2020 IL App (2d) 180128-U
No. 2-18-0128
Order filed July 17, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-4336
KERWIN P. MURRY,	)	Honorable George D. Strickland
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to suppress statements to police during two separate custodial interrogations. First, though defendant was fatigued during the interrogation leading to the first set of statements, the overall circumstances suggested that the statements were not involuntarily given. Second, though defendant invoked his right to counsel at the end of the first interrogation, it was defendant, not the police, who initiated the second interrogation. Also, defendant's query whether it was possible to have an attorney present for the second interrogation was not an unequivocal request for counsel. Finally, any error in the admission of the statements was harmless given the independent evidence to support defendant's conviction for first-degree murder. An accomplice testified to defendant's participation in the crime, and this testimony was corroborated by fingerprint evidence linking defendant to the scene as well as evidence showing defendant's consciousness of guilt.

¶ 2 Defendant, Kerwin P. Murry, appeals from his first-degree murder conviction in the circuit court of Lake County, contending that the trial court erred in denying his motion to suppress statements he gave to the police. Because defendant's motion to suppress was properly denied, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on several charges, including first-degree murder (720 ILCS 5/9-1(a)(2) (West 2010)).

¶ 5 A. Motion to Suppress

¶ 6 Before trial, defendant moved to suppress statements he gave to the police while in custody on December 29 and 30, 2011. The following facts were presented at the hearing on the motion to suppress.

¶ 7 At around 2 p.m. on December 29, 2011, the Waukegan police arrested defendant and several accomplices. Detective Jaroslaw Grzeda of the Waukegan Police Department transported defendant to the police station. There, Detective Grzeda and Detective Brian Hawbaker of the Waukegan Police Department interrogated defendant.

¶ 8 The December 29 interrogation began around 2:48 p.m. and ended about 7:41 p.m. The interrogation took place in an interview room with a desk and three chairs. The only officers present were Detectives Grzeda and Hawbaker. The entire interrogation was video recorded.

¶ 9 The video recording showed Detective Grzeda reading defendant his *Miranda* rights and defendant reading and signing the waiver. Although defendant signed with a false name, later during the interrogation he told Detective Grzeda his real name.

¶ 10 Throughout the interrogation, defendant appeared to be tired. During breaks he would either rest his head against the wall or on the desk. At one point, because defendant was cold, the

officers gave him a blanket. Several times during the interrogation, when the officers left the room, defendant would rest by lying on the floor covered with the blanket.

¶ 11 When defendant would ask for water or cigarettes, the officers promptly provided both. At around 5 p.m., the officers asked defendant if he wanted water or food or if he needed to use the bathroom.

¶ 12 At around 6:22 p.m., as the officers were leaving the room, they told defendant that he was welcome to lay on the floor. Defendant did so until the officers returned at around 6:36 p.m. Upon returning, Detective Grzeda asked defendant to sit in the chair. At around 6:42 p.m., defendant commented that it had been a long night, and Detective Grzeda acknowledged that defendant was tired. At about 6:54 p.m., the officers left the room. Defendant laid on the floor under the blanket. At around 7:17 p.m., the officers returned. Detective Grzeda told defendant to wake up and sit in the chair. Detective Grzeda told defendant that he knew defendant was tired but that he wanted to talk to defendant face to face.

¶ 13 Throughout the interrogation, the officers used a conversational tone. Defendant appeared coherent and alert, though tired. He was engaged with the officers and answered questions appropriately.

¶ 14 Defendant made several incriminating statements during the interview including that he and his associates were with the victim in the car. Defendant denied seeing his associates shoot the victim.

¶ 15 The interrogation continued until about 7:34 p.m., when defendant asked for an attorney. The officers immediately stopped and left the room. At about 7:41 p.m., the officers returned and told defendant that, because he had asked for an attorney, they were done talking to him. They

also told him that they would take him to a cell where he could lay down and rest. The video ended at around 7:41 p.m.

¶ 16 Detective Grzeda testified that defendant appeared coherent and alert during the December 29 interrogation. He did not appear to be under the influence of drugs or alcohol. Although defendant was tired, he seemed to understand the questions and respond appropriately.

¶ 17 According to Detective Hawbaker, defendant had slept on the floor during breaks. He did not know how long defendant had been without sleep. Defendant did not seem to be under the influence of drugs or alcohol. When defendant was lying on the floor, he seemed to understand what was being said.

¶ 18 Chief Daniel Greathouse of the Waukegan Police Department testified that he had been called several times by defendant's mother while defendant was in custody. Late on the afternoon of December 30, 2011, Chief Greathouse called defendant's mother. Defendant's mother told Chief Greathouse that she was concerned about defendant and wanted to speak to him. Chief Greathouse told her that he would give defendant a message to call her.

¶ 19 Chief Greathouse denied encouraging defendant's mother to talk to defendant or coaching her to tell defendant that he needed to confess. Nor did he ask her to do anything on behalf of the police department or to assist in the investigation. Chief Greathouse could not recall if he knew that defendant had invoked his right to an attorney. Chief Greathouse told Detective Grzeda to make sure that defendant had an opportunity to call his mother. Detective Grzeda then arranged for defendant to call his mother. After defendant spoke to his mother, he asked to speak with Detective Grzeda.

¶ 20 Ruthie Murry, defendant's mother, testified that, at around 2 p.m. on December 30, 2011, she called and spoke to Chief Greathouse. According to Murry, Chief Greathouse told her that

defendant would not talk to the police. He also told her that, because the other guy was talking to the police, it would be better for defendant if she could get him to talk. Murry responded that, if Chief Greathouse would have defendant call her, she would let him know that he needed to talk. Chief Greathouse replied that he would do so and that she should get defendant to talk. According to Murry, about five minutes later, defendant called her. She told defendant that he needed to talk to the police and that Chief Greathouse said that, if he did, he could go home. The next morning, Murry called Chief Greathouse and asked if defendant was talking. Chief Greathouse said that he was.

¶ 21 Defendant testified that he had dropped out of school after his freshman year but later obtained his GED. The last time that he had slept before the night of December 29, 2011, was when he awoke around 8 a.m. on December 28, 2011. The night before the December 29 interrogation he had drunk three shots of vodka and a fifth of rum, smoked three ounces of marijuana, and taken three Percocet pills. He was hung over during the December 29 interrogation. He slept and ate the night between December 29 and December 30.

¶ 22 On cross-examination, defendant testified that Chief Greathouse had come to his cell and given him the opportunity to call his mother. After speaking to his mother, defendant wanted to talk to the police.

¶ 23 Detective Grzeda testified that, in the late afternoon of December 30, 2011, Chief Greathouse wanted to make sure that defendant called his mother. After the phone call, defendant asked to speak to Detective Grzeda. Detectives Grzeda and Hawbaker then placed defendant in the interview room.

¶ 24 The December 30 interrogation began about 6:55 p.m. and was video recorded. The video showed that, initially, defendant asked for water and cigarettes, which the officers provided. At

about 7:09 p.m., the officers reentered the room. Detective Grzeda asked defendant if he wanted to speak to the officers. Defendant answered that he did and acknowledged that the officers had not asked to speak to him. Detective Grzeda read defendant his *Miranda* rights; defendant read the rights form, acknowledged that he understood his rights, and signed the waiver.

¶ 25 Defendant then asked if it was possible to have an attorney present. Detective Grzeda answered that they did not have any attorneys available, but that defendant was welcome to have an attorney present. Defendant then said that he was willing to speak to the officers.

¶ 26 During the December 30 interrogation, defendant made several incriminating statements, including being present during the armed robbery and when the victim was shot. The interrogation ended about 8:24 p.m.

¶ 27 In denying the motion to suppress, the trial court found that defendant knowingly and voluntarily waived his *Miranda* rights before both the December 29 and December 30 interrogations. Further, the court found that defendant initiated the December 30 interrogation. The court further found that there was no evidence that the police had defendant's mother try to get him to talk to the police. The court noted that defendant never testified at the hearing that he talked to the police on December 30 because of his mother's prompting or that he was otherwise induced to talk to the police on that date.

¶ 28 B. Trial

¶ 29 The following facts were presented at defendant's trial. On the evening of December 28, 2011, defendant was hanging out with Frederick Smith, Jonathan Barnes, and Barnes's sister, Tawana Davis, at Davis's apartment at the Julian Towers in Waukegan. At one point, the foursome took a cab to Frank's Lounge in North Chicago. While there, they had several drinks. They stayed until around 1:30 a.m. on December 29, 2011. They then took a cab back to Davis's apartment.

¶ 30 While at the apartment, they began discussing committing an armed robbery. Thereafter, the foursome left on foot to look for someone to rob. As they walked around, they took a bicycle from a rack at the library and took turns riding the bike.

¶ 31 Smith testified for the State. He admitted to doing so in exchange for having a murder charge dismissed and receiving a 20-year sentence for armed robbery. According to Smith, defendant had a .22 caliber revolver in his waistband when they went to Frank's. No one else but defendant had a gun.

¶ 32 When they returned to Davis's apartment, all four again talked about robbing someone. They left the apartment around 4 a.m. to look for a victim. As they walked around, they saw a Cadillac pull into the driveway of a house and saw the driver go inside. They then saw a man come out of the house. Defendant and Barnes approached the man. Defendant held a gun to the man as Barnes patted him down. Smith was standing at the end of the driveway. When Smith walked up, defendant gave him the gun and told him to put the man in the car. Smith and the man got in the back seat. Barnes drove, and defendant sat in the front passenger seat. Davis rode off on the bicycle.

¶ 33 According to Smith, they drove and stopped near Julian Towers. Defendant, Barnes, and Smith exited the vehicle but left the man inside. Defendant then took the gun from Smith and fired three shots into the passenger compartment of the car.

¶ 34 The threesome then went to Davis's apartment. Davis was there. Defendant still had the gun. When they asked defendant why he shot the man, defendant said that he did not know.

¶ 35 When they saw from the apartment window that the police were arriving, defendant and Smith went to defendant's apartment on the 14th floor. The building was then put on lockdown. Smith hid in a ventilation duct on the 14th floor. He then dropped down seven floors and became

stuck in the duct. The police had to cut him out. He had the victim's cell phone when he was arrested. On cross-examination, Smith admitted that he did not initially cooperate with the police but, rather, lied to the them until he had the opportunity to plead guilty to the lesser charge of armed robbery in exchange for his testimony.

¶ 36 Officer Rolando Villafuerte of the Waukegan Police Department found the victim, Carlos Hernandez, lying in the street. Carlos indicated that he had been shot in the stomach and chest and that he was having difficulty breathing. Carlos said that he thought he was dying. He told Officer Villafuerte that three black males were involved. Carlos later died of the gunshot wounds.

¶ 37 Carlos's wife, Josephia Uriostegui, testified that she and Carlos lived at 417 Hickory Street in Waukegan. On the morning of December 29, 2011, Carlos was going to be picked up by his nephew and the two were going to drive to a painting company to pick up their paychecks. When Carlos's nephew arrived, he parked the Cadillac, left the engine running, and entered the house to use the bathroom. As he did, Carlos went outside to wait for him. When Josephia heard voices outside, she looked out the bedroom window. Although it was still dark, she saw Carlos standing with his hands in the air. She could not see anyone else but heard voices. She had her daughter call the police. She then saw Carlos's nephew's car back out of the driveway.

¶ 38 Lieutenant Anthony Joseph of the Waukegan Police Department responded to the Julian Towers. As he walked near apartment 801, he suspected that someone was hiding inside. He had a building maintenance person open the door. He and other officers found defendant hiding behind a mirror. Defendant shoved the mirror at the officers and tried to escape. After wrestling with defendant, the officers arrested him. Later, Smith was removed from a ventilation duct.

¶ 39 A subsequent search of a basement trash dumpster revealed a .22 caliber revolver. The revolver held five live rounds and three spent shell casings. The police also found in the dumpster the keys to the Cadillac.

¶ 40 A forensic pathologist opined that Carlos died of two gunshot wounds. The autopsy revealed two .22 caliber bullets in Carlos's body. A firearms tool identification expert opined that the two bullets found in Carlos were fired from the .22 caliber revolver found in the dumpster.

¶ 41 According to defendant's girlfriend, Melissa Keys Gillian, in December of 2011, she was living with defendant and was three-months pregnant with his child. Sometime between December 28 and December 29, 2011, Tawana Davis showed up at her door. Davis pulled out a gun and told her to throw it away. Melissa told her to get out. In her testimony, Davis denied having a gun on December 29.

¶ 42 Defendant testified that, around 10 or 10:30 p.m. on December 28, 2011, he went to Davis's apartment. Barnes and Davis were there. Smith showed up around the time that they went to Frank's. Defendant, Barnes, Smith, and Davis took a cab to Franks. Defendant denied having a gun.

¶ 43 Defendant had four drinks at Frank's. They left around 1:30 a.m. and took a cab back to Davis's apartment.

¶ 44 At one point, Davis wanted cigarettes, so defendant, Barnes, Smith, and Davis walked to a nearby gas station. As they did, they took a bike from a rack at the library. Barnes talked about committing a robbery, but defendant did not take him seriously. After buying cigarettes, the foursome headed back to Davis's apartment.

¶ 45 As defendant and Davis trailed behind, defendant saw Barnes and Smith approach a guy, stick him up, and put him in a car. Because Barnes had a gun, defendant did not want him to think

that he would call the police. So, defendant got in the car. Barnes drove, Smith sat in the back seat with the victim, and defendant sat in the front passenger seat.

¶ 46 As they drove, Barnes and Smith asked the victim if he had any money. Defendant never spoke to the victim. After driving for a few minutes, they stopped near a house about a block from Julian Towers. As they sat in the car, Smith pointed the gun at the victim. Both Barnes and Smith kept asking the victim if he had any money and threatening the victim.

¶ 47 At one point, Barnes, Smith, and defendant exited the car. Barnes then took the gun from Smith. Defendant began to run away. As he did, he heard several loud cracking noises. He turned around and saw Barnes leaning into the passenger compartment of the car.

¶ 48 Barnes and Smith yelled at defendant to stop. All three then went to Davis's apartment. Barnes, Smith, and defendant discussed what to do with the gun. When defendant left the apartment, the gun was still there.

¶ 49 Defendant went to his apartment on the 14th floor. He and Melissa then went to McDonald's. He did not tell her what had happened.

¶ 50 Defendant then went to a friend's apartment at Julian Towers. He changed clothes and cut his hair. He did not call the police, because he did not want to be a snitch. He stayed in the friend's apartment until the police arrested him. Defendant denied shooting the victim, planning the robbery, or having the gun.

¶ 51 As for the police interrogation, defendant testified that he was extremely tired, because he had been up for 24 hours. He was also coming down from alcohol. He described the officers as hospitable; they gave him what he wanted to eat or drink and allowed him to use the bathroom. He did not initially tell the police the truth, because he was afraid of Barnes.

¶ 52 The next morning, Detective Grzeda came to defendant's cell and told him that he needed to call his mother. Chief Greathouse also told him that his mother was worried and allowed him to call her. According to defendant, he did not intend to speak to the officers but changed his mind after talking to his mother.

¶ 53 In his testimony, Detective Grzeda admitted that, during the December 29 interrogation, defendant looked exhausted at times and that he slept some. He stopped the interrogation when defendant asked for an attorney.

¶ 54 Defendant spent the night in a cell in the booking area. The next day, Chief Greathouse asked defendant if he had had the chance to speak to his mother. Detective Grzeda then took defendant to a phone, and defendant talked to his mother. After defendant was done talking, he told Detective Grzeda that he wanted to talk to him.

¶ 55 In the interview room, Detective Grzeda asked defendant if he wanted to talk. Defendant said he did. Detective Grzeda asked defendant if he was initiating the conversation, and defendant confirmed that he was. Detective Grzeda read defendant his *Miranda* rights. Detective Grzeda admitted to lying to defendant several times during the interrogations. He also admitted that, several times during the December 29 interrogation, defendant had his head on the desk with his eyes closed and was also lying on the floor. Detective Grzeda could not recall if defendant was sleeping, but he did ask defendant to sit up.

¶ 56 Among the instructions that the jury received was an instruction that Smith's testimony should be viewed with caution and suspicion because he admitted to his participation in the crime. The jury found defendant guilty of first-degree murder. The jury also found that the State had proved that defendant, or someone for whose conduct he was responsible, was armed with a

firearm. The jury found that the State did not prove that defendant personally discharged the firearm.

¶ 57 Defendant was sentenced to 37 years in prison for murder and given a 15-year consecutive sentence for being armed with the firearm. Defendant filed a timely notice of appeal.

¶ 58 II. ANALYSIS

¶ 59 On appeal, defendant contends that his December 29 statement was involuntary because he was exhausted and recovering from alcohol consumption. He also argues that his December 30 statement was invalid because (a) he did not voluntarily reinitiate a conversation with the police after invoking his right to counsel the night before, and (b) the officers ignored his unequivocal request for counsel at the outset of the December 30 interrogation.

¶ 60 We first address the voluntariness of the December 29 statement. The test of voluntariness is whether the individual confessed freely and voluntarily, without compulsion or inducement of any kind, or whether his will was overborne at the time of the confession. *People v. Morgan*, 197 Ill 2d 404, 437 (2001). The voluntariness of a confession is determined by considering the totality of the circumstances. *People v. Richardson*, 234 Ill. 2d 233, 253 (2009). The court should consider the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of the questioning. *People v. Willis*, 215 Ill. 2d 517, 536 (2005). The court should also consider the duration of the interrogation, the presence of *Miranda* warnings, whether there was any physical or mental abuse, and the legality and duration of the detention. *Willis*, 215 Ill. 2d at 536. No single factor is dispositive. *Richardson*, 234 Ill. 2d at 253. When a defendant challenges the voluntariness of his confession, the State bears the burden of proving by a preponderance of the evidence that the confession was voluntary. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 61 Our review of a trial court's ruling on a motion to suppress is governed by a two-part standard. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We accord great deference to the trial court's factual findings and credibility determinations and will reverse them only if they are against the manifest weight of the evidence. *Slater*, 228 Ill. 2d at 149. Factual findings and credibility determinations are against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). However, we review *de novo* the ultimate legal question of whether the suppression was warranted. *Cosby*, 231 Ill. 2d at 271.

¶ 62 Here, defendant, in contending that his December 29 statement was involuntary, focuses primarily on his lack of sleep. Sleep deprivation is a factor bearing on the voluntariness of a confession. *Murdock*, 2012 IL 112362, ¶ 47; *People v. Redd*, 135 Ill. 2d 252, 293 (1990).

¶ 63 Although it is apparent from the video that defendant was very tired, that factor alone did not render his confession involuntary. Indeed, the totality of the circumstances supports the conclusion that the December 29 statement was voluntary.

¶ 64 First, defendant was advised of his *Miranda* rights and signed a waiver. In doing so, he never indicated that he did not understand his rights. Indeed, later, he invoked his right to counsel and ended the interrogation.

¶ 65 Second, throughout the interrogation defendant appeared to be alert and engaged with the officers. He seemed to understand what was being said and to appropriately respond to questions. Although he appeared to sleep during various breaks, he was overall alert and responsive when the officers were in the room.

¶ 66 Third, defendant was 22 years old and had a GED. He did not appear to be uneducated. Nor was he confused or unable to understand why he was there or what the officers were saying.

¶ 67 Fourth, defendant had extensive experience with the criminal justice process. He had several prior convictions and had served prison time.

¶ 68 Fifth, the officers did not engage in any physical or mental abuse. Indeed, they conducted themselves professionally throughout the interrogation. They gave defendant water and cigarettes whenever he asked. They offered him food and allowed him to use the bathroom. They provided him a blanket because he was cold. They spoke to defendant in a professional and non-threatening tone. See *Murdock*, 2012 IL 112632, ¶ 45.

¶ 69 Sixth, although the entire interrogation lasted about five hours, there were numerous breaks throughout in which defendant was allowed to rest. Further, the interrogation took place at a reasonable time of day and not the middle of the night. See *Murdock*, 2012 IL 112632, ¶ 47.

¶ 70 Seventh, when defendant asked for an attorney, the officers immediately stopped the interrogation.

¶ 71 Based on the totality of the circumstances, although defendant was tired, his will was not overborne during the December 29 interrogation. Thus, his lack of sleep did not alone render his statement involuntary.

¶ 72 Defendant also points to his having been drinking earlier. The video, however, does not indicate that defendant was under the influence of alcohol. He spoke clearly and responded promptly and appropriately to questions. Further, both Detective Grzeda and Detective Hawbaker testified that defendant did not appear to be under the influence of drugs or alcohol. Thus, defendant's earlier consumption of alcohol did not render his statement involuntary.

¶ 73 When we consider the various factors, they collectively show that the December 29 statement was voluntary, notwithstanding that defendant was tired and recovering from alcohol

consumption. Thus, the trial court did not err in denying the motion to suppress the December 29 statement.

¶ 74 We next consider whether defendant's December 30, 2011, statement was invalid because the police improperly initiated the interrogation. It was not.

¶ 75 Under *Miranda*, if an accused requests counsel at any time during an interview, he cannot be questioned further until a lawyer has been made available to him or until he reinitiates a conversation with the police. *People v. Harris*, 2012 IL App (1st) 100678, ¶ 69 (citing *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981)). The purpose of that bright-line rule is to prevent the police from either deliberately or unintentionally persuading the accused to incriminate himself despite his earlier request for counsel. *Smith v. Illinois*, 469 U.S. 91, 98 (1984).

¶ 76 In applying that rigid prophylactic rule, we must determine whether the accused actually invoked his right to counsel. *Harris*, 2012 IL App (1st) 100678, ¶ 69. A reference to an attorney that is ambiguous or equivocal, to a reasonable officer under the circumstances, does not require cessation of questioning. *Davis v. United States*, 512 U.S. 452, 459 (1994) ("maybe I should talk to a lawyer" held to be ambiguous). Although a defendant need not articulate his request in a manner of a Harvard linguist, he must articulate his desire in a clear enough manner that a reasonable officer would understand the statement as a request for an attorney. *People v. Schuning*, 399 Ill. App. 3d 1073, 1082 (2010); see also *People v. Sommerville*, 193 Ill. App. 3d 161, 169 (1990) (simply referring to an attorney does not automatically constitute an invocation of the right to counsel). The invocation must be sufficiently free from indecision or double meaning as to reasonably inform authorities that the accused wishes to speak to counsel. *In re Christopher K.*, 217 Ill. 2d 348, 382 (2005).

¶ 77 Here, defendant clearly invoked his right to counsel during the December 29 interrogation, and the police properly terminated that interrogation. Detective Grzeda testified, however, that on December 30 defendant reinitiated the conversation. Although defendant's mother testified that Chief Greathouse coaxed her into persuading defendant to talk to the police, Chief Greathouse denied that assertion. The trial court found that there was no evidence that Chief Greathouse induced defendant's mother to prompt defendant to talk. That finding implied that the trial court rejected defendant's mother's testimony and believed Chief Greathouse. That credibility determination was not unreasonable or contrary to the evidence. Although, after speaking to his mother, defendant indicated to the police that he was willing to talk, this did not show necessarily that Chief Greathouse induced his mother to try to get him to talk. There could have been any number of reasons why defendant might have decided to talk after speaking to his mother. Further, when Detective Grzeda asked defendant if he was initiating the conversation, defendant said yes. Defendant could have clarified at that point that he was doing so because of his mother but he did not. Because defendant reinitiated the conversation without any involvement by the police, he was not denied his right to counsel.

¶ 78 This leaves defendant's assertion that the police ignored his unequivocal request for an attorney at the beginning of the December 30 interrogation. Defendant made no such request. He merely asked if it was possible to have an attorney present. That was not a clear, unequivocal request for an attorney. Instead, it was the type of ambiguous statement that did not require a cessation of questioning. Indeed, defendant knew how to unequivocally invoke his right to an attorney, as he had done so the night before. Further, when he did, the officers immediately stopped their questioning. Thus, he knew that if he asked for an attorney, the interrogation would end. On December 30, however, when he asked if it was possible to have an attorney present,

Detective Grzeda answered that none were available, but that defendant was welcome to have his own attorney present. Instead of stating that he would not speak until he had a lawyer present, defendant said that he wanted to go ahead and talk to the officers. Thus, he did not invoke unequivocally his right to an attorney during the December 30 interrogation.

¶ 79 Even were we to hold that either statement should have been suppressed, any error was harmless beyond a reasonable doubt. *People v. Wrice*, 2012 Il 111860, ¶ 67 (citing *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). To ascertain whether an erroneous admission of an involuntary statement is harmless, a court may focus on the error to determine whether it contributed to the conviction, analyze the other evidence to ascertain whether there is overwhelming properly admitted evidence that supports the conviction, or consider whether the improperly admitted statement was cumulative or duplicative of the properly admitted evidence. *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). Although the admission of an unlawfully obtained confession is rarely harmless, (*Harris*, 2012 IL App (1st) 100678, ¶ 76), where the evidence against the defendant is overwhelming, the admission of an involuntary statement will be deemed harmless (*People v. Mitchell*, 152 Ill. 2d 274, 328-30 (1992)).

¶ 80 Here, there was overwhelming evidence, irrespective of defendant's statements, to support his conviction. According to Smith, defendant was carrying a .22 caliber revolver when they went to Frank's. Smith further testified that defendant was involved in the robbery. More importantly, Smith testified that defendant shot the victim. Smith's testimony was to be viewed with suspicion because he was a participant in the crime who received favorable treatment in exchange for his testimony against defendant. See *People v. Zambrano*, 2016 IL App (3d) 140178, ¶ 27 (the testimony of an accomplice should be viewed with suspicion and accepted only with great caution, especially where the witness was promised leniency or where the testimony was induced with a

grant of immunity). Nevertheless, it was within the jury's province to accept Smith's testimony. See *People v. Tenney*, 205 Ill. 2d 411, 429 (2002). Further, defendant admitted that he was present during the robbery and the shooting. His fingerprint was on the passenger side door handle. Defendant also admitted that, upon seeing the police arrive, he went to a friend's apartment, changed clothes, cut his hair, and hid there from the police. Those actions evinced defendant's consciousness of guilt. See *People v. Hart*, 214 Ill. 2d 490, 519 (2005).

¶ 81 The evidence apart from defendant's statements overwhelmingly supported his conviction for first-degree murder. Thus, any error in failing to suppress defendant's statements was harmless beyond a reasonable doubt.

¶ 82 For the foregoing reasons, the trial court did not err in denying defendant's motion to suppress his December 29, 2011, and December 30, 2011, statements to the police.

¶ 83 III. CONCLUSION

¶ 84 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 85 Affirmed.