2015 IL App (1st) 101030-U

FIFTH DIVISION
March 20, 2015

No. 1-10-1030

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 02 CR 04554
	)	
ABAYOMI ADEDIJI,	)	Honorable
	)	Joseph Kazmierski,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justice McBride and Justice Reyes concurred in the judgment.

ORDER

¶1 ***Held***: Defendant's conviction and sentence was reversed where defendant was arrested without probable cause and the matter was remanded to the trial court for an attenuation hearing. Defendant forfeited his claim that the trial court erred by refusing to rule prior to trial on whether the jury would be given a lesser-included offense instruction and defendant did not establish that he was entitled to such a ruling prior to trial. The trial court's answer to a question from the jury was a correct statement of the law and did not direct the jury to issue a guilty verdict.

¶2 This appeal arises from defendant's second trial for the murder of the victim, Kamoludeen Okunnu. Defendant was arrested for that crime on January 17, 2002, and charged with first degree murder and armed robbery. A jury found defendant guilty of both crimes and

defendant was sentenced to concurrent terms of 50 years' imprisonment for murder and 10 years' imprisonment for armed robbery. However, this court reversed those convictions and sentences on the ground that the jury should have been instructed on the lesser-included offense of involuntary manslaughter. See *People v. Adediji*, No. 1-04-2077 (2006) (unpublished order pursuant to Supreme Court Rule 23). Following a second jury trial, defendant was found guilty of first degree felony murder and sentenced to 25 years' imprisonment. On appeal, defendant contends that: 1) the trial court erred in denying his motion to quash his arrest and suppress evidence; 2) the trial court erred by refusing to rule prior to trial whether the jury would be instructed on the lesser-included offense of involuntary manslaughter; and that 3) the trial court gave an improper response to a question sent by the jury during deliberations. For the reasons that follow, we reverse and remand with directions.

¶3 Prior to his second trial, defendant filed a motion to quash his arrest and suppress evidence. Defendant claimed that he was arrested by police without probable cause and that all evidence resulting from that unlawful arrest should be suppressed. At the hearing on defendant's motion, Chicago police officer Spaargaren testified that in the afternoon of January 17, 2002, he arrested defendant in the pastor's room at the back of a church in Chicago, Illinois. Defendant was sitting in a chair in the pastor's room and was not in the act of committing a crime.

¶4 On cross-examination, Officer Spaargaren testified that on January 17, he and his partner, Officer Gonzalez, were patrolling in an unmarked squad car. They were flagged down by two men who told the officers that defendant had been involved in a shooting on January 16, 2002, and that defendant was the person who shot the gun. The men indicated that defendant was located in a nearby church. The officers relocated to that church and the two men went with them. The men provided the officers with a physical description of defendant. Based upon that

description and the information the men provided about the shooting, the officers went into the church and found defendant in a back room. The officers asked defendant to come to the front of the church so that they could have him identified by the two men. The officers brought defendant to the front of the church, where both men "emphatically said, that is him, that is him." The officers then placed defendant into custody. Immediately after he was arrested, defendant was given *Miranda* warnings and confirmed his involvement in the shooting. The officer later called Area 3 violent crimes and learned that defendant was wanted in connection with a shooting that occurred on the north side of Chicago. Officer Spaargaren further testified that neither he nor his partner had any information about the shooting before the two men flagged them down. They learned all of above information within five minutes of defendant's arrest.

¶5 On redirect examination, Officer Spaargaren acknowledged that he was not aware that the victim in this case had been killed or how the crime occurred until he spoke with the two men. Those men told the officer that there had been a shooting and that they knew whom the offender was and where he was located. The officer had never seen the two men before they flagged him down on the street that day. Officer Spaargaren believed the citizens also pointed out a car before leading the officers to the church. Officer Spaargaren searched defendant for a weapon before bringing him outside and put defendant in handcuffs once he was placed under arrest. No weapons were found on defendant. Defendant also did not try to flee when the officers approached him in the church and he did not resist arrest.

¶6 Officer Gonzalez testified to substantially the same version of events as did his partner, Officer Spaargaren. Officer Gonzalez also knew nothing of the crime before the citizens flagged the officers down in the street. The officer added that he and his partner made a traffic stop on the way to the church based upon information that the two men gave them. Specifically, the men

told the officers that there was a vehicle associated with the shooting possibly belonging to defendant. However, defendant was not in the car so the officers proceeded to the church. The officers approached defendant with their guns drawn and, after they detained defendant, they searched him for weapons.

¶7 On cross-examination, Officer Gonzalez testified that the person in the car that he and his partner stopped also related that "the person who had been in control of the vehicle" was in the church. This person did not provide the officers with any details of the crime. Officer Gonzalez did not know the person in the vehicle and did not indicate this person in his arrest report.

¶8 Following the hearing, the trial court denied defendant's motion to quash arrest and suppress evidence. The court stated that the officers were "reasonable" in the action they took and that, although they did not know any details of the crime, the information they learned from people they spoke with was sufficient to warrant following up on that information. The court found that the officer's initial "limited detention" of defendant for the purpose of obtaining an identification from the two men was proper and that the subsequent identification gave police probable cause to arrest defendant.

¶9 On December 28, 2009, the trial court heard the State's motion to have Ayinke Scaife, who testified at defendant's first trial, declared an unavailable witness. The State's motion asserted that it had been unable to locate Scaife despite reasonable efforts to do so and that Scaife had been fully cross-examined at defendant's first trial. The State's motion asked the court to admit into evidence a transcript of Scaife's testimony from defendant's first trial. The trial court held a hearing on the issue at which several witnesses testified to the efforts they made to locate Scaife. That testimony suggested that Scaife had sold her identity to someone and left the country. After the hearing, the trial court found that the State had made a diligent search for

Scaife and granted the State's request to admit her prior testimony into evidence.

¶10 On February 16, 2010, the trial court noted that the State was proceeding only on the charge of first-degree felony murder based on the underlying offense of armed robbery. Defendant's trial began the following day.

¶11 The State 's first witness was the victim's older sister, Monsurat Hasan, who testified that she was born in Nigeria but had lived on Sheridan Road in Chicago for 25 years. In 2002, Hasan was part owner of a grocery store on Sheridan Road in Chicago. The victim, who was known by his nickname "Noah," also worded at the grocery store. Hasan last saw the victim alive at the grocery store at 8 a.m. on January 16, 2002. She later learned that he had been shot to death. Hasan testified that she knew defendant and first met him in 1994. Defendant was known by the nickname "Ranti" and he and the victim were friends. The victim drove a Lexus and Hasan did not know if the victim went to collect a debt on the day he was killed.

¶12 Abayomi Ajayi testified that he often visited Hasan's grocery store and was friends with the people who worked there, including Hasan and the victim. Ajayi went to the grocery store on the evening of January 16, 2002. The victim was there and asked Ajayi to go with him to "collect some money." Ajayi had never been in the victim's Lexus so he agreed to accompany him. At the time, the victim did not seem upset or nervous. They first drove to the victim's house, where the victim's girlfriend was waiting outside. The victim got out of the car and spoke to his girlfriend momentarily. The victim and Ajayi then left to collect the money. As they were driving, the victim saw a woman driving an SUV and both vehicles pulled over. The victim exited the car and spoke to the woman briefly. Ajayi did not know this woman and saw approximately three other people in her car. The victim and Ajayi then drove to a large apartment building and parked in the back. The victim called someone on his cell phone and defendant emerged from the

building. Ajayi had never met defendant. Defendant entered a white Jaguar as someone from an upper floor of the building yelled "don't let him go out with that Jaguar car."

¶13 The victim and Ajayi drove to a nearby mall, where defendant arrived in the Jaguar and the lady who the victim had previously spoken to arrived in her SUV. The victim exited the Lexus and got into the Jaguar with defendant and the woman got into the driver's seat of the victim's Lexus, in which Ajayi was waiting. The jaguar drove away and Ajayi and the woman followed them to the back of a building located at 1917 Touhy Avenue. Everyone exited the vehicles and the woman spoke briefly with the victim. Defendant then said, "I'm a friend, I'm a good man, you don't need to worry about me." Defendant, who was carrying a bag, the woman and the victim then entered the building while Ajayi reentered the Lexus and waited. Approximately 40 minutes later, defendant came out of the building carrying the same bag and walked past Ajayi and entered the Jaguar and "sped" away. Approximately 30 minutes later, the lady, who Ajayi later learned went by the name "Shade," came out of the building and said to Ajayi, "This man that I was complaining about at the beginning, where did you get him from? He has hit your friend in the head." Ajayi asked Shade why defendant had done that and told her to take him to see the victim. Shade led Ajayi through the back door of the building to an apartment, where he saw the victim lying on his back on the ground. Ajayi assumed the victim was unconscious. Another man came into the room and Ajayi asked for the victim's cellular phone to call the police. The man and Shade said they did not see the victim's phone. Ajayi asked to use the land line phone in the apartment but "they refused me." He asked them to help him carry the victim to the car so he could take him to the hospital and they carried the victim to the Lexus. Ajayi drove away and the unknown man and Shade went back into the building. Ajayi never saw them again.

¶14 Ajayi drove to a Dominick's grocery store. He used the phone inside to call his wife and tell her to go to Hassan's grocery store to tell the victim's family about what had happened. Ajayi then called the police, who subsequently arrived along with the fire department and paramedics. Ajayi later took the police back to the building at 1917 West Touhy. He was then taken to the police station, where he told the police what happened and identified a photograph of defendant as the "Jaguar man." Ajayi also viewed a physical lineup and identified defendant as the person who drove the Jaguar.

¶15 On cross-examination, Ajayi testified that he had never met defendant before that night and that he did not know from whom the victim was going to collect money. Ajayi testified that he did not know where he and the victim were going to collect money. He was read testimony from defendant's previous trial in which he testified that he told Shade the address to drive to on Touhy, but Ajayi denied having given such testimony. Ajayi denied that he heard any gunshots while he sat in the car outside the building on Touhy. He also testified that he did not know a woman named Ayinke Scaife at the time of the incident and met her for the first time at the police station following the shooting. Ajayi never saw Scaife come out of the building with her children while he waited in the car outside the building. He acknowledged that although he had an injured man in his car he did not call police or flag anyone down but instead drove to Dominick's grocery store. He testified, however, that he was unfamiliar with that part of the city and did not know the location of any nearby police stations or hospitals.

¶16 Over defendant's objection, a court reporter read to the jury the transcript of the March 23, 2004, testimony that Ayinke Scaife gave at defendant's first trial. Scaife was a 42-year-old certified nursing assistant who came to the United States from Nigeria in 1990. In January of 2002, Scaife lived at 1917 West Touhy with her children and a friend, Samson Kofo. Kofo was

staying with Scaife while he was looking for an apartment. Scaife knew Hassan and defendant, who went by the nickname "Ranti."

¶17 On January 16, 2002, Scaife and Kofo went out for a while and then returned to Scaife's apartment, where Kofo's girlfriend was supposed to be waiting. Scaife entered the apartment through the rear kitchen door and, once inside, she saw defendant, the victim, and Shade, who was Kofo's girlfriend. This was the first time Scaife had met the victim. Scaife paid the babysitter, who then left. Scaife's children were in another room at the time. Everyone was standing in the dining room when defendant told Kofo to "give me what you have" and pulled a silver gun from his waistband. Kofo gave defendant a plastic bag with powder in it. Defendant was still holding the gun and said "hands up." Defendant hit Kofo in the head with the gun, which then went off and the bullet hit a closet door. Defendant turned and grabbed the victim's sweater and pointed the gun at his chest. While this was happening, Scaife grabbed her three children and left the apartment through the back door. As she left, Scaife heard a gunshot but she did not look back. Scaife walked to the front of her building and drove to the babysitter's house. Scaife was contacted by police "at some point" after she went to her babysitter's house and went to the police station. She viewed a lineup at the police station and identified defendant as the person who "pulled" the gun. She also identified photographs of defendant, Kofo, and Shade. Scaife was also nervous when she spoke to police because her name was on the apartment lease and she did not remember if she told police that she left the apartment before the shooting.

¶18 On cross-examination, Scaife testified that she did not know that Kofo dealt drugs. Scaife acknowledge that she did not go the police station "immediately" after she left her apartment and that she went "some time later." Scaife testified that she stopped at Hassan's grocery store on her way to the police station. After speaking with Hasan, she then went to the police station to view a

lineup. Scaife did not remember telling police that Kofo had a scale on the coffee table and was weighing drugs.

¶19 The medical examiner's report established that the victim had two injuries. One was a blunt trauma injury that occurs from "something hitting the body or the body hitting something" represented by a bruise on the victim's left upper arm. The other injury was a gunshot wound of entry in the victim's upper left chest. There was a bullet located in the back of the victim's chest. There was no evidence of close-range firing around the wound on the victim's skin. If there was evidence of close-range firing it would have been found on the outer layer of the victim's clothing. However, the medical examiner did not have the clothing or request it so that it could be tested. The medical examiner's report established that the victim died of a gunshot wound to the chest and that the manner of death was homicide.

¶20 Officer Gonzalez testified to essentially the same version of events at defendant's trial that he previously testified to at the suppression hearing.[1] He added that the two men who flagged the officers down related that there was a person driving a vehicle who was involved in a homicide. The two men pointed out a nearby Nissan Maxima. Officer Gonzalez stopped the vehicle and spoke to its driver, who was the only occupant of the vehicle. That person said that the person who gave him the car was in a nearby church. When Officer Gonzalez saw defendant sitting by himself in an office in the back of the church, the officer announced himself as a police officer and asked defendant to stand up. Defendant was then detained, placed in handcuffs and taken to the police station.

¶21 On cross-examination, Officer Gonzalez added that the two men who flagged the officers down related that a man who was wanted for a homicide was in a nearby church. The men gave

[1] Officer Gonzalez gave no testimony concerning the statement made by defendant at the time of his arrest at the church and it does not appear that the statement was introduced at trial.

police a general description of this person and it appeared to the officer that the two men knew the person they were describing. When the police stopped the Maxima, the two men were in the vicinity in their own vehicle and had a view of the person driving the Maxima. Officer Gonzalez asked the men if the man driving the car was the person they described and the men said no. The person in the Maxima indicated that the person who gave him the car was in a nearby church. The two men who flagged the officers down did not originally mention a church. Officer Gonzalez was in plain clothes and did not have his weapon drawn when he initially entered the church. The officers were directed to an office in the rear of the church and then drew their weapons as they approached that office for safety reasons. Officer Gonzalez explained that he and his partner placed defendant in handcuffs and conducted a protective search of defendant's person for safety reasons given the nature of the incident they were investigating. The officers found no weapons or narcotics on defendant.

¶22 James Novy testified that he was an Assistant State's Attorney in January of 2002. On January 18, 2002, at 3:00 a.m., he met with Detective Rossi at the police station and was briefed about the victim's murder. He reviewed police reports and spoke to several people, including Scaife. Novy learned that defendant was in custody and spoke with him at approximately 8 a.m. on January 18. Detective Rossi was present for this interview. Novy introduced himself and read defendant his *Miranda* rights, which defendant said that he understood. Defendant appeared "calm [and] conversant" at the time. Novy asked defendant to tell him what happened "over on Touhy Avenue," and defendant made a statement about the victim's murder. Novy then asked defendant if he wished to memorialize that statement and explained to defendant the different ways his statement could be memorialized. Defendant chose to give a videotaped statement. Novy then spoke to defendant alone, during which time he reread defendant his *Miranda* rights

and asked defendant if he wanted an attorney. Novy asked defendant how he had been treated by police and defendant "did not mention any mistreatment." Defendant's videotaped statement was admitted into evidence and then played for the jury.

¶23 Although the videotaped statement was not transcribed during defendant's second trial, this court detailed that statement in our previous order in this case.[2] This court specifically stated:

> "In the videotaped statement defendant said he spoke to the victim on the afternoon of January 24, 2002, in his apartment at 7031 North Sheridan Road about "cash flow" problems and $2,000 that the victim owed him. They decided they would rob some drug dealers while pretending to purchase drugs, but they had no one specifically in mind. The victim called him on the morning of the 16th and said he had someone lined up, and they later met to put the plan together. Defendant owned a gun, which was already loaded. The victim left, but returned at approximately 5 p.m., and defendant met him outside. The victim was in a Lexus with a man whom defendant did not know, and defendant got into his roommate's Jaguar and followed them to a strip mall where they waited for a woman to arrive. Once she arrived, she got into the Lexus, and the victim got into the Jaguar with defendant. The woman led them to a building on Touhy, where they parked in the back parking lot, while everyone except the passenger in the Lexus went inside.
>
> Approximately 20 minutes later, Scaife and a man defendant did not know, later identified as Samson (Kofo), arrived. Scaife, Samson (Kofo) and the woman went into the kitchen to talk, then she returned to the living room with drugs and a scale and weighed them. The drugs were contained in a clear, ziplock baggie and appeared to be beige-colored powder. Defendant stated that the powder was heroin, and he put it into his

[2] Neither party disputes the accuracy of defendant's statement as it is set forth in this court's prior order in this case.

coat pocket. He then took the bag he was carrying off his shoulder and gave it to the woman. The bag was supposed to contain money but it really contained books. Defendant then walked toward the dining room to meet Samson and pulled the gun out from his waistband and told Samson to go into the living room. As he was pushing Samson toward the living room, the gun went off. Defendant then went into the living room to retrieve the bag he had brought with him, and the victim reached for the gun. As they were struggling with the gun, it went off again, after which they both fell back onto the sofa with the victim on top of defendant. Defendant crawled out from underneath the victim and left the apartment. He drove the Jaguar through alleys, threw the gun into a garbage can, and parked the car. He tried to call the victim on his cellular phone several times, but there was no answer. Defendant then fled to the south side to stay with a friend who was supposed to get rid of the drugs for him. He returned to the north side to get the Jaguar, then to his apartment, where he told his roommate what had happened before returning to the south side. He did not know the victim was dead until after his arrest." *Adediji*, No. 1-04-2077, at 4-6.

¶24 John Miller, a forensic investigator, testified that he went to the Dominick's parking lot at 6659 North Damen Street. He attempted to process the Lexus for fingerprints but he could not because it was raining. He had the vehicle towed to an indoor lot so it could dry. Miller later went to the hospital and conducted a gunshot residue test on the victim's body. He also took photographs of the apartment in which the victim was killed.

¶25 Robert Berk, a trace evidence analyst with the Illinois State Police, examined the gunshot residue kit recovered from the victim. The samples from the back of the victim's left and right hands tested positive for gunshot residue. This meant that the victim discharged a firearm, had

contact with an item that had gunshot residue on it or was in an environment where a firearm was discharged. In Berk's opinion, the victim was within 12 feet of a firearm that was discharged.

¶26 The State's case ended with several stipulations by the parties which established the following facts. Brian Maryland of the Illinois State police compared the bullet taken from the victim's body to a bullet recovered from the closet at 1917 West Touhy. They were both .32-caliber bullets but Maryland could not determine if they were fired from the same gun. Evidence technician Daniel Principato processed the Lexus after it was towed to the indoor lot and was able to recover five fingerprints. The white Jaguar was recovered by police at 7300 North Sheridan Road and the police discovered that it had been stolen from a car rental business. Evidence technician James Duffy processed the white Jaguar and recovered nine fingerprints. Fingerprint analyst Christie Fischer received the processed fingerprints and compared them to defendant's fingerprint card but found no matches. Following these stipulations, the State rested its case.

¶27 Defendant called Chicago Police detective Nick Rossi in order to lay a foundation for the testimony of his expert witness, Dr. Solomon Fulero. Detective Rossi testified that he was assigned to the victim's murder and was informed on the afternoon of January 17, 2000, that defendant was under arrest. The detective spoke to defendant in an interview room around 9 p.m. He did not recall if he had spoken to any other witnesses before he spoke to defendant, but his report indicated that police had spoken to Scaife and a person named Oluinko. Defendant was not handcuffed and did not have a lawyer present. Defendant was advised of his *Miranda* rights and defendant acknowledged that he understood them and indicated that he wanted to speak. Detective Rossi acknowledged that he accused defendant of lying during the interrogation and explained that he did so because the answers defendant gave were not supported by the facts.

The detective then ended the interview and left the room. He later returned and brought defendant food. He told defendant that there were other witnesses in the station who would tell police what happened. As Detective Rossi continued to speak to defendant, it became clear to him that defendant was not being truthful and he indicated that to defendant. He did not propose alternative ways that the events occurred but, instead, challenged defendant's answers as being illogical. The detective was alone with defendant in the interview room but his partner came into the room from time to time to inform Detective Rossi about other areas of the investigation. The detective testified regarding the techniques he was trained to utilize during interrogations. Detective Rossi testified that police never found the gun used in the shooting or the shell casing and that he did not recall the victim's blood being found in the apartment. The police never found Sampson Kofu or "Shade" Julius and never spoke to Scaife's babysitter.

¶28 Dr. Fulero, a professor at Sinclair College, testified as an expert in forensic psychology. In preparation for his testimony in this case, Dr. Fulero reviewed the videotape of defendant's confession and the transcript of that confession as well as the police reports and transcript of Detective Rossi's trial testimony. Dr. Fulero explained the study of police interrogations and false confessions and then discussed the specific techniques used by police in this case. The doctor testified that an interrogation room creates a feeling of isolation in the suspect and that, in this case, the police would have left defendant in the interrogation room for four to four-and-a-half hours to make him feel helpless. The doctor explained that the risk of a false confession increases after approximately six hours. Interrogation by a single officer serves to establish that officer's authority and Detective Rossi's accusation that defendant was lying was a forceful technique and sent a message that the police already knew that defendant was guilty and that the only question was how or why the crime was committed. Ending an interrogation by accusing a

suspect of lying makes a suspect feel that he is in trouble, that he needs the officer to get out of trouble and that any answer other than "I did it" will upset the officer and hurt the suspect's interests. By telling defendant that there were other witnesses at the police station, Detective Rossi increased the pressure on defendant in order to make him feel that an admission was better than continuing to deny involvement in the murder.

¶29 Defendant's videotaped confession was played for the jury while Dr. Fulero provided commentary. The doctor explained that the accuracy of a confession is increased if a suspect is allowed to provide his own narrative of what occurred. Dr. Fulero testified that in his case, he was "struck" by the detective's leading questions.

¶30 On cross-examination, Dr. Fulero acknowledged having been compensated for his work in this case. Dr. Fulero previously testified before a jury in approximately 20 cases, none of which involved him testifying for the prosecution. However, he had worked on cases for the prosecution. Dr. Fulero did not read the Chicago Police Department's manual on police interrogation and he did not speak with defendant or Detective Rossi. It was the doctor's opinion that the certain techniques Detective Rossi used when he interviewed defendant were psychologically coercive and increased the risk of a false confession.

¶31 The parties stipulated that if called as a witness, Chicago Police officer Willam Heneghan would testify that he spoke to Ajayi at the Dominick's and that Ajayi stated that he rode with the victim to 1917 West Touhy. The victim entered an apartment alone and approximately 20 minutes later an African American female and male carried the victim outside and placed him into a Lexus.

¶32 Following deliberations, the jury found defendant guilty of first degree felony murder based on the underlying felony of armed robbery and not guilty of personally discharging a

firearm during the commission of the offense that proximately caused death to another person. The trial court sentenced defendant to a term of 25 years' imprisonment. This appeal followed.

¶33 On appeal, defendant first contends that the trial court erred in denying his motion to quash arrest and suppress evidence. Defendant claims that at the time of his arrest, his identification as the shooter was "supported only by uncorroborated statements by unknown individuals to officers who had no knowledge of the crime."

¶34 When reviewing a ruling on a motion to quash arrest and suppress evidence, we apply a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). We accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Id*. However, we review *de novo* the court's ultimate ruling on a motion to suppress involving probable cause. *Id*.

¶35 Under the fourth amendment of the United States Constitution, every person has a right against unreasonable searches and seizures. U.S. Const., amend IV. Reasonableness under the fourth amendment generally requires a warrant supported by probable cause. *People v. Johnson*, 237 Ill. 2d 81, 89 (2010). In *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the United States Supreme Court provided an exception to the warrant and probable cause requirements which allows a police officer to briefly detain an individual in order to investigate possible criminal activity. Specifically, under *Terry*, a police officer may briefly stop a person for temporary questioning if the officer has a reasonable suspicion, based on specific and articulable facts, that the person in question has committed, or is about to commit, a crime. *Id.* at 21; *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). While these facts need not rise to the level of probable cause, a "mere hunch" is not sufficient. *Id*. at 110. The underlying facts are viewed objectively "from the perspective of a reasonable officer at the time that the situation confronted him or her." *Id.* Whether a stop is

reasonable depends on the totality of the circumstances. *Id*.

¶36 Information received from a member of the public may be sufficient to justify a *Terry* stop if that information " 'bear[s] some indicia of reliability and [is] sufficient to establish the requisite quantum of suspicion.' " *People v. Miller*, 355 Ill. App. 3d 898, 901 (2005), quoting *People v. Brown*, 343 Ill. App. 3d 617, 623 (2003); *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 15. Because the reliability of a tip can vary greatly, a reviewing court should evaluate the informant's veracity, reliability, and basis of knowledge when determining whether an informant's statements provide sufficient basis for a *Terry* stop. *Id*. at ¶15; *Miller*, 355 Ill. App. 3d at 901. "If the third-party's information does not have 'some indicia of reliability,' police are not justified in relying on it as the basis for a *Terry* stop unless they 'conduct additional investigation to verify the information.' " *People v. Jackson*, 348 Ill.App.3d, 719, 731 (2004), quoting *People v. Sparks*, 315 Ill.App.3d 786, 793 (2000). Although a reviewing court should evaluate the informant's veracity, reliability, and basis of knowledge, whether a tip is sufficient to justify a *Terry* stop ultimately depends on the totality of the circumstances. *People v. Linley*, 388 Ill. App. 3d 747, 750 (2009).

¶37 A review of the relevant case law indicates that the sources of tips are classified upon a spectrum of reliability. The initial issue in this case is how to properly classify the two men who flagged down Officers Spaargaren and Gonzalez. Defendant characterizes them as "anonymous" informants and claims that because they did not explain to police how they knew defendant killed the victim and because the police did not corroborate the information the men provided, the tip provided by the two men was insufficient to justify a *Terry* stop. The State, on the other hand, characterizes them as "concerned citizens" who provided specific details that were corroborated by police and thus were sufficient to justify the *Terry* stop.

¶38 The United States Supreme Court has distinguished between an anonymous tip and one from a known informant whose reputation could be ascertained and who could be held accountable if the tip turned out to be fabricated. See *Florida v. J.L.*, 529 U.S. 266, 268 (2000). When an "informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip." *Id*. at 276 (Kennedy, J., concurring, joined by Rehnquist, C.J.); see also *Linley*, 388 Ill. App. 3d at 751 ("That an informant has placed his or her anonymity at risk may be considered in assessing the reliability of the tip"). As this court has stated, "[b]etween the two extremes is a sliding scale." *Sanders*, 2013 IL App (1st), ¶ 20. "In other words, 'if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip was more reliable.' " *Id*., quoting *Alabama v. White*, 496 U.S. 325, 330 (1990).

¶39 Generally, information from a concerned citizen is considered more credible than a tip from a paid informant or someone who provided the information for personal gain. *Linley*, 388 Ill. App. 3d at 750; *Sanders*, 2013 IL App (1st) at ¶ 15; see also *People v. Jones*, 374 Ill. App. 3d 566, 574 (2007) (generally the reliability of an ordinary citizen, unlike that of an informant, need not be established, and, absent an indication to the contrary, information provided by an ordinary citizen is presumed to be reliable); but see *People v. Smulik*, 2012 IL App (2d) 110110, ¶ 8, (where there was no evidence that the tipster contacted the police through an emergency number or provided a name, the tip must be considered anonymous, "and its reliability hinges on the existence of corroborative details observed by the police"). However, even when the information comes from an identified informant, some corroboration or other verification of the reliability of the information is required. *Linley*, 388 Ill. App. 3d at 751. A tip providing predictive information and readily observable details will be deemed more reliable if these details are

confirmed or corroborated by the police. *People v. Allen*, 409 Ill. App. 3d 1058, 1072, (2011). Ultimately, the reliability of any informant's tip must be decided on a case-by-case basis. *Sanders*, 2013 IL App (1st), ¶ 20.

¶40 In *Sanders*, an unidentified woman flagged police down on the street and, during a 15-second conversation, related that she had seen a man place a machine gun into the car. The woman described the man, the car and the car's trajectory. *Id*. at ¶ 2. Shortly thereafter, the officers observed a vehicle matching that description bearing the license plate the woman had provided travelling in the direction the woman had indicated. The officers pulled the vehicle over, asked the defendant to exit the car and observed a machine gun inside the car. The defendant was then placed under arrest. *Id*. at ¶ 3. The appellate court found that the police conducted a valid *Terry* stop of the defendant's car. The court rejected the assertion that the police acted on an anonymous tip and instead found that the woman more closely resembled a citizen informant. *Id*. at ¶ 26, 31. The court noted that although the woman did not identify herself and was not a known informant whose reputation could be verified, she approached the police in person and engaged in a face-to-face conversation. The woman thus risked both her anonymity and the chance that she might be identified in the future. *Id*. at ¶ 26, 31. The court also observed that the woman's status as a "disinterested citizen informant suggested trustworthiness and undercut any negative implications regarding her reliability created by her unidentified status." *Id*. at 31. The face-to-face conversation also allowed police to observe the woman's demeanor and assess her credibility as she explained the basis of her knowledge. *Id*. "[C]learly [the police officer] found her credible, as he immediately acted upon her information." *Id*.

¶41 In this case, we find that the two men who provided the information to police most

closely resemble citizen informants. It is true that they did not explain the basis of their knowledge that defendant had committed a crime and there is no indication that they identified themselves to police. However, given the totality of the circumstances, we reject defendant's characterization of these two men as "anonymous" informants who provided uncorroborated information. The two men approached police in the street and engaged in a face-to-face conversation. There is no indication that either man tried to conceal his identity and by speaking to the police both risked their anonymity and the chance they could later be identified. They further risked their anonymity when they agreed to accompany police to the church. This again increased the reliability of the information they provided. Both appeared to the police to be disinterested citizens who did not stand to gain from telling the police that defendant had committed a murder, further increasing the reliability of the information they provided police. The in-person conversation also allowed police to observe the demeanor of the two men and to assess their credibility and trustworthiness.

¶42 Contrary to defendant's assertion, the information the citizen informants provided was not "uncorroborated." It is important to note that the information was related to police by not one but two citizen informants. While it might have been more corroborative had police spoken to them separately and at different times during their investigation, the fact that two citizen informants related the same information to police increased the reliability of that information. Further, the police corroborated innocent details of the information they provided. They identified a vehicle as belonging to defendant and, when police stopped that vehicle, the person driving the vehicle indicated that defendant had given him the vehicle. The driver of the vehicle also corroborated the information the citizen informants provided when he told police that defendant was in a nearby church. Finally, the police found defendant in the location where the citizen informants

said defendant would be, further corroborating the information they provided. This corroboration of innocent details can be considered in assessing the reliability of the information the citizen informants provided and whether that information gave police a reasonable suspicion that defendant had committed a crime. See *Sanders*, 2013 IL App (1st) at ¶ 16, 31-32 (finding that the information provided by the citizen informant gave police reasonable suspicion to justify the *Terry* stop where police only corroborated innocent details of the citizen's tip).

¶43 When viewed objectively, we find that the above facts and circumstances were sufficient to give the police a reasonable and articulable suspicion that criminal activity may be afoot. Therefore, the police were constitutionally allowed to approach defendant in order to make reasonable inquiries and investigate possible criminal activity.

¶44 We next consider whether the police officers' actions in approaching defendant in the back of the church and bringing him to the front of the church to be identified by the two men were permissible under *Terry* or whether those actions converted the encounter between defendant and the police into an arrest. An arrest occurs when the circumstances are such that a reasonable person, innocent of any crime, would conclude that he was not free to leave. *People v. Lopez*, 229 Ill. 2d 322, 346 (2008). However, because *Terry* permits police to briefly detain an individual to investigate the possibility of criminal behavior without probable cause to arrest, the mere restraint of an individual does not convert an investigatory stop into an arrest. *People v. Fields*, 2014 IL App (1st) 130209, ¶ 26. Thus, even though an individual is not free to go during the investigatory stop, the stop is not an arrest. *Id*. Whether an investigatory stop becomes an arrest based depends on the length of detention and the scope of investigation following the initial stop, not the initial restraint on movement. *People v. Ross*, 317 Ill. App. 3d 26, 30 (2000). The scope of the investigation must be reasonably related to the circumstances that justified the

police interference and the investigation must last no longer than is necessary to effectuate the purpose of the stop. *Id*. at 31. Illinois courts consider the following factors in determining whether an arrest has occurred: (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. *People v. Vasquez*, 388 Ill. App. 3d 532, 549 (2009). The presence of any one of these circumstances, alone or in concert with others, will not automatically convert a stop into an arrest. *People v. Bujdud*, 177 Ill. App. 3d 396, 402 (1988).

¶45 In this case, the record indicates that the police briefly detained defendant in order to bring him from the back to the front of the church so that he could be identified by the citizen informants who accompanied the officers to the church. The police may detain a suspect long enough for an eyewitness to identify or clear him without turning an investigatory stop into an arrest. *People v. Ross*, 317 Ill.App.3d 26, 31 (2000); *People v. Lippert*, 89 Ill. 2d 171, 181-84 (1982). Here, two officers approached defendant in the rear of the church with the intention of bringing him to the front of the church so that he could be identified by the citizen informants. The officers did not intend to arrest defendant at this time and defendant was not told he was under arrest. It is true that the police approached defendant in the rear of the church with their weapons drawn. This factor alone, however, does not convert an investigatory stop into an arrest. See *Bujdud*, 177 Ill. App. 3d at 402-03 ("the fact that an officer has his gun drawn while

conducting the investigatory stop does not convert that stop into an arrest. It would make little sense to permit an officer to detain pursuant to an investigatory stop and yet deny him the right to use the force necessary to effectuate that detention"). As Officer Gonzalez explained, he and his partner had their weapons drawn for safety reasons because they had been told defendant shot someone the previous day. Although the officers did not testify how long it took to bring defendant from the back of the church to the front of the church, it is apparent that the entire process took only moments and thus was sufficiently limited. See, *e.g.*, *Ross*, 317 Ill. App. 3d at 30-31 (eight-minute detention was "very brief"). Further, with respect to whether defendant was told he could refuse to cooperate, Officer Gonzalez testified that he and his partner "asked" defendant to come to the front of the church to be identified. Moreover, the record, although not entirely clear, indicates that defendant was not handcuffed until after he was identified by the two men as the person who committed the murder. We note that even if defendant was handcuffed before he was taken to the front of the church, this restraint on his movement would not automatically convert the encounter into an arrest. See *Ross*, 317 Ill. App. 3d at 31 (stating that an investigatory stop is not converted into an arrest by, among other things, the use of handcuffs and that "during the course of a legitimate investigatory stop, a person is no more free to leave than if he were placed under a full arrest").

¶46 Considering the facts and circumstances set forth above, we find that the police conducted a valid investigatory stop under *Terry* and that they did not exceed the permissible boundaries of such a stop when they approached defendant in the rear of the church and brought him to the front of the church to be identified. The length of the detention was sufficiently brief and the scope of the investigation was narrowly tailored to determining whether defendant was the person who the citizen informants claimed had committed a murder the previous day. We

note that we would reach the same conclusion even if defendant was handcuffed before he was brought to the front of the church.

¶47 The State does not dispute that defendant was placed under arrest after he was identified by the two men in the front of the church. The State claims, however, that the reasonable suspicion justifying the investigatory stop ripened into probable cause when defendant was identified by the citizen informants. Defendant maintains that the police lacked probable cause to arrest him because the two men were not sufficiently reliable and the police did not corroborate the information they provided.

¶48 The existence of probable cause is determined by the trial court based on the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 230–31 (1983); *People v. Tisler*, 103 Ill. 2d 226 (1984) (following the totality of the circumstances approach set forth in *Gates*). A warrantless arrest must be supported by probable cause, which exists when the totality of the facts and circumstances known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the suspect is committing or has committed the crime. *People v. Grant*, 2013 IL 112734, ¶ 11. Probable cause does not require proof beyond a reasonable doubt but does require more than mere suspicion. *People v. Kidd*, 175 Ill.2d 1, 22 (1996). Further, a determination of probable cause is governed by commonsense, practical considerations, and not by technical legal rules. *People v. Buss*, 187 Ill. 2d 144, 204 (1999).

¶49 Probable cause can be based on information obtained from third parties, such as anonymous or identified informants or through reports of ordinary citizens. *People v. Arnold*, 349 Ill. App. 3d 668, 672 (2004). Such information normally must contain indicia of reliability in order to establish probable cause. *People v. Morris*, 229 Ill. App. 3d 144, 158 (1992). "An indicia of reliability exists when the facts learned through a police investigation independently verify a

substantial part of the information learned from the informant." *Arnold,* 349 Ill. App. 3d at 672, citing *People v. James,* 118 Ill. 2d 215, 225 (1987). The personal reliability of the third party must also be considered in the totality of the circumstances analysis, but it is only one of the factors to be considered. *People v. Jackson*, 2014 IL App (3d) 120239, ¶ 84; *Arnold,* 349 Ill. App. 3d at 672.

¶50 In *People v. Adams,* 131 Ill. 2d 387, 396-98 (1989), our supreme court rejected a rigid distinction between the reliability of a paid informant and the reliability of an ordinary citizen. The court determined that, regardless of whether the information was provided voluntarily by a citizen or upon payment by a paid informant, the primary inquiry is whether "the information, taken in its totality, and interpreted not by technical legal rules but by factual and practical commonsense considerations, would lead a reasonable and prudent person to believe that the person stopped had committed an offense. [Citation.]." *Id*. at 396-97.

¶51 In this case, the information was provided by two citizen informants and the police corroborated some of the innocent details of the information those men provided. As we have already found, this provided sufficient reliability so as to give police reasonable suspicion that defendant may have committed or was about to commit a crime and to justify briefly detaining defendant in order to investigate. That the two men were citizen informants, as opposed to paid ones, and that police corroborated some of the innocent details of the information the men provided are factors to consider in the probable cause analysis. See *Arnold*, 349 Ill. App. 3d at 672; *Kidd*, 175 Ill. 2d at 23 (fact that the defendant's name was given to police by someone other than a paid informer is a factor in the probable cause analysis). However, we find that the officers failed to verify a substantial part of the information the citizen informants provided and that the totality of the facts and circumstances known to the officers at the time of defendant's

arrest were insufficient to lead a reasonably prudent person to believe that defendant had committed a crime.

¶52 We reach this conclusion for several reasons. Foremost is the officers' failure to corroborate that a crime had even been committed. Before being flagged down by the citizen informants, the officers were not aware that the victim had been murdered. After the citizen informants told the officers that defendant had shot the victim, the officers did not contact anyone in the police department or otherwise verify that the victim had been killed. They instead proceeded to the church to have defendant identified by the citizen informants. Similarly, the citizen informants also told the officers that defendant was wanted for the victim's murder. However, the officers failed to verify this information before placing defendant under arrest. That the officers could have easily verified this information is evidenced by the officers' testimony that they called Area 3 violent crimes after defendant was arrested and verified that defendant was wanted in connection with the victim's murder.

¶53 As our supreme court has observed, the difficulty of establishing probable cause is lessened when it is known that a crime has been committed. *Lippert*, 89 Ill. 2d at 179–80, citing 1 W. LaFave, Search and Seizure § 3.2, at 478–85 (1978). " '[T]the existence of known criminal activity serves to provide an anchor or touchstone, in a time-space sense, which limits the police arrest authority. Police will not continually be arresting upon a less than 50% probability of guilt, but only in limited situations where a person is found in an area where it is known a crime has recently occurred.' " *Lippert*, 89 Ill.2d at 179, quoting 1 LaFave, Search and Seizure § 3.2, at 484–85 (1978). The police need less of a factual basis to establish probable cause when they are acting in response to a recent murder or other serious crime than when it is not known if a crime has been committed. *Lippert*, 89 Ill. 2d at 180.

¶54 In addition to failing to verify that a crime had been committed or that defendant was wanted for that crime, the officers did not ask the citizen informants or otherwise determine where the crime occurred. The citizen informants did tell the officers, however, that the crime occurred the previous day. This was therefore not a situation in which the crime had occurred only minutes before police were flagged down by eyewitnesses and the suspect could still reasonably be expected to be in the immediate vicinity. Such physical and temporal proximity to the crime scene, as well as knowledge of the crime itself, have been the bases for requiring less corroborative facts in order to find probable cause. See *Jones*, 374 Ill. App. 3d at 575. As the court in *Jones* observed:

> "Here, the serious crimes of murder and attempted murder had been committed about 15 minutes before the police apprehended defendant. Defendant was within three blocks of the crime scene and fit the general description of the fleeing suspects. These circumstances alone support a finding of probable cause. *More facts would have been needed to establish probable cause if the suspect had been physically or temporally more distant from the scene or if the officers did not know for certain that a serious crime had been committed*. Not only did the time and place of defendant's apprehension correspond to the time and place of the shooting, but defendant also fit the description given by the witnesses and had been running as reported by the witnesses. (Emphasis added.) *Jones*, 374 Ill. App. 3d at 575.

¶55 In addition to the above, the officers in this case made no attempt to evaluate the basis of the two citizen informant's knowledge that defendant had committed a crime. In probable cause jurisprudence, the term "basis of knowledge" refers to how a criminal or citizen informant has acquired information that has been given to police. *Tisler*, 103 Ill. 2d at 39. An examination of an

informant's basis of knowledge helps ensure that an arrest based upon information received from that informant is predicated upon something more substantial than conclusory allegations or "casual rumor." *Spinelli v. United States*, 393 U.S. 410, 416 (1969). The basis of knowledge inquiry is not a separate or independent test which must be satisfied in order to establish probable cause. *Tisler*, 103 Ill. 2d at 237–40. Rather, an informant's basis of knowledge is simply a relevant factor to be considered as part of the totality of the circumstances known to police at the time of the arrest. *Kidd*, 175 Ill. 2d at 23, quoting *Adams*, 131 Ill. 2d at 398.

¶56 Here, the two citizen informants did not indicate to police that they were somehow victims of the crime or that they were otherwise eyewitnesses who saw the crime occur. The two men simply stated that defendant had committed the crime. However, the police made no attempt to determine how they acquired this information. This fact weighs against the reliability of the two men and the information they provided. Further, although citizen informants are generally considered more reliable than anonymous or paid informants, one of the bases for this principle is that citizen informants are often victims of or eyewitnesses to the crime. *People v. Wilson*, 260 Ill. App. 3d 364, 369 (1994). Thus, the fact that neither citizen informant in this case indicated that he was a victim of the crime or that he saw the crime take place also negates some of the reliability usually associated with tips from citizen informants.

¶57 In these respects, the facts of this case are similar to those in *Wilson*. In that case, the victim flagged down police after he was robbed but did not provide police with a description of the robbers. Several days later, the victim's daughter provided the victim with the first names and addresses of three of the robbers, including defendant's address, and a general description of the fourth. The victim subsequently gave that information to the police. The police did not contact the daughter or ask how she who came upon this information. Instead, they consulted the robbery

case report and learned that the robbers were four black males between sixteen and twenty-one years old. The police drove to two of the addresses they were given and arrested two people for the robbery. The police then went to the defendant's address, where his father told police defendant was at a friend's house. The defendant was then located and arrested at his friend's house. *Wilson*, 260 Ill. App. 3d at 365-66. The trial court denied the defendant's motion to quash his arrest but the appellate court reversed that ruling.

¶58 The court began by noting that citizen informants had historically been deemed credible and reliable "because they are usually victims or eyewitnesses acting to aid in criminal investigations," as opposed to paid informants who assist police for monetary gain. *Id*. at 369. The court noted, however, that "our supreme court has instructed that classifications of citizen informants and paid informants are actually '"terms of art that represent opposing ends on a continuum of reliability,"' and thus exemplify a 'shortcut' to determinations of credibility and reliability." *Id*. (quoting *Adams*, 131 Ill. 2d at 397-98) (quoting *People v. Townsend*, 90 Ill. App. 3d 1089, 1095 (1980)).

¶59 The court observed that when the defendant was arrested, the police only knew that an armed robbery had been committed by four black males between the ages of sixteen and twenty-one and that the victim's daughter had supplied him with the first names and addresses of three young men and a description of a fourth. *Wilson*, 260 Ill. App. 3d at 370. The court found this insufficient to establish probable cause. In arguing to the contrary, the State asserted that the providers of the information were the victim and his wife, who was an eyewitness to the robbery, and that therefore the information was presumed to be reliable. The court rejected that argument and stated:

"[T]he police did not have information directly from the victim or an eyewitness; rather,

> the victim was merely a conduit for a tip from his daughter, and the officers made no effort to evaluate her veracity or to discover the basis of her knowledge. We find unpersuasive the State's argument that by examining the arrest report and finding codefendants at their homes before arresting defendant, the police corroborated the tip from the victim's daughter. In fact, none of this information connected defendant to the armed robbery." *Id*.

¶60 In this case, the State claims that defendant's assertion that the two citizen informants were never identified and that the police never examined the basis of their knowledge is "disingenuous." The State argues that defendant attached police reports to his motion to quash that listed who the men were, the basis of their knowledge and their contact information. The State's argument is unpersuasive. First, the police reports were not entered into evidence and police reports are generally deemed inadmissible hearsay. See *People v. Ulrich*, 328 Ill. App. 3d 811, 820 (2002). Second, there is no indication in the reports and there was no testimony as to when police acquired the information in the reports, including the two citizen informant's identities, and the reports strongly suggest that the officers did not acquire this information until after defendant's arrest. Finally, even if the reports had been admitted as evidence, they would be of little help to the State. A supplemental report indicates that the two citizen informants who flagged down the police were Adebayor Oladigbo, a friend of the victim, and Adeniy Olayinka, defendant's roommate. The supplemental report states that after the murder, Scaife called Hasan at the grocery store to let her know that defendant shot the victim and that Oladigbo, who was at the grocery store at the time, then called Olayinka to learn where defendant could be found. Olayinka came to the grocery store and then he and Oladigbo drove to the south side to look for defendant. It was during this time that the two men flagged down the officers. The report thus

indicates that, as in *Wilson*, the two men did not witness the crime and that they were merely "conduits" for a tip that began with Scaife, was relayed to Hasan and then passed on to Oladigbo.

¶61 We reject the State's argument that the reasonable suspicion justifying the *Terry* stop ripened into probable cause when the two citizen informants identified defendant in the church. This identification only corroborated that defendant was in the church and it in no way connected him to the crime. Given the deficiencies set forth above, we conclude that defendant's identification in the church, along with the other facts and circumstances known to police at the time of defendant's arrest, were insufficient to lead a reasonably prudent person to believe that defendant had committed a crime. We find therefore that based on the totality of the circumstances, defendant was arrested without probable cause.

¶62 Finally, we note that during oral arguments, this court *sua sponte* raised an issue based upon Officer Spaargaren's testimony that after defendant was arrested, the officer "later" called Area 3 violent crimes and learned that defendant was wanted in connection with a shooting on the north side of the city. Specifically, the question was whether the knowledge that led to defendant being wanted in connection with the shooting could be imputed to Officers Spaargaren and Gonzalez under the "collective knowledge" doctrine so as to establish probable cause. Under the collective knowledge doctrine, "when officers are working in concert, probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." *People v. Bramlett*, 341 Ill. App. 3d 638, 649 (2003). In most cases where courts have imputed information from one officer to another for probable cause purposes, those courts have found evidence of some sort of communication between the officers, such as a dispatch of orders. *Id*.

¶63 The record in this case is insufficient to conclude that police had probable to arrest

defendant under the collective knowledge doctrine. It is unclear from the record whether defendant was wanted for questioning or if there was a warrant for defendant's arrest and, if there was a warrant, when it was issued. It is also unclear what information the police collectively possessed that led to defendant being wanted in connection with the victim's murder. The only testimony on the issue was Officer Spaargaren's vague statement set forth above. Further, the testimony of the witnesses at defendant's trial is insufficient for this court to determine what information the police collectively possessed before defendant's arrest. For example, it is unclear what information Ajayi and Scaife gave police and it is also unclear when Scaife identified defendant from a photo array at the police station. Thus, based upon the record before us, we cannot find that police had probable cause to arrest defendant under the collective knowledge doctrine.

¶64 A finding that defendant was subject to an illegal arrest does not resolve the question of whether defendant's inculpatory statement was properly admissible at trial. *People v. Wallace*, 299 Ill. App. 3d 9, 18 (1998). Evidence collected after an illegal arrest, including a confession, may be admissible if it is sufficiently attenuated from the illegal arrest. *People v. Klimawicze*, 352 Ill. App. 3d 13, 19 (2004). To decide whether a confession was attenuated from the illegal arrest, we consider four factors: (1) whether *Miranda* warnings were given; (2) the amount of time between the defendant's arrest and his statements; (3) whether there were intervening circumstances; and (4) the degree of flagrancy of police misconduct. *Id*.

¶65 In this case, because of the trial court's ruling on defendant's motion to quash arrest and suppress evidence, the parties never presented evidence and argument on the issue of attenuation and the trial court never had the opportunity to rule upon the issue. The Supreme Court has cautioned that the question of whether a defendant's statement was obtained by means sufficient

to cleanse the taint of the illegal arrest depends on the facts of each case. *Brown v. Illinois*, 422 U.S. 590, 603–04 (1975). Moreover, "[w]here the record does not allow [a reviewing court] to make an independent determination on attenuation, [the reviewing court] will vacate the convictions and sentences and remand the cause to the trial court with directions to conduct a hearing on whether the inculpatory statement was sufficiently attenuated from the illegal arrest to render it admissible"). *People v. Hopkins,* 363 Ill. App. 3d 971, 984 (2005). Here, while there was testimony about when defendant was given his *Miranda* warnings, the record is insufficient for this court to evaluate the other relevant factors and to make an independent assessment as to whether defendant's statement to ASA Novy was sufficiently attenuated from his illegal arrest. Accordingly, we reverse defendant's conviction and remand this cause for a hearing to determine whether defendant's inculpatory statement was sufficiently attenuated from his illegal arrest to warrant its admissibility. We note that the State as well as defendant asked that this matter be remanded in the event that we found no probable cause to arrest.

¶66 Because the trial court on remand may find sufficient attenuating circumstances to conclude that defendant's statement was admissible, we will address defendant's other claims on appeal. See *People v. Ollie*, 333 Ill. App.3d 971, 987 (2002) (where the trial court may find sufficient attenuating circumstances to render a defendant's inculpatory statement admissible, the appellate court will address the defendant's remaining contentions of error).

¶67 Defendant next contends that the trial court erred by "refusing" to rule prior to trial that involuntary manslaughter was not a lesser-included offense of felony murder.

¶68 The record shows that at a pretrial hearing on February 16, 2010, defense counsel noted that the State had dismissed all charges against defendant except felony murder based on the underlying felony of armed robbery. The following discussion then took place

"MR. WALTON [Defense counsel]: We had a couple preliminary matters we wanted to address, your Honor.

THE COURT: First of all, the State prior to trial, the State dismissed all charges except the charge of felony murder.

MR. WALTON: First of all, the State has nolle prosed Count 5 and Count 10 and they're only proceeding on Count 6. We wanted clarification on the jury instructions. This case was reversed and remanded for lack of a manslaughter instruction. We presume the evidence will come in about the same way and manslaughter should be properly instructed in this case.

THE COURT: We'll see what the evidence is when it comes in.

MR. WALTON: But potentially we'll have a manslaughter instruction if the evidence is appropriate?

THE COURT: As I said, if the evidence is appropriate the Court will so instruct the jury, depending on the - -

MR. DALKIN [Assistant State's Attorney]: Well, Judge, just for clarification, we don't believe involuntary manslaughter is a lesser included of felony murder.

THE COURT: We can broach that when it comes.

MR. DALKIN: Yes.

MR. WALTON: Your honor, we were addressing some of these things in our opening.

THE COURT: Well, you better not do it, then, if you don't know it's going to be appropriate or if it's not born out by evidence. Depending on what charges were made in the inclusion of the case what's what is going to determine what the status of it is."

The record further shows that during the jury instruction conference, defendant argued that the jury should receive an involuntary manslaughter instruction. The trial court found that involuntary manslaughter was not a lesser-included offense of felony murder based upon the underlying felony of armed robbery and that the instruction would not be given.

¶69 Defendant does not dispute the trial court's ruling that the jury would not be given an involuntary manslaughter instruction. Rather, he assigns error to the court's "refusal" to rule on the issue prior to trial. The court's refusal to do so "belied the truth that involuntary manslaughter was unavailable to [defendant] as a matter of law." Defendant asserts that a pretrial ruling would have allowed him to direct his defense solely against the felony murder charge and "not misdirected him into preparing for the possibility that the jury might be instructed about involuntary manslaughter."

¶70 The State initially responds that defendant forfeited this issue because he did not include it in his posttrial motion. See *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (When a defendant fails to object to an error at trial and include the error in a posttrial motion he or she forfeits ordinary appellate review of that error). Defendant does not dispute that he did not include this specific issue in his posttrial motion, but instead argues that the issue should be reviewed for plain error. Under the plain-error doctrine, a reviewing court may consider a forfeited claim when "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Under both prongs, the burden of persuasion remains on defendant. *People v. Herron*, 215 Ill. 2d 167, 186-

87 (2005). The first step in plain-error analysis is to determine whether error occurred at all. *People v. Smith*, 372 Ill. App. 3d 179, 181 (2007).

¶71 We find that defendant has forfeited his claim that the trial court's alleged error amounted to plain error. In response to the State's argument of forfeiture, defendant asks that we review the issue for plain error and then recites the general two-prong rule for plain error analysis. However, defendant does not argue that the evidence in this case was closely balanced nor does he argue that the error was so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. See *Piatkowki*, 225 Ill. 2d at 565. By failing to do so, defendant has forfeited his claim that the issue amounts to plain error. See *People v. Nieves*, 192 Ill. 2d 487, 503 (finding that the defendant waived his plain-error argument where his argument merely consisted of "a single sentence asking us to employ the plain-error rule."); *People v. Polk*, 2014 IL App (1st) 122017, ¶ 48 (defendant forfeited his plain-error argument where he failed to present an argument as to how either of the two prongs of the plain error doctrine were satisfied).

¶72 Even if defendant's request for plain-error review was sufficient, we find that no error occurred. Defendant cites no authority that a trial court must rule on a request for a lesser-included offense jury instruction prior to trial. See Ill. S. Ct. R. 341(h)(7) (eff.Feb.6, 2013) (requiring arguments on appeal to be supported by citation to authority, and an absence of such authority forfeits the argument); *People v. Ward*, 215 Ill.2d 317, 332 (2005) (a point raised in a brief but not supported by citation to relevant authority fails to satisfy the requirements of the supreme court rules and is therefore forfeited). Defendant instead relies upon *People v. Patrick*, 233 Ill. 2d 62 (2009), which he claims involves essentially the same circumstances that are present in this case. In *Patrick*, the trial court refused to rule on the defendant's pretrial motion *in limine* to exclude the defendant's prior convictions as impeachment until after the defendant had

testified. *Id*. at 65. After the defendant testified, the trial court allowed evidence of three of the defendant's prior convictions. *Id*. Our supreme court found that a trial court's failure to rule on a motion *in limine* on the admissibility of prior convictions as impeachment when it has sufficient information to make a ruling was an abuse of discretion. *Id*. at 73. In so finding, the court reasoned that in most cases a trial court would have sufficient information to make such a ruling and that an early ruling on the admissibility of prior convictions permits defendants to make informed tactical decisions in planning a defense. *Id*. at 70. These decisions include whether to inform the jury that a defendant will not testify, portraying the defendant in a manner consistent with those prior convictions and whether the defense should bring up the prior convictions and thus reduce their prejudicial effect. *Id*.

¶73 The facts in this case are distinguishable from those in *Patrick*. Foremost, this case does not involve a motion *in limine* seeking a ruling on the admissibility of evidence. Further, defendant in this case did not file a motion *in limine* seeking a definitive pretrial ruling on a lesser-included offense instruction. In analogizing the circumstances of this case to the pretrial motion in limine at issue in *Patrick*, defendant overstates the context in which the issue arose in this case. Here, after the trial court noted that the State was proceeding only on the felony murder charge, defense counsel simply asked the trial court to clarify that the jury would be instructed on involuntary manslaughter if the evidence introduced at trial was essentially the same evidence introduced at defendant's first trial. The trial court responded that it would give the instruction if the evidence justified it, and the State responded that it did not believe involuntary manslaughter was a lesser-included offense of felony murder. Defense counsel did not object to the trial court's statement or respond to the State's assertion and the entire conversation between defense counsel, the State and the trial court on the issue cannot fairly be characterized as a pretrial

request for a ruling on whether the jury would be given an involuntary manslaughter instruction. In fact, it was not until near the end of trial that defendant filed a memorandum asking the court to instruct the jury on involuntary manslaughter and the trial court denied that motion during the jury instruction conference. Moreover, as noted, *Patrick* applies to motions *in limine* on the admissibility of prior convictions and there is no authority for the proposition that a defendant is entitled to a pretrial advisory ruling on whether a jury will be given a lesser-included offense instruction. *Patrick* certainly does not stand for such a proposition.

¶74 Additionally, defendant's claim that the trial court's "refusal" to rule on the issue prior to trial "misdirect[ed]" him into preparing for the possibility that the jury might be instructed on felony murder is belied by the record. After the trial court stated that it would instruct the jury if the evidence was appropriate, defense counsel stated "[y]our honor, we were addressing some of these things in our opening." The court then advised defense counsel not to do so if counsel did not "know it's going to be appropriate or if it's born out by the evidence." Thus, the trial court essentially told defense counsel not to address involuntary manslaughter in his opening statement if counsel was not sure if the lesser-included offense was legally available or that the evidence presented at trial would warrant an involuntary manslaughter instruction. Further, the record shows that defendant's trial strategy focused on discrediting defendant's videotaped confession. The record does not reveal a defense strategy directed at introducing evidence that he shot the victim under circumstances that might later justify an involuntary manslaughter instruction.

¶75 For all of these reasons, we find that defendant has forfeited his claim that the trial court erred by refusing to render a pretrial ruling on whether involuntary manslaughter was a lesser-included offense of felony murder and that, even if not forfeited, no error occurred.

¶76 Defendant next contends that the trial court's response to a question from the jury

improperly directed the jury to issue a particular verdict.

¶77 The record shows that because the State was seeking a sentencing enhancement due to the discharge of a firearm, the jury was given the following instructions before it began deliberations:

> "The defendant is charged with the offense of first degree murder. You will receive two forms of verdict. You will be provided with a 'not guilty' and a 'guilty' form of verdict. From these two verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. ***.
>
> The State has also alleged during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another person.
>
> If you find the defendant is not guilty of the offense of first degree murder, then you should not consider the State's additional allegation regarding the offense of first degree murder.
>
> If you find the defendant is guilty of first degree murder, then you should go on with your deliberations to decide whether the State has proved beyond a reasonable doubt the allegation that during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another person.
>
> Accordingly, you will be provided with two forms of verdict as to the allegation. We, the jury, find the allegation was not proven, that during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another, and, we, the jury, find the allegation was proven,

that during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another person.

From these two verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. ***.

***.

And verdicts that you will receive read as follows.

We, the jury, find the defendant, Abayomi Adediji, not guilty of first degree murder.

We, the jury, find the defendant, Abayomi Adediji, guilty of first degree murder.

We, the jury, find the allegation was not proven that during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another person.

We, the jury, find the allegation was proven that during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another person."

¶78 The jury sent out three notes during deliberations. The first two notes are not at issue in this case. The third note asked, "Will a first degree murder verdict (guilty) be sustained if the allegation is not proven?" Outside the presence of the jury, the trial court stated that the jury was essentially asking "can we find the defendant guilty of first degree murder but not the allegation, find that the allegation had not been proven" and observed that "the instructions tell [the jury] if -- they can't even get to the allegation unless they first find the defendant guilty of first degree murder." The trial court answered the question, "yes" over defendant's objection that the answer reinforced a guilty verdict.

¶79 Defendant now claims that the trial court's answer of "yes" directed the jury to issue a guilty verdict and that, given the closeness of the evidence, his conviction must be reversed.

¶80 "The trial court has a duty to provide instruction to the jury when the jury has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion." *People v. Brooks*, 187 Ill. 2d 91, 138 (1999). However, when the jury raises a factual question, the decision of whether to answer the question is within the trial court's discretion. *Id*. "Nevertheless, a trial court may exercise its discretion to refrain from answering a jury question under appropriate circumstances." *People v. Millsap*, 189 Ill.2d 155, 160–61 (2000). "Appropriate circumstances include when the instructions are readily understandable and sufficiently explain the relevant law, where further instructions would serve no useful purpose or would potentially mislead the jury, when the jury's inquiry involves a question of fact, or where the giving of an answer would cause the court to express an opinion that would likely direct a verdict one way or another." *Id.* Additionally, when a trial court decides to answer a jury's question, it must do so correctly and "must not misstate the law." *People v. Gray*, 346 Ill. App. 3d 989, 994 (2004). Reviewing the propriety of the trial court's response to a jury question accordingly requires a two-step analysis. *People v. Leach*, 2011 IL App (1st) 090339, ¶16. We must first determine whether the trial court should have answered the jury's question. We review the trial court's decision on this point for abuse of discretion. *Id*. An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Hall*, 195 Ill. 2d 1, 20 (2000). We next determine whether the trial court's response to the question was correct. Because this is a question of law, we review this issue *de novo*. *Id*.

¶81 In this case, the jury asked a question on a point of law. It is evident, as the trial court

stated, that the jury's use of the phrase "the allegation" was a reference to the sentencing enhancement. That enhancement was always referred to in the jury instructions and the verdict forms as the "allegation." The first degree murder charge, on the other hand, was never referred to as an "allegation." Thus, the jury was asking if it could find defendant guilty of first degree murder even if it found that the State had not proven the allegation that defendant personally discharged a firearm. This was a question of law and therefore the trial court was required to answer it. Moreover, the trial court's answer to the jury's question correctly stated the law as it was not necessary for defendant to personally discharge a firearm to be guilty of felony murder. We note that defendant makes no assertion that the trial court's answer was incorrect. Further, contrary to defendant's claim, the trial court's answer did not direct a certain verdict. In fact, the instructions informed the jury that it was not to consider whether the allegation had been proven unless it first found defendant guilty of first degree murder. Therefore, the jury would not have asked the question it did unless it had already found defendant guilty of first degree murder. Accordingly, the trial court's answer to the question could not have directed the jury to issue a guilty verdict. The above interpretation of the jury's question is supported by the jury's verdicts. The jury ultimately found defendant guilty of first degree murder and found that the State had not proven the sentencing enhancement. For all these reasons, we find no error in the trial court's answer to the jury's question.

¶82 We vacate defendant's conviction and sentence and remand the cause to the trial court with directions to conduct an attenuation hearing. Should the trial court find that defendant's statement to ASA Novy was sufficiently attenuated from his illegal arrest so as to render it admissible, the court is directed to reinstate defendant's conviction and sentence. *People v. Bramlett*, 341 Ill. App. 3d 638, 651 (2003). If, on the other hand, the trial court finds that

attenuation does not exist to purge from defendant's statement the taint of his illegal arrest, then we direct it to suppress the statement and conduct further proceedings consistent with this opinion. *Id*. at 651. A retrial would not be barred by the constitutional prohibition against double jeopardy because we find that the evidence presented at trial, including defendant's statement and confession, was sufficient to support defendant's convictions beyond a reasonable doubt. See *People v. Olivera*, 164 Ill. 2d 382, 393 (1995).

¶83 Judgment vacated and cause remanded with directions.