2018 IL App (3d) 140509-U

Order filed May 24, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0509 Circuit No. 07-CF-2218
GABRIELA ESCUTIA,	)	The Honorable Carla Alessio-Policandriotes,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held*: Because the evidence supported an inference that the police deliberately used a "question first, warn later" tactic to obtain a confession from the defendant, the circuit court erred when it denied the defendant's motion to suppress her recorded and written statements to police.

¶ 2 The defendant, Gabriela Escutia, was convicted of first degree murder (720 ILCS 5/9-1(a) (West 2008)) and was sentenced to 52 years of imprisonment. On appeal, Escutia argues,

inter alia, that the circuit court erred when it denied her motion to suppress her recorded and written statements to police. We reverse and remand.

¶ 3 FACTS

¶ 4 On November 15, 2007, Escutia and codefendant Ricardo Gutierrez were charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)), alleging that they shot and killed Javier Barrios on October 28, 2007. In August 2010, Escutia's attorney filed two motions to suppress the statements Escutia gave to the police. An amended motion was also filed on August 31, 2011.

¶ 5 Several hearings were held on the pretrial motions between December 2010 and August 2012. The evidence presented at those hearings has largely been set forth by this court in Gutierrez's appeal (*People v. Gutierrez*, 2016 IL App (3d) 130619). We will repeat only those facts—supplemented when needed—necessary for the resolution of this appeal.

¶ 6 Barrios was shot and killed in the parking lot of a Meijer store in Plainfield on October 28, 2007. Once Barrios was identified, the police ran his information and learned that Escutia had an order of protection against him. An officer drove past Escutia's Plainfield residence but did not see her vehicle there. In a further attempt to locate her, the police sought records from Escutia's cell phone carrier. In this effort, they worked with Secret Service agents in Chicago, who used a device to try to locate Escutia's cell phone. Ultimately, Escutia's cell phone company provided the police an alternative billing address in Chicago, which was Gutierrez's residence.

¶ 7 The police arrived at the Chicago residence around 5:20 a.m. on October 29, 2007. They located Escutia and Gutierrez in a bedroom and asked them to come to the police station to answer some questions. They agreed. At 5:49 a.m., Escutia signed a consent form for the search

of her vehicle. At 6:15 a.m., Escutia was placed in an unmarked police vehicle and driven by detective Troy Kivisto to the Plainfield police department. Detective Carianne Siegel sat in the rear passenger's seat. Escutia was not in handcuffs or restrained in any way. Siegel stated that Escutia was not a suspect at that time and was not under arrest, which was why she had not been read her *Miranda* rights.

¶ 8 Siegel testified that during the approximately 60-minute drive, Escutia began talking "[a]lmost immediately" without any prompting from the detectives. Siegel claimed that Escutia started talking about family and friends, including Gutierrez and Barrios. She ultimately relayed details of the night of the shooting, including the circumstances that led to the meeting in the Meijer parking lot. Escutia told the officers about the incident, including that she shot Barrios in the chest. At that time, which was around 50 minutes into the trip, Siegel admitted that Escutia was no longer just a person of interest and was no longer free to leave.

¶ 9 When they arrived at the Plainfield police department at approximately 7:15 a.m., Escutia was placed into an interview room, where she remained by herself, save for an opportunity to use the washroom. At 8:34 a.m., Siegel and another officer began to interview Escutia, who signed a *Miranda* waiver form and consented to be videotaped. The interview lasted only five to ten minutes, however, because the recording system failed. The system was reset, and the interview resumed. Escutia was read her *Miranda* rights again, which she waived at 9:02 a.m., and she also consented again to the recording of the interview. The interview lasted approximately 50 minutes and was followed by Escutia agreeing to and preparing a written statement. In both statements, Escutia stated that she had previously dated Barrios and that he was verbally and physically abusive. He had also threatened harm to Escutia's family and her young daughter. On the day of the shooting, Escutia had agreed to meet Barrios at Meijer to talk. Gutierrez gave

Escutia a gun and accompanied her to Meijer along with one of Escutia's friends. Once they arrived, Escutia walked up to Barrios' vehicle and shot him. Barrios fled toward a nearby field. Gutierrez followed and shot him.

¶ 10 Kivisto testified that before the police went looking for Escutia, they had an eyewitness description of a vehicle and two people from the scene of the shooting. He believed that the description of the vehicle did not match Escutia's vehicle.[1] One of the people was a female and while Kivisto could not recall the physical description of that female but believed that the description "perhaps did" fit Escutia and "could have been substantially similar."[2] In addition, Kivisto stated that the police also knew that Barrios had recently expressed concern to them that Escutia had threatened to harm him through the acts of a third party. He stated, though, that Escutia was not a suspect at that point.

¶ 11 Kivisto also testified that Escutia sat in the front passenger's seat in the vehicle on the way to the Plainfield police department. She began talking about 10 minutes into the trip and eventually incriminated herself about 45 minutes into the trip. He also claimed that any comments he made during that time were meant only to acknowledge her statements and were not inquiries, even though he said things like "then what" in response to her statements and even though he admitted that saying "then what" to her would prompt her to continue to talk and tell him what happened next. He also stated that Siegel was taking notes in the back seat as Escutia spoke.

[1] On cross-examination, Siegel agreed that there were similarities between the eyewitness' description of the vehicle at the scene of the incident and Escutia's Nissan Altima. On redirect, Siegel stated that the description was a smaller black vehicle, "possibly a [Volkswagen] Passat."

[2] On cross-examination, Siegel agreed that the eyewitness' description of the female matched Escutia. On redirect, Siegel stated that the description was a "[s]horter, heavy female with dark curly hair."

¶ 12 Kivisto stated that Escutia was free to leave at any point until she admitted shooting Barrios, but that whether she was still free to leave at that point was up to the State's Attorney's office. Later, he stated that she was no longer free to leave once she confessed to the murder, which occurred when she was at the police station. Then, later, he said that Escutia was not free to leave once they arrived at the police station.

¶ 13 Escutia testified that the officers told her that she needed to come down to the police station to answer some questions. While she said she would go, she did not feel at liberty to decline and did not feel free to leave. She also signed a form that gave the police consent to search her vehicle, but she did not feel like she had any choice in the matter.

¶ 14 Escutia stated that she was escorted from the residence by a male officer, who walked in front of her, and a female officer, who walked behind her. In the vehicle, the male officer drove and the female officer sat in the back seat. Approximately 10 to 15 minutes into the trip, the male officer began asking her questions about Barrios and what she had done on the previous day. He further said that "he was going to make it easy for me and that he already knew what had happened, that it was all on video, that they had the security tapes from Meijer and the gas station and Office Max and that all he needed now was a why." She then made incriminating statements and gave the officers details of the circumstances leading up to and including the shooting.

¶ 15 An exhibit entered into evidence at the hearing was a document from the Will County Adult Detention Facility, which listed Escutia's arrest time as 5:28 a.m. on October 29, 2007. An employee of that facility testified that the arresting agency, which was the Plainfield police department, would have been the source of that information.

¶ 16 On August 6, 2012, the circuit court issued a written decision on the motions to suppress. In relevant part, the court found, *inter alia*, that Escutia had voluntarily gone with the officers to the Plainfield police department. The court also found:

> "that Escutia's demeanor in the vehicle was calm but very talkative; that Escutia initiated the communication regarding her relationship with Barrios; that Escutia was not interrogated by police in the vehicle wherein she confessed the details of the killing of Barrios. That Kivisto's minimal communication or responsive utterances did not subject Escutia to interrogation; that Seigel's [*sic*] writing of the [*sic*] Escutia's statements was an attempt to record the communication based on what was available; that Siegel's notes of Escutia's statements State's exhibit 2, along with the testimony of Kivisto, Seigel [*sic*] and Escutia relates that Escutia was in custody and not free to leave immediately after Escutia's statement "I WENT TO HIS TRUCK";
>
> That at this time Kivisto or Seigel [*sic*] should have interrupted the Escutia communication and advised her of her constitutional rights pursuant to Miranda; that the remaining portion of Escutia [*sic*] statements in the vehicle are suppressed;
>
> That Escutia was properly mirandized [*sic*] at approximately 8:34 a.m. at the police station; that Escutia voluntarily consented to being recorded and interviewed and waived her rights pursuant to Miranda; that the initial audio and

> video recording was not operating correctly; that the initial police station interview is suppressed; that the subsequent audio and video recording of the entire Escutia interview was operating correctly; that Escutia's complete interview as reflected in State's exhibit five (5) is admissible; that this verbal and the written statement of Escutia was freely and voluntarily made; that Escutia's Motion to Suppress as it relates to that is denied."

¶ 17 A jury trial was held in March 2014, at which both Escutia's written statement and the recording of her interview with the police were admitted into evidence. The jury found her guilty of first degree murder. On July 1, 2014, the circuit court sentenced Escutia to 52 years in prison. Escutia appealed.

¶ 18 ANALYSIS

¶ 19 Escutia's first argument on appeal is that the circuit court erred when it denied her motion to suppress her statements to police given at the police department. In essence, Escutia argues that the police used a "question first, warn later" technique, which was improper and requires suppression of the statement she gave to the police at the Plainfield police department.

¶ 20 The fifth amendment provides protection against self-incrimination. U.S. Const., amend. V. Generally, a custodial confession is admissible at trial if (1) the police read the individual his or her *Miranda* warnings first, and (2) the individual waived those rights. *People v. Lopez*, 229 Ill. 2d 322, 355-56 (2008). One exception to this rule is when the police use a "question first, warn later" technique. *Id.* at 360-61.

¶ 21 Escutia contends that the circuit court's decision was erroneous because it runs afoul of *Missouri v. Seibert*, 542 U.S. 600 (2004), and *Lopez*. In *Lopez*, our supreme court adopted a test from *Seibert* that appeared in Justice Anthony Kennedy's concurrence:

> "In applying Justice Kennedy's concurrence, we must first determine whether the detectives deliberately used a question first, warn later technique when interrogating defendant. If there is no evidence to support a finding of deliberateness on the part of the detectives, our *Seibert* analysis ends. If there is evidence to support a finding of deliberateness, then we must consider whether curative measures were taken, such as a substantial break in time and circumstances between the statements, such that the defendant would be able 'to distinguish the two contexts and appreciate that the interrogation has taken a new turn.' " *Lopez*, 229 Ill. 2d at 360-61.

¶ 22 Because police officers will not generally admit that they deliberately withheld *Miranda* warnings, " 'courts should consider whether objective evidence and any available subjective evidence such as an officer's testimony, support an inference that the two-step interrogation procedure was used to undermine the *Miranda* warning.' " *Id.* at 361 (quoting *United States v. Williams*, 435 F.3d 1148, 1158 (9th Cir. 2006). Factors to consider include " 'the timing, setting and completeness of the prewarning interrogation, the continuity of police personnel and the overlapping content to the pre- and postwarning statements.' " *Id.*

¶ 23 Our first task is to consider the objective evidence in this case. A contingent of as many as 14 law enforcement officers—which included as many as four Secret Service agents—went to

the alternate billing address of Escutia's cell phone at approximately 5:20 a.m. in an attempt to locate and question her regarding Barrios' death. They had no warrant to search or arrest. As many as 10 officers entered the house, allegedly with the consent of an occupant. Escutia and Gutierrez (who was unknown to the police) were located in a bedroom in the residence, where they had been sleeping. While the three Plainfield police officers who were at the residence—Siegel, Kivisto, and Robert Plutz—testified that Escutia was not arrested, the arrest document entered into evidence, which was filled out by the Plainfield police department, listed Escutia's arrest time as 5:28 a.m.—eight minutes after the contingent of officers arrived at the residence. In addition, she signed a consent form for the search of her car at 5:48 a.m. The officers asked Escutia to come with them to the Plainfield police department an hour away to answer some questions. Escutia agreed. She was taken by unmarked police vehicle from the residence at 6:15 a.m. She was not read her *Miranda* rights at any time before departure for the Plainfield police department.

¶ 24 Escutia sat in the front passenger's seat of the vehicle, while Kivisto drove and Siegel sat in the rear passenger's seat. Approximately 10-15 minutes into the hour-long trip, Escutia, allegedly unprompted, started talking about matters related to Barrios, culminating in her incriminating herself in the shooting. Siegel took notes in the back seat and, by his own admission, at a minimum, Kivisto made statements such as "then what" while Escutia talked. At no point did the officers stop her to read her *Miranda* rights, nor is there any evidence that she was ever released from her arrest.

¶ 25 Once they arrived at the Plainfield police department at around 7:15 a.m., Escutia was taken to an interview room, where she remained by herself except for a short time when she was taken to the washroom. At 8:34 a.m., she signed a waiver of her *Miranda* rights and a consent to

be videotaped. Siegel began to interrogate her, but the interrogation lasted only a few minutes because the recording system malfunctioned. Once the system was reset, Escutia verbally consented to the recording of her interview, and she signed another *Miranda* waiver at 9:02 a.m. The interview lasted approximately 50 minutes and she completed a written statement after the interview finished. Both statements included confessions to shooting Barrios, as she had also admitted in the vehicle on the trip to Plainfield, and included some additional details about her relationship with Barrios and the circumstances of the shooting.

¶ 26 Next, we consider the subjective evidence. Siegel testified that Escutia began talking on her own without any prompting by her or Kivisto. Escutia began talking about family and friends, including Gutierrez and Barrios, and eventually began relaying details of the night of the shooting. Siegel stated that Escutia confessed to shooting Barrios at approximately 50 minutes into the trip to the Plainfield police department.

¶ 27 Kivisto denied that he interviewed or interrogated Escutia in the vehicle on the way to the Plainfield police department. He claimed that his statements to her in the vehicle were tantamount to statements indicating active listening, although he admitted that he made statements such as "then what" in response to Escutia's statements, which he acknowledged on cross-examination would logically prompt Escutia to keep talking. He equivocated on whether Escutia was free to leave at any point prior to the arrival at the police department, stating first that she was free to leave until she admitted shooting Barrios, but even then the decision on whether she was free to leave was up to the State's Attorney's office; then he said that she was no longer free to leave once she confessed to the shooting, which occurred at the police station; before finally settling on stating that she was no longer free to leave once they arrived at the police station.

¶ 28 Escutia testified that while she agreed to go to the police station to answer questions and to allow the police to search her vehicle, she did not feel at liberty to decline. She was escorted from the residence by one male officer and one female officer, with the former walking in front of her and the latter walking behind her. Approximately 10 to 15 minutes into the trip to the police station, Kivisto started asking her questions about Barrios and where she had been the previous day. He also told her that they had watched surveillance videos and knew what had occurred, but they just needed to know why it occurred. She eventually confessed in the vehicle during the trip.

¶ 29 Viewing the objective and subjective evidence in totality, we find that it supports an inference that the police utilized a "question first, warn later" tactic after locating Escutia, arresting her, and subsequently transporting her to the Plainfield police department. Initially, we note that Escutia contests the circuit court's findings that Siegel and Kivisto testified credibly regarding what occurred in the vehicle. While both Siegel and Kivisto (after equivocating) testified that Escutia was free to leave at any point until she confessed in the vehicle, it is reasonable for a person in Escutia's situation—*i.e.*, being arrested and then transported in a police vehicle to a police station one hour away to be interviewed—to believe she was not free to leave. Further, it cannot be understated that the arrest information document, which was filled out by the Plainfield police department, listed Escutia's arrest time as 5:28 a.m.—just eight minutes after the contingent of officers and Secret Service agents approached the Chicago residence and prior to accompanying the police officers to Plainfield. This undisputed evidence not only undermines the credibility of Siegel and Kivisto, but also militates against any suggestion that the officers mistakenly withheld *Miranda* warnings in the vehicle (*cf. id.* at 364

(noting that if the officer did not know that the suspect was in custody, the withholding of *Miranda* warnings might have been unintentional)).

¶ 30 Further, even assuming that Escutia did start talking without prompting from the officers, Kivisto said he made statements such as "then what" while Escutia was talking. He acknowledged at the hearing that such statements would prompt Escutia to continue to talk and to tell him what happened next. Thus, even if the conversation began innocently, Kivisto was directing it toward a confession. Under the totality of these circumstances, we hold that the objective and subjective evidence support an inference that the officers deliberately withheld *Miranda* warnings from Escutia. See *id.* at 363-64. Thus, we hold that the circuit court erred when it failed to suppress Escutia's recorded and written statements given at the police station. Our analysis does not end there, however.

¶ 31 Next, we must consider whether Escutia's recorded and written statements were nonetheless admissible. "The relevant question is whether, after receiving midstream *Miranda* warnings, a reasonable person, in defendant's situation, would have understood that he retained a choice about continuing to talk to police." *Id.* at 364. Factors to consider regarding whether curative measures were taken include the amount of time between the pre- and post-warning statements, the location of those statements, any continuity in interrogators, whether details learned in the pre-warning statement were used during the post-warning interrogation, and whether the individual was advised that the pre-warning statement could not be used against her. *Id*. at 364-65.

¶ 32 As previously mentioned, only a small amount of time passed between the vehicle confession and the police station confessions—Escutia confessed in the vehicle around 7 a.m., they arrived at the police station around 7:15 a.m., and she sat virtually undisturbed in an

interview room between that time and 8:34 a.m. when the interview began. Siegel was present for the vehicle confession and also conducted the police station interview. Further, there was no evidence to indicate that Escutia was ever told that her vehicle confession could not be used against her. Viewing all these factors, we conclude that a reasonable person in Escutia's position would not have understood that she had a choice in whether to continue talking to the police. *Id.* at 366. Thus, we conclude that Escutia's recorded and written statements given at the police station were involuntary under the fifth amendment and should have been suppressed. *Id.*

¶ 33 Lastly, we must also consider the double jeopardy implications of our ruling that Escutia's recorded and written statements given at the police station were inadmissible at trial. *Id.*

¶ 34 The double jeopardy clause of the fifth amendment (U.S. Const., amend. V) does not prohibit retrying a defendant whose conviction has been negated due to an error in the proceedings leading to the conviction unless the evidence was insufficient to sustain a conviction. *Lopez*, 229 Ill. 2d at 367. When considering the sufficiency of the evidence for this purpose, all evidence submitted at trial—even the improperly admitted evidence—may be considered. *Id.* We view that evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 35 There is no question here that the evidence presented at Escutia's trial was sufficient to convict her of first degree murder. The State presented Escutia's recorded and written statements in which she confessed to shooting Barrios in the chest. Gutierrez also shot Barrios, but the evidence showed that each shot was sufficient to cause death. Under *Collins*, we hold that the evidence presented at trial was sufficient for a rational trier of fact to conclude that

Escutia committed first degree murder. See *id.* Accordingly, there is no double jeopardy impediment to retrying Escutia. See *Lopez*, 229 Ill. 2d at 368. Therefore, we remand the case for a new trial.

¶ 36 Our ruling on this issue obviates the need to address Escutia's remaining arguments on appeal.

¶ 37 CONCLUSION

¶ 38 The judgment of the circuit court of Will County is reversed and the cause is remanded for a new trial.

¶ 39 Reversed and remanded.

¶ 40 JUSTICE WRIGHT, dissenting:

¶ 41 I agree that an intentional usage of the "question first, warn later" technique is grossly improper and may warrant the suppression of pre and post-*Miranda* statements when used by law enforcement. *Missouri v. Seibert*, 542 U.S. 600 (2004); *People v. Lopez*, 229 Ill. 2d 322 (2008). However, based on the trial court's findings of fact, this record does not support the view that law enforcement deliberately employed a "question first, warn later" technique.

¶ 42 A two-part standard of review applies when reviewing a trial court's decision pertaining to a motion to quash arrest and suppress evidence. *People v. Grant*, 2013 IL 112734, ¶ 12. It is well settled that the trial judge is in a superior position to hear and weigh evidence and to assess the credibility of witnesses. *Shelby County Housing Authority v. Thornell*, 144 Ill. App. 3d 71, 76 (1986). Accordingly, reviewing courts should not reverse the trial court's factual findings unless such findings are against the manifest weight of the evidence. *Grant*, 2013 IL 112734, ¶ 12. The trial court's judgment is against the manifest weight of the evidence only when the opposite result is clearly evident. *Gerber v. Hamilton*, 276 Ill. App. 3d 1091, 1093 (1995).

¶ 43 After focusing on the contents of Defendant's exhibit No. 14, the majority expressly rejects the trial court's credibility determinations. Specifically, the majority finds that Detective Siegel's and Detective Kivisto's testimony was not truthful because the testimony did not mirror the arrest time listed on Defendant's exhibit No. 14, the printout of computer entries. For the reasons discussed below, I respectfully disagree that the contents of Defendant's exhibit No. 14 undermines the detectives' credibility or that Defendant's exhibit No. 14 conclusively establishes that Escutia was under arrest at 5:28 a.m. on October 29, 2007.

¶ 44 The record contains defense counsel's offer of proof involving the testimony of Scott Carey, a correctional officer at the Will County Adult Detention Facility. Carey testified that it had been several years since he inputted data into the correctional institution management information system (SIMIS) form which comprises Defendant's exhibit No. 14. Carey carefully explained that, in this case, he entered only Escutia's demographic information and arrival time of 5:30 p.m. into SIMIS. According to Carey, the time of the arrest listed on Defendant's exhibit No. 14 would have been filled in by someone else "after [Carey] initially logged Escutia into the computer system." Carey testified that once he "got her in the SIMIS computer," all other data entries on Defendant's exhibit No. 14 would have been made by some other unknown correctional officer tasked with entering the time of arrest and other routine booking information contained in Defendant's exhibit No. 14.

¶ 45 During the offer of proof, Carey stated that typically the other person entering data about the time of Escutia's arrest into the SIMIS form would rely on the time of arrest listed on the arrest and booking form, Defendant's exhibit No. 15. According to Carey, the information about the time of arrest would be the same time the officer from the arresting agency wrote down when filling in the blanks on the preprinted written form, Defendant's exhibit No. 15.

¶ 46 Next, defense counsel asked Carey to identify Defendant's exhibit No. 15, labeled as the arrest and booking form, pertaining to Escutia. Unlike the typed information on Defendant's exhibit No. 14, Defendant's exhibit No. 15 was handwritten and signed by an officer from the arresting agency rather than a correctional officer from the jail. During his testimony, Carey agreed that the officer from the arresting agency, who completed Defendant's exhibit No. 15, drew a line through the blank where the arrest time should have been listed on this exhibit. In response to the court's question, Carey was unable to explain the source of the arrest time that a correctional officer entered into SIMIS, because Defendant's exhibit No. 15 omitted this information about the time of Escutia's arrest.

¶ 47 The record reveals that defense counsel was surprised by Carey's testimony during the offer of proof. Counsel advised the court that his conversations with the personnel at the sheriff's department caused counsel to believe Carey was the person who personally entered the arrest time of 5:28 a.m. on Defendant's exhibit No. 14. Following Carey's testimony, defense counsel stated that "If we can stipulate the evidence shows that Ms. Escutia was in their control, arrest, detainment since 5:28 a.m., I'll sit down." In response to this suggestion, the court stated that such a stipulation would not "get" the defense to "where you need to be." The court explained its statement to defense counsel as follows: "What I am suggesting is a form produced by the Will County Sherriff's Department based on their own protocol and their choice of words they use cannot dictate to this court when the time of arrest is."

¶ 48 Due to defense counsel's surprise, the court took a recess in order to allow defense counsel to have time to investigate and ascertain the name of the officer from the arresting agency that signed Defendant's handwritten exhibit No. 15. The record shows that defense counsel subsequently located and had a conversation with the Plainfield police officer that

actually filled out and signed Defendant's exhibit No. 15. Defense counsel advised the court that the Plainfield police officer that signed Defendant's exhibit No. 15 was not involved in the murder investigation. Both Defendant's exhibit Nos. 14 and 15 were admitted as evidence without objection from the State.

¶ 49 I do not share the majority's view that Defendant's exhibit No. 14 conclusively establishes the time of arrest in this case was 5:28 a.m. or undermines the credibility of Detective Kivisto and Detective Siegel for several reasons. First, Carey explained that the correctional officer that inputs the time of arrest into the computer typically retrieves the time listed on the arrest and booking form completed by an officer from the arresting agency. In this case, it is undisputed that the handwritten arrest and booking form marked as Defendant's exhibit No. 15 was not completed by Detective Kivisto or Detective Siegel. Further, neither Detective Kivisto nor Detective Siegel entered the time of arrest into SIMIS, because a correctional officer is charged with that task. Since neither detective was responsible for listing the arrest time as 5:28 a.m., this data entry does not impeach or weaken the credibility of either officer.

¶ 50 In addition, defense counsel originally theorized that the source of the information about the arrest time of 5:28 a.m. contained in Defendant's exhibit No. 14 was the information provided by the arresting agency on Defendant's exhibit No. 15. Obviously, Defendant's exhibit No. 15, the arrest and booking form, was not the source for the arrest time of 5:28 a.m. because Defendant's exhibit No. 15 did not include any time of arrest. Moreover, for purposes of the offer of proof by defense counsel, counsel could not advise the court of the source of the arrest time inserted into SIMIS. Defense counsel did not know the name of the correctional officer that recorded the arrest time on Defendant's exhibit No. 14, and the police officer that delivered

Escutia to the jail did not recall the booking events that took place many years before defense counsel contacted her.

¶ 51 I also note that the court had other undisputed facts to consider before making the necessary findings about when Escutia's situation became custodial for purposes of *Miranda*. For example, even Escutia agreed that the officers did not touch her, restrict her movement, or use any physical force on her before she left the residence. It is also undisputed that Escutia was not handcuffed during the ride to Plainfield in the squad car. I observe that typically experienced detectives would not have allowed a person under arrest for murder to ride in the front seat of the squad car completely unrestrained. Handcuffs are generally indicative that an arrest has taken place and are one factor to be considered in this case. *People v. Wells*, 403 Ill. App. 3d 849, 857 (2010). Consequently, I agree with the trial court's conclusion that Escutia was not in custody when she entered the squad car.

¶ 52 Further, the trial court determined that Detective Kivisto's use of the words "then what," along with other responsive utterances rose to the level of actual "coercion" resulting in an unconstitutional interrogation expressly condemned in *Seibert* and *Lopez.* In *Seibert,* our supreme court described law enforcement's *unmirandized* interrogation, adapted to undermine *Miranda,* as "systematic, exhaustive, and managed with psychological skill." *Seibert,* 542 U.S. 600 at 616. In *Lopez,* law enforcement brought a 15-year-old defendant to the police station, placed him in an interrogation room, advised him that he was implicated in a murder, proceeded to question defendant in the absence of *Miranda* warnings, then left defendant in the interrogation room for at least four hours while officers continued to investigate. The abbreviated verbal responses of Detective Kivisto uttered during a ride to the police station cannot be accurately described as "systematic, exhaustive, and managed with psychological skill."

¶ 53 The case law recognizes that "There is a vast difference between the direct consequences flowing from coercion of a confession by physical violence or other deliberate means calculated to break the suspect's will and the uncertain consequences of disclosure of a 'guilty secret' freely given in response to an unwarned but noncoercive question." *Oregon v. Elstad*, 470 U.S. 298, 312 (1985). In my view, the actions of the detectives in this case pale in comparison to the systematic conduct undertaken by the law enforcement officials in *Seibert* and *Lopez*. Consequently, like the trial court, I also conclude the detectives did not employ the type of coercive conduct that the holdings in *Seibert* and *Lopez* were intending to deter.

¶ 54 Next, I conclude that the trial court correctly denied the portion of the motion to suppress pertaining to the statements by Escutia more than an hour after she arrived at the police station. I note that upon her arrival at the police station, the detectives left Escutia alone for one hour and 15 minutes. The pause in the process provided Escutia with more than an hour alone to gather her thoughts and decide whether she wanted to participate in a more formal interview. I believe this pause, in part, constitutes a curative measure and represents the beginning of another chapter in the murder investigation that did not include Detective Kivisto. Instead, two female law enforcement officers, Officer Mary Kay Zimmerman and Detective Siegel, spoke with Escutia. During this interview, the female interrogators made sure Escutia received her *Miranda* rights twice, signed a *Miranda* waiver form, and agreed to give verbal and written statements. In my view, these steps represent curative measures that removed any unintended taint from the conversation between defendant and Detective Kivisto in the squad car.

¶ 55 For these reasons, I conclude the trial court's credibility determinations and the resulting findings of fact were not against the manifest weight of the evidence. Further, I find that the curative measures present in this record attenuated the effects of any police errors or misconduct

with respect to the duty to *Mirandize* this defendant during the squad car ride. I would hold that the trial court did not err when it failed to suppress Escutia's recorded and written statements given at the police station. Thus, I would uphold defendant's conviction.