their prejudicial effect." He further contended that he did not "agree to any waiver of his 'Miranda' rights" during the third interview, and that in any event, his statements therein "would likewise be introduced purely for prejudicial value." The trial judge entered an order on December 1, 2014, in which he referred to the defendant's filing as a "motion to suppress" and set it for a hearing.

¶ 5 On December 11, 2014, the hearing was held. The trial judge began the hearing by noting it was "on the defendant's motion to suppress statements" and that the burden therefore was on the State. The State presented three witnesses: Patrick Riordan, a detective with the St. Louis Metropolitan Police Department; Thomas Coppotelli, formerly with the Collinsville Police Department, and, at the time of the hearing, director of public safety at Lindenwood University; and Thomas Bates, a detective with the O'Fallon Police Department.

¶ 6 Riordan testified that he interviewed the defendant on January 2, 2014, beginning at "around 10:45 p.m." (the first interview). The interview was videotaped. Early in the interview, as Riordan and another officer went through a video statement checklist with the defendant, the defendant indicated that he had smoked marijuana approximately one to two hours prior to the interview. Riordan testified that the defendant stated that he understood what was going on, and Riordan testified that he believed the defendant understood what was going on. The interview lasted approximately one hour, concluding "at about 11:49 p.m."

¶ 7 Coppotelli testified that he was in charge of the investigation of the defendant, and that he observed the defendant several times while the defendant was in custody and was interviewed. Coppotelli testified that at around 1 or 1:30 p.m. on January 4, 2014, he was advised by officers that the defendant wished to speak with investigators again. Coppotelli went to the cell block area of the Cahokia Police Department, where the defendant was being held, and observed the defendant "very emotionally upset, crying." According to Coppotelli, the defendant repeatedly stated, " 'I need to talk to somebody.' " Coppotelli asked if the defendant wished to speak with an investigator, to which the defendant responded, " 'yeah, I want to talk to you guys right now.' " Coppotelli testified that he arranged an interview with Detective Bates, who had interviewed the defendant earlier. On cross-examination, Coppotelli testified that he did not ask the defendant if the defendant wished to speak to an attorney. When asked by defense counsel if he gave the defendant "the opportunity to calm down," he stated that he did not.

¶ 8 Bates testified that he conducted an interview with the defendant on January 3, 2014, beginning at "around 10:49 p.m." (the second interview). The interview was terminated when the defendant stated that he did not wish to speak to the police any longer, and made statements about wanting to talk to his mother about her hiring an attorney for him. Bates testified that no more questions were asked of the defendant, and that the defendant was returned to his cell. He testified that the following day, January 4, 2014, at approximately 1:30 p.m., he was informed that the defendant "had asked to speak with detectives again." Bates testified that he and another detective then met with the defendant in the interview room (the third interview). Bates testified that the detectives "tried to go over the Miranda forms" with the defendant, that the other detective read the defendant his *Miranda* rights, and that they requested that the defendant sign a form indicating that he understood his rights. The defendant declined to sign the form. Bates discussed with the defendant the fact that the defendant had reinitiated contact with the detectives, and although the defendant stated that he understood everything the detectives had told him about his rights, he did not sign the form. Bates testified that he did not ask the defendant any questions about the murder, instead telling him that he wanted to talk to the defendant, but could not do so until the defendant signed the form. Nevertheless, the defendant made "spontaneous statements" during this time, although no questions were asked of him about the murder.

¶ 9 On cross-examination, Bates testified that he did not know if the defendant had spoken with his mother, or with an attorney, between the second and third interviews. He testified that during the second interview, the detectives showed the defendant some

photographs they had taken from a social media website that showed the defendant "holding guns." He testified that the photographs were posted on the social media website either on or after January 1, 2014, and that the defendant stated that he and others had fired the guns on New Year's Eve. When asked if the defendant's statement about shooting the guns had anything to do with the murder the detectives were investigating, Bates testified "we were talking to him about the guns being shot because there was stuff found at his house there, you know *** shell casings there." He conceded that the murder weapon had not been found. He also testified that the third interview ended when the defendant "said he wanted to go back to his cell."

¶ 10 There was no redirect examination, but the trial judge asked Bates what time the second interview ended. Bates testified that the second interview lasted "around between 40 to 50 minutes," and agreed with the trial judge that it therefore ended "between 11:30 and midnight." After Bates was excused, the trial judge told the parties that he would watch the videotapes of the interviews, which had been admitted into evidence during the hearing, after the hearing, but that he would like to hear argument first.

¶ 11 The State argued that the first interview was voluntary, and that despite the defendant's statement that he had smoked marijuana one to two hours before the interview, the videotape made it "clear that the defendant understood everything that was going on." The State pointed out that 24 hours elapsed between the first and second interviews, that the defendant was again advised of his *Miranda* rights before the second interview began, and that the police immediately ceased the second interview when the defendant stated that he did not wish to talk any longer and made statements about hiring

an attorney. The State further pointed out that it was the defendant who reinitiated contact with the investigators, approximately 13 hours later, at around 1 p.m. on January 4, 2014, and that no questions were asked about the murder during this third interview, although the defendant made "spontaneous statements" at that time. The trial judge then asked about the content of the "spontaneous statements" and the State responded that the defendant made various comments that showed "he knew what was going on, he was involved in some way, that his friend was the one that did it" and that otherwise implied that the defendant "had something to do with it."

¶ 12 Counsel for the defendant argued that the defendant was "clearly stoned" during the first interview and therefore could not consent to a waiver of his rights. When the trial judge asked for clarification of what was stated by the defendant during the first interview that was "of an inculpatory nature," the State responded that during the first interview, "there really wasn't anything that was stated." The State went on to assert that the only reason it would want to use, at trial, the videotape of the first interview "would be for rebuttal" if the defendant testified inconsistently with it. The trial judge then stated, "So the first statement is not admissible in the case in chief, anyway." Defense counsel stated, "That would be our position, Your Honor," and the State responded, "Correct." The defendant then continued his argument, contending that the second interview's depiction of the defendant being shown photographs of himself with guns that could not be connected to the murder was "purely prejudicial" and offered "no probative value." Counsel pointed out that if there were in fact shell casings found at the defendant's home that matched shell casings found at the scene of the murder, those could

be introduced by investigators who worked the crime scene, and those who searched the defendant's home, rather than via the videotape of the second interview. He also objected to statements made by the defendant during the second interview about "him selling weed." With regard to the third interview, counsel argued that the defendant "was in an irrational state" because he was highly upset, and because he had not been allowed to contact his mother or an attorney following the second interview. Counsel also argued that the third interview contained nothing of "probative value to the State's case." He contended there were no "admissions" in the third interview, merely "irrational statements" like " 'I'm going to end up in jail anyway.' "

¶ 13 In rebuttal, the State offered to redact the videotape of the second interview as needed to address anything the trial judge found to be "prejudicial and not relevant to this case." The State reiterated, however, that it believed the gun portion of the videotape was relevant to the shell casings allegedly found at the defendant's home and allegedly matching shell casings found at the location of the murder. The State also argued that the defendant's statements in the second interview "about him doing weed deals, and there have been weed deals that have gone bad" were highly relevant as to the defendant's motive, because, according to the State, "[t]hat's what this whole case is over. I mean, that's why this victim is dead is because of a weed deal gone bad." After argument, the trial judge took the matter under advisement, pending his review of the videotapes.

¶ 14 On January 16, 2015, the trial judge entered an order in which he first noted that he had "received and considered" testimony, digital video, and the arguments of the parties with regard to the defendant's "[m]otion to [s]uppress." He noted that the

defendant had been interviewed three times. He found that "[n]one of the statements contain admissions by the defendant," and that "[c]onsequently, the statements are not admissible in the State's case in chief." He stated, however, that "[t]he statements were given voluntarily and are therefore admissible for impeachment purposes." He noted that "the defendant's motion is granted."

¶ 15 On January 20, 2015, the State filed a motion to reconsider, in which it argued, *inter alia*, that even if the statements did not contain admissions, because the judge had ruled that they were given voluntarily, the State had the right to introduce them at trial in its case in chief, unless they were excluded by privilege or other exclusionary rules. On January 22, 2015, the trial judge held a hearing on the State's motion to reconsider, at which argument was adduced. The trial judge took the motion under advisement, then, on January 26, 2015, denied the motion without explanation or analysis. On February 23, 2015, the State filed a certificate of substantial impairment[1] and a notice of appeal, and

[1]We note that at a hearing held subsequently on whether the defendant should be released from custody during the pendency of the State's appeal, the trial judge expressed skepticism about how impaired the State actually was by his ruling on the motion to suppress, in light of the arguments the State made about how strong its case against the defendant was–the suppressed evidence notwithstanding–and why, therefore, the defendant should continue to be deprived of his liberty while the State appealed. We share the concern of the trial judge. However, as we explain below, we may not delve into the degree to which the State is or is not actually substantially impaired by a ruling

this timely appeal followed. Additional facts, including those related to the contents of the videotapes of the three interviews–which are part of the record on appeal and have been reviewed by this court as necessary–will be discussed where appropriate in the remainder of this order.

¶ 16 ANALYSIS

¶ 17 We begin by examining the permissible scope of our review in this appeal. Illinois Supreme Court Rule 604(a)(1) provides that the State may pursue an interlocutory appeal of a pretrial suppression order in a criminal case if the State " 'certifies to the trial court that the suppression substantially impairs the State's ability to prosecute the case.' " *People v. Keith*, 148 Ill. 2d 32, 38-39 (1992) (quoting *People v. Young*, 82 Ill. 2d 234, 247 (1980)). To determine jurisdiction, a reviewing court looks at the substantive effect of a trial court's order–that is, whether it actually suppressed evidence–rather than at the label of the motion upon which the ruling was made. *Id*. at 39. Accordingly, if an order actually suppresses evidence, it does not matter if the motion in question was styled a motion to suppress or a motion *in limine*. *Id*. Likewise, a reviewing court may not delve into the State's certificate of impairment to determine the degree of impairment and thus the appealability of the order in question; instead, the reviewing court is to "rely upon the good-faith evaluation by the [State] of the impact of the suppression order on" the State's case. *Id*. at 39-40.

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on a motion to suppress.

¶ 18 We turn now to our standard of review. "The review of a trial court's ruling on a motion to suppress involves mixed questions of fact and law." *People v. Redman*, 386 Ill. App. 3d 409, 417 (2008). With regard to questions of fact, the Illinois Supreme Court has noted that "findings of historical fact should be reviewed only for clear error and *** reviewing courts must give due weight to inferences drawn from those facts by the fact finder." *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001) (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Accordingly, we will give "great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence." *Redman*, 386 Ill. App. 3d at 417. However, we review *de novo* the legal determination of whether suppression was appropriate under those facts. *Id.* We note as well that, as the Supreme Court of Illinois has long recognized, in an interlocutory appeal taken from an order that suppresses evidence, the appellate court may affirm the ruling of the trial judge on any basis supported by the record. See, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 134 (2003). We may do so because the question before us on appeal is the correctness of the result reached by the trial judge, rather than the correctness of the reasoning upon which that result was reached. *Id.* at 128.

¶ 19 On appeal, the State claims the trial judge erred as a matter of law when he concluded that because the statements contained no "admissions," they were not admissible in the State's case in chief. In support of this argument, the State points out the longstanding principle, found in *People v. Layne*, 286 Ill. App. 3d 981, 989 (1997), and many other cases, that any statement given by an accused person–whether a confession or something less–may be used against the accused person as an "admission"

as long as the statement is not excluded by the privilege of self-incrimination or by other exclusionary rules. The State continues that once the trial judge found that the statements were voluntary, he should have also found them to be admissible in the State's case in chief, because they were relevant and not unduly prejudicial. The defendant, on the other hand, posits that the trial judge was using the term "admissions" more broadly, something more along the lines of the relevance necessary to satisfy standards of admissibility in general, and urges this court to affirm the trial court on the basis, argued by the defendant to the trial court, that the statements are not relevant or probative and are highly prejudicial. The defendant also urges this court to find that the third interview "was conducted in violation of [the defendant's] right to counsel."[2]

¶ 20 We begin by noting that we agree with the defendant that the trial judge's use of the term "admissions" was meant to broadly encompass the question of admissibility with regard to relevance. As the defendant aptly notes, as a reviewing court, this court "will extend all reasonable presumptions in favor of the judgment or order from which an appeal is taken, and will not presume that error occurred below." *People v. Besser*, 273 Ill. App. 3d 164, 169 (1995). We do so because it is "a basic tenet of jurisprudence" that a trial judge "is presumed to know the law." *People v. Ollins*, 231 Ill. App. 3d 243, 250

[2]On appeal, the defendant does not contend that the statements given in the first and second interviews were not voluntarily given. The defendant having conceded that the trial judge correctly determined that the statements in those interviews were voluntary, we confine our analysis of those interviews to the points below.

(1992). Moreover, as noted above, this court may affirm on any basis in the record. See, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 134 (2003).

¶ 21 To determine the correctness of the trial judge's order with regard to each of the three interviews, we must examine each interview in turn. We begin with the first interview. As explained above, at the conclusion of the December 11, 2014, hearing on the defendant's motion to suppress, counsel for the defendant argued that the defendant was "clearly stoned" during the first interview and therefore could not consent to a waiver of his rights. When the trial judge asked for clarification of what was stated by the defendant during the first interview that was "of an inculpatory nature," the State responded that during the first interview, "there really wasn't anything that was stated." The State went on to assert that the only reason it would want to use, at trial, the videotape of the first interview "would be for rebuttal" if the defendant testified inconsistently with it. The trial judge then stated, "So the first statement is not admissible in the case in chief, anyway." Defense counsel stated, "That would be our position, Your Honor," and the State responded, "Correct."

¶ 22 As the defendant points out on appeal, the defendant then ceased making arguments related to the first interview, and the State's motion to reconsider the trial court's order referenced only statements given in the second and third interviews. In light of the position taken by the State, in the trial court, with regard to the first interview, we agree with the defendant that the State may not now challenge the exclusion of the first interview from its case in chief. See, *e.g.*, *People v. Hughes*, 2015 IL 117242, ¶¶ 33, 46-47 (party has right to rely on intentional waiver by other party when argument

deliberately not made). Put another way, the State stipulated that it would use the first interview only in rebuttal, if at all, and the defendant clearly relied upon that stipulation. Moreover, there is no reason to believe the trial judge intended to even include in the order appealed from a ruling on the first interview, for he, like the defendant, had every right and reason to believe the State had taken the first interview off the table with regard to the State's case in chief. Accordingly, on remand, the State may not use the first interview in its case in chief, although of course it remains free to seek to introduce statements from the first interview for impeachment purposes and/or for other rebuttal purposes if circumstances arise that, under the rules of evidence, would permit the State to do so.

¶ 23 We turn now to the second interview. We note as an initial matter that although the State argued, in rebuttal at the hearing on the motion to suppress, that during the second interview the defendant made statements "about him doing weed deals, and there have been weed deals that have gone bad," in fact, the defendant made no statement in the second interview about weed deals gone bad. To the contrary, the officers interviewing the defendant proposed to him, approximately 30 minutes into the second interview, that the murder was the result of a weed deal gone bad. The defendant vehemently denied this, as he denied, throughout the second interview, that he was present when the murder took place, or that he knew anything about the murder. The only statements made by the defendant in the second interview about "doing weed deals" came when detective Bates told the defendant that the officers knew the defendant sold small amounts of marijuana, but were focused on the murder and did not care that the

defendant sold marijuana. To this, the defendant responded, at approximately 13 minutes into the second interview, that he did not sell "anything that big." At approximately 15 minutes into the second interview, the defendant stated that when the victim called him on the date of the murder, he declined the opportunity to sell marijuana to the victim, because he was at home and planned to stay there. He made no other statements in the second interview about selling marijuana.

¶ 24 In any event, on appeal, the State has not argued that the trial judge erred in suppressing in the State's case in chief any statements made by the defendant in the second interview about selling marijuana. Instead, the State's argument on appeal with regard to the second interview is focused solely on the statements related to guns. Accordingly, the State has forfeited any argument with regard to the use, on remand, in the State's case in chief, of the defendant's statements in the second interview about selling marijuana. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Of course, as with statements in the first interview, the State remains free on remand to seek to introduce statements in the second interview about selling marijuana for impeachment purposes and/or for other rebuttal purposes if circumstances arise that, under the rules of evidence, would permit the State to do so.

¶ 25 We turn now to the statements made by the defendant, in the second interview, about guns. The State posits that the defendant's admission, in the second interview, that

he and others fired guns while at his apartment on or around New Year's Eve was "relevant because [it] corroborated circumstantial evidence of [the] defendant's involvement in the murder." Specifically, the State contends that shell casings found at the defendant's apartment match casings recovered at the scene of the murder. However, the State presented no evidence in the trial court to substantiate its claim that shell casings found at the defendant's home match casings found at the crime scene. Although when he was asked if the defendant's statements about shooting the guns had anything to do with the murder, Detective Bates testified "we were talking to him about the guns being shot because there was stuff found at his house there, you know *** shell casings there," this is a far cry from the State presenting evidence with regard to the shell casings and the alleged match with casings found at the scene of the murder. Indeed, Detective Bates did not testify at all about the shell casings allegedly found at the scene of the murder, nor did any other witness. Moreover, Detective Bates conceded that the murder weapon had not been found, and no evidence was presented by any witness tying any shell casings to any particular gun or type of gun, nor tying that particular gun or type of gun to the defendant and his statements about firing a gun on or around New Year's Eve.

¶ 26 On appeal, the State posits that although actual testimony about the alleged ballistics match would have been "helpful," it was not required, and that the State believed its intention to present actual evidence of a shell casing match at trial was sufficient to prevent suppression of the defendant's statements. We do not agree. As the defendant aptly notes, this court has previously held that "[i]t is a well[-]recognized proposition of law that a weapon, and we assume testimony concerning a weapon, may

be admitted into evidence where there is proof to connect it to the defendant and the crime." *People v. Wade*, 51 Ill. App. 3d 721, 729 (1977). In the case at bar, the State thus far has presented only speculative argument, not actual evidence or proof, connecting shell casings allegedly found at the defendant's apartment to shell casings allegedly found at the scene of the crime, and has presented no evidence at all tying any shell casings to any particular gun or type of gun, nor tying that particular gun or type of gun to the defendant and his statements about firing a gun. Accordingly, we agree with the defendant that the defendant's statements about firing a gun at his apartment on or around New Year's Eve, in light of the evidence presented by the State so far, are not sufficiently relevant, without more, to be admissible in the State's case in chief. The State, of course, remains free on remand to ask the court for the opportunity to present evidence that demonstrates the relevance of the defendant's statements about firing a gun. Even if the State does not make such a request, the State remains free on remand to seek to introduce statements in the second interview about guns for impeachment purposes and/or for other rebuttal purposes if circumstances arise that, under the rules of evidence, would permit the State to do so.

¶ 27 Finally, we consider the third interview. The State posits that in this interview the defendant made multiple statements that implicate him in the murder, and that the statements imply him "knowing about the murder, knowing who committed the murder, specifically insinuating that it was his best friend, and that he was present at the murder." The defendant responds that the statements made in the third interview are not relevant, but are potentially highly prejudicial. As noted above, the defendant also contends the

third interview "was conducted in violation of [the defendant's] right to counsel." However, for the reasons that follow, we need not reach the defendant's latter argument.

¶ 28 With regard to the relevance and potential prejudice arguments made by the defendant about the statements in the third interview, the defendant posits that the statements are "at best ambiguous" about any possible involvement or accountability on the part of the defendant, and that because he was "in a highly emotional" state during the third interview, the danger of unfair prejudice posed by the admission of the statements substantially outweighs any probative value they might have. The State does little to contest the defendant's contention that the statements are highly prejudicial, responding only that it should be left to a jury to interpret what the defendant's highly emotional state in the interview means. In support of that proposition, the State cites a single case: *People v. Hadden*, 2015 IL App (4th) 140226, ¶ 29.

¶ 29 *Hadden*, however, is not on point, nor is it helpful. It deals not with the exclusion of evidence, but with a challenge to the sufficiency of the evidence. *Id*. ¶ 20. To determine what standard of review to employ when evaluating the defendant's challenge to the sufficiency of the evidence used to convict him, the *Hadden* court concluded that the regular, deferential standard of review, rather than a *de novo* standard of review, was appropriate, because the jury had been required to engage in fact-finding, in the form of drawing inferences from an audio recording, to determine whether an essential element of the crime charged had been proved. *Id*. ¶¶ 25-27, 29. The court noted that deferring to the jury was particularly important because the jury had considered "an audio-recorded statement as opposed to a written transcript." *Id*. ¶ 28. The court reasoned that "[s]poken

language contains more communicative information than the mere words because spoken language contains 'paralanguage'–that is, the 'vocal signs perceptible to the human ear that are not actual words.' " *Id*. (quoting Keith A. Gorgos, *Lost in Transcription: Why the Video Record Is Actually Verbatim*, 57 Buff. L. Rev. 1057, 1107 (2009)). Quoting further from the Gorgos law review article, the *Hadden* court noted how certain qualities related to quality of voice and speech comprise paralanguage that is rarely included in a transcript because the qualities have no written counterpart. *Id.* The court concluded that it was the responsibility of the jury "to interpret the paralanguage and draw the appropriate inferences therefrom." *Id*. ¶ 29. No claim was made by the defendant in *Hadden* that the audio recording was prejudicial, nor did the *Hadden* court discuss the defendant's emotional state at the time the recording was made. The case simply has no relevance to the question before us.

¶ 30 Far more apposite to that question are the following well-established legal principles. "Evidence is admissible if it is relevant to an issue in dispute and its probative value is not substantially outweighed by its prejudicial effect." *People v. Aguilar*, 265 Ill. App. 3d 105, 113 (1994) (citing *People v. Gonzalez*, 142 Ill. 2d 481 (1991)). Evidence will be deemed relevant if it has "any tendency to make the existence of a fact that is of consequence to the determination of an action more or less probable than it would be without the evidence." *Id.* "[E]videntiary rulings are within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007). Moreover, the Supreme Court of Illinois has held that "[i]t is entirely within the discretion of the trial court to 'reject offered evidence on

grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or possibly unfair prejudicial nature.' " *Id.* (quoting *People v. Harvey*, 211 Ill. 2d 368, 392 (2004)). A reviewing court will find an abuse of discretion in an evidentiary ruling only where we conclude the ruling made by the trial judge is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted' " in the ruling. *Id*. at 133 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)).

¶ 31 In this case, while we take no position with regard to the guilt, or lack thereof, of the defendant, we begin by examining, in light of the foregoing, highly-deferential standard of review, the defendant's statements in the third interview that he did not know what was going to happen on the day of the murder, statements such as the following: (1) "I didn't know the shit was fixin' [*sic*] to happen"; (2) "The shit happened, I was scared, I left"; and (3) "I didn't know the shit was fixin [*sic*] to happen, sir–dude did what he did, and I kept my mouth closed for him and ya'll [*sic*] come get me like I did something wrong." We agree with the defendant that these statements in the third interview are sufficiently vague and ambiguous that the trial judge could have reasonably concluded that they were of limited probative value, and indeed could easily be interpreted as denying involvement as a participant, positing instead that the defendant was a bystander, not an accomplice who was accountable for the actions of another. After all, the defendant repeatedly denied, in all three interviews–and even while left alone in the interview room for several minutes during the third interview–that either he or his girlfriend had any involvement in the murder.

¶ 32 Moreover, the trial judge could have reasonably concluded that the defendant's repeated statements about not wanting to "snitch" on a friend, and his repeatedly-expressed belief that he was "gonna get locked up regardless," were of limited probative value because they simply reiterated his assertion, made dozens of times during the interviews, that he mistrusted the authorities and believed they were trying to frame and/or blame him for the actions of another, rather than reflected some kind of accountability or involvement on the defendant's part in the murder, and that whether he felt loyal to a friend or was willing to provide information to authorities about that friend may have been probative of knowledge about the murder, but not necessarily about accountability or involvement in the murder.

¶ 33 Similarly, the trial judge could have reasonably concluded that even to the extent the statements in the third interview were probative, the probative value was substantially outweighed by the prejudicial effect to the defendant of the admission of the statements from the third interview. As the defendant points out, he was in a highly-agitated emotional state during the third interview. Officer Coppotelli testified that when, just prior to arranging the third interview, he went to the cell block area of the Cahokia Police Department where the defendant was being held, he observed the defendant "very emotionally upset, crying." According to Coppotelli, the defendant repeatedly stated, " 'I need to talk to somebody.' " The videotape itself demonstrates how distraught the defendant was, including not only repeated requests to speak with his girlfriend to "make sure she's okay," but also the defendant at times pacing around the interview room, covering his face, rocking in his seat, and almost constantly crying. The officers

involved in the third interview recognized the defendant's emotionally-agitated state, and repeatedly attempted to calm him down, and to get him to stop talking long enough for them to ensure that he understood his rights and that any statement that followed was voluntary. In fact, the officers never asked the defendant any questions about the murder during the third interview, no doubt recognizing that unless they could adequately calm him, it would be virtually impossible to demonstrate that any statement he gave was given following a knowing and intelligent waiver of his earlier invocation of his right to counsel. Indeed, on two separate occasions during the third interview–at approximately 10 minutes into the interview, and at approximately 23 minutes into the interview–the officers left the defendant alone in the room, for several minutes each time, telling him each time that he needed to sign a waiver of his rights before they could continue to speak with him, something he never did during the third interview. Under all of these circumstances, we cannot conclude that no reasonable person would take the position that the danger of unfair prejudice to the defendant from admitting the statements substantially outweighs the probative value of the statements. Therefore, we cannot conclude the trial judge erred in his ruling.

¶ 34 Nevertheless, as with the other statements, the State remains free on remand to seek to introduce statements in the third interview for impeachment purposes and/or for other rebuttal purposes if circumstances arise that, under the rules of evidence, would permit the State to do so.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the ruling of the trial court.

¶ 37 Affirmed.