2014 IL App (1st) 101982-U

THIRD DIVISION
JUNE 30, 2014

No. 1-10-1982

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. 06 CR 6073
	)	
DARIN GATER,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *HELD*: defendant's official misconduct conviction affirmed where: defendant's pre-trial motion to suppress his inculpatory statement was properly denied; the trial court did not abuse its discretion in denying defendant's motion for a continuance that was filed on the eve of trial, allowing the State to admit polygraph and other crimes evidence into the record, or sequestering the jury; the trial court did not abandon its role as an impartial arbiter; the jury was provided with appropriate and accurate jury instructions; and defendant was proven guilty of the offense of official misconduct beyond a reasonable doubt.

¶ 2 Following a jury trial, defendant Darin Gater, a former Cook County Correctional Officer, was convicted of official misconduct and sentenced to 30 months' imprisonment. Defendant

appeals his conviction and the sentence imposed thereon, arguing: (1) the circuit court erred in denying his pre-trial motion to suppress his inculpatory statement; (2) the circuit court erred in admitting other crimes evidence; (3) the circuit court erred in admitting polygraph evidence; (4) the circuit court erred when it sequestered the jury; (5) the circuit court erred when it denied defendant's motion for a motion for a continuance; (6) the circuit court judge abandoned his role as an impartial arbiter and displayed bias in favor of the State; (7) the circuit court provided the jury with confusing and misleading jury instructions regarding the offense of official misconduct; and (8) he was not proven guilty of the charged offense beyond a reasonable doubt. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On February 11, 2006, six inmates escaped from the Cook County Jail. Defendant, a correctional officer at the jail, was charged with multiple offenses in connection with the escape including official misconduct. The charges against defendant were filed after he made an inculpatory statement several hours after the inmate escape, in which he admitted that he aided the prisoners' escape efforts.

¶ 5 A. Motion to Suppress and Suppression Hearing

¶ 6 Prior to trial, defendant filed a motion to suppress his inculpatory statement, as well as a supplement thereto, in which he argued that he had not been fully and completely admonished in accordance with *Miranda v. Arizona*, 384 U.S. 436 (1966) and did not knowingly and voluntarily waive his constitutional rights. Defendant further asserted that the statements he made were obtained as a result of threats and promises made during his interrogation.

¶ 7 The circuit court presided over a hearing on defendant's motion to suppress where it heard

testimony from the following witnesses:

¶ 8 Craig Januchowski, an Investigator with the Cook County Sheriff's Police Department, testified that in February 2006, he was a member of the Jail Enforcement Unit and was responsible for "investigat[ing] criminal activity at the jail as well as the outlying courts." During the early morning hours of February 12, 2006, Januchowski received a phone call informing him that six inmates from the jail's Abnormal Behavior Observation (A.B.O) Unit, which was the unit in which "some of the most violent offenders in the jail [were] housed," had escaped. Following the call, Januchowski and his partner, Investigator D'Oronzo, traveled first to Division 1, where a command post had been established following the inmate escape, and then to the Internal Affairs Office at Division 5, where defendant, the officer who had been working on the unit from which the inmates had escaped, had been taken for an interview.

¶ 9 When he and his partner arrived at Division 5, Investigator Januchowski found defendant seated alone in an office. The door to the office was open and defendant was not handcuffed or restrained in any way. Investigator Januchowski and his partner introduced themselves to defendant, and informed him that they were investigating the inmate escape. Because they knew several correctional officers had been injured during the escape, Investigator Januchowski inquired whether defendant needed medical assistance, but defendant declined, stating that he was "fine." They then asked defendant to provide them with an account of the events that had taken place prior to and during the escape. Investigator Januchowski acknowledged that he did not admonish defendant of his *Miranda* rights at that time because he and his partner had been advised that defendant was a "victim" and they were treating him accordingly. After speaking to defendant for approximately 45 minutes, Investigator Januchowski and his partner exited the

room, conferred briefly about some of the answers that defendant had provided and then contacted their supervisor. Once they re-entered the room, Investigator Januchowski informed defendant that some of the answers he provided were contradictory and asked him to "further explain himself." Defendant acknowledged that his responses "d[id]n't look good" and agreed to submit to a polygraph examination. Lieutenant Anton *Mirandized* defendant and then administered the polygraph test to defendant. After completing the examination of defendant, Lieutenant Anton reported to Investigator Januchowski that the test "showed that [defendant's] responses were deceptive."

¶ 10 Following the polygraph test, Investigators Januchowski and D'Oronzo conducted a second interview with defendant. This time, Investigator Januchowski commenced the interview by first advising defendant of his *Miranda* rights. After defendant acknowledged that he understood those rights, he was informed that some of his responses during the polygraph exam had been deceptive. When confronted with the polygraph exam results, defendant delivered a statement implicating himself in the inmate escape. Investigator Januchowski testified that during the two hour conversation that ensued, defendant was "never handcuffed" and was provided with food and drink. After defendant's verbal admission, he agreed to provide a handwritten statement to Assistant State's Attorney (ASA) Bonnie Greenstein. Investigator Januchowski was present as ASA Greenstein transcribed defendant's statement and then had defendant confirm that the statement was accurate. Defendant confirmed the accuracy of the statement, however he declined to sign the statement. Investigator Januchowski's supervisor and ASA Greeinstein's supervisor then met briefly with defendant, and after that meeting, defendant signed the statement. Investigator Januchowski denied that defendant was ever threatened or promised anything in

exchange for his statement. Investigator Januchowski further denied that defendant ever asked for an attorney or a union representative that day.

¶ 11 On cross-examination, Investigator Januchowski acknowledged that defendant was initially believed to have been a victim of the inmate escape. He explained that defendant's shift at the prison was from 10 p.m. to 6 a.m. and that several hours after his shift started, defendant had been found handcuffed to a cell in the cell block from which the inmates had escaped and his legs had been shackled together. After he had been found, defendant had informed investigators that a chemical substance had been thrown in his face and a shank had been pressed to his throat.

¶ 12 When asked about his initial interview with defendant, Investigator Januchowski confirmed that when he and his partner first arrived at Division 5, defendant was seated alone in a room and that two Internal Affairs Officers were nearby. Defendant was not handcuffed. He explained that the Internal Affairs officers had transported defendant to Division 5 following the inmate escape. Based on his recollection, Investigator Januchowski believed that defendant arrived at Division 5 at approximately 12 a.m., that he first interviewed defendant at approximately 2 a.m. and that the polygraph exam was administered at approximately 7 a.m. on February 12, 2006. Investigator Januchowski further reported that defendant provided his first incriminating statement at 10 a.m., after he was informed about the results of his polygraph exam. Investigator Januchowski acknowledged that defendant stated at one point, "maybe I should have an attorney," but denied that defendant ever sought to stop questioning or to obtain the representation of an attorney. Defendant's handwritten statement was signed later that evening. Investigator Januchowski confirmed that when defendant initially declined to sign the statement, he explained that he did not want to do so because it was not correct.

¶ 13 Investigator Frank D'Oronzo confirmed his partner's account of their conversations with, and investigation of, defendant. Specifically, Investigator D'Oronzo confirmed that defendant was initially viewed as a victim of the escape but that he provided inconsistent responses about the events leading up to the inmate escape in response to their initial questions. After being confronted with his inconsistencies, defendant ultimately provided statements implicating himself in the escape. Investigator D'Oronzo further confirmed that defendant never requested an attorney or union representative and was never threatened or given any incentives in exchange for his confession. Defendant also never asked to make a phone call in his presence.

¶ 14 Lieutenant Michael Anton, a member of the Cook County Sheriff's Police Special Operations Unit, and a certified Illinois State polygraph examiner, testified that he received an assignment on February 12, 2006, to conduct a polygraph examination of defendant. He met with defendant in a small office at approximately 6:50 a.m. that morning, introduced himself and explained basic polygraph procedure. Defendant was cooperative and signed a polygraph waiver form, which contained *Miranda* admonishments. The subsequent exam lasted approximately 1 hour, and after ascertaining the results of the exam, Lieutenant Anton informed Investigators Januchowski and his partner that defendant's responses were deceptive. Lieutenant Anton confirmed that after defendant was confronted with his polygraph exam results, defendant made inculpatory statements during subsequent interviews. After defendant signed a written statement later that day, Lieutenant Anton testified that he had asked defendant why he had initially been reluctant to sign his name to the statement and defendant explained that he was "scared * * * to tell the truth." Lieutenant Anton confirmed that he never saw defendant handcuffed during any of the interviews and never heard anyone make threats or promises to defendant. He also never heard

defendant make a request for an attorney or union representative.

¶ 15 On cross-examination, Lieutenant Anton acknowledged that he met with Investigators Januchowski and D'Oronzo prior to administering defendant's polygraph exam. They detailed the circumstances of the inmate escape and informed him that defendant's statements contained some inconsistencies. Lieutenant Anton confirmed that polygraph exams measure emotional responses to questioning and acknowledged that test results could be affected if the person who is being examined experienced a recent trauma. He acknowledged that he did not know the emotional state of defendant at the time that he administered the exam. Lieutenant Anton also confirmed that he asked defendant whether he helped plan the escape or whether he knew the escape was planned and that defendant answered "no" to both questions. Lieutenant Anton, however, concluded that his responses to both questions were deceptive.

¶ 16 ASA Bonnie Greenstein testified that she was a member of the Cook County State's Attorney's Felony Review Unit on February 12, 2006, and that she received an assignment to assist Cook County Investigators who were investigating the recent prison inmate escape. As part of her assignment, ASA Greenstein confirmed that she interviewed defendant. She testified that she began the interview by introducing herself to defendant, informing him that she was an ASA and advising him of his *Miranda* rights. In response, defendant acknowledged his rights, signed a written *Miranda* waiver form and agreed to provide a written statement. Investigator Januchowski was also present as defendant delivered his statement. ASA Greenstein recalled that at one point during the interview, defendant stated "maybe [I] should have a lawyer." She, in turn, asked defendant if he wanted to stop the interview and obtain the assistance of an attorney. Because he did not affirmatively request an attorney, however, ASA Greenstein continued with the

interview. During the interview, ASA Greenstein transcribed defendant's oral statement. She then read defendant's statement aloud to him to ensure that she had accurately recorded what he had said. After making sure that the statement was accurate, ASA Greenstein requested defendant to sign the statement, but he expressed reluctance to do so. ASA Greenstein then stepped out of the room and met with her supervisor, ASA Darren O'Brien, and informed him that she had obtained a written statement from defendant, that defendant had confirmed the accuracy of the statement, but that he did not want to sign it. ASA Greenstein testified that her supervisor and Investigator Januchowski's supervisor, Sergeant Fitzgerald, then had a brief conversation with defendant. Afterwards, ASA Greenstein returned to the room and asked defendant if he wanted to review and sign his statement. This time, defendant agreed and signed each page of his statement. ASA Greenstein denied that she had seen or heard anyone threaten defendant or promise him leniency in exchange for his statement.

¶ 17 ASA Darren O'Brien, Greenstein's supervisor in February 2006, was the final witness called by the State. He confirmed that on February 12, 2006, he conferred briefly with ASA Greenstein and learned that defendant had made an admission regarding his participation in the inmate escape but was reluctant to sign the handwritten statement. ASA Greenstein informed him that defendant was not recanting the statement, but that he did not want sign his name to the statement. ASA O'Brien confirmed that he then went to speak with defendant. Sergeant Fitzgerald and Investigator Januchowski were also present. He testified that when he entered the room, he asked defendant if his statement was true, and defendant nodded. ASA O'Brien then informed defendant that he was going to face criminal charges regardless of whether he signed his statement. Defendant then responded that he would sign the statement. ASA O'Brien testified

that this encounter was brief, lasting maybe three to four minutes, and emphasized that it "was not a confrontational discussion." Afterwards, he left the room and informed ASA Greenstein that defendant was willing to sign his statement. ASA O'Brien denied that he ever threatened defendant or promised him leniency in exchange for his signature.

¶ 18 Defendant testified that in February 2006, he was employed as a correctional officer by the Cook County Sheriff's Department and was a member of the Department's S.O.R.T. Team, a special operations unit that handled high profile and high risk inmates. On February 11, 2006, defendant worked the "graveyard [10 p.m. to 6 a.m.] shift" in the jail's Abnormal Behavioral Observation (A.B.O.) Unit. He recalled that he arrived at approximately 9:45 p.m., changed into his uniform and relieved the lone officer working on the A.B.O tier. Before leaving, the officer told defendant that an inmate named Eberhart, one of sixteen inmates housed in the A.B.O tier, was on the phone and instructed defendant to lock him up after he finished his phone call. As he accompanied Eberhart back to his cell, the inmate informed him that Doss, another inmate, wanted to take a shower. Defendant then took Doss to the shower. When it was time for defendant to let Doss out of the shower, he opened the door, and Doss threw "a substance" in his face.

¶ 19 Defendant testified that he did not know what the substance was, but recalled that it "burned [his] eyes." As defendant was incapacitated, Doss pushed him against the shower door, pressed a "shank" against his neck and threatened to "kill" him. Doss then instructed defendant to handcuff himself to a bar in the shower, and defendant complied, using the handcuffs on his belt to secure himself. Once defendant was secured, Doss started "unpopping the cell doors and letting inmates out." A group of the inmates then came to where defendant was handcuffed and "converged on [him]." Defendant recalled that the inmates were holding either shanks or poles

in their hands. After he was surrounded, inmate Ernest told defendant to "stay calm" and to remove his uniform. Defendant's handcuffs were removed and the inmates surrounded him as he took off his uniform. Once he undressed, defendant was led back to one of the empty cells and was handcuffed to the cell. At that time, he was gagged and his legs were shackled. From the cell, he heard the inmates banging on the door to the tier and then began to smell smoke. Defendant was unable to see what was happening because the inmates also turned off the lights in the tier. Once the fire alarm sounded, the door to the tier was opened and he heard a "big commotion as [the inmates] went out the door." Approximately 15 to 20 minutes later, responding officers found defendant handcuffed and shackled in the cell. He was freed, given clothing and was offered medical assistance, which he declined. An investigation into the escape commenced immediately and the superintendent on call ordered defendant to give his statement to Internal Affairs. Before providing a statement, defendant made calls to his father and his fiancé around 12 a.m., told them what had happened and assured them that he was okay.

¶ 20 Defendant was then approached by Chief Kaufman, the chief of Internal Affairs Division (IAD.), who immediately began yelling and cursing at him, calling him a "stupid mother fucker." He was then ordered to stay put in an office. Chief Kaufman told two armed members of IAD to stand by the door, not to let defendant out, and not to let anyone else in until defendant gave his statement. As he waited, defendant asked to make another phone call, but his request was denied. At that time, defendant testified that he believed that he was under arrest because he "wasn't free to move." From that point on, defendant was not allowed to move around by himself as he was "escorted" everywhere he went. Defendant recalled that he spoke to Investigators Januchowski and D'Oronzo for approximately 20 minutes and "told them that [he] didn't have anything to do

with the escape." The investigators conferred briefly before driving him to a Sheriff's administrative building. Defendant testified that he was handcuffed as he was transported. He "didn't know why [he] was being handcuffed but [he] was following orders." Defendant recalled that the handcuffs were removed as another interrogation session commenced. At this point, the questioning was not friendly and he was not allowed to make any phone calls.

¶ 21 After repeatedly denying that he had anything to do with the inmate escape, defendant testified that he was introduced to Lieutenant Anton, who told him that he needed to take a lie detector test. Defendant complied because he was following orders, but requested a lawyer or a union representative to be present because he "just knew that something wasn't right at that time." Lieutenant Anton responded that it would take a long time for a lawyer to arrive and help defendant, told him that he "looked like an honest guy" and encouraged him to take the test to just "get it over with." Defendant testified that he made "several" more requests for representation throughout the day as he was subjected to additional interrogation, but his requests were ignored. As the interrogation continued, defendant was told that the investigators "didn't believe [his] story" and he was encouraged to "help [him]self." Defendant acknowledged signing a *Miranda* rights waiver form as well as a statement that had been written out by ASA Greenstein. He explained that he initially refused to sign the statement because it "was a lie," and only signed it later "because [he] was being threatened." Specifically, defendant testified that he had been threatened by ASA O'Brien, who "told [him] if [he] didn't cooperate [he] could get 15 years [and that ASA O'Brien] could change the charges from a count 4 to a count 1 felony" if defendant signed the statement. After ASA O'Brien threatened to "destroy" defendant if he did not sign the statement, O'Brien told defendant that he would talk to the judge on defendant's behalf and get defendant a

"break" if he cooperated. Defendant testified that he signed the statement as a result of ASA O'Brien's threats and promises. Twenty to thirty minutes after he signed the statement, defendant was permitted to meet with Steve Watkins, an attorney who had been retained for him by his family.

¶ 22 On cross-examination, defendant acknowledged that none of the people who questioned him including Investigators Januchowski and D'Oronzo, Lieutenant Anton, ASA Greenstein or ASA O'Brien had any supervisory authority over him. Defendant further conceded that he never requested to speak to one of his supervisors during the time that he was subjected to questioning; however, he stated that he believed that he was under general orders to cooperate with the IAD investigation. Although some of the information contained in the statement was true, defendant asserted that everything in the statement admitting to his complicity in the inmate escape was false. He only signed the statement in response to threats. Defendant stated that he "was in a stressful situation" and "was tired" when he signed the statement.

¶ 23 Attorney Steven Watkins, testified on defendant's behalf. He testified that he met with defendant on February 13, 2006, after he was retained by defendant's parents on his behalf following his arrest. During their initial meeting, defendant informed him that he had just signed a written statement 30 minutes before Watkins had arrived. Defendant did not report signing an inculpatory statement the previous day.

¶ 24 The State called ASA Greenstein as a rebuttal witness. She confirmed that defendant's statement was taken in February 12, 2006, and that he signed the statement that same day. ASA Greenstein explicitly denied that the statement was actually taken and signed on February 13, 2006, and then "backdated" to make it appear that the statement had been made the previous day.

¶ 25 After hearing and considering the aforementioned evidence, the circuit court denied defendant's motion to suppress. The court explained its ruling as follows:

"The motion to suppress the statements is going to be denied. This case and these motions ultimately turn mostly on the credibility of the witnesses, not to diminish the law.

Obviously, the law is something that needs to be applied to the facts. But to determine the facts, certainly the credibility of the witnesses is paramount. In essence in this particular case, there is a large dispute as to what occurred. The State has produced numerous investigators and supervisors involved from the Cook County Department of Corrections and the Sheriff's Office and the State's Attorney[']s Office who have testified as to the occurrence and events which took place basically from February 12th and several days thereafter.

[Defendant] has testified himself and has given his version of what occurred. They are very much at odds with each other. [Defendant's] version though of what occurred is not corroborated by the physical evidence, which includes the written statement which the defense seeks to suppress in this particular case.

* * *

[Following the inmate escape, defendant] was immediately and by appearances was a victim. And by his own initial comments obviously he was a victim and I believe he was treated as a victim. He was not handcuffed when he is initially spoken to by officers. They didn't immediately handcuff him and he was not being treated as a defendant. He wasn't an escapee. He wasn't somebody who was being considered some sort of conspirator.

* * *

Defendant was not given *Miranda* when he was initially spoken to by the investigators that

were called in Januchowski and was it [D'Oronzo]. * * * They had no need to give *Miranda*. He was not in custody. He was not a suspect at the time. He was a victim. He makes himself a victim. He says he's a victim. He appears to be a victim so they treat him accordingly.

* * *

What happened though is that when they are interviewing him and he is cooperating and he is voluntarily giving statements about how these individuals escaped, there are some inconsistencies in what he says in the view of the investigating officers. They wonder why he didn't call out. And for the first time they hear that he was gagged. He did not mention that he was gagged earlier.

* * *

If you're portraying yourself in one light and all of a sudden clearly the house of cards falls down around you, it's not unusual for, I suspect for a suspect to then give a different statement when that is in fact incriminating.

Defendant did not ask to have a lawyer during the course of the interviews by the various investigators. I find that to be the fact. I find the testimony from the investigators and the sergeant to be more credible than the defendant.

* * * [D]efendant is given his *Miranda* rights * * *. He waives them. He signs off on them. He is given his *Miranda* rights later on in written form by a State's Attorney Greenstein that same day. * * * He signs a written statement containing his *Miranda* Warnings.

He signs a line directly below the *Miranda* Warnings indicating that he wishes to give a statement. So his testimony [regarding coercion] is completely belied by the written exhibits in this particular case as well as by the oral testimony of other individuals.

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* * * And during the taking of that statement, at one point, the defendant does make a statement which the state's attorney comes into court and under oath testifies he made. Maybe I should have an attorney. Clearly, the defendant made that statement. I do not believe he made other statements asking for a lawyer, demanding a lawyer, refusing to speak without the benefit of a lawyer. But I clearly believe that he made that statement.

But what did State's Attorney Greenstein do at that point in time? She did not talk to the defendant out of it. She did not ignore it. I believe she scrupulously honored the defendant's statement, even though it was not a strict request for a lawyer. She asked him if he wanted a lawyer and the defendant said no. I find that to be the evidence.

* * * The defendant in the statement given does not allege anything in the statement that he signed multiple locations, that in any way he was promised anything, that he was threatened. * * * The defendant is not some seventeen year old kid scared to death of the police. * * * The defendant is an experienced law enforcement officer, been a member of the United States military. He had portrayed himself in an attempt to apparently as the statement is accurate, to cover up his involvement. He infiltrated himself in a favorable light as a victim.

I do not believe for a second that all of those individuals came in here and lied * * * . I think in any event, motion to suppress the statement is denied."

¶ 26 Following the circuit court's denial of defendant's motion to suppress, the cause proceeded to trial.

¶ 27 B. Trial

¶ 28 At trial, Jamie Joanson testified that in 2006, she was fifteen years old and was living in Calumet City with her mother. In early January of that year, she received a phone call from Eric

Bernard, a friend from the neighborhood who was in prison. At that time, Joanson had known Bernard for four or five years. Bernard's nickname was "Evil," and Joanson spoke to him for a few minutes during that call. Several days later, she received a phone call from a person who identified himself as Darin. After speaking to Darin, Joanson testified that she went to a car wash located on 26th Street. At that location, she met with defendant and gave him $100, which he was to give to Evil. Joanson also paid defendant $100 for passing along the money to Bernard. During that exchange, defendant told Joanson that if she "brought him a hundred dollars he could get anything that [she] wanted or needed to get in to Eric." Joanson testified that she met with defendant three more times from January to February 2006. The second meeting also took place at the car wash. This time, Joanson gave defendant a "carton of Newport[]" cigarettes and one hundred dollars. During their third meeting at the car wash, Joanson testified that she gave defendant a bottle of alcohol and another one hundred dollars. The cigarettes and alcohol were for Bernard and the money was payment for defendant's delivery of those items to Bernard.

¶ 29 After their third meeting, Joanson testified that she received a phone call from defendant on a Saturday afternoon. During that call, defendant told her that "Evil needed a black hoodie and some Nike's." At approximately 6 p.m. the same night, defendant called her and inquired whether she had obtained the clothing. After Joanson indicated that she had the items that defendant requested, he instructed her to meet him with those items at the same car wash. When she arrived at the meeting place, Joanson gave defendant the clothing and one hundred dollars. At that point defendant "told [her] that Evil was getting out" that night. When Joanson inquired how Evil was getting out of jail, defendant told her "he worked at the county for a lot of years and Evil would be out safe and sound." The following morning, Joanson was watching the news and "learned that

Eric and other inmates broke out of Cook County Jail." Later that day, Joanson testified that she received a phone call from defendant, and that he "said that [she] might want to keep [her] mouth shut about all of this because he kn[ew] where [she] live[d]." On February 16, 2008, an Assistant State's Attorney came to Joanson's home and spoke to her about the escape. At that time, Joanson was shown several photographs and she identified defendant as the individual she had met with prior to the inmate escape.

¶ 30 On cross-examination, Joanson acknowledged that she did not contact law enforcement after learning about the inmate escape; rather, law enforcement officials initiated contact with her. Joanson further acknowledged that she considered Evil one of her "best friends" and that she willingly agreed to do favors for him. When she brought cigarettes and alcohol to defendant, Joanson knew those items were going to be snuck into the prison. Joanson further admitted that she knew she was committing a crime when she delivered those items to defendant. She confirmed that she had been willing to commit a crime for Evil, but explained that she did not appreciate the gravity of her actions because she was 15 years old at the time. Although Joanson had testified that she had met with defendant four times and had told investigators that defendant had "dark" eyes, she acknowledged at trial that defendant actually had light-colored eyes. Joanson confirmed that she had not been able to provide investigators with defendant's phone number because he always called from a "private" number.

¶ 31 Brandon Gentry, a correctional officer at the Cook County Department of Corrections, testified that on February 11, 2006, he was working the 11 p.m. to 7 a.m. shift. At approximately 11:55 p.m., Officer Gentry was seated at a desk located approximately 6 to 8 feet from the door to the Abnormal Behavior Observation (A.B.O) unit, when he heard a knock at the door. Officer

Gentry retrieved some keys, walked over to the A.B.O door, peered in the window and saw a man in a uniform standing in front of the door, whom he believed to be another correctional officer. Behind the man, Officer Gentry saw smoke coming from somewhere in the unit. As soon as Officer Gentry began to open the door, the man wearing the uniform pushed it open causing him to fall back. At that point, Officer Gentry realized that the man was not a correctional officer and saw other prison inmates follow him through the door. The inmates began hitting him, and while he was on the floor trying to protect himself, Officer Gentry saw that other inmates were "punch[ing] on" another correctional officer, Officer Zaremba. Once the inmates subdued both officers and took Gentry's keys, they went through another door in the jail. After the "chaos," Officer Gentry confirmed that he and Officer Zaremba assembled in their lieutenant's office and were then discharged to receive medical treatment. At no point did Officer Gentry hear any cries for help or any raised voices coming from the A.B.O unit prior to the inmate escape.

¶ 32 Officer James Sheahan, testified that on February 11, 2006, he was employed as a correctional officer at the Cook County Department of Corrections and worked the "overnight" shift. At approximately midnight, "an all available [emergency] call was called over the radio." He and several other officers responded to the call and were able to apprehend several "detainees" who had attempted to escape from prison. After performing a headcount of the prisoners, they learned that six prisoners, Francisco Romero, Tyrone Everhart, Arnold Joyner, Michael McIntosh, Eric Bernard and David Earnest, had been successful in their escape efforts. After securing the prison, Officer Sheahan entered the A.B.O unit and noticed that lights in the unit had been turned off. In addition, there was water on the floor and smoke in the air. He then discovered defendant handcuffed to one of the vacant prison cells in the unit. Although he did not observe any signs of

physical injury to defendant, Officer Sheahan nonetheless asked defendant if he had been injured and defendant indicated that he had not been hurt. He confirmed that defendant was not wearing his correctional officer uniform at that time. Officer Sheahan also confirmed that prior to the radio call requesting the assistance of all available correctional officers, there had been no calls from any officer requesting assistance in the A.B.O unit.

¶ 33 Sergeant Darryl Bernard, testified that in 2006, he was a crime scene investigator in the Evidence Technicians Unit of the Cook County Sheriff's Department. In the early morning hours of February 12, 2006, he received an assignment to investigate an inmate escape at the Cook County Jail. After receiving his assignment, Sergeant Bernard photographed and collected evidence at the scene. In the A.B.O unit of the jail, he observed uncoiled fire hoses and some garbage and debris on the floor that appeared to have been burned. During the investigation, Sergeant Bernard and his partner recovered two shanks, waist and belly chains, and inmate uniforms. Defendant's correctional officer uniform shirt was also recovered as they processed the scene.

¶ 34 Investigator Craig Januchowski provided testimony consistent with the testimony that he provided during the pre-trial suppression hearing. Specifically, Investigator Januchowski testified that he was contacted during the early morning hours of February 12, 2006, was informed of the inmate escape and was instructed to commence an investigation into that escape. He confirmed that defendant, who had been working on the tier from which the escape occurred, was initially thought to be a victim, and he was treated accordingly during his initial interview. Investigator Januchowski testified, however, that he and his partner perceived some inconsistencies in defendant's account of the escape and sought clarification from him. In

response, defendant acknowledged the inconsistencies and stated: "oh, this doesn't look good." At approximately 10 a.m., Investigator Januchowski testified that he and his partner conducted another interview with defendant. After advising defendant of his *Miranda* rights, Investigator Januchowski again confronted defendant about various inconsistencies in his earlier statement and informed defendant that he "didn't believe exactly what [defendant] was telling" him. At that point, defendant conceded that he was "part of" the escape and detailed his involvement.

¶ 35 At that time, Investigator Januchowski testified that defendant reported that he had been approached by an inmate and was offered $50,000 if he allowed the inmate to escape from prison. Defendant further stated that he agreed to do so, but had not received the compensation he had been promised. When asked why he would risk his livelihood and facilitate an inmate escape without first receiving any money, Investigator Januchowski recalled that defendant "chuckled." A break in their conversation ensued and defendant was provided with lunch. When their conversation resumed, defendant admitted that he had not been truthful about the $50,000 payment and provided a different account of his involvement.

¶ 36 This time, defendant told Investigator Januchowski that he had been approached by Bill Jones, another Cook County correctional officer, several weeks earlier. On that occasion, Jones advised defendant that several inmates, including inmates Everhart, Earnest and McIntosh, were going to attempt to escape from prison, and was told that the escape could benefit defendant if he chose to participate. Defendant told Investigator Januchowski that he initially told Jones that he "was not interested" in helping the inmates escape. Jones then approached defendant a second time about the escape plan, and defendant again reiterated that he did not want to be a part of the plot. Defendant told Investigator Januchowski that he was approached a third time by Jones on

February 8, 2006, and at that point, he agreed to be a part of the escape plot. Defendant learned that there were other correctional officers involved in the plot including Sergeant Rodriguez and Officer Michno. That same day, defendant spoke to McIntosh, one of the inmates orchestrating the escape plan. McIntosh informed defendant that he would know exactly when the escape "was about to go down" when he received an instruction to take Doss, an inmate in the A.B.O unit, to take a shower, during one of his work shifts.

¶ 37 Defendant told Investigator Januchowski that shortly after he arrived to work on February 11, 2006, inmate Eberhart informed him that inmate Doss wanted to take a shower. At that point in time, defendant acknowledged that he "was under the impression that the escape was going to take place." In accordance with the escape plan, defendant took Doss to the shower. Doss told defendant to keep quiet and threw some kind of "substance at him." Defendant then handcuffed himself to the shower, while Doss opened the other inmate's cell doors. Once the other inmates were released, they relocated defendant to one of the cells. Defendant removed his uniform, put his legs in shackles and handcuffed himself to the cell door.

¶ 38 After providing this account of his involvement to Investigator Januchowski, defendant agreed to detail his involvement in the inmate escape to a State's Attorney. Investigator Januchowski recalled that ASA Bonnie Greenstein arrived at approximately 4 p.m. on February 12, 2006, and advised defendant of his *Miranda* rights. Defendant then "relayed the same facts" that he had told him to ASA Greenstein. After doing so, defendant then agreed to ASA Greenstein's request to provide a handwritten statement. At one point during the handwritten statement, Investigator Januchowski recalled that defendant paused and stated: "maybe I should have an attorney." However, when ASA Greenstein asked defendant if he wanted to stop the

statement and contact an attorney, defendant declined and stated, "let's continue." Defendant was re-*Mirandized* and ASA Greenstein finished transcribing the statement. Once she read the statement to him to verify its accuracy, however, defendant indicated that he did not want to sign it. Investigator Januchowski then spoke to defendant along with his supervisor, Sergeant Fitzgerald, and ASA Greenstein's supervisor, ASA Darren O'Brien. At that time, defendant acknowledged the statement was accurate but that he "didn't want to take the weight of it." After admitting his fear, defendant agreed to affix his signature to the handwritten statement.

¶ 39 On cross-examination, Investigator Januchowski acknowledged that defendant initially denied any involvement in the escape and stated that he took an inmate to the shower, that the inmate threw a substance at his face, pressed a shank to his neck, removed his clothing and handcuffed him to a cell. Following the escape, defendant had been found handcuffed to a cell, wearing only his underclothes. Investigator Januchowski further acknowledged that he when he first interviewed defendant, he observed some kind of white substance on defendant's face, but confirmed that no tests were performed to identify the substance. Although defendant later confessed to his involvement in the escape plot, Investigator Januchowski admitted that defendant did not write out his own inculpatory statement; rather, ASA Greenstein transcribed the statement for him. Investigator Januchowski also admitted that when defendant initially declined to sign the statement, he explained that his reluctance to do so stemmed from the fact that the statement was not accurate.

¶ 40 Robert Fitzgerald, a Sergeant in the Cook County Sheriff's Police Department, testified that he received a phone call at approximately 12 a.m. on February 12, 2006, informing him of an inmate escape at the Cook County Department of Corrections. After he arrived at the scene,

Sergeant Fitzgerald instructed two of his men, Investigators Januchowski and D'Oronzo, to interview defendant, who had been the officer working in the tier from which the prisoners escaped. Sometime later that afternoon, Sergeant Fitzgerald confirmed that he took part in a conversation with Investigator Januchowski, ASA Darren O'Brien, and ASA Bonnie Greenstein. After the conversation, he accompanied Investigator Januchowski and ASA O'Brien into an office in which defendant was sitting. Sergeant Fitzgerald testified that he had a brief conversation with defendant, during which he inquired "if everything was okay" and if defendant needed any food or drink. The conversation lasted "no more than a minute." After his inquiries, ASA O'Brien then asked defendant why he did not want to sign the statement he had just given to ASA Greenstein and informed defendant that he was going to charge him regardless of whether he signed the statement or not. The conversation terminated at that point and the three men left the room. Sergeant Fitzgerald confirmed that he did not have any supervisory authority over defendant or any of the correctional officers who worked at the Cook County Department of Corrections.

¶ 41 ASA Bonnie Greenstein and ASA Darren O'Brien also reiterated the testimony that they provided at the earlier suppression hearing and detailed the circumstances surrounding defendant's signed inculpatory statement. Specifically, ASA Greenstein testified that she met with defendant in the afternoon of February 12, 2006, and advised defendant of his *Miranda* rights. Defendant signed a *Miranda* waiver form and agreed to provide a handwritten statement. After transcribing defendant's statement, ASA Greenstein acknowledged that defendant was reluctant to sign the statement, but did so after he had a brief conversation with ASA O'Brien, Sergeant Fitzgerald and Investigator Januchowski. She confirmed that she was not present for that conversation.

¶ 42 ASA O'Brien, in turn, confirmed that he spoke to defendant after he was informed that

defendant had made a statement admitting to his role in the inmate escape but had expressed reluctance to sign the statement. He recalled that he told defendant that he was going to be charged regardless of whether or not he signed the statement. ASA O'Brien testified that the entire conversation took "two or three minutes." He did not recall asking defendant for a reason why he did not want to sign the statement. ASA O'Brien denied threatening defendant or offering defendant leniency in exchange for his signature.

¶ 43 Daniel Brown, Assistant Executive Director of Administration of the Cook County Department of Corrections, testified that all employees and correctional officers employed by the Cook County Department of Corrections are required to abide by general orders, which are a set of criteria designed to maintain control over the prison environment and establish certain protocols addressing how various issues should be handled. General Order 9.19 sets forth the policy to follow with respect to inmate escapes and was in effect in February 2006. It requires correctional officers who learn of an escape plan to immediately relay that information to a division or shift commander. In addition to abiding by General Orders, Brown testified that correctional officers are required to follow various safety measures. One such safety measure is to never enter a unit or tier of the prison without backup.

¶ 44 Joseph Brown, Chief of External Operations for the Cook County Department of Corrections, confirmed that there was a supervisor working the night shift at the time of the inmate escape that defendant could have contacted if he had information pertaining to a potential inmate escape.

¶ 45 After presenting the aforementioned evidence, the State rested its case-in-chief, and the defendant moved for a directed verdict, which the circuit court denied. The defense then called

the following witnesses:

¶ 46 Roberto Rodriguez testified that in February 2006, he was the Sergeant of the Cook County Sheriff's Department Special Operations Response Team (S.O.R.T.), and worked the afternoon shift. He confirmed that defendant was a member of S.O.R.T. and was assigned to the night shift. Sergeant Rodriguez also confirmed that the officers who were part of S.O.R.T. and who were responsible for securing the A.B.O. tier, were required to abide by general orders; however, he explained that there were no standard operating procedures in effect in February 2006 that S.O.R.T. officers were required to follow. Accordingly, although S.O.R.T. officers were responsible for securing the A.B.O tier, there were no specific instructions or procedures in place that officers were required to follow to fulfill that responsibility. Sergeant Rodriguez also confirmed that there were no procedures in effect in February 2006 that prohibited officers from allowing inmates in the A.B.O unit to take showers or make phone calls at night. He explained that it was not until June 2006, several months after the escape, that any such standardized operating procedures were implemented. When standard operating procedures were enacted in June 2006, however, they were "back dated" to December 2005.

¶ 47 Sergeant Rodriguez further testified that the A.B.O tier contained "the worst of the worst" inmates, including two who had previously attempted to escape. The inmates in that tier were known to have set fires, started floods and attacked correctional officers throughout their incarceration. Because that tier contained the most dangerous inmates, Sergeant Rodriguez was concerned for his staff's safety. One of his biggest concerns was that S.O.R.T. was "undermanned" and that there was no S.O.R.T supervisor assigned to work the night shift.

¶ 48 Sergeant Rodriguez confirmed that he was notified of the inmate escape shortly after it

occurred and that he proceeded immediately to the scene. When he arrived, he saw defendant sitting in a supervisor's office and noticed that defendant "had really red eyes" and "[h]e had white stuff on most of the middle of his face, to the left side of his face and all down a shirt, a black shirt." Sergeant Rodriguez asked defendant if he was alright, but defendant "just had a blank stare on his face" and did not respond. When he continued trying to talk to defendant, Sergeant Rodriguez testified that he was interrupted by an Internal Affairs Officer who was nearby and was instructed not to speak to defendant.

¶ 49 Captain Tyrone Everhart, assistant commander of S.O.R.T., testified that general orders in effect at the time of the February 2006 inmate escape, required officers to report any knowledge of any purported escape plans to a superior. He further testified that one of his sons, Tyrone Everhart Jr., was a prisoner in the Cook County Department of Corrections and recalled that prior to 2006, he had learned from his son's girlfriend that his son was planning an escape. In accordance with general order 9.01, Captain Everhart reported what he had learned of his son's escape plan to other officials. He further testified that never heard of an escape plan involving his son that was set to take place in February 2006. Given that he had no knowledge of a February 2006 inmate escape plot, Captain Everhart never made any reports about the plan.

¶ 50 Sergeant Ivan Hernandez testified that he was employed as a S.O.R.T. officer in February 2006, and worked the afternoon shift. On February 11, 2006, Sergeant Hernandez received information that inmate Michael McIntosh had a shank in his cell. Sergeant Hernandez passed that information along to Captain Wright. He explained that he was not able to conduct a search of an inmate's cell without receiving a directive from a superior and testified that he expected to receive a directive from Wright. Sergeant Hernandez further testified that he did not receive a

directive at any time during his shift and that he was not able to search McIntosh's cell before he completed his shift that day. When defendant arrived for the overnight shift, Sergeant Hernandez confirmed that he did not pass along that information to defendant because he had been unable to get any confirmation as to whether inmate McIntosh had a weapon in his cell.

¶ 51 Sergeant Hernandez left the prison after finishing his shift, but returned after he received an "all-call" and learned that six inmates, one of whom was McIntosh, had escaped. Another inmate, Patrell Doss, had not been successful in his attempt and when he was stopped, he was found to be wearing defendant's uniform. After the scene was secured, Sergeant Hernandez recalled observing defendant sitting in an office. He noted that defendant's "eyes were bloodshot red." Defendant also appeared to have "a pale complexion" and white residue on his shirt. Sergeant Hernandez was prevented from talking to defendant at that time, but testified that defendant appeared to be "extremely rattled."

¶ 52 Bill Jones, another Cook County Department of Corrections officer, testified he was also a S.O.R.T. member in February 2006, and recalled that he had recruited defendant to be a member of the team to supervise and secure the A.B.O. unit during the night shift. Officer Jones explained that he had assembled a team after the Director Andrews had relayed concerns he had about the security and safety of the A.B.O. tier. Officer Jones was not on duty on February 12, 2006, but responded to the all-response call that was made following the escape.

¶ 53 Nelson Lewis testified that he was a S.O.R.T. officer at the Cook County Department of Corrections in February 2006. As a S.O.R.T officer he had received various assignments, but his main assignment was to secure the A.B.O. unit. He had worked the night shift on the A.B.O. unit on multiple prior occasions and testified that there was "always" a shortage of staff at the prison,

and that it was not uncommon for him to be the only officer assigned to the A.B.O. unit during the night shift. Officer Lewis testified that at the time of the February 2006 inmate escape, there were no orders in effect that prohibited officers from taking keys in the A.B.O. unit. He also testified that there were no orders in place precluding officers from allowing inmates to shower during the night shift.

¶ 54 On February 11, 2006, the day of the escape, Officer Lewis was assigned to the day shift. After completing his uneventful shift, he left the prison. Several hours later, however, Officer Lewis received an emergency all-call and reported back to the prison. When he arrived, Officer Lewis saw defendant sitting at the S.O.R.T. command post. Defendant "looked like he had just s[een] a ghost" and appeared to have a "white almost milky type substance all over him." Officer Lewis also recalled that defendant's eyes were glassy and red. After briefly speaking to defendant, Officer Lewis walked with him to their supervisor's office. Within seconds, Chief Kaufman "came storming into the command center," pointed his finger at defendant and began yelling at him. Chief Kaufman ordered Officer Lewis out of the room and placed a guard at the door. Officer Lewis was not present when defendant was questioned.

¶ 55 Gene Micho, another S.O.R.T member in February 2006, also confirmed that there were instances in which he manned the A.B.O. tier alone. He further confirmed that there was no prohibition against an officer taking keys from the command post into the A.B.O. unit and that inmates were permitted to take showers at night. Although he was not assigned to work on the date of the escape, Officer Michno testified that he also responded to the emergency all-call and observed defendant when he arrived at the scene. He recalled that defendant was pale and "real nervous looking." Defendant also appeared to have a "white soapy substance around his eyes

[and] his cheeks." Officer Michno testified that he was able to speak to defendant for five or ten minutes before Chief Kaufman walked through the corridor and began screaming and swearing at them. Chief Kaufman made a comment that the "jail guards [were] going to pay."

¶ 56 Officer Michno confirmed that he was also questioned about the escape. After investigations into the February 2006 escape were concluded, Officer Michno testified that he filed a lawsuit against the Cook County Sheriff's Department in which he alleged that he was retaliated against when he refused to implicate other officers in the escape. Officers Ivan and Rodriguez also joined the lawsuit. Each of the men claimed that they were initially falsely accused of being part of the escape plan and were "politically targeted" thereafter.

¶ 57 Harry Wheeler, another S.O.R.T. member and a union steward in February 2006, testified that he also responded to the all-call following the escape and saw defendant when he arrived. Officer Wheeler recalled that defendant was seated in a supervisor's office and "looked very shook up." He also noticed that there was "some kind of substance down the front of [defendant's] shirt." The following day, Officer Wheeler saw defendant again. At that point, defendant was sitting in a room and was handcuffed. Officer Wheeler told investigators that he was a union steward and wanted to talk to defendant, but he was told he could not see him. He then contacted Harold Simpson, the chief union representative, and notified him that defendant was going to need a union attorney. Officer Wheeler confirmed that he also filed a lawsuit against the Sheriff's Department following the escape.

¶ 58 Anthony Lordo testified that he was another S.O.R.T. officer who had worked in the A.B.O. unit. Prior to February 2006, Officer Lordo recalled that he had told his superiors about safety concerns he had about the unit. One of his concerns was that the locks in the A.B.O. unit

did not work properly. Officer Lordo testified that he saw defendant the morning after the escape. He recalled that defendant was handcuffed and that he "looked a mess." There appeared to be white residue on defendant's face and t-shirt. After the investigation into the escape, Officer Lordo confirmed that he joined Officer Wheeler's lawsuit.

¶ 59 S.O.R.T. Officer Alberto Lamas also testified that the locks in the A.B.O. unit did not work properly and that there was no rule in effect at the time of the February 2006 escape that prohibited officers from taking command post keys into the A.B.O. tier. He confirmed that he also responded to the emergency all-call following the escape. When he arrived at the scene, Officer Lamas overheard Chief Kaufman yelling and screaming.

¶ 60 Donald Gater, defendant's father, testified that he received a phone call from his son sometime after midnight on February 12, 2006. At the time, defendant "sounded a little shook up." They talked for about five minutes and then he fell asleep. Gater testified that he expected to hear from his son later that morning but that he did not have any contact with his son all day. As a result, Gater's wife made a phone call to the union organization to which defendant belonged. The following morning, Gater called an attorney for his son. Gater stated that he was not able to personally converse with defendant until February 15, 2006, when his son appeared in bond court.

¶ 61 Jalesha Coles, defendant's former fiancé and the mother of his two children, testified that on February 11, 2006, she and defendant spent the day with their daughters before defendant left for work at approximately 9:15 p.m. She received a phone call from defendant shortly after midnight. During that call, defendant sounded "shaky." After speaking to him, Coles contacted defendant's parents. Coles expected to hear from defendant later that morning, but never received a call. She then placed several calls trying to locate defendant, but was unable to reach him. Coles

testified that she, too, had no contact with defendant until he appeared in bond court on February 15, 2006.

¶ 62 Defendant elected to testify on his own behalf. He denied that he had ever met with or spoken to Jamie Joanson. He also denied that he had ever snuck contraband into the Cook County Department of Corrections during his tenure as a correctional officer. Defendant testified that when he reported to work on February 11, 2006, he relieved the officer in the A.B.O. tier and was told that Eberhart, one of the inmates, was using the phone and needed to be returned to his cell when he finished with his call. Although he was the only officer assigned to the night shift in the A.B.O. tier that evening, defendant stated that it was not unusual for him to work that shift alone. Once Eberhart finished his phone call, defendant recalled that he walked him back to his cell. Once he was returned to his cell, Eberhart informed defendant that inmate Doss wanted to take a shower. Defendant testified that it was also not unusual for an inmate to be permitted to shower during the night shift. Accordingly, defendant escorted Doss to the shower. After Doss finished showering, he called out to defendant to unlock his leg shackles and let him out of the shower. Defendant testified that once he unlocked Doss, the inmate immediately "threw a substance in [his] face, and pinned [him] up against the bars in the shower and had a shank up to [his] neck." The substance temporarily blinded defendant. Although he had received training regarding defensive tactics to employ when confronted with a violent inmate, defendant testified that he had never been trained on what to do in that type of situation. Accordingly, when Doss ordered defendant to handcuff himself to the shower stall, defendant complied.

¶ 63 Defendant acknowledged that he did not cry out for help, but explained that he kept quiet because Doss threatened to kill him if he did not follow his instructions. Once defendant was

secured and handcuffed to the shower stall, Doss began "popping the cell doors to let the other inmates out." After the other inmates were released, defendant testified that they surrounded him. Many of the inmates were armed with shanks, sticks, and broom handles. At that point, defendant testified that he was instructed to remove his uniform. He also complied with this order because the inmates were dangerous and he was very scared. Once defendant undressed, he was taken to an empty cell on the tier, and was handcuffed to the bars of the cell. The inmates put his ankles in shackles and placed a gag in his mouth. After the inmates turned the lights in the A.B.O. unit off, defendant heard the inmates start banging on the door to the tier and began to smell smoke. He also heard the sound of running water. After a fire alarm sounded, defendant heard the inmates move through the A.B.O. tier's door. Although he was able to spit the gag out of his mouth, defendant did not scream or make any sounds at that point, explaining: "the fire alarm was going off, the water was running on the tier and nobody would probably be able to hear [him]."

¶ 64 Defendant testified that he remained handcuffed to the cell for what felt like an "eternity" before other officers found him. He was then taken to his captain's office where he placed calls to his father and his fiancé. Defendant explained his wallet containing his identification and address had been in his uniform pants that had been taken by the inmates and he was concerned for his family's safety. At approximately 12:45 p.m., defendant was ordered to give a statement to IAD. Before his interview, Chief Kaufman, the chief of IAD yelled and swore at him and said that if defendant had been involved in the escape, he would make sure that defendant lost his job. Chief Kaufman then left two guards at the door and instructed them not to let anybody in or out to see defendant. He was never left alone after that point.

¶ 65 Defendant testified that he was then interviewed by Investigators Januchowski and

D'Oronzo and he told them what had happened. Defendant repeatedly denied his involvement, but was subjected to additional questioning. He was denied medical treatment as well as the opportunity to make additional phone calls. His request for an attorney was also denied. At some point, defendant recalled that he met with ASA Greenstein and that she wrote out a statement implicating defendant in the inmate escape. Defendant explained that he refused to sign it because the statement "wasn't the truth. The statement was a lie." After refusing to sign the statement, defendant was confronted by ASA O'Brien, Sergeant Fitzgerald, and Investigator Januchowski. ASA O'Brien threatened defendant with additional jail time if he did not sign the statement. As a result, defendant signed the statement.

¶ 66 On cross-examination, defendant acknowledged that he was familiar with his *Miranda* rights prior to speaking with Investigators Januchowski, D'Oronzo, and ASA Greenstein. He also confirmed that none of the individuals he spoke to following the inmate escape had any supervisory authority over him. Defendant admitted that he had brought his command post keys into the A.B.O. unit when he started his shift on February 11, 2006, and confirmed that none of the prisoners would have been able to get out of their cells without those keys. Defendant denied that he had prior knowledge of the inmates' escape plans. Although he had a radio that allowed him to maintain contact with other correctional officers, defendant acknowledged that he did not radio for assistance or backup with the transported inmate Doss to the shower that evening. Defendant further acknowledged that he had not been gagged when he was initially handcuffed to the shower stall as Doss was letting the other inmates out and that he did not yell or call out for assistance. He explained that he never resisted or fought back because he "didn't want to die."

¶ 67 When asked about his signed statement, defendant admitted that some of the information

contained therein was accurate, but stated that all of the language detailing his involvement in the escape was false. Defendant testified that he fully cooperated with Investigators Januchowski and D'Oronzo's investigative efforts and conceded that he agreed to take a polygraph exam. The exam was conducted at approximately 7 a.m. on February 12, 2006. Defendant further conceded that Investigator Januchowski discussed the results of the test with him later that morning, at approximately 10 a.m. Although defendant claimed that he did not sign the statement until February 13, 2006, he acknowledged that the statement itself indicated that it was signed on February 12, 2006, at approximately 4:45 p.m. Defendant testified that the statement was not dated or time-stamped at the time that he signed it. Although the statement was inaccurate, defendant explained that he signed it because he was "under duress" and had been threatened by ASA O'Brien. Defendant explained that ASA O'Brien threatened to charge him with a Class 1 felony instead of a Class 4 felony if he continued to be uncooperative. ASA O'Brien also told defendant that he would talk to the judge on defendant's behalf if he signed the statement. Defendant testified that he believed that ASA O'Brien "had the power to do anything he wanted to do to [him]."

¶ 68 In rebuttal, the State recalled ASA Greenstein who testified that the time and date was included on the face of the statement at the time that defendant signed it. She confirmed that the statement was completed on February 12, 2006, and denied backdating the statement. ASA O'Brien also testified in rebuttal. He denied threatening to charge defendant with a more serious offense if he continued refusing to sign the statement. ASA O'Brien also denied offering defendant leniency in exchange for his signature and reiterated "[n]o one forced him to sign anything."

¶ 69 Miriam Rentas, a former member of IAD, was also called as a rebuttal witness. She testified that she was notified of the escape by her boss, Chief Kaufman, and responded immediately to the scene. When she arrived, she met with him and was apprised of what had occurred. At no time did she hear him yelling or threatening any of the correctional officers on the scene.

¶ 70 After presenting the aforementioned evidence, the parties delivered closing arguments. The circuit court then provided the jury with relevant instructions and, following deliberations, the jury returned with a verdict finding defendant guilty of official misconduct. At the sentencing hearing that followed, the circuit court, after hearing the arguments advanced in aggravation and mitigation, sentenced defendant to 30 months' imprisonment. Defendant's post-trial motions were denied and this appeal followed.

¶ 71 II. ANALYSIS

¶ 72 A. Motion to Suppress

¶ 73 On appeal, defendant advances numerous claims of circuit court error. He first argues that the circuit court erred in denying his pre-trial motion to suppress his statement and in admitting his "coerced confession" into evidence.

¶ 74 The State, in turn, responds that the court properly denied defendant's motion to suppress because the evidence showed that "defendant freely chose to give his statement, signed each page of it, and never asked for an attorney." In addition, the State observes that "[t]he trial court specifically found that the witnesses defendant called in support of his motion were wholly lacking in credibility."

¶ 75 Federal and state constitutional mandates prohibit the admission of an involuntary

inculpatory statement into evidence. *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005); *People v. Jones*, 2014 IL App (1st) 120927, ¶ 48. A confession is deemed voluntary "if is the product of free will, rather than the inherently coercive atmosphere of the police station." *Nicholas*, 218 Ill. 2d at 118. To determine the voluntariness of a statement, courts employ a totality of the circumstances analysis to evaluate the circumstances surrounding the statement including: the presence or absence of *Miranda* warnings; the defendant's age, intelligence, education and experience at the time of his detention and interrogation; the duration of the interrogation; the presence or absence of any physical or mental abuse during the detention and interrogation; and the legality of the detention. *Nicholas*, 218 Ill. 2d at 118; *Jones*, 2014 IL App (1st) 120927, ¶ 48. Under a totality of the circumstances analysis, no single factor is controlling. *In re G.O.* 191 Ill. 2d 37, 54 (2000); *Jones*, 2014 IL App (1st) 120927, ¶ 48. When reviewing a circuit court's ruling as to the voluntariness of a defendant's confession, the court's factual findings will be upheld unless they are against the manifest weight of the evidence. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003). Factual findings are against the manifest weight of the evidence " 'only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.' " *Jones*, 2014 IL App (1st) 120927, ¶ 50, quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). The circuit court's ultimate legal finding as to whether suppression is warranted, however, is subject to *de novo* review. *Braggs*, 209 Ill. 2d at 505; *People v. Kronenberger*, 2014 Il App (1st) 110231, ¶ 28.

¶ 76 In support of his contention that he did not voluntarily sign the statement, defendant asserts: he was not given his *Miranda* rights at the beginning of the interrogation process; he was subjected to repeated questioning and was held in custody for hours prior to signing the statement;

his requests for an attorney or union representative were repeatedly denied; and the statement was signed in response to both threats and promises made by ASA O'Brien. After reviewing the relevant factors, we do not agree that the totality of the circumstances supports defendant's argument that his statement was involuntary.

¶ 77 The record reveals that shortly after the escape, at approximately 2 a.m. on February 12, 2006, defendant spoke to Investigators Januchowski and D'Oronzo, who had been assigned to investigate the prison escape. Although defendant was not *Mirandized* at that time, the investigators explained that no warnings were administered because defendant was believed to have been a victim of the prisoners' escape efforts rather than complicit in the crime. Defendant was not handcuffed or otherwise restrained prior to or during the interview. In addition, he had been permitted to contact his father and his fiancé and was offered medical treatment, which defendant declined. After inquiring about some perceived inconsistencies in defendant's story, Investigator Januchowski asked defendant if he would be willing to submit to a polygraph exam and defendant agreed. The record shows that the polygraph exam took place at approximately 7 a.m. and was administered by Lieutenant Anton. Defendant was *Mirandized* for the first time by Lieutenant Anton, who informed him of his rights prior to conducting the exam. Following the polygraph test, Investigators Januchowski and D'Oronzo re-*Mirandized* defendant and spoke to him about his test results. Defendant waived his rights and provided his first inculpatory statement at 10 a.m. Defendant subsequently agreed to speak with an ASA and memorialize his statement. ASA Greenstein met with defendant at approximately 4 p.m., admonished him of his *Miranda* rights, and transcribed his statement. After expressing some initial reluctance, defendant signed the statement.

¶ 78 In finding defendant's statement voluntary and denying his motion to suppress, the trial court expressly rejected defendant's claims that his requests for counsel were repeatedly denied; that his statement was actually signed on February 13th and then backdated to reflect that the statement was signed the previous afternoon; and that his signature was only affixed to the statement in response to threats and promises made to him by ASA O'Brien. In so finding, the court explained that defendant's account of the circumstances of his statement was "very much at odds with" the accounts provided by the State's witnesses, who were more credible. The court further emphasized that at the time that he made his statement, defendant was not a young inexperienced "seventeen year old kid scared to death of the police" and unfamiliar with the legal system; rather, he was a former member of the United States military and was an experienced correctional officer. After reviewing the record, we reject defendant's claims that the circuit court's credibility determinations and factual findings are against the manifest weight of the evidence and conclude that the court did not err in finding his statements to be knowing and voluntary and in denying his motion to suppress.

¶ 79 We also reject defendant's argument that the circuit court erred in denying his motion to reconsider its suppression ruling. In support of his motion to reconsider, defendant relied on *Garrity v. New Jersey*, 385 U.S. 493 (1967), a United States Supreme Court case holding that the constitutional protections against coerced statements preclude the use of statements obtained from law enforcement officers in court proceedings against them where the statements were made after they were threatened by superiors with termination. Here, there is no evidence in the record that defendant was threatened with termination or ordered to provide his inculpatory statement. Accordingly, the Supreme Court's ruling in *Garrity* does not apply and the circuit court did not err

in denying defendant's motion to reconsider its suppression ruling.

¶ 80 B. Other Crimes Evidence

¶ 81 Defendant next argues that the court improperly admitted other crimes evidence when it permitted Jamie Joanson to testify about meetings she had with him prior to the night of the escape. He argues that Joanson's testimony concerning items she provided to him to smuggle into the prison was not relevant because he was charged "with official misconduct with the underlying charge of aiding and abetting the escape, *not* smuggling in cigarettes or alcohol into the jail." Moreover, defendant argues that the State did not provide any evidence to corroborate Joanson's claims, and accordingly, he was "severely prejudiced by the admission of th[e] unsupported 'other crimes' evidence."

¶ 82 The State responds that the other crimes evidence was properly admitted into evidence "to show defendant's intent, motive, and common plan or design." Specifically, the State argues that Joanson's testimony concerning defendant's willingness to smuggle items to inmate Barnard "was relevant to show his motive to act for personal gain" and explained why he agreed to help the inmates escape. The State further argues that Joanson's testimony "was also relevant to show intent and knowledge because defendant's comment[s] to [her] showed that he knew the inmates were going to escape and knew when it would happen."

¶ 83 As a general rule, evidence of other crimes or prior bad acts, that is, evidence of crimes or acts for which a defendant is not on trial, may be admitted only if it is relevant for a purpose other than to establish the defendant's bad character or his propensity to commit the charged offense. *People v. Pikes*, 2013 IL 115171, ¶ 11; *People v. Evans*, 373 Ill. App. 3d 948, 958 (2007). Accordingly, other crimes evidence may be admitted to show modus operandi, intent, motive,

identity, or the absence of mistake. *Pikes*, 2013 IL 115171, ¶ 11. In addition, other crimes evidence may be admitted "if it is part of a continuing narrative of the event giving rise to the offense [and is] intertwined with the charged offense." *People v. Patterson*, 2013 IL App (4th) 120287, ¶ 58; see also *People v. Adkins*, 239 Ill. 2d 1, 32 (2010); *Evans*, 373 Ill. App. 3d at 958-59. Such evidence is admissible because it " 'sets the stage' for the charged offense and explains the circumstances about the charged offense that might appear improbable." *People v. Hale*, 2012 IL App (1st) 103537, ¶ 14, *quoting People v. MacFarland*, 259 Ill. App. 3d 479, 481 (1994). When acts are part of the continuing narrative of the charged offense, they are not viewed separate, distinct, and unconnected crimes for purposes of other crimes analysis. *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 101 (2013).

¶ 84 Ultimately, however, even where the other crimes evidence is relevant for purposes other than the defendant's criminal propensity, the evidence should not be admitted where its probative value is outweighed by its prejudicial effect. *Pikes*, 2013 IL 115171, ¶ 11. To establish prejudice, the other crimes evidence " 'must have been a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different.' " *Patterson*, 2013 IL App (4th) 120287, ¶ 59, *quoting People v. Hall*, 194 Ill. 2d 305, 339 (2000). The circuit court's ruling concerning the admissibility of other crimes evidence will not be disturbed absent an abuse of discretion. *People v. Moss*, 205 Ill. 2d 139, 156 (2001). An abuse of discretion pertaining to an evidentiary ruling " ' will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 101, *quoting People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 85 Here, we do not find that the court erred in permitting Joanson to testify about defendant's other crimes. Joanson's testimony was not used to establish defendant's bad character or mere propensity to commit criminal acts; rather, the circuit court found, and we agree, that the evidence was admissible to establish defendant's motive and knowledge of the escape plan, and the court instructed the jury accordingly. Specifically, defendant's interactions with Joanson established his willingness to assist prisoners in exchange for money and personal gain. In addition, his actions in smuggling contraband into the prison, especially the clothing and shoes, on the day of the offense, set the stage for, and was part of the continuing narrative, of the charged offense. Moreover, his conversations with Joanson established his knowledge of the escape plan. Where, as here, the other crimes evidence was offered as evidence of defendant's motive, knowledge, and intent, as well as to explain the continuing narrative of the events that gave rise to the charged offense, we do not find that the court abused its discretion in allowing Joanson's testimony. See, *e.g.*, *People v. Wilson*, 139 Ill. App. 3d 726 (1985), *rvsd*. On other grounds, *People v. Wilson*, 112 Ill. 2d 657 (1986) (preparations taken by the defendant prior to helping a man escape from the hospital were admissible as they were relevant to establish the defendant's motive, knowledge, and the absence of an innocent frame of mind). Rather, we find that the evidence was relevant and that its probative value outweighed its potential for prejudice. Assuming *arguendo* that the other crimes evidence was improperly admitted, we nonetheless conclude that defendant is not entitled to relief as he cannot establish that he was prejudiced by Joanson's testimony. Indeed, given the strength of the evidence against defendant, including his own confession, it is not likely that the jury would have reached a different verdict had Joanson's testimony been excluded. Accordingly, defendant's other crimes argument must fail.

¶ 86 C. Polygraph Evidence

¶ 87 Defendant next argues that the circuit court erred in allowing the State to introduce evidence that he took part in a polygraph examination prior to making his inculpatory statement. Although the trial court precluded the State from discussing the result of defendant's polygraph exam, he argues that the jury was "smart enough to know that the prosecution would not seek to admit the polygraph examination if they did not like the result," and thus, he was prejudiced by the polygraph evidence.

¶ 88 The State acknowledges that polygraph evidence is generally inadmissible, but argues that the evidence "was properly admitted to rebut defendant's testimony that he agreed to give a handwritten statement because ASA O'Brien threatened him."

¶ 89 As a general rule, evidence pertaining to polygraph examinations is inadmissible. *People v. Baynes*, 88 Ill. 2d 225 (1981); *People v. Matthews*, 2012 IL App (1st) 102540, ¶ 13. The Illinois Supreme Court has explained that the rationale behind the exclusion of such evidence is "twofold. On the one hand, the results of polygraph examinations are not sufficiently reliable to be used to prove guilt or innocence. On the other hand, because of their quasi-scientific appearance, the results of polygraph examinations are likely to be given undue weight in the minds of jurors. The possibilities for prejudice are obvious; jurors will assume that the polygraph is reliable. Jurors do not have the experience or technical skill to understand that a reported 'failure' might in fact be a 'pass' or vice versa, much less that 'inconclusive' is not another word for 'failure.' " *People v. Taylor*, 101 Ill. 2d 377, 391-92 (1984); see also *People v. Washington*, 363 Ill. App. 3d 13, 20 (2006). In *People v. Jefferson*, 184 Ill. 2d 486 (1998) however, the supreme court created an exception to the general rule against admitting polygraph evidence, holding that when a

criminal defendant makes an inculpatory statement and later asserts that the statement was coerced or induced by promises made by investigatory authorities, the State may present evidence of the defendant's polygraph exam to rebut the claim of coercion. *Jefferson*, 184 Ill. 2d at 496-97. The admissibility of polygraph exam evidence is permitted in such limited circumstances because "[w]hen the witness who took the polygraph changes his or her version of events surrounding statements to police at trial, the jury is left with a mistaken impression about the circumstances prompting those statements [Citation]. Only one narrative is presented–that of the witness who has changed his or her version of events since making statements to police. In these instances, prohibiting the State from introducing polygraph evidence would permit the defendant to take unfair advantage of the rule against admission of such evidence. [Citation]. The polygraph evidence essentially serves as a surrogate rebuttal witness." *Matthews*, 2012 IL App (1st) 102540, ¶ 18. Accordingly, to disallow polygraph evidence after a defendant advances a claim of coercion "would only succeed in permitting the defendant to unjustifiably profit from [the] general rule that bars introduction of evidence relating to polygraph testing." *Jefferson*, 184 Ill. 2d at 497.

¶ 90 Here, the trial court committed no error in allowing the State to introduce the polygraph evidence. Once defendant testified about the circumstances surrounding his inculpatory statement to police and asserted that his statement was induced both by threats as well as promises of lenient treatment from ASA O'Brien, evidence of defendant's earlier polygraph exam became relevant and admissible to provide additional context for his confession. See *Jefferson*, 184 Ill. 2d at 496-97; *People v. Logan*, 2011 IL App (1st) 093582, ¶ 39. Specifically, the polygraph evidence was admissible for the limited purpose of providing an alternative explanation for the timing and rationale behind defendant's confession and show that defendant admitted to his crime

after being confronted with his polygraph exam results rather than in response to ASA O'Brien's purported threats and promises. *Jefferson*, 184 Ill. 2d at 496-97. Indeed, after defendant was questioned about his polygraph exam, the court immediately provided the jury with a limiting instruction, stating:

> "Ladies and gentlemen, you have now heard in these past few questions and answers some testimony regarding and concerning a polygraph test. You may consider that evidence for a limited purpose only. You will consider it only for the limited purpose of whether or not the defendant's statement was coerced. That's the only limited purpose for which you can consider it."

We find that the instruction correctly informed and guided the jury and that the admission of polygraph evidence in this case did not amount to error.

¶ 91 D. Sequestration of the Jury

¶ 92 Defendant next challenges the trial court's decision to sequester the jury. He argues that the court elected to sequester the jury "without cause and as punishment" for the jury submitting questions during its deliberations. Defendant argues that the circuit court's decision to punish the jury members by sequestering them hastened the jury's guilty verdict, thereby prejudicing him.

¶ 93 The State initially notes that defendant forfeited this claim for appellate review as no objection to the court's sequestration decision was made during circuit court proceedings or in a post-trial motion. On the merits, the State argues that defendant's claim that the circuit court decision to sequester the jury was intended to punish the jury after they sent out questions during deliberations is "completely spurious" as the record demonstrates that the court took time to confer with counsel after receiving the notes to craft an appropriate response to each of the questions

submitted by the jury and only elected to sequester the jury after deliberations continued late into the night.

¶ 94 As a threshold matter, we agree with the State that defendant failed to properly preserve this issue for appellate review. There was no immediate objection raised to the court's decision to sequester the jury during deliberations and the issue was not included in a post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a post-trial motion and that his failure to satisfy both requirements results in forfeiture of appellate review of his claim). The plain error doctrine, however, provides a limited exception to the forfeiture rule and permits review of otherwise improperly preserved issues on appeal if the evidence is closely balanced or the error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The first step in any such analysis is to determine whether any error actually occurred *People v. Walker*, 232 Ill. 2d 113, 24-25 (2009). If an error is discovered, the defendant then bears the burden of persuasion to show that the error prejudiced him under either prong. *People v. McLaurin*, 235 Ill. 2d 478, 495 (2009). Keeping these principles in mind, we review defendant's claim.

¶ 95 The length of time that a jury is reasonably permitted to deliberate as well as the decision whether or not to sequester a jury during deliberations are matters within the sound discretion of the circuit court, and accordingly they will not be reversed absent an abuse of that discretion. *People v. McCoy*, 405 Ill. App. 3d 269, 275 (2010). A court's comments to the jury, including statements pertaining to deliberation time and possible sequestration, will only be found to be

improper when, under the totality of the circumstances, it can be determined that the comments *actually* interfered with the jury's deliberations and coerced a guilty verdict. *People v. Wilcox*, 407 Ill. App. 3d 151, 163 (2010). Although coercion is a highly subjective concept that is not susceptible to precise definition (*Wilcox*, 407 Ill. App. 3d at 163), courts have recognized that sequestration, itself, is not inherently coercive (*McCoy*, 405 Ill. App. 3d at 275-76). To determine whether the sequestration of a jury amounted to coercion, courts may look to various factors including the length of deliberations after the sequestration. *Wilcox*, 407 Ill. App. 3d at 163. Although the length of deliberations following sequestration is not itself sufficient evidence of coercion, brief deliberations invite an inference of coercion. *Wilcox*, 407 Ill. App. 3d at 163; *McCoy*, 405 Ill. App. 3d at 275-76.

¶ 96 Here, after being impaneled, the jury heard evidence presented by both parties for one week. After receiving the relevant instructions, the jury commenced deliberations at 1:40 p.m. on the final day of defendant's one-week trial. During deliberations, the jury submitted questions to the court at 5:40, 6:20 and 8:25 p.m. that evening. The first two notes sought clarification regarding certain legal concepts from the judge, while the third note, in pertain part, asked: "How long do we struggle to come to a verdict before we call it a night?" Before the court could respond to that question, the jury submitted a note requesting that the sheriff call their families to inform them that they were still at court. At 10 p.m. the court ultimately told the jury that they would be sequestered until 10 a.m. the following morning. Defense counsel raised no objection to the sequestration. The following morning, after the jury resumed deliberations at 10 a.m., they returned with a verdict one hour later.

¶ 97 Based on the totality of the circumstances apparent in the record, we are unable to conclude

that the court's statements about sequestration coerced the verdict. By the time the sequestration announcement was made to the jury, it was late at night and the jury had deliberated for approximately 8 hours. Given the lateness of the evening and the length of time that the jury had deliberated, it is entirely possible that the court's statements regarding sequestration removed, rather than created, pressure on the jury to return a verdict as the jury was not pressured to reach an immediate decision. See, *e.g.*, *People v. Steidl*, 142 Ill. 2d 204, 231-31; *McCoy*, 405 Ill. App. 3d at 276. Indeed, the record shows that jury deliberated for an additional hour the following day before returning its verdict. Accordingly, given the lack of evidence that the court's decision to sequester the jury actually coerced a verdict, we do not find that the court erred or abused its discretion in doing so.

¶ 98 E. Denial of Defendant's Motion for a Continuance

¶ 99 Defendant next challenges the circuit court's denial of his motion for a continuance where the State "withheld evidence favorable and material to the defense," which was not discovered until the eve of trial. He argues that the court substantially prejudiced him when it did not grant his request for a continuance to allow additional evidence to be tendered to defense counsel and to permit counsel to have an "adequate opportunity to digest the [new] information."

¶ 100 The State responds that the circuit court did not abuse its discretion when it denied defendant's motion for a continuance, which was filed days prior to the trial date, as there was no evidence that the State breached its discovery obligations or that defense counsel was not provided with sufficient time to prepare for trial.

¶ 101 Requests for continuances are governed by section 114-4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-4 (West 2006)). That provision provides, in pertinent

part, that either "[t]he defendant or the State may move for a continuance" and that a continuance may be granted "if the interests of justice so require." 725 ILCS 5/114-4(a), (d) (West 2006). Ultimately, the decision to grant or deny a motion for a continuance is within the sound discretion of the circuit court, and accordingly, that decision will not be reversed on appeal absent an abuse of discretion. *People v. Walker*, 232 Ill. 2d 113, 125 (2009); *People v. Hatchett*, 397 Ill. App. 3d 495, 509 (2009). Although there is no mechanical test for determining the propriety of a continuance, relevant factors to consider include the movant's diligence, the history of the case, the seriousness of the charges, the defendant's right to a fair and speedy trial, the trial court's interest in judicial economy and docket management, and the potential for inconvenience to the parties and witnesses. *Walker*, 232 Ill. 2d at 125-26.

¶ 102 Here, defendant was indicted on March 8, 2006, and defense counsel filed his appearance that same month. After engaging in pre-trial proceedings for several years, a trial date was set for May 17, 2010. On May 14, 2010, three days before the scheduled trial date, defendant filed an emergency motion for supplemental discovery. In the motion, defendant sought depositions completed in March 2010 in connection with a federal civil lawsuit filed by several Cook County Jail correctional officers following the inmate escape, as well as any video or audio surveillance conducted on inmates as they were being escorted to or from court.

¶ 103 The trial court held a hearing on defendant's motion for additional discovery that same day. Because there was no evidence that any surveillance tapes that defendant sought even existed, the court declined to "micromanage what could just become a fishing expedition." With respect to the federal deposition transcripts defendant sought, the court emphasized that the case had been pending for years and had an impending trial date, and then suggested that defense counsel review

the documents at the State's Attorney's office.

¶ 104 Following the court's ruling, defendant sought a continuance, citing defense counsel's inability to familiarize himself with the deposition transcripts within the limited time before trial, the State's failure to fulfill its discovery obligations, and the unavailability of several material witnesses. This motion was also denied. In pertinent part, the trial court reasoned that there was no evidence that the State had not met its discovery obligations and that defense counsel had all of the information available to him that he needed to proceed to trial.

¶ 105 After reviewing the record, we are unable to conclude that the trial court's decision to deny defendant's motion for a continuance amounted to an abuse of discretion. Although a continuance may be appropriate when the State commits a discovery violation (see *People v. Leon*, 306 Ill. App. 3d 707, 713 (1999)), there is no evidence that the State did so. Indeed, in denying defendant's request for video surveillance pertaining to the transportation of certain inmates, the court noted that there was no evidence that such footage existed and that it would not order the State, on the eve of trial, to review a multitude of video footage to determine whether any of it fell within the bounds of defendant's new discovery request. Ultimately, upon consideration of relevant factors, including the procedural posture of the case, and the trial court's rationale behind the denial of defendant's motion for a continuance, we reject defendant's contention of error.

¶ 106 F. Bias

¶ 107 Defendant next raises an allegation of judicial bias. He argues that "the trial judge made improper comments to defense counsel and defense witnesses that demonstrated an open hostility toward the defense" and thereby infringed on his constitutional right to a fair trial.

The State responds that the trial judge "treated the parties even-handedly." Although defendant

cites a few purportedly objectionable exchanges between defense counsel and the judge, the State argues that a close reading of the record demonstrates that "the trial judge's remarks were never an attempt to convey the court's opinion of defendant's guilt or innocence; rather, they were intended to ensure a fair trial in the face of the aggressive defense presented by defense counsel.

¶ 108 It is well-established that a criminal defendant has a fundamental due process right to a fair trial protected by both federal and state constitutions. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, ¶ 2. It is axiomatic that a fair trial encompasses a trial before an unbiased and open-minded trier of fact. *People v. Harris*, 384 Ill. App. 3d 551, 560 (2008); *People v. Heiman*, 286 Ill. App. 3d 102, 113 (1996). The standards for impartiality apply to both judges and juries. *Heiman*, 286 Ill. App. 3d at 113. Indeed, trial court impartiality during a jury trial is "especially important as jurors are watchful of the court's conduct and it must be careful not to influence the jury by reflecting disbelief in witnesses, an assumption of guilt of the defendant, or undue influence in the prosecution's witnesses." *People v. Jimerson*, 404 Ill. App. 3d 621, 629 (2010). Although a trial court judge is afforded wide latitude when presiding over a trial, that latitude is not without limits and an abuse of discretion will be found if the judge abandoned his role of impartial arbiter and adopted the role of advocate for one of the parties. *People v. Jackson*, 409 Ill. App. 3d 631, 647 (2011). Accordingly, a judge "must take care to insure his intimations, demeanor, and comments do not prejudice those against whom they are made." *People v. McKinney*, 260 Ill. App. 3d 539, 550 (1994). " 'Improper comments include those which reflect disbelief in the testimony of defense witnesses, confidence in the credibility of the prosecution witnesses or an assumption of defendant's guilt. In addition, a hostile attitude toward defense counsel or remarks that defense counsel has presented his case in an improper manner may also be prejudicial and

erroneous.' " *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 57, *quoting People v. Williams*, 209 Ill. App. 3d 709, 718 (1991). The mere fact that a trial judge displays frustration or irritation in response to an attorney's behavior, however is not necessarily evidence of judicial bias against defendant or his counsel. *Lopez*, 2012 IL App (1st) 101395, ¶ 96. Only where improper comments can be deemed to have been prejudicial and a material factor in a defendant's conviction, will a verdict be disturbed. *People v. Johnson*, 2012 IL App (1st) 091730, ¶ 76; *Lopez*, 2012 IL App (1st) 101395, ¶ 58. To make this determination, the comments must be viewed in the context in which they were made and against the evidence contained in the record. *Lopez*, 2012 IL App (1st) 101395, ¶ 58.

¶ 109 Here, the voluminous record contains multiple exchanges between the trial judge and counsel for both parties. As evidence of bias, defendant points to portions of the record where the judge ordered defense counsel "[not to] argue with [him]" and "[not to] interrupt [him]" in response to the court's rulings. Defendant also notes that there were times that the judge ordered defense counsel to refrain from "commenting on [a witness's] answers" and to save his arguments "for a different time of the trial" rather than during his examination of witnesses. Finally, defendant contends that the judge evidenced bias when he instructed certain defense witnesses to answer the specific questions posed and "not to make speeches" and to "hold off" on answering a question if an objection was made.

¶ 110 After reviewing these comments in the context of the entire record, we are not persuaded by defendant's claim of judicial bias. In making various evidentiary rulings, the trial judge never once conveyed any opinion about defendant's guilt or innocence. Although the judge admonished defense counsel on several occasions not to argue or interrupt him, we do not agree

that these admonishments amounted to displays of hostility toward defense counsel. At most, the record shows that the trial judge may have become frustrated with defense counsel on various occasions during the trial; however, judicial frustration in itself, is not evidence of judicial bias. See, *e.g.*, *Lopez*, 2012 IL App (1st) 101395, ¶ 97. Defendant's claim of judicial bias fails as he cannot establish that the trial judge's conduct was a material factor in his conviction given the strength of the evidence against him. See, *e.g.*, *Jimerson*, 404 Ill. App. 3d at 633 (rejecting the defendant's claim of judicial bias where the defendant could not establish that the trial judge's allegedly improper conduct was a material factor in his conviction).

¶ 111 G. Jury Instructions

¶ 112 Defendant next argues that the jury instructions that the circuit court provided to the jury pertaining to the offense of official misconduct were "confusing and misleading."

¶ 113 The State responds that defendant's challenge to the jury instructions is without merit as the circuit court tendered the relevant Illinois Pattern Jury Instructions that set forth the elements of the offense of official misconduct.

¶ 114 "The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence so that the jury may reach a correct conclusion according to the law and evidence." *People v. Wales*, 357 Ill. App. 3d 153, 157 (2005). Supreme Court Rule 451(a) provides that where an applicable Illinois Pattern Instruction (IPI) exists, it "*shall* be used, unless the court determines that it does not accurately state the law." (Emphasis added.) Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013). The use of the word "shall" in this rule makes it clear that the use of an applicable IPI is "not optional, but mandatory." *People v. Polk*, 407 Ill. App. 3d 80, 108 (2010). In evaluating the propriety of a set of jury instructions, the relevant inquiry is "whether the

instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). The trial court's instructions to the jury will not be deemed improper absent an abuse of discretion. *Mohr*, 228 Ill. 2d at 66; *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 108. An abuse of discretion will only be found " 'if the jury instructions are not clear enough to avoid misleading the jury.' " *Mohr*, 228 Ill. 2d at 66, quoting *In re Timothy H.*, 301 Ill. App. 3d 1008, 1015 (1998). However, even where there is an error with respect to a set of jury instructions, reversal is not warranted unless it is evident that the jury was misled and that the verdict prejudiced the defendant. *Polk*, 407 Ill. App. 3d at 108.

¶ 115 Here, defendant was charged with two offenses: official misconduct (720 ILCS 5/33-3(b) (West 2006)) and aiding the escape of inmates (720 ILCS 5/31-3(b) (West 2006)). In accordance with Supreme Court Rule 451(a), the circuit court provided the jury with a series of IPI instructions pertaining to the offenses.[1] Specifically, in accordance with IPI 21.15, the jury received the following instruction defining the offense of official misconduct: "A public employee commits the offense of official misconduct when, in his official capacity, he knowingly performs an act which he knows he is forbidden by law to perform." The jury was also provided with IPI 21.16, which sets forth the elements of that offense, and provides in pertinent part as follows: "To sustain the charge of official misconduct, the State must prove the following propositions * * * That the defendant was a public employee * * * and [t]hat in his official capacity, the defendant knowingly performed an act which he knew he was forbidden by law to perform." The trial court

[1] Defendant does not challenge the propriety of the IPI instructions provided to the jury pertaining to the offense of aiding the escape of inmates.

further instructed the jury that the forbidden act that defendant was alleged to have performed was aiding escape.

¶ 116 Initially, we note that this issue has not been preserved properly for appellate review as defendant never raised any objection to the IPI instructions pertaining to the offense of official misconduct that the circuit court provided to the jury. On appeal, however, defendant asserts that the IPI instructions were faulty as they were confusing to the jury. In support, defendant observes that the jury requested clarification as to "the difference between 'misconduct' and 'aiding escape.' " Defendant further argues that the jury's confusion became even more evident when it returned "inconsistent" verdicts, acquitting him of the offense of aiding escape, but convicting him of official misconduct.[2] After reviewing the instructions that the trial court provided to the jury, however, we find that the IPI instructions pertaining to the offense of official misconduct accurately expressed correct principles of law. Indeed, we note that defendant does not offer any suggestions as to how the instruction could have been worded differently. Given that the IPI 21.15 and IPI 21.16 contain accurate statements of law, we are unable to conclude that the trial court abused its discretion providing those instructions to the jury. See, *e.g.*, *Valladares*, 2013 IL App (1st) 112010, ¶ 109 (there is no error where the IPI jury instructions that the circuit court provided of the jury contained accurate statements of law); *People v. Gutierrez*, 402 Ill. App. 3d 866, 887 (2010) (same).

¶ 117 H. Sufficiency of the Evidence

[2] Despite raising an inconsistent verdict argument in his challenge to the jury instructions provided during his trial, we note that defendant does not seek reversal of his official misconduct conviction on those grounds.

¶ 118 Finally, defendant challenges the sufficiency of the evidence. Specifically, he argues that the State failed to provide any evidence to corroborate the information contained in his inculpatory statement, and thus his official misconduct conviction should be vacated.

¶ 119 The State responds that defendant was proven guilty beyond a reasonable doubt of official misconduct "because he admitted his involvement in the inmates' escape and his handwritten statement was corroborated by other evidence."

¶ 120 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007).

¶ 121 In every criminal case, it is incumbent upon the State to prove two propositions beyond a reasonable doubt to sustain a criminal conviction: (1) the *corpus delecti*, *i.e.*, the occurrence of a crime; and (2) the defendant was the perpetrator of that crime. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010); *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 114. As a general rule,

although a defendant's inculpatory statement "may be integral to proving the *corpus delecti*," the *corpus delecti* may not be proven, by that statement, alone (*Sargent*, 239 Ill. 2d at 183); rather, the State must provide independent evidence that corroborates the statement (*People v. Lara*, 2012 IL 112370, ¶ 17). The corroboration requirement stems from the "historical mistrust of extrajudicial confessions" (*Sargent*, 239 Ill. 2d at 183) and its purpose is "to ensure the confession is not rendered unreliable due to either improper coercion of the defendant or the presence of some psychological factor" (*Lara*, 2012 IL 112370, ¶ 47). The requirement may be satisfied by various types of evidence including witness testimony or physical evidence. See generally *People v. Bounds*, 171 Ill. 2d 1 (1995); *People v. Perfecto*, 26 Ill. 2d 228 (1962). "Although the corroboration requirement demands that there be some evidence, independent of the confession, tending to show the crime did occur, that evidence need not, by itself, prove the existence of the crime beyond a reasonable doubt. If the defendant's confession is corroborated, the corroborating evidence may be considered together with the confession to determine whether the crime, and the fact the defendant committed it, have been proven beyond a reasonable doubt." *Sargent*, 239 Ill. 2d at 183; see also *Crawford*, 2013 IL App (1st) 100310, ¶ 114. To determine whether there is sufficient corroboration, our supreme court has instructed that there need not be an "*exact match* between the independent evidence and the details in the defendant's confession;" rather it is sufficient if there is " 'some consistency' " that " 'tend[s] to confirm and strengthen the confession.' " (Emphasis in original.) *Lara*, 2012 IL 112370, ¶ 42, *quoting People v. Furby*, 138 Ill. 2d 434, 451-52 (1990).

¶ 122 Keeping these principles in mind, we find that the State presented sufficient independent evidence to corroborate defendant's confession that he was complicit in the inmate escape.

Jamie Joanson provided detailed testimony about defendant's knowledge of the escape. Specifically, she testified that hours before the escape occurred, she received a phone call from defendant instructing her to get a black sweatshirt and a pair of Nike gym shoes for inmate Bernard. When she met with him to hand over the items defendant had requested, defendant informed her that Bernard was "getting out" later that night. We acknowledge that Joanson's testimony was not entirely consistent with the circumstances of defendant's confession. In particular, she testified that she received a phone call from defendant the day following the escape, but there is no evidence that defendant had access to the phone after his initial interview with Investigators Januchowski and D'Oronzo. It is well-established, however, that independent evidence need not "exact[ly] match" a defendant's confession to satisfy the corroboration requirement; rather, the requirement is satisfied where there is "some consistency" between the independent evidence and the defendant's statement. *Lara*, 2012 IL 112370, ¶ 42. Moreover, in addition to Joanson's testimony, the State presented evidence that defendant took his command post keys into the A.B.O. unit when he began his shift and that the inmates would not have been able to get out without those keys. The State also presented evidence that defendant, unlike other correctional officers on duty, was not physically injured and that he did not cry out or use his radio to warn the other officers of the escape. Altogether, the evidence presented by the State had the tendency to confirm and strengthen defendant's confession. Accordingly, we reject defendant's argument that his inculpatory statement lacked sufficient corroboration and find that he was proven guilty of the offense of official misconduct beyond a reasonable doubt.

¶ 123 III. CONCLUSION

1-10-1982

¶ 124 Accordingly, we affirm the judgment of the circuit court.

¶ 125 Affirmed.