

SECOND DIVISION
September 29, 2015

No. 1-13-0178

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 05 CR 7411
)	
NOEL DE JESUS,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's confession was attenuated from his illegal arrest.

¶ 2 Defendant Noel De Jesus, appeals from an order of the trial court finding that his incriminating statement was attenuated from his illegal arrest because a witness's statement provided intervening probable cause. We agree and for the following reasons affirm the ruling of the trial court.

¶ 3 **BACKGROUND**

¶ 4 Defendant was charged with first degree murder of Giovanni (Gio) Parker, attempted first degree murder of Louis Allison and Curtis Parker, aggravated battery and aggravated discharge in connection with a shooting that occurred on February 21, 2005. Defendant filed a pretrial motion to suppress his confession. In that motion, defendant asserted that he had been arrested without a warrant and without probable cause. He stated that he was handcuffed and taken against his will to the police station, where he was “constantly interrogated” concerning the murder of Gio and told that if he did not confess to the murder, his brother would be charged with the murder and his family’s house would be seized and forfeited. He further asserted that he never made a knowing waiver of his Miranda rights.

¶ 5 The trial court held a hearing on defendant’s motion to suppress. At that hearing, the State called three witnesses, namely, Officer Peter Milutinovic, who brought defendant to the police station on the morning of January 21, 2005, Detective John Fuller, who interviewed defendant at the police station later that morning, and Detective Daniel Gillespie, who interviewed defendant at the police station on the evening of that day, and to whom defendant admitted his involvement in the shooting.

¶ 6 Officer Milutinovic testified that on the morning of February 21, 2005, he and his partner, Officer Darren Hoeger, were assisting detectives in investigating the shooting of Gio. They were looking for a suspect named Andre “Choco” Valasquez as well as defendant’s younger brother, Joel DeJesus, whom they believed had been with Choco on the night of the shooting.

¶ 7 Officer Milutinovic received information that Choco and Joel might be in the vicinity of 2122 North Central Park driving tow trucks. He and his partner proceeded to that location, where

he found a tow truck parked in an alley and parked his squad car next to it. After waiting for approximately one hour, a second tow truck, driven by defendant, pulled into the alley and stopped behind the squad car. Officer Milutinovic testified that he did not have any information regarding defendant at that time. He approached defendant and asked him if he had any information regarding the whereabouts of Choco and Joel. Defendant responded that he did not.

¶ 8 Officer Milutinovic testified that his partner called Detective Fuller to inform him of the situation. Detective Fuller instructed him to ask if defendant would be willing to come to the police station for questioning. Accordingly, Officer Milutinovic said, he asked defendant if he would be willing to come to the police station to answer questions regarding the whereabouts of Choco and Joel. Defendant allegedly agreed. He parked his tow truck and then entered the back seat of the squad car, whereupon Officer Milutinovic drove him to the police station.

¶ 9 Officer Milutinovic testified that defendant was not a suspect in any crime at that point and came to the police station voluntarily and freely. He further testified that he did not handcuff defendant, nor did he read him his Miranda rights. During cross-examination, he admitted that he did not specifically tell defendant that he was not required to come to the police station. Counsel for defendant then asked whether the doors of the squad car locked when defendant was in the back seat. "I think they lock automatically," Officer Milutinovic responded. He acknowledged that defendant would therefore not have been able to exit the squad car.

¶ 10 Upon his arrival at the police station, Officer Milutinovic stated, he informed detectives of who defendant was, and the detectives escorted defendant away. Officer Milutinovic did not see where they escorted him to, nor did he have any further contact with defendant.

¶ 11 Detective Fuller, one of the detectives who interviewed defendant at the police station, testified that on February 21, 2005, he was assigned to investigate the murder of Gio. The detectives were looking for Choco, who had been identified by two witnesses as being in a nearby alley prior to the shooting. Choco's girlfriend said that Choco was employed as a tow truck driver for Prestige Towing and that she had last seen him with his friend Joel. Detective Fuller passed this information on to a number of police officers.

¶ 12 Detective Fuller told the court that he subsequently received a phone call from Officer Hoeger stating that he had met with an individual by the name of Noel, who was driving a Prestige Towing truck and whom Officer Hoeger believed was related to Joel. Detective Fuller was hopeful that this individual would help lead them to Choco. He asked Officer Hoeger to inquire if the man would be willing to come to the police station so that Detective Fuller could speak with him.

¶ 13 Late that morning, Detective Fuller said, he spoke briefly with defendant in an interview room at the station. Detective Fuller stated that the interview room was unlocked and defendant was not handcuffed. He did not tell defendant that he was under arrest or place him under arrest, because he was not a suspect at that time. "My interest in speaking with Noel was merely as a means of hopefully finding [Choco]," he testified. When asked about Choco, defendant stated that Choco was a friend of his and that he had last seen Choco in the neighborhood at approximately 10 p.m. on the evening prior to the shooting.

¶ 14 Detective Fuller stated that he did not promise anything to defendant, nor did he threaten anything. In particular, he testified that he did not threaten or hear anyone threaten that if defendant did not confess, his brother would be imprisoned and his home would be seized. He

further stated that defendant would have been free to leave at any time, though he admitted during cross-examination that he did not specifically tell defendant that he was free to leave.

¶ 15 The State also called Detective Gillespie, one of the detectives to whom defendant confessed his involvement in the shooting. Detective Gillespie testified that on February 21, 2005, he was working the day shift, beginning at 8:30 a.m. Prior to his arrival at work, defendant had been brought to the station and interviewed by Detectives Fuller and Thaxton regarding the whereabouts of Choco. Detective Gillespie stated that defendant was in one of the interview rooms and that the room was locked. “For his safety and the safety of others in the area,” he explained, “we don’t need people walking around the detective area freely.” However, he said, defendant was not handcuffed, he was allowed to use the restroom, and he was provided with food and drink.

¶ 16 That evening, Detective Gillespie interviewed a man named Jose “Suave” Vasquez as part of the investigation of Gio’s murder. Suave told Detective Gillespie that he was temporarily staying at the DeJesus residence, and on the night of the shooting, he was there with several friends and Joel, making music. Suave said that he could hear defendant on the front porch arguing with someone outside. He then saw defendant walk inside with an angry look on his face and exit through the rear door of the house. Approximately fifteen minutes later, Suave heard gunshots. He called 911. He then saw defendant enter the house through the back door, hand an object to Joel (Suave did not see what the object was), and tell Joel to put it somewhere. Joel went up to the attic and came back downstairs. Defendant then left the house. Perhaps an hour and a half later, Suave said, Joel told Suave that he had hidden a gun in the attic. Suave opined to

Detective Gillespie that defendant was the shooter, that he had given a gun to Joel, and that Joel had then hidden that gun in the attic.

¶ 17 Based upon this interview, Detective Gillespie testified that for the first time, he considered defendant to be a suspect in the murder. Right after he interviewed Suave, he went to interview defendant, accompanied by two other detectives. It was approximately 7:30 p.m., around 12 hours after defendant first arrived at the police station. This was the first time that Detective Gillespie spoke with defendant. He stated that he read defendant his Miranda rights “from the FOP book” and defendant acknowledged his understanding of those rights. He then told defendant that “new information had developed” and provided some of that information, whereupon defendant admitted involvement in the shooting “almost immediate[ly].” He testified that nobody promised the defendant anything or threatened him with anything in his presence, nor did defendant claim that anyone had threatened him. He specifically denied telling defendant that if defendant did not confess, his brother would be charged with the murder and his house would be seized.

¶ 18 Regarding the Miranda rights that he read to defendant, Detective Gillespie read them aloud in court from the FOP book, over the objection of defense counsel, who contended that he had to testify from memory as to what he said instead of reading from a book. He said that he told defendant that he had the right to remain silent, that anything he said could be used against him, that he had a right to talk to a lawyer before any questioning and to have a lawyer present during any questioning, that if he could not obtain a lawyer one would be appointed for him, and that if he chose to answer questions, he would retain the right to stop questioning at any time and

consult a lawyer if he chose. Detective Gillespie testified that defendant acknowledged his understanding of each of these rights individually.

¶ 19 The defense called Detective Deborah Thaxton as its sole witness at the suppression hearing. Detective Thaxton testified that, early in the morning of February 21, 2005, she interviewed defendant for approximately five minutes in an interview room. She was accompanied by Detective Fuller. She questioned defendant as to whether he knew the suspect Choco and whether he knew Choco's whereabouts. Defendant was not a suspect at that time, and she did not read him his Miranda rights. On cross-examination by the State, Detective Thaxton stated that she did not ask defendant about the murder – not if he was involved, nor even if he was a witness. She further testified that defendant was not handcuffed and that the interview room was unlocked.

¶ 20 After hearing the arguments of counsel, the court denied defendant's motion to suppress his confession. It found that, according to the uncontradicted testimony of Officer Milutinovic, defendant was not initially a suspect and went to the police station freely and voluntarily. It further found that, prior to defendant's confession to Detective Gillespie at 7:30 p.m., he was never questioned for any length of time and was only asked two questions, namely, whether he knew Choco and whether he knew of Choco's whereabouts. The court stated that a reasonable person in his shoes would not have believed himself to be under arrest. Finally, the court found that, at the time defendant confessed to Detective Gillespie, probable cause to arrest him had arisen.

¶ 21 The case proceeded to a jury trial. The State called five people as witnesses to the events on the day of the shooting, namely, the two surviving victims, Curtis and Allison, defendant's

brother Joel, and two musicians who were at defendant's house on the evening of the murder, Wallder Gorgas and Manuel Estevan Aponte.

¶ 22 Curtis testified that on the night of February 20, 2005, he was at a party at his friend Deon Carter's apartment, located at 2123 North Central Park. Also present at the party were his cousin Gio, Allison, and a man named Selmer "Boo" Phillips. During the party, there was an altercation between Boo and Carter that resulted in Boo being arrested. After the altercation, Gio, Curtis, and Allison left the party together in order to find a man they knew named Choco.

¶ 23 Curtis said that as he, Gio, and Allison were walking, they encountered defendant, who told Gio to "get the fuck from in front of my fucking house." (Later testimony established that defendant's residence was at 2122 North Central Park, across the street from Carter's apartment building). Gio told defendant that they were leaving. There was no physical fight between them, nor did defendant issue any threats.

¶ 24 Curtis testified that he, Gio, and Allison later encountered Choco. They had a brief conversation, and then Choco punched Curtis in the jaw. (Curtis did not explain what they spoke about or why Choco punched him). Choco and Curtis engaged in a brief fistfight. Choco then said that he wanted to fight Gio, so he and Gio fought one-on-one. Choco helped Gio to his feet, and then Choco and Allison fought one-on-one. Once that fight was over, Curtis said, they asked Choco if he was all right, helped him find his glasses, and shook his hand. "I thought he was cool by us shaking hands," Curtis said.

¶ 25 As the three of them were walking away from Choco, Curtis heard three gunshots being fired from behind them. Curtis, Gio, and Allison ran toward Carter's apartment building. While they were running, Gio said that he had been hit. Curtis turned around to look back at him. At

that point, he testified, he saw “[f]ire, like sparks” in the direction that they were running from. During direct examination, he said that he did not see Choco when he turned around. During redirect examination, however, Curtis said that he did see Choco when he turned around, and Choco was standing in a different location than the location from which the shots were being fired. He admitted during cross-examination that he never saw who fired any of the shots and he never saw defendant with a gun.

¶ 26 Curtis stated that he and Allison, who received gunshot wounds to the back, were able to reach Carter's apartment building. Gio, however, collapsed on the threshold of the building, half of his body in the hallway, the other half outside on the curb.

¶ 27 Allison, the other testifying victim, gave a similar account of events on the night of the murder. He testified that on the evening of February 20, 2005, he attended a party with his cousins Curtis and Gio. During the party, Boo got into an argument with Curtis's girlfriend, so Allison, Curtis, and Gio decided to leave. When they went outside, Allison said, they saw defendant and Choco exiting defendant's house. Defendant told Allison, Curtis, and Gio to get away from the front of his house. However, defendant did not threaten any of them.

¶ 28 Allison, Curtis, and Gio walked away from the defendant's house and then stopped to talk to Choco. Choco fought with Curtis, then with Gio, and then with Allison. After the series of fights, Allison said, he shook Choco's hand and helped him to find his glasses.

¶ 29 While they were walking away from Choco, Allison heard shots being fired from behind them. Without looking back, he ran to the apartment building where the party was taking place. Curtis was in front of him, and Gio was behind. During cross-examination he admitted that he never saw defendant firing a gun.

¶ 30 Joel, the defendant's younger brother, also testified on behalf of the State regarding the events that occurred on the night of the murder. Joel stated that on February 20 to 21, 2005, he resided at 2122 North Central Park with his brother and Suave, a music producer. On the night of February 20, 2005, Suave, several musicians, and Joel were at the dining room in the middle of the house, performing music. The defendant was also home that evening.

¶ 31 Joel testified that while they were performing music, and before the shooting occurred, he saw blue lights from a police car at the front of the house. He and all of the musicians went to the window at the front of the house. Joel saw police outside as well as three men standing in front of the house arguing. Joel knew that one of the men was named Louis, though he did not know his last name.

¶ 32 According to Joel, defendant told the three men that he did not want them standing in front of the house. They swore at him in response. Defendant then told Joel to return to playing music. Joel and the other musicians complied, returning to the dining room. Defendant was with them.

¶ 33 At some point, Joel said, defendant left the house. Joel did not see him leave. It was around the time that defendant usually left to go to work. When Joel noticed that his brother was gone, he decided to go to the front door so that he could say goodbye to his brother as he was leaving. While he was at the front of the house, he heard approximately six gunshots coming “from around by the side of the house.” He “hit the floor” and then called the police.

¶ 34 Approximately 15 minutes later, Joel saw his brother entering the house through the back door. Joel said that his brother appeared nervous. He passed Joel a gun, telling Joel to “wrap it,” which Joel said meant to throw it away. “I got scared,” Joel said. He threw the gun into a hole in

the ceiling of the second floor of the house. He then took another gun, a TEC-9 pistol in a bag, and also threw it into the hole.

¶ 35 Subsequently, Joel said, defendant left the house. Not long thereafter, defendant called Joel on his cell phone and asked Joel what was going on. Joel said that he thought someone had been shot. Defendant told Joel that he loved him and that he should take care. After that conversation, police arrived at the house and took Joel to the police station. On redirect examination, it was clarified that the police did not take Joel into custody for the shooting, but rather, because they recovered a rifle in the house (a different weapon from the two weapons that Joel threw into the hole in the ceiling) that they were not supposed to have.

¶ 36 As noted, the State also called to the stand two musicians named Gorgas and Aponte who were at defendant's house when the shooting occurred. Gorgas testified that, as a hobby, he plays reggaeton music, which he described as "Latin pop type reggae/rap music." On the night of February 20, 2005, Gorgas and several friends who also play reggaeton music went to defendant's house because their producer, Suave, was staying there at the time. They sat down with Suave in the dining room in the middle of the house and began making music together. Gorgas said that Joel was at the house that night. He was not asked about, nor did he comment on, defendant's whereabouts at any time on that night.

¶ 37 While he and his friends were making music, Gorgas said, they saw flashing lights, like from a police squad car, coming from outside. He did not get up to see what was going on, but the others did. Approximately 20 minutes later, he heard gunshots, and Suave called the police. He was not sure whether Joel was with them in the room at the time he heard the gunshots, but he saw Joel in the living room approximately five minutes later.

¶ 38 Aponte similarly testified that on the night of February 20, 2005, he was at defendant's house with several other friends who play reggaeton music. While they were playing music, he noticed flashing lights outside and went to see what was going on. He saw that it was "some issue that was going on across the street." He returned, told his friends that it was nothing serious, and they continued playing. Later, they heard gunshots outside. Several of them, including Aponte and Joel, went to the front window to see what was going on. Aponte testified that he saw a teenager lying half inside and half outside an apartment building across the street, as if he had fallen. The teenager did not get up.

¶ 39 The State called four witnesses regarding the recovery of physical evidence in this case, namely, Detective Thomas Conley, Officer Paul Malachesen, forensic investigator Donald Fanelli, and assistant medical examiner Dr. Ponni Arunkumar.

¶ 40 Detective Conley, a violent crimes detective with the Chicago Police Department, testified that he went to 2123 North Central Park in the early morning hours of February 21, 2005, to investigate the shooting of Gio and Allison. He observed ten cartridge cases on the ground and notified evidence technicians of this discovery. Officer Malachesen, an evidence technician with the Chicago Police Department, recovered these cartridge cases, placed them in sealed envelopes, and sent them to the crime lab.

¶ 41 Fanelli, a forensic investigator with the Chicago Police Department, testified that on February 21, 2005, he recovered two firearms from defendant's house. The first, a Ruger 9mm pistol, was inside an access panel to the attic on the second floor of the house. The second, a TEC-9 pistol, was outside on the roof in a black cloth bag. Also in the bag were two magazines. Fanelli testified that he submitted both of the recovered guns for fingerprint testing.

¶ 42 Dr. Arunkumar, an assistant medical examiner at the Cook County medical examiner's office, was called as an expert in the field of forensic pathology. He performed an autopsy of Gio and concluded that he died of multiple gunshot wounds. He recovered two bullets from Gio's body, which he photographed and placed in envelopes which were given to the Chicago Police Department.

¶ 43 The State then called two experts to testify about the analysis of the foregoing recovered physical evidence. The first such witness, Kurt Zielinski, a forensic scientist working for the Illinois State Police, was called as an expert in the field of firearms identification. He testified that all 10 of the recovered cartridges, as well as the two spent bullets received from the medical examiner's office, had been fired from the Ruger pistol.

¶ 44 The second such witness, Jeanne Hutchinson, a member of the Illinois State Police Division of Forensic Sciences, was called as an expert in fingerprint identification. She testified that the defendant's fingerprints were found on the magazines found with the TEC-9 pistol. However, she said, no fingerprints were found on the Ruger pistol or on any of the other recovered evidence.

¶ 45 The State finally called Detective Jose Cardo and Assistant State's Attorney Cathleen DeWald to testify regarding their meetings with the defendant. Detective Cardo testified that, as part of his investigation of the murder of Gio, he interviewed Suave. After that interview, he met with defendant at the police station at approximately 7:15 p.m., and once he had advised defendant of his rights, defendant spoke with him with regard to his investigation. As a result of speaking with defendant, Detective Cardo learned that the murder weapon was at defendant's

house and requested permission to search his house to find the weapon. Detective Cardo testified that defendant agreed and signed a consent form to authorize the search.

¶ 46 At the time that Detective Cardo spoke with defendant, Joel had also been arrested on an unrelated matter, namely, being in possession of a .22 caliber rifle. On cross-examination, Detective Cardo said that he did not remember whether he told defendant that Joel was in custody, but he “probably could have.”

¶ 47 ASA DeWald testified that she was assigned to assist police in their investigation of the murder of Gio. At approximately 5:15 a.m. on February 22, 2005, she met defendant, accompanied by Detectives Gillespie, Burke, and Cardo. (This was after defendant made his initial confession on the previous evening). ASA DeWald testified that she introduced herself, explained that she was a prosecutor and not his lawyer, and read him Miranda warnings.

¶ 48 According to ASA DeWald, defendant gave the following account of events on the night of the shooting: Defendant heard a commotion outside and saw Gio running from police with a gun in his waistband. A short time later, he heard another commotion and saw Gio, Curtis, and Allison standing by his front gate. He asked them to leave, and Gio and Curtis started “talking s-t” to him. Defendant went back into his house, where Joel and the other musicians were. He was angry. Not long after, he went outside, heard the voices of Gio, Curtis, and Allison, and fired seven or eight shots in their direction. He went back home and gave the gun to Joel, telling him to wrap it. He then left for work.

¶ 49 ASA DeWald testified that after defendant told her about what happened on the night of the shooting, she asked the detectives to leave and spoke alone with defendant. She asked him

how he had been treated by police, and he said he had been treated well. He denied being threatened or being promised anything to speak, and he said he had been given food and drink.

¶ 50 The sole witness for the defense was the defendant. Defendant testified that, on the night of the shooting, he did not shoot at anyone, he did not possess a gun, and he did not give a gun to his brother. As far as he could recall, he said, he had never seen the murder weapon or the TEC9 before. In fact, he said, when he was speaking with detectives on February 21 and 22, 2005, he did not even know what a TEC-9 was.

¶ 51 Defendant admitted that, after he was arrested, he gave a statement to the police in which he claimed that he was responsible for the shooting. However, he said, he made that statement in order to protect his brother. "He ain't smart," defendant explained. "He's got mental problems." He testified that before he made his admission, he was told by police that his brother had also been arrested. Defense counsel then asked him, "What was [*sic*] your feelings about what might happen to your brother?" Counsel for the State objected to this question and the objection was sustained.

¶ 52 Defendant gave the following account of events on the morning that the shooting occurred. He said that he saw Gio, Curtis, and Allison outside his house and requested that they leave, explaining that his father did not like people standing around in front of the house. Although he spoke nicely and did not swear, they responded by swearing at him. After speaking with them, defendant testified that he left for work. He was not at home when the shooting occurred.

¶ 53 After defendant's testimony, the defense rested. The jury found defendant guilty of all charges. Defendant was sentenced to 68 years in the Department of Corrections.

¶ 54 Defendant appealed and argued that: (1) his confession was obtained in violation of his Fourth Amendment rights since police detained him without probable cause, (2) his confession should not have been introduced at trial where the State failed to prove that he was given proper Miranda warnings prior to his confession, and (3) he was denied his Sixth Amendment right of confrontation where the trial court sustained objections to various cross-examination questions asked by his counsel during the hearing on his motion to suppress. Defendant additionally raised six more contentions of trial error, namely, that (4) the trial court should have allowed him to submit a modified instruction to the jury regarding prior inconsistent statements, (5) the trial court erred in introducing evidence that his fingerprints were found on the magazines of a TEC–9 pistol that was found at his house but not used in the murder, since such evidence was both irrelevant and prejudicial, (6) the trial court erred in curtailing testimony that defendant's brother was “partially retarded,” since such evidence would have been relevant to his defense that he falsely confessed in order to protect his brother, (7) the prosecutor should not have questioned defendant as to why he failed to recant his confession at various stages of the proceeding against him, (8) the trial court improperly limited defense counsel's closing argument to the jury, and (9) the trial court made improper comments regarding defense counsel.

¶ 55 This court reversed and remanded defendant's case to the trial court for an attenuation hearing regarding defendant's confession. *People v. DeJesus*, No. 1-08-1452 (March 25, 2011) (unpublished order under Illinois Supreme Court Rule 23). We found that the trial court's ruling on the motion to suppress was erroneous because even if defendant arrived at the police station voluntarily, his 12-hour “stay at the police station escalated into an involuntary seizure prior to his formal arrest” but that there was “no compelling indication to preclude the possibility of

attenuation." In addition, we ruled that the trial court erroneously sustained objections to questions posed by defense counsel at trial. Specifically, we held that the areas of whether the informant had a criminal record, the length of time he had been in custody, whether he had been formally charged and the basis for placing him in custody were relevant to attention because they impacted the informant's credibility. As such, we concluded:

"[T]his issue will in all likelihood arise on remand, since it impacts [the witness]'s credibility as an informant, which, in turn, impacts upon whether there was probable cause which would help to purge the taint of defendant's illegal arrest. Thus, on remand, we instruct the trial court to permit questioning that would be relevant to the reliability of [the] statement and, therefore, to the issue of whether that statement created probable cause, to the extent that such questioning otherwise comports with the rules of evidence."

¶ 56 At the attenuation hearing on remand, the parties adopted the earlier testimony from the motion to suppress hearing and Detective Fuller and Detective Gillespie testified again. Detective Fuller testified that after defendant arrived at the police station, he went to 2122 North Central to speak with defendant's brother Joel, who police believed had been seen with Choco. When Joel opened the door to the residence and invited him inside, Detective Fuller saw a rifle standing vertically in the front hallway closet and a handgun on the floor next to the rifle. Detective Fuller arrested Joel and Suave, a resident of the house who was present at the time, for possessing guns. Detective Fuller also stated that Joel was also arrested so that detectives could investigate whether he had information regarding Choco.

¶ 57 Detective Gillespie testified that he was assigned to the case at about 8:30 a.m., after he came on shift. He learned that Suave was being held at the police station at about 11 a.m.

Later that evening, about 7 p.m., he Mirandized and interviewed Suave. Detective Gillespie testified that Suave was providing information "freely and voluntarily" and was neither threatened nor promised anything. Suave provided details of the shooting and stated that defendant had an argument with people outside of Suave's residence and following the argument, defendant grabbed his jacket and left out of the back door. Fifteen minutes later, shots were fired in front of the house. Suave saw the victim lying in the street. Shortly thereafter, defendant ran into the house through the back door and handed an object to his brother, telling his brother to "take care of it." Suave stated that his brother hid the object, later recovered and identified as the murder weapon, in the attic.

¶ 58 Following Suave's statement, Detectives Burke, Cardo and Gillespie met with defendant in the interview room at the police station. Defendant was Mirandized and informed that new information had developed. Defendant admitted his involvement in the shooting almost immediately.

¶ 59 After the testimony of the detectives, the State argued that the defendant's statement was sufficiently attenuated because he was Mirandized before confessing and was only in custody for 12 hours. In addition, defendant was confronted with an intervening circumstance, Suave's statement, and there was no evidence of police misconduct outside of the illegal arrest. The defense argued that Suave was illegally arrested at the time he implicated defendant and therefore his statement could not constitute an intervening circumstance as a matter of law.

¶ 60 The trial court agreed with the State that defendant's confession was attenuated from his illegal arrest, noting the fact that Suave's intervening statement broke the causal connection between defendant's arrest and murder confession. The court further found that Suave had been

legally arrested as probable cause existed because illegal weapons were recovered from his home and that his statement to detectives was a proper intervening circumstance.

¶ 61 This appeal followed.

¶ 62 ANALYSIS

¶ 63 Defendant argues that the trial court erred when it held that Suave's statement purged the taint of defendant's illegal arrest, where Suave himself was illegally arrested before making the statement.

¶ 64 To establish that a statement made by a suspect in custody is admissible, notwithstanding an illegal arrest, the State must show that the statement was a product of the defendant's free will, independent of any taint of the illegal arrest. *People v. Lekas*, 155 Ill. App. 3d 391, 411 (1987). The relevant inquiry is whether the statement was obtained through the exploitation of the illegal arrest. *People v. Foskey*, 136 Ill. 2d 66, 84 (1990). Whether the statement is sufficiently attenuated from the prior illegal arrest requires an examination of four factors: (1) whether the defendant received Miranda warnings; (2) the time period between the arrest and the confession; (3) the existence of intervening circumstances; and (4) the purpose and flagrancy of the official misconduct. *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975). The presence or absence of intervening circumstances and the flagrancy of police misconduct have emerged as the most relevant in assessing the admissibility of a statement obtained subsequent to an illegal arrest. *People v. Jennings*, 296 Ill. App. 3d 761, 765 (1998). We review *de novo* the ultimate question of whether the evidence should be suppressed. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004).

¶ 65 We now analyze each of the four factors to determine whether they support the trial court's finding of attenuation.

¶ 66

I. Miranda Warnings

¶ 67 Defendant does not dispute that he received Miranda warnings; rather he contends that Miranda warnings alone cannot attenuate the taint of an unconstitutional arrest. Defendant therefore maintains that the presence of Miranda warnings is not dispositive.

¶ 68 Here, the testimony at the attenuation hearing established that defendant was Mirandized prior to his only interview about his involvement in the murder. He was informed of the consequences of relaying incriminating evidence to the police but chose to waive that right and gave a confession. Although the presence of Miranda warnings may not be the most relevant of factors, it is nonetheless one of the factors we consider. We find that the presence of *Miranda* warnings here weighs in favor of attenuation.

¶ 69 II. Proximity in Time Between the Illegal Arrest and Defendant's Confession

¶ 70 Defendant contends that 12 hours passed between the time he was illegally arrested and the time detectives interviewed him. He confessed almost immediately during the interview and argues that because there were no intervening circumstances during the 12-hour period of time, there was nothing to break the taint of his unlawful arrest.

¶ 71 A lapse of time is a factor that "cuts both ways" when analyzing attenuation. *Lekas*, 155 Ill. App. 3d at 414. It "may serve to amplify the coercion latent in the custodial setting" or "may help to purge the taint of a prior illegality by allowing the accused to reflect on his situation, particularly when attended by other factors ameliorating coercion, such as Miranda warnings." *Id.*

¶ 72 In this case we previously held that defendant was illegally arrested and held for 12 hours. We find that on the one hand, the fact that defendant was left alone for 12 hours and was

not subjected to continuous interrogation could weigh in favor of attenuation. However, the fact that defendant was left alone, deprived of his possessions with no knowledge as to how long he was to remain at the police station could weigh against a finding of attenuation. Therefore, we find that this factor both weighs in favor of and against attenuation.

¶ 73 III. The Existence of Intervening Circumstances

¶ 74 Defendant contends that Suave's statement to police implicating defendant, with which the officers confronted defendant, did not come from an independent source and was obtained as a direct result of Suave's unlawful arrest. Defendant argues that Suave's statement cannot serve as an intervening circumstance to break the taint of his unlawful arrest.

¶ 75 Defendant cites to *People v. Clay*, 349 Ill. App. 3d 517 (2004), a case in which this court held that it was improper to confront the defendant with statements obtained from an unlawfully arrested codefendant, which could not serve to attenuate the defendant's statement from his unlawful arrest. *Id.* at 528-29. Defendant claims that similar to *Clay*, Suave's statement that was obtained illegally cannot be used as an intervening circumstance to break the causal connection between his illegal arrest and confession.

¶ 76 An intervening circumstance serves to break the connection between the defendant's incriminating statement and the prior illegal arrest. *Jennings*, 296 Ill. App. 3d at 766.

Intervening circumstances may break the causal connection between an illegal arrest and a confession if they have such an effect on the defendant so that his confession made after the intervening event is an exercise of free will, and not an exploitation of the initial illegality.

People v. Graham, 214 Ill. App. 3d 798, 814, appeal denied, 141 Ill. 2d 550 (1991). Confronting a suspect with new information, untainted by illegality, has been held an intervening

circumstance that renders a confession voluntary. *People v. Bates*, 267 Ill. App. 3d 503, 506 (1994). See also *People v. Bracy*, 152 Ill. App. 3d 566, 572 (1986) (defendant confessed after seeing his girlfriend at the police station and learning that she was cooperating with police and after seeing proceeds of the robbery at the police station).

¶ 77 Defendant's entire argument here is premised on the idea that Suave's arrest and subsequent statement were illegal, which is contrary to the trial court's finding. We agree with the court's finding that Suave was not illegally arrested based on the record before us. Probable cause for his arrest existed for his arrest when two unregistered and illegal firearms were discovered in the house in which he lived. Probable cause demands only a probability of criminal activity, not proof beyond a reasonable doubt. *People v. Garvin*, 219 Ill. 2d 104, 115 (2006). It was reasonable for Detective Fuller to believe that because the guns were found in a common area rather than a private bedroom they could have belonged to any person living in the house.

¶ 78 Being confronted with Suave's statement implicating defendant was the intervening circumstance that broke the causal connection between defendant's illegal arrest and his confession. Defendant sat at the police station for 12 hours, while being given food, water and the opportunity to use the restroom. During that time, he had interaction with police officers and he did not confess. It was only when he was confronted with the fact that Suave gave him up, did defendant confess "almost immediately." It was Suave's statement that caused defendant to confess, not defendant's illegal arrest.

¶ 79 IV. The Purpose and Flagrancy of the Official Misconduct

¶ 80 Defendant contends that the police misconduct was purposeful and flagrant in this case. Defendant argues specifically that "the police committed misconduct by locking [defendant] in an interview room without probable cause" for 12 hours while they looked for other witnesses.

¶ 81 This court previously found that defendant was illegally arrested and held at the police station for 12 hours. However, police action is flagrant "where the investigation is carried out in such a manner as to cause surprise, fear, and confusion, or where it otherwise has a 'quality of purposefulness,' *i.e.*, where the police embark upon a course of illegal conduct in the hope that some incriminating evidence (such as the very statement obtained) might be found." *Jennings*, 296 Ill. App. 3d at 765; see also *Foskey*, 136 Ill. 2d at 86.

¶ 82 In *People v. Klimawicze*, 352 Ill. App. 3d 13, 23 (2004), the court did not find flagrant police misconduct, stating that defendant was not mistreated and was provided food, drink and bathroom breaks while being detained at the police station. The defendant was in the interview room overnight, but was not repeatedly interrogated and was given sufficient time to think about her situation. *Id.*

¶ 83 Here, as we found, defendant was under arrest when he voluntarily showed up at the police station at 7:30 a.m. and was placed in an interview room, which was later locked. Defendant was not handcuffed. He was briefly interviewed by Detectives Fuller and Thaxton. Defendant was then not interviewed again until 7:30 p.m. that same day. While he was being held, he was given food, drink, and bathroom breaks. Moreover, the police did not engage in promises, threats, mistreatment of defendant, or act in a manner designed to create surprise, fear or confusion.

¶ 84 In summary, we find that the first *Brown* factor, the presence of Miranda warnings, clearly weighs in favor of attenuation. The second factor, the time between the illegal arrest and the statement, weighs against attenuation. The third factor, the existence of intervening circumstances, weighs for a finding of attenuation. The fourth factor, the purpose and flagrancy of the police misconduct, weighs for a finding of attenuation. Therefore, considering each of the four factors, we find the evidence sufficient to establish that defendant's confession was the product of his own free will rather than an exploitation of his illegal arrest. We find that the State did meet its burden in establishing that defendant's statements were made independent of any taint of his illegal arrest. Accordingly, we affirm the trial court's finding of attenuation.

¶ 85 CONCLUSION

¶ 86 Based on the foregoing, the judgment of the trial court is affirmed.

¶ 87 Affirmed.