2013 IL App (1st) 093005-U

No. 1-09-3005

SIXTH DIVISION
December 20, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 03 CR 5227
	)	
JASON JOHNSON,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: (1) The trial court erred in granting defendant's motion to quash arrest; and (2) the trial court did not abuse its discretion in allowing the State to introduce other crimes evidence.

¶ 2 Following a jury trial, defendant Jason Johnson was found guilty of four counts of home invasion and four counts of first degree murder. The trial court then merged his convictions and sentenced him to a term of natural life imprisonment for first degree murder. On appeal,

defendant contends: (1) that the trial court erred in finding that his inculpatory statements were attenuated from his illegal arrest; and (2) that the trial court erred in allowing the State to present certain other crimes evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 3, 2003, Prescott Perry, his daughter Sarah Perry, her boyfriend Ronald Ryals Sr. (Ronald Sr.), and their two-year-old child Ronald Ryals Jr. (Ronald Jr.), were found shot to death inside their residence at 8042 South Michigan Avenue, in Chicago. Emmanuel Phillips[1], who lived next door, initially took full responsibility for the murders in a confession letter that he left after later shooting and killing his father, Roosevelt Phillips. While a manhunt was underway for him, however, defendant disclosed his own involvement in the January 3, 2003 home invasion and murders. He eventually gave a statement and was charged with multiple counts of first degree murder, home invasion, armed robbery, and residential burglary.

¶ 5 A. Motion to Quash Arrest and Suppress Evidence

¶ 6 Prior to trial, defendant filed a motion to quash his arrest and suppress evidence, asserting that he was arrested at his home at 12522 South Lowe Avenue without a valid warrant or probable cause. The following evidence was adduced at the hearing on that motion.

¶ 7 Jammel Johnson[2], defendant's brother, testified that on February 6, 2003, he lived with his mother, Carin Johnson, in an apartment at 50 West 71st Street, in Chicago. Defendant lived with his mother's husband, James McKee, at 12522 South Lowe Avenue.

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[1] Emmanuel's name is alternately spelled Immanuel and Emanuel in the record.

[2] The name of defendant's brother is alternately spelled Jamal in the record.

¶ 8 On the morning of February 6, 2003, Jammel was on the phone when he heard a knock at his door. He cracked the door open, at which time police announced their office, kicked the door open, drew their guns, and entered the apartment. A few officers seated Jammel down on the couch while the others moved toward the back of the house. The officers asked Jammel if he was defendant, and after some "back and forth," they asked him to get his identification. He went to his room accompanied by police and found other officers already in there looking under the bed and opening the closet door. After retrieving his identification, the officers brought Jammel back to the couch and had a discussion amongst themselves. Jammel then agreed to go to the police station, and he was placed in a holding room and questioned about defendant. He told police that defendant was "probably at James' house" and was let go after about nine hours in the room. Jammel testified that he never consented to the search of his apartment. On cross-examination, Jammel stated that he told police that Emmanuel often visited defendant at 12522 South Lowe Avenue and that there was a good chance that he would be there.

¶ 9 Chicago police officer Albert Thomas testified that about 7 p.m. on February 6, 2003, he received a call of a burglary on the 125th block of Lowe Avenue. He responded to 12522 South Lowe Avenue, spoke with McKee at the side door when he arrived, and observed that the door appeared to have been kicked in. McKee told him that his son's bedroom door also appeared to have been kicked in and that the room was ransacked, but that nothing appeared to be missing. Officer Thomas observed that the bedroom door appeared to have been "forced open." He also observed that the bed was not made and that there were clothes on the floor.

¶ 10 Defendant testified he was 18 years old in February 2003. He lived with his mother and stepfather at 12522 South Lowe Avenue and worked at a Wendy's restaurant on 127th Street and Ashland Avenue. About 3 a.m. on February 6, 2003, defendant returned home from work and went to sleep in his first floor bedroom at the back of the house. Later that morning, he woke to the sound of banging at the side door of the house. He initially went back to sleep; however, he eventually got up and walked towards the front door of the house when the banging continued. As he reached the entrance to the kitchen, the side door was kicked in and three people in street clothes came running into the house with guns. The officers told defendant "freeze, don't move," and defendant complied and put his hands up. The officers placed him in handcuffs and "threw" him on the couch. Two of the officers then searched the house.

¶ 11 Defendant testified that the officer who stayed with him asked him about four times if he knew Emmanuel's location. When defendant told him that he did not, the officer "smack[ed]" him in the face. At some point, an officer brought defendant pants and a coat, and he was momentarily uncuffed so that he could put them on. Another officer also brought defendant his shoes. The officers then told defendant that they were taking him to the police station because he knew where Emmanuel could be found. Defendant again denied knowing where Emmanuel was, and the officer who had hit him said, "we going to play a game called if you lie to us, we're going to bust your s***." He was then taken out of the house in handcuffs, placed in an unmarked squad car, and taken to the police station. At the police station, he was placed in an interrogation room and handcuffed to the wall. The officer who brought him in there closed the door when he left, and he was never released from custody.

¶ 12 Defendant testified that no one showed him a search warrant or told him that he was under arrest on the day in question. He also testified that the police never asked him if he would accompany them to the station and that he never volunteered to go there and help them find Emmanuel. Defendant testified that, in February 2003, he was about 5-feet, 7-inches tall, weighed 150 pounds, wore his hair in braids, and did not have facial hair. Emmanuel was about 5-feet, 11-inches tall, 250 pounds, had shorter hair than defendant, and wore his hair in a ponytail or braids. Defendant further testified that his bedroom was "clean" and "neat" on the morning in question and that his coat, which was hanging on the back of his bed, was the only clothing out. He acknowledged, however, that his bed was unmade.

¶ 13 Chicago police detective Joseph Nega testified that on February 6, 2003, he observed defendant in an interview room at Area 2 headquarters and inventoried his coat.

¶ 14 James McKee testified that on February 6, 2003, he was living at 12522 South Lowe Avenue. When he left for work about 6 a.m. that morning, there was nothing wrong with the exterior door on the side of the house and nothing was "amiss" in defendant's bedroom. When he returned home from work about 5:30 p.m., however, he observed that someone had broken in through the door and that "everything was all thrown around" in defendant's bedroom. He called the police, thinking it was a robbery, but later learned from a neighbor that it was police who had broken into the house.

¶ 15 The parties stipulated that John Barker would testify that he lives in the house directly south of 12522 South Lowe Avenue. On February 6, 2003, he heard a noise and took a number of photographs from his front window, including one entered into evidence.

¶ 16 After the defense rested, the State called Chicago police detective David Fidyk. From January 1, 2003, to January 3, 2003, Detective Fidyk investigated the quadruple homicide at 8042 South Michigan Avenue. Detective Fidyk described the building where the homicides occurred as a "common Chicago bungalow" and testified that the victims were a 48-year-old man, his daughter, his daughter's boyfriend, and a 2-year-old child. He also testified that the nine-millimeter casings found on the scene were not "the common silver color or brass color," but "a frosty colored silver."

¶ 17 On February 6, 2003, Detective Fidyk learned of Roosevelt Phillips' homicide at 8046 South Michigan Avenue, next door to where the quadruple homicide had occurred. Roosevelt was found on the back porch and appeared to have been locking the door when he was shot. The nine-millimeter casings found at the scene were the same "frosty color" as the casings found next door, indicating that the homicides were related. There was also a note found taped to the wall of Emanuel Phillips' second-floor bedroom in which Emanuel took full responsibility for the quadruple homicide and the killing of his father. The note indicated that Emmanuel would be killing himself on an El platform. Detective Fidyk and other detectives spoke with Emanuel's mother and learned that defendant was a close friend of Emanuel and lived at 50 West 71st Street. That afternoon, detectives went to that address, located defendant, and spoke with him.

¶ 18 About 12:30 a.m. on February 7, 2003, Detective Fidyk spoke with defendant at Area 2 headquarters about locating Emanuel Phillips, who police believed was responsible for the homicides. Defendant, who was not in handcuffs, was scared of Emanuel. He told Detective Fidyk that, about one week prior, Emanuel discussed his involvement in the January homicides

and threatened defendant that he, his mother, and his child would be harmed if he said anything.

¶ 19 About 2 p.m. that day, Detective Fidyk had another conversation with defendant. During that conversation, defendant stated that he and Emanuel had been friends from kindergarten through sixth grade and that they reunited in 2002. At some point, he and Emanuel went to the area of 95th Street and the Dan Ryan Expressway, and Emanuel told him of his involvement in the January 2003 quadruple homicide. Defendant said that Emanuel and a cousin named "Bee" had gone to the house to get a gun. As soon as they knocked on the door, they were let in and "Preston Scott," aka "Tug," the 48-year-old owner of the house, was shot. Emanuel and Bee then brought everybody into a bedroom where Emanuel killed them all, and they took the gun and left. Defendant stated that he met up with Emanuel afterwards, and Emanuel was carrying a bag containing bloody clothes and a rifle with a broken stock. Emmanuel asked defendant for a favor, but defendant told him that he was afraid to help because he had just been released from jail. Emanuel threw the bag in a garbage can. After their conversation regarding the murders, Emanuel wanted defendant to always be near a phone and said "you better be there." He also told defendant that he was going to kill his father and stated that his mother would be "straight because she would get the insurance money" for herself and would be able to take care of his sister. Defendant told Detective Fidyk that Emanuel also once pulled a Tec machine pistol out from a bush at his house.

¶ 20 About 8:50 p.m., Detective Fidyk learned of a homicide involving similar casings to those found at the previous homicide scenes. At trial, he identified an arrest report for defendant, which showed the date of his arrest as 002500 hours on February 7, 2003.

¶ 21 On cross-examination, Detective Fidyk stated that he first saw defendant in an interview room, which had no windows and a lock on the door. The door was not locked, and defendant was not in handcuffs. He identified an arrest report with his name on it indicating that defendant was arrested at 12:25 a.m. on February 7, 2003. However, he testified that defendant was not under arrest at that time. He first noticed that the date and time were incorrect on the arrest report sometime before defendant gave his court reported statement at 4:35 p.m. on February 9. He does not know who wrote the report and stated that it shows defendant was received in the lockup for the last time at 12:55 a.m. on February 10, 2003.

¶ 22 Chicago police sergeant Richard Lombard testified that he was a detective on February 6, 2003. About noon that day, Sergeant Lombard was among a group of officers who went looking for Emanuel Phillips at 12522 South Lowe Avenue. He had learned that day that Emanuel had killed five people within a month, and he had information from defendant's brother Jammel that Emanuel might be at that address. When he arrived at the address, Sergeant Lombard initially went to the front door and heard a detective say "there is somebody running around in there." He then stepped off the porch, looked in the front window, and saw a male whom he believed was Emanuel Phillips running around inside. He relocated to the side door of the house and used a sledgehammer to open the door. He then entered the house, found defendant on the second floor landing, and placed him in handcuffs.

¶ 23 Sergeant Lombard testified that he brought defendant to the living room and sat him on the couch while the house was searched. He asked defendant for his name and told him that they were looking for Emanuel because he had killed four people around New Years Day and also

killed his father that day. When defendant's ID was eventually found, Sergeant Lombard removed the handcuffs and asked defendant if he would help them find Emanuel, and defendant agreed to do so. He testified that defendant was "very scared of Emmanuel. Defendant was crying. He was shaking, especially after [Sergeant Lombard] informed him that Emmanuel had just killed his father." Defendant was "afraid that Emmanuel would kill him, his parents, his family." Sergeant Lombard assured defendant that he would be "protected," and defendant agreed to accompany the officers to Area 2. However, he asked to be handcuffed when he was brought out of the house so that it would not appear that he was cooperating with them. Sergeant Lombard complied with defendant's request, and the handcuffs were removed when defendant arrived at Area 2.

¶ 24 On cross-examination, Sergeant Lombard stated that he was "sure" that he had a photograph of Emanuel when he went to the house at 12522 South Lowe Avenue. He testified that a special bulletin indicated that Emmanuel was 5-foot, 11-inches tall and weighed 250 pounds. The parties stipulated that defendant is 5-foot, 7-inches tall and weighs 150 pounds. Sergeant Lombard stated that after he interviewed Jamal, he did not get a warrant for Emmanuel's arrest or a warrant to search the house at 12522 South Lowe Avenue. He also stated that he had no information that defendant was involved in the January 2003 quadruple homicide when he first encountered him.

¶ 25 Chicago police detective John Bloore[3] testified that he was working in the cold case unit on February 6, 2003. That day, about 1 p.m., he spoke with defendant for about an hour in an

[3] Detective Bloore retired on January 16, 2007.

interview room at Area 2. Detective Mislanska was present, and defendant was not read his *Miranda* rights. The detectives learned that defendant and Emmanuel Phillips were good friends and had known each other since kindergarten. A week before, defendant spoke with Emmanuel on the phone, and Emmanuel stated that he wanted to talk to defendant in person. Defendant got on a bus and met him at the train station at 95th and State Streets. Emmanuel told defendant that he had killed four people, that he wanted defendant "to go away with him," and that he would take care of defendant's child. He said that defendant was not his friend if he did not go with him. Moreover, Emmanuel was "afraid he [defendant] was going to rat on him" and threatened to kill defendant, defendant's parents, and defendant's child. Defendant was "definitely afraid of Emmanuel." Defendant further stated that Emmanuel had a "secret hiding place" in his bedroom near the television where a removable section of wall contained several firearms that Emmanuel had stashed. Detective Bloore sent officers to Emmanuel's home as a result of this conversation.

¶ 26 About 5 p.m., after police had returned from Emmanuel's home, Detective Bloore spoke with defendant again in the presence of Detective Mislanska. This time, he advised defendant of his *Miranda* rights, and defendant acknowledged that he understood his rights and agreed to speak with him. The detectives questioned defendant about his whereabouts on New Year's Eve and New Year's Day 2003. At one point, defendant stated that he had been at his girlfriend's house. But, when the detectives said they were going to try to verify that with his girlfriend and asked who else was there that night, defendant changed his story and said that he had been at home, went for a walk, bought batteries, and smoked a "blunt" in the back yard. Detective Bloore testified that defendant's "stories began to change," leading them to suspect that he was

possibly involved in the case with Emmanuel. Detective Bloor also testified that defendant denied having spoken to Emmanuel despite phone records indicating numerous conversations between them. They confronted defendant with these records and "at some point he just didn't answer." The detectives further asked defendant if he would be willing to take a polygraph examination, but he refused, stating that he was "too nervous" to take one.

¶ 27 About 7 p.m., Detective Bloore spoke with defendant again. They discussed the fact that defendant had spoken with Emmanuel and that they were "mainly interested at this point in trying to apprehend Emmanuel." Defendant then stated that Emmanuel had given him a cell phone number where he could be reached, which was written on a CTA pass in his bedroom. Detective Bloore obtained a written consent to search from defendant and went to his house where he obtained a consent to search from the parents as well. He went into defendant's bedroom and found the CTA pass, which had the name "Eric" written on it with a cell phone number. He then returned to Area 2 and resumed his conversation with defendant at about 11 p.m. He again asked defendant to take a polygraph examination, but defendant still refused. About 11:30 p.m., the investigation was turned over to Detective Fidyk and his partners. Detective Bloore testified that defendant was never in handcuffs while they were speaking, that he was given food and allowed to use the bathroom, and that he never complained about anything.

¶ 28 On cross-examination, Detective Bloore stated that defendant was first read his *Miranda* rights at about 5 p.m. on February 6, 2003, after he told them about Emmanuel's weapons and hiding place. Defendant was nonetheless free to leave at that time. Between 8:30 a.m. and

12:30 p.m. on February 7, 2003, defendant was interviewed further by Detectives Bloore and Mislanska and was again advised of his *Miranda* rights. During that conversation, defendant stated that he had been in Emmanuel's bedroom with Emmanuel and "B" when Emmanuel opened the wall panel, took out some weapons, and said that he and B were going to rob someone and be right back. Emmanuel told defendant that his job was to watch out the bedroom window. Defendant then said that Emmanuel gave him a walkie-talkie and told him to stand on the street and watch for police. Defendant later said that he knocked on the door because Emmanuel "wouldn't have been able to get in this house because they all knew him and they were afraid of him." Defendant was not free to leave once he told Detective Bloore that he was the lookout for the murder.

¶ 29 Chicago police sergeant Daniel Brannigan testified that he was the sergeant assigned to the detective division of the cold case squad on February 6, 2003. He was present when the house at 12522 South Lowe Avenue was entered and made the decision to leave the home and relocate back to Area 2. He testified that there were several reasons for his decision. One reason was for the safety of the parties and the neighborhood. Another reason was that the house was not a good defensive position if Emmanuel showed up there. A third reason was that Area 2 was where the investigation was centered and where most of the resources were located.

¶ 30 Sergeant Brannigan was briefly present during a conversation between defendant and Detectives Bloore and Mislanka at Area 2. The discussion concerned how they were going to protect his parents from Emmanuel Phillips and how they were going to protect him once Emmanuel was captured. Defendant was "very willing to cooperate" at this time.

¶ 31 Sergeant Brannigan testified that defendant was questioned at his home regarding Emmanuel's whereabouts. He provided some information, but essentially did not know where Emmanuel could be found. Defendant, who was "fearful for his safety *** and that of his family," was "visibly shaken" and "crying." Defendant remained "visibly upset" at Area 2 and "voiced his concern several times."

¶ 32 On cross-examination, Sergeant Brannigan stated that it was his decision to handcuff defendant when he was taken out of the house. He explained to defendant that it was his choice, but that "if anybody sees you, or if Emmanuel Phillips is out there right now, we are buying time. He will assume you are under arrest, not that you are just going with us because you are cooperating and attempting to help us."

¶ 33 On redirect, Sergeant Brannigan confirmed that defendant had "absolutely no problem" being handcuffed as he was led out of his home. He also testified that defendant never indicated that he wanted to leave Area 2 on the evening of February 6, 2003.

¶ 34 The parties presented argument on defendant's motion. Thereafter, the trial court found the relevant issue to be whether defendant was arrested at his home. Relying on definitions of arrest from *People v. Hopkins*, 363 Ill. App. 3d 971 (2005), and *People v. Ollie*, 333 Ill. App. 3d 971 (2002), the court stated:

> "The court finds that the police officers entered his home, several police officers, with guns drawn. They entered his home by force. There was testimony as to the nature of that force, and the police and the State concede that it was a forcible entry.

[Defendant] was home. It appears that [defendant] was grabbed in his house, he was handcuffed for a period of time, put on a couch and questioned. I understand why the police did what they were doing. They were looking for someone else. I understand that [defendant] would have been afraid of Mr. Phillips under all of the circumstances.

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Now, under all of the circumstances I find that at the time that the police grabbed [defendant] in the house a reasonable innocent person in that circumstance would not feel that they had much in the way of options available to them. The police came into the house with force, handcuffed him. Apparently while the handcuffs were removed there was a sufficient show of authority.

Even if I do believe the State that there was a voluntarily [*sic*] accompaniment to the police station, the question becomes what really is voluntary and what really–what real choices [defendant] had at that time.

I don't think that at the time [defendant] was taken to the police station he had much of a choice, but let's assume that [defendant] said, well, I will agree to go under all of those circumstances. Even if that's the case, I do find that at the time

> [defendant] arrived at Area 2 there was no probable cause."

The court further found that there was no probable cause when defendant was advised of his *Miranda* rights and questioned about his whereabout during the 5 p.m. interview on February 6, 2003, the point where "the focus of the investigation shifted from looking for Emmanuel Phillips to targeting [defendant] and what was his whereabouts." Although the court acknowledged that two types of shell casing had been found at the scene of the murders and that defendant had displayed his knowledge of Emmanuel's hiding place for weapons by that time, it did not find that probable cause existed to believe that defendant was involved in the crime. The trial court thus initially granted defendant's motion to quash arrest and set a date for an attenuation hearing.

¶ 35 B. Attenuation Hearing

¶ 36 At the attenuation hearing, the trial court heard additional testimony from witnesses. In announcing its findings, the court stated, *inter alia*, that "on February 7, 2003, at 9:00 o'clock a.m. when [defendant] said that he operated as a lookout for the quadruple homicide *** I think the police had probable cause to arrest the Defendant under an accountability theory." It further stated:

> "The testimony in this case is that [defendant] was sought only because he may have had information about the whereabouts of Immanuel Phillips and when the police saw him February 6 at 1:30 p.m., they came into his house looking for Immanuel Phillips and to a certain extent, if they had found Immanuel Phillips in that house, Immanuel Phillips never would have been able to contest

> the entry and it's absolutely clear just based on the way they came into [defendant's] house, were looking for Immanuel Phillips. Every information that the police had at that point is that Immanuel Phillips was a multiple killer who was on the loose and presented a clear and present danger to the citizens of Cook County and they were after Immanuel Phillips. The only way they knew about [defendant], they felt [defendant] may have known something about Immanuel Phillips. So when they came in, their purpose, I believe, and I find, was to locate Immanuel Phillips. That was the purpose.
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> * * *
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> I think that the purpose of the police investigation all along was to locate and apprehend Immanuel Phillips. That's what the police were after. I think the police recognize that Immanuel Phillips probably didn't act alone, but I think it was pretty clear under all the circumstances Immanuel Phillips is the person that the police were primarily after."

Ultimately, the court ruled that defendant's statements were sufficiently attenuated from his illegal arrest. The court thus denied his motion to quash arrest and suppress evidence.

¶ 37 C. Motion *In Limine*

¶ 38 Before trial, the State filed a motion *in limine* to introduce evidence of extra-indictment

crimes committed by Emmanuel Phillips; namely, the murder of Roosevelt Phillips, Emmanuel's confession/suicide letter, the murder of a woman named Kaneese Sherrod,[4] and Emmanuel's own suicide. The State argued, *inter alia*, that the shooting of Kaneese was relevant to show that a conspiracy existed between defendant and Emmanuel "to help each other commit these other acts." Defendant, in response, filed a motion *in limine* to bar "prior bad act" evidence of defendant. He asserted that the State had "provided no reliable evidence that [defendant] had anything to do with the murder of Kanise Sherrod."

¶ 39 At a hearing on May 1, 2009, the trial court ruled that the State could present evidence of Sherrod's murder to the extent it pertained to police efforts to apprehend Emmanuel. The State could thus present evidence that police learned from defendant that Sherrod was a possible homicide victim, that they "took certain actions," and that she was eventually murdered by Emmanuel. As for rebuttal, however, the court reserved its ruling.

¶ 40 D. Defendant's Jury Trial

¶ 41 Defendant's jury trial commenced on June 2, 2009. The State's evidence[5] established that defendant and Emmanuel Phillips attended elementary school together and were good friends until Emmanuel transferred to a different school in the sixth grade. They then reconnected in 2002. For about three weeks in the spring of that year, defendant lived with Emmanuel at his parents' house, at 8046 South Michigan Avenue. He was eventually asked to leave by Roosevelt

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[4] Kaneese Sherrod is alternately spelled Kanise Sherod in the record.

[5] We have provided only a condensed recounting of the evidence at trial, including as much as is necessary to fully address defendant's claims.

Phillips, however, because he was not following the house rules.

¶ 42 Prescott Perry, aka "Tug," lived next door to the Phillips' home, at 8042 South Michigan Avenue, with his daughter Sarah Perry, her boyfriend, Ronald Sr., their child, Ronald Jr., and a dog named Princess. On January 3, 2003, Prescott did not show up for his shift at work and did not answer calls placed to his cell phone. His boss Robert Starr found this unusual, went to his home, and tried to get an answer, but all was silent. Starr eventually flagged down a Chicago police officer, and the Chicago fire department was called to the house. The fire department entered the house and opened the door for police; inside the home, police found the bodies of Sarah Perry, Ronald Sr., and Ronald Jr. in a first-floor bedroom, and the bodies of Prescott and his dog in Prescott's second-floor bedroom. All four victims had gunshot wounds to the head among other injuries. Multiple nine-millimeter and .22 caliber shell casings were found throughout the home as well.

¶ 43 On January 26, 2003, police sought to interview Emmanuel Phillips, the only person on the block whom they had not yet interviewed. Emmanuel was brought into the police station by his father, and detectives spoke with him alone for a few hours. Emmanuel told the detectives about a four-person home invasion crew from the area of 79th Street and Wabash Avenue whom, he said, "were the type of people that could perpetrate the crime that [they] were investigating." He provided names, addresses, and whereabouts; however, the leads did not pan out. The detectives indicated that they wanted to interview Emmanuel further, and his father agreed to bring him back sometime that week.

¶ 44 On February 6, 2003, however, Roosevelt Phillips was shot and killed at his home. During a search of Emmanuel's bedroom, police found a handwritten note taped to the wall in which Emmanuel confessed to the murders of his father and the four people next door. They also found letters and official documents belonging to defendant in Emmanuel's room. Sherrie Phillips, Emmanuel's mother, told police that defendant was a close friend of Emmanuel's and that he lived at 50 West 71st Street. She also told police that Emmanuel had told her two weeks before that if something happened to defendant she should take care of defendant's baby. Thereafter, police brought defendant to Area 2 headquarters.

¶ 45 Over the course of the next few days, defendant had multiple conversations with police while the search for Emmanuel was underway. Initially, he assisted police in their case against Emmanuel and their efforts to find him. For instance, he led police to the hidden compartment in Emmanuel's room where Emmanuel had stashed his guns and to the bus card that Emmanuel gave him containing the phone number for reaching him. He also informed them of Emmanuel's plan to kill some "Black Disciples" from 79th Street and Wabash Avenue, as well as a woman named "Kaneese," who lived on the north side around Hollywood Avenue. His information regarding Emmanuel's plan was highly accurate: on the evening of February 7, 2003, a woman named Kaneese Sherrod was shot and killed at 1040 West Hollywood Avenue, and the next evening, a black male was shot at 79th Street and Wabash Avenue. In both shootings, the shell casings were found to match those left at the previous murder scenes.

¶ 46 Defendant, however, eventually implicated himself in the quadruple homicide. He first told police that he had acted as a lookout during the murders, but later revealed a much greater

participation in the crime. During a conversation with detectives on the morning of February 8, 2003, defendant stated that he received a phone call from Emmanuel on January 1. Emmanuel invited him over to smoke some "blunts" and stated that his cousin "Bee" was there with him. Defendant took a bus over to the house, and the three smoked several "blunts" in Emmanuel's room. Emmanuel then discussed a plan for the three of them to go to Prescott Perry's home and steal his Uzi. The plan entailed that they would wait until Roosevelt left for work and that defendant would knock on the door because "Sarah would be the only one home and [Emmanuel] didn't get along with Sarah so she would probably let [defendant] in the house." Emmanuel removed a baseboard in his bedroom and took out a .22 caliber rifle and a nine-millimeter gun. The group then waited 10 minutes for Roosevelt to leave for work and went next door: Bee with the rifle and Emmanuel with the nine-millimeter.

¶ 47 Once they arrived at the Perry residence, defendant knocked on the door while Bee and Emmanuel stood to the side where they could not be seen. As soon as Prescott opened the door, Emmanuel and Bee "burst past" defendant, started taking Prescott up the stairs, and shot him in the chest. Emmanuel then ran past defendant to Sarah's bedroom, and defendant and Bee dragged Prescott "up the stairs" to the hall by the bedroom. Prescott was brought to the door of Sarah's bedroom, and Emmanuel and Bee went into the room and turned on the light. Sarah woke up and asked "what's going on," and Emmanuel said something, then shot her in the head. Defendant was outside the room sitting against the wall and heard Emmanuel ask, "where's the gun." He then heard several more shots and did not hear the baby crying or Ronald speaking anymore. When Emmanuel and Bee left the room, Prescott was asking, "why are you doing

this," and Emmanuel continued to ask, "where's the gun?" They dragged Prescott up the stairs, and Prescott was shot another time during a struggle with Emmanuel. The dog was barking, and Emmanuel and Bee again asked "where's the gun." Prescott and the dog were then shot, and Emmanuel ran down the stairs with the Uzi in one hand and his nine-millimeter in the other. After defendant checked to make sure that no one was outside, the group returned to Emmanuel's bedroom where Emmanuel wiped off the guns while Bee held the Uzi. Defendant stated that Emmanuel took off his clothes, placed them in a garbage bag, and put the bag in the wall. Defendant then slept the night at Emmanuel's house.

¶ 48 After speaking with the detectives, defendant gave a handwritten statement recounting his story, but refused to sign it. The next day, however, he agreed to give a court-reported statement after Emmanuel committed suicide at a hotel following a 12-14 hour stand-off. In his statement, defendant once again confirmed that he rang the doorbell so that Emmanuel and Benji[6] could get in the Perry house and steal Prescott's Uzi, that he was in the house during the murders, and that he helped carry Prescott up the stairs after he was shot.

¶ 49 Defendant did not testify at trial. The defense theory, essentially, was that no forensic evidence linked defendant to the murders in the Perry home. The defense established that there was no fingerprint evidence linking defendant to the murders, that a jacket and boots recovered from defendant did not contain any blood stains, and that the boots also did not match bloody shoe impressions found on floor tiles in the Perry home.

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[6] In his court-reported statement, defendant identified "B" as Prescott's brother "Benji," aka Andrew Shubert. Police never found a connection between Andrew Schubert and Emmanuel Phillips.

¶ 50 The defense also called Sergeant Brannigan during its case to testify regarding the entry of defendant's residence on February 6, 2003. Sergeant Brannigan testified, *inter alia*, that defendant agreed to accompany police to Area 2 in order to help locate Emmanuel. He suggested that defendant leave the house in handcuffs because defendant "was concerned about his own safety with Immanuel." Sergeant Brannigan testified that defendant's demeanor at Area 2 was "[n]ot happy" and "a little bit nervous" and that he cried when he first arrived. He also testified that defendant expressed concern for his family's safety.

¶ 51 In rebuttal, the State sought to introduce testimony that defendant and Emmanuel had once called Sherrod and threatened to "get her." The State also sought to introduce a redacted portion of defendant's handwritten statement in which defendant said that Emmanuel told him he was going to kill Sherrod "because Kaneese was responsible for [defendant] getting locked up on a criminal charge in 2002." Over the defense's objection, the court allowed this evidence for the limited purpose of establishing a "common design and a scheme, as well as the Defendant's motive." The court noted that it had "heard testimony about the Defendant being afraid of Immanuel Phillips," and stated, "I think it is *** rebuttal evidence to bring in evidence that may bear on the issue of [defendant's] fear of Immanuel Phillips certainly at certain times." The redacted portion of defendant's handwritten statement was modified, however, to reduce prejudice to defendant. Instead of the phrase "because Kaneese was responsible for [defendant] getting locked up on a criminal charge in 2002," the State was ordered to use the phrase "because Kaneese was responsible for getting [defendant] in trouble back in [2002]."

¶ 52 Following deliberations, the jury found defendant guilty of four counts of home invasion and four counts of first degree murder. The trial court then merged defendant's convictions and sentenced him to a term of natural life imprisonment for first degree murder. Defendant appeals pursuant to Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009).

¶ 53 II. ANALYSIS

¶ 54 Defendant first contends that the trial court erroneously found his inculpatory statements to be attenuated from his illegal arrest. He particularly argues that the police misconduct in this case was "flagrant" and that there were no legally intervening events between the arrest and the statements. He claims that this court should reverse his convictions and maintains that a remand for a new trial is unnecessary because the State cannot prove his guilt without his statements.

¶ 55 The State, meanwhile, responds that the trial court's ruling denying defendant's motion to suppress should be affirmed where defendant was not illegally arrested in the first place. The State takes issue with the trial court's conclusion that defendant was arrested at his home, or alternatively, at the 5 p.m. interview that day, without probable cause. It claims that the warrantless entry of defendant's home to arrest Emmanuel Phillips was justified by exigent circumstances and that "[a]ny 'show of authority' occasioned by th[e] initial encounter," where defendant was grabbed, handcuffed, and questioned, "was objectively 'undone' " when police subsequently holstered their weapons and removed defendant's handcuffs. It further claims that there was no "objective indicia of arrest" at the time of the 5 p.m. interview. Although the State acknowledges that defendant was *Mirandized* and that "detectives briefly delved into [his] whereabouts and reminded him the phone records they had did not entirely square with his initial

efforts to minimize his friendship with Immanuel," it argues that "[t]his does not translate into a seizure under the Fourth Amendment." Alternatively, the State claims that even if defendant's fourth amendment rights were violated, his statements and the recovery of the CTA bus card were sufficiently attenuated from any illegality.

¶ 56 A circuit court's ruling on a motion to suppress evidence is assessed under the two-part test adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Absher*, 242 Ill. 2d 77, 82 (2011). Under that standard, "[t]he circuit court's factual findings are upheld unless they are against the manifest weight of the evidence." *Absher*, 242 Ill. 2d at 82. "The reviewing court then assesses the established facts in relation to the issues presented and may draw its own conclusions in deciding what relief, if any, should be granted." *Absher*, 242 Ill. 2d at 82. We review *de novo* the ultimate legal question of whether suppression is warranted. *Absher*, 242 Ill. 2d at 82.

¶ 57 In this case, we must begin our analysis by addressing the issue of whether defendant was illegally arrested prior to giving his inculpatory statements. See *People v. Hopkins*, 235 Ill. 2d 453, 458 (2009) (noting that the need for an attenuation hearing is negated where probable cause to arrest exists). Here, the trial court concluded that defendant was illegally arrested by police at his home on February 6, 2003. The court's conclusion was based on its finding that several police officers forcefully entered the home that day with their guns drawn, handcuffed defendant, sat him on a couch, and questioned him. The court stated that it understood "why the police did what they were doing," noting that the police "were looking for someone else"; however, it found that "at the time that the police grabbed [defendant] in the house a reasonable innocent person in

that circumstance would not feel that they had much in the way of options available to them," citing, specifically, the forceful entry of the home and the handcuffs. The court acknowledged that defendant's handcuffs were subsequently removed. Notwithstanding, the court found that "there was a sufficient show of authority" and that, even if defendant voluntarily accompanied police to the station, he did not have "much of a choice."

¶ 58 The court also offered an alternative basis for finding an illegal arrest in this case. The court found that defendant was under arrest without probable cause when he was advised of his *Miranda* rights and questioned about his whereabout during the 5 p.m. interview on February 6, 2003. At that point, the court noted, "the focus of the investigation shifted from looking for Emmanuel Phillips to targeting [defendant] and what was his whereabouts."

¶ 59 "A person has been arrested when his freedom of movement is restrained by physical force or a show of authority." *People v. Ollie*, 333 Ill. App. 3d 971, 981 (2002). "The relevant inquiry in determining whether a suspect has been arrested is whether, under the circumstances, a reasonable person would conclude that he was not free to leave." *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 58 (citing *People v. Melock*, 149 Ill. 2d 423, 437 (1992)). "The reasonable person test is objective and presupposes an innocent person." *Gomez*, 2011 IL App (1st) 092185, ¶ 58 (citing *United States v. Drayton*, 536 U.S. 194, 202 (2002)). A defendant who voluntarily accompanies police officers has not been arrested or "seized" in the fourth amendment sense. *Gomez*, 2011 IL App (1st) 092185, ¶ 58.

¶ 60 While no one factor is dispositive in determining whether an arrest has occurred, we may consider several factors, including: "(1) the time, place, length, mood, and mode of the encounter

between the defendant and the police; (2) the number of police officers present; (3) any indicia of formal arrest or restraint, such as the use of handcuffs or drawing of guns; (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether the defendant was told he could refuse to accompany the police; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by officers." *Gomez*, 2011 IL App (1st) 092185, ¶ 59.

¶ 61 Considering the above factors, we believe the trial court erroneously found that defendant was arrested at his home on February 6, 2003. While we do not dispute the factual findings of the trial court, we find that the court unduly focused on the initial encounter between police and defendant to conclude that defendant was placed under arrest. The court cited the presence of several police officers, the officers' forceful entry of the home, their drawing of weapons, and the fact that defendant was placed in handcuffs, in finding that "at the time that the police grabbed [defendant] in the house a reasonable innocent person in that circumstance would not feel that they had much in the way of options available to them." However, the initial encounter between police and defendant was not representative of the whole episode. When police first entered the home, as the court noted at the attenuation hearing, it was "absolutely clear *** [that they] were looking for Immanuel Phillips." Moreover, "[e]very information that the police had at that point is that Immanuel Phillips was a multiple killer who was on the loose and presented a clear and present danger to the citizens of Cook County." More pertinent, we believe, is what happened after the officers determined that defendant was not Emmanuel. At that point, the police

removed defendant's handcuffs. They then questioned defendant solely about Emmanuel's whereabouts, and defendant, who was "afraid of [Emmanuel] under all of the circumstances," accompanied them to Area 2 to help them locate him. We agree with the State that "[a]ny 'show of authority' occasioned by th[e] initial encounter was objectively 'undone' " by these subsequent circumstances." A reasonable, innocent person in defendant's shoes clearly would have realized that he was no longer under arrest where the obvious objective of the police was to locate a dangerous individual who was on the loose, and defendant's handcuffs were removed after the police determined that he was not that person. *Gomez*, 2011 IL App (1st) 092185, ¶ 58. In addition, we disagree with the trial court's conclusion that defendant did not have "much of a choice" in voluntarily accompanying police to the station. The findings of the trial court would suggest, to the contrary, that it was to defendant's advantage to accompany police to the station, as this afforded him protection from Emmanuel. The very act of voluntarily accompanying the police to the station, moreover, shows that there was no arrest. *Gomez*, 2011 IL App (1st) 092185, ¶ 58. Given the totality of the circumstances, we cannot say that the findings of the trial court support its conclusion that defendant was arrested at his home. We therefore find that the court erred in granting defendant's motion to quash arrest based on that encounter.

¶ 62 Turning to the court's alternative basis for finding an illegal arrest in this case, we find that the court also erred in concluding that defendant was under arrest at the 5 p.m. interview later in the day. The record shows that the court provided two bases for its conclusion that defendant was under arrest at that time: (1) defendant was read his *Miranda* rights; and (2) police questioned him about his whereabouts on the night of the homicides. Neither basis supports the

court's conclusion. The act of reading defendant his *Miranda* rights "does not of itself provide conclusive evidence that defendant [was] improperly detained." *People v. Davis*, 236 Ill. App. 3d 233, 241 (1992). Also, merely questioning defendant about his whereabouts at a certain date or time clearly is not a "show of authority" sufficient to effectuate an arrest. See *People v. James*, 337 Ill. App. 3d 532, 537 (2003) (noting that "a police officer may question an individual on any subject during a consensual encounter") (citing *Florida v. Royer*, 460 U.S. 491, 497 (1983)). It is clear that defendant was safe from any threat posed by Emmanuel during the time he remained at Area 2. Under the circumstances, we believe the trial court's findings simply do not support the conclusion that defendant was under arrest during the 5 p.m. interview.

¶ 63 Defendant argues against our conclusion and claims that this court must presume the trial court resolved any issues of fact not mentioned in its findings in his favor because it ruled for him on the motion to quash arrest, citing *People v. Lagle*, 200 Ill. App. 3d 948, 954 (1990), and *People v. Besser*, 273 Ill. App. 3d 164, 169 (1995). He thus claims, for instance, that this court must presume that the trial court found that during the police entry to his home defendant was hit in the face by an officer and threatened, "if you lie to us, we're going to bust your s***." We disagree.

¶ 64 In *Lagle*, the trial court granted a defendant's motion to quash arrest without making any findings of fact or conclusions of law. *Lagle*, 200 Ill. App. 3d at 952. On appeal, the reviewing court declined to adopt a state trooper's version of the facts that was favorable to the State, noting that "[a]lthough the trial court failed to make findings of fact, we, as a reviewing court, must presume that the trial court found all issues and controverted facts in favor of the prevailing

party, here, the defendant." *Lagle*, 200 Ill. App. 3d at 954.

¶ 65 In *Besser*, the trial court granted a defendant's motion to suppress based on an illegal search. *Besser*, 273 Ill. App. 3d at 165. On appeal, the reviewing court found it unclear from the trial court's comments whether it had made any finding on the issue of "how a reasonable person would have felt" at the time of the search, but noted that the relevant case was argued to the trial court and no request was made for the court to further explain its ruling. *Besser*, 273 Ill. App. 3d at 169. Under those circumstances, the court cited the general rule that "[a] reviewing court will extend all reasonable presumptions in favor of the judgment or order form which an appeal is taken, and will not presume that error occurred below." *Besser*, 273 Ill. App. 3d at 169.

¶ 66 Defendant's reliance on *Lagle* and *Besser* is misplaced. Here, unlike those cases, the trial court clearly stated its factual findings and its reasons for concluding that defendant was illegally arrested at his home on February 6, 2003, or during the 5 p.m. interview later that day. There is absolutely no uncertainty in the record as to the substance of those findings and conclusions and, thus, no need to resort to presumptions. We further note that had the court found that defendant was hit by officers and threatened, or that any other testimony by the defense witnesses supported its finding of an illegal arrest, the court certainly would have cited such powerful evidence during its discussion of the evidence. We also find it highly unlikely that the court would have offered an alternative basis to support its finding of an illegal arrest, as it did in this case, if the court had truly found that defendant was hit and threatened at his home. We thus reject defendant's claim and conclude that the trial court erred in granting defendant's motion to quash arrest in this case.

¶ 67 Defendant next contends that the trial court erred in allowing the State to present certain "other crimes" evidence. He first claims that the court erred in allowing the State to present evidence that Emmanuel was upset with Sherrod for getting defendant "in trouble." He also claims that the trial court erred in allowing the State to present evidence of a threatening phone call he made to Sherrod at one point in time. Finally, he claims that the State's closing argument compounded any prejudice to him by emphasizing the other-crimes evidence and by including arguments not based on the evidence.

¶ 68 The State responds that the trial court did not abuse its discretion in admitting the above evidence because it was relevant to establishing "defendant's close connection to Immanuel and his willingness to engage in threatening behavior with Immanuel in the days leading up to the quadruple murders and was necessary to rebut the defense theory that Immanuel acted alone." The State also responds that its closing remarks were proper.

¶ 69 Under Illinois law, " '[a]ll relevant evidence is admissible, except as otherwise provided by law.' " *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010), quoting Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is that which has any tendency to make the existence of any fact of consequence to the determination more or less probable than it would be without such evidence. *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991).

¶ 70 The supreme court has long recognized that evidence of other crimes is inadmissible to show defendant's disposition or propensity to commit crime. *Illgen*, 145 Ill. 2d at 364. However, it is equally well settled that such evidence is admissible if relevant for any other purpose, so long as its prejudicial effect does not substantially outweigh its probative value. *Dabbs*, 239 Ill.

2d at 283-84. Such purposes include but are not limited to motive, intent, identity, and lack of mistake. *Dabbs*, 239 Ill. 2d at 283. "The admissibility of other-crimes evidence is within the sound discretion of the trial court, and its decision on the matter will not be disturbed absent a clear abuse of that discretion." *Dabbs*, 239 Ill. 2d at 284.

¶ 71 Here, defendant initially objects that the State was allowed to introduce evidence showing that Emmanuel planned to kill Kaneese Sherrod because she had "gotten [defendant] in trouble." During the State's case-in-chief, Sergeant Lombard testified about a conversation he had with defendant at 7 p.m. on February 6, 2003. Defendant stated that about a week and a half before the quadruple homicide, he met with Emmanuel at the bus station at 95th Street and the Dan Ryan. Emmanuel told him that he was planning to kill a woman named "Kaneese," who lived on the north side around Hollywood Avenue. He also said that he was going to kill his father and some "Black Disciples" from 79th Street and Wabash Avenue. At one point, when the State asked, "What did the defendant tell you in this 7:00 o'clock conversation?" Sergeant Lombard responded, "He told us that Immanuel was upset with Kaneese because she had gotten [defendant] in trouble." Defense counsel objected to this response; however, the court overruled, stating, "I'll give you an opportunity to cross-examine on that point." Subsequently, in rebuttal, the court allowed the State to introduce a previously redacted portion of defendant's handwritten statement, which also referred to Sherrod getting defendant "in trouble." That statement read, "Jason states that Immanuel told him that Immanuel was going to kill his father, Roosevelt Phillips, then kill everyone who had ever messed with Immanuel including Kaneese Sherod because Kaneese was responsible for getting [defendant] in trouble back in [2002] and because

Immanuel did not like her *** and then he would kill himself."

¶ 72 Contrary to defendant's claim, we find that the trial court properly allowed the State to introduce Sergeant Lombard's testimony and the redacted portion of defendant's handwritten statement, as modified. The purpose of this evidence was not to show that defendant had been "in trouble"; it was to show that Emmanuel planned to kill Sherrod to avenge defendant. Emmanuel's motive for killing Sherrod was relevant at trial because it was probative of the nature of his relationship with defendant. The defense attempted to portray Emmanuel as the lone killer and defendant, himself, as just another potential victim; however, the fact that Emmanuel would kill to avenge defendant suggests a much closer relationship and ultimately goes to support the reliability of defendant's confession. *People v. Hale*, 2012 IL App (1st) 103537, ¶¶ 27 ("[E]vidence of other crimes is admissible to establish the accuracy and reliability of a defendant's confession."). We find that any prejudice resulting from the evidence that defendant had been "in trouble" was, at most, minimal due to the extreme vagueness of that term. See *People v. Guyon*, 117 Ill. App. 3d 522, 534 (1983) (remarks containing no details as to what criminal activities were involved were too vague to have caused prejudice). We therefore find no abuse of discretion. *Dabbs*, 239 Ill. 2d at 283-84.

¶ 73 Defendant also objects that the State was allowed to introduce evidence in rebuttal that he had previously made a threatening phone call to Sherrod. During the State's rebuttal case, Mario Klyce testified that one night in December 2002, Sherrod received a phone call at their home and asked him to listen in on the conversation. Klyce heard defendant on the other end arguing with Sherrod, and defendant told her, "you b*** [you] need to mind your own business and I'm going

to f*** you up, along those lines, you know. You always running your mouth. You always in somebody's business and b*** this, b*** that, you know." He also heard Emmanuel get on the line and threaten Sherrod as well.

¶ 74 We find that the trial court also properly allowed evidence of the threatening phone call made by defendant and Emmanuel in rebuttal. "[R]ebuttal testimony is offered to explain, repel, contradict or disprove evidence presented by the opposing party." *People v. Dresher*, 364 Ill. App. 3d 847, 862 (2006). Here, the evidence of the threatening phone call made by defendant and Emmanuel was relevant to rebut the defense's portrayal of Emmanuel as a lone wolf and defendant as a scared bystander. The fact that defendant and Emmanuel called and threatened Sherrod together shows that they shared a close relationship and were willing to support each other in misdeeds. Any prejudice that defendant suffered as it related solely to his propensity to commit crime was minimized by the fact that phone harassment is a far cry from the murders that occurred in this case. The jury was also aware from the testimony that Emmanuel acted alone in killing Sherrod. Under the circumstances, we find that the trial court did not abuse its discretion in allowing the State to introduce the "other crimes" evidence of which defendant complains. *Dabbs*, 239 Ill. 2d at 283-84. We therefore need not address defendant's claim that the prejudice from the "improper other-crimes evidence" was compounded by the State's closing remarks.

¶ 75 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 76 Affirmed.