2017 IL App (1st) 151744

No. 1-15-1744

Third Division

December 13, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 11 CR 13643(02)
EUGENE WRIGHT, Defendant-Appellant.	)	Honorable Timothy Chambers, Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.

Justices Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court substantially complied with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), the evidence was sufficient to prove beyond a reasonable doubt that co-offender possessed a firearm during armed robbery, and the court did not abuse its discretion in barring co-offender's statement as hearsay where defendant abandoned the issue prior to the declarant becoming unavailable.

¶ 2 Defendant Eugene Wright was convicted of two counts of armed robbery while armed with a firearm and sentenced to 50 years in prison. On appeal, defendant asserts that the trial

court failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), the State failed to prove him guilty beyond a reasonable doubt of armed robbery while armed with a firearm, and the trial court improperly excluded his co-offender's statement that the crime was committed with a BB gun. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In the case at bar, defendant was charged with several counts of armed robbery with a firearm, involving a robbery of a Bakers Square restaurant on December 11, 2010, in Case No. 11 CR 13643[1]. Defendant was also charged with multiple counts of armed robbery with a firearm in a separate case, No. 11 CR 13186[2], concerning the robbery of a separate Bakers Square, which was the subject of its own appeals in *People v. Wright*, 2015 IL App (1st) 123496, and *People v. Wright*, 2017 IL 119561. Due to the related nature of the facts and issues defendant raises in the current appeal, we briefly summarize the relevant details of both cases.

¶ 5 A. Pretrial Litigation

¶ 6 Defendant was simultaneously arraigned in both cases on February 7, 2011. At the time, defendant was represented by a public defender; however, after the public defender sought a continuance to order discovery, defendant said he wanted to hire his own attorney and the case was continued. On the next court date, defendant indicated that he wished to proceed *pro se*. The trial court informed defendant that he had a right to an attorney, but it would not appoint counsel other than the public defender. It admonished defendant that he was charged with two different cases of armed robbery and that he could possibly be sentenced to

[1] Originally, Case No. 11 CR 927.
[2] Originally, Case No. 11 CR 928.

consecutive terms, but incorrectly stated that he faced a maximum sentence of 60 years, instead of 75 years, based on his background. Defendant confirmed that he wanted to proceed *pro se*.

¶ 7 The court admonished defendant again on March 1, 2011, informing him that he was not eligible for consecutive sentences, but based on his criminal history and the use of a handgun during the offense, he faced a concurrent sentence of 21 to 60 years in prison, again misstating the maximum sentence. Defendant stated that he had completed two years of college and had experience with the criminal justice system, and the court allowed defendant to proceed *pro se*. In August 2011, defendant was charged in new indictments due to an inaccuracy in a police officer's grand jury testimony.

¶ 8 The State subsequently elected to proceed to trial first on 11 CR 13186. Defendant represented himself throughout the trial and the jury ultimately convicted him of armed robbery with a firearm. On October 10, 2012, the trial court sentenced defendant to 50 years' incarceration. At the end of the sentencing hearing for 11 CR 13186, the parties discussed a status date in 11 CR 13643 and defendant demanded trial in that case.

¶ 9 Continuing to represent himself, defendant filed and argued several motions, including motions for substitution of judge, to suppress evidence, and to quash the indictment. Over the course of the pretrial litigation, defendant indicated that he was "at peace" with his decision to represent himself on three separate occasions and declined multiple offers by the trial court to appoint counsel. Immediately prior to jury selection, defendant asked the trial court what the potential sentencing range was and the trial court correctly informed him that he faced a sentencing range from 21 to 75 years' imprisonment.

¶ 10 B. The 11 CR 13643 Trial

¶ 11 At defendant's trial in the case at bar, Angelo Pagan, an employee at a Chicago Bakers Square, testified that he was working shortly before midnight on December 11, 2010, when Michael Morgan entered the restaurant. He wore a gray vest and hat and asked to place an order to go. He then lifted his shirt displaying the handle of a gun in his waistband. He told Pagan, "Don't be a hero." Defendant then entered the restaurant and the two men "surrounded" Pagan. Morgan told him to take them to the safe. Unable to access the safe, Pagan took them to his manager, James Peltier, in the kitchen. There, Morgan showed Peltier his gun. Peltier and Pagan then took Morgan to the safe in the restaurant's office while defendant waited outside the room. When Peltier struggled to open the safe, Morgan placed the gun against his neck and told him it would get him "to open the safe faster." Morgan told Pagan to leave the office. As Pagan stood outside of the office with defendant, a customer entered the restaurant. Defendant ordered Pagan to help the customer and "keep it under the radar." After the customer left, Morgan and Peltier returned. Morgan told Peltier to open a second safe beneath the register and Peltier gave them the money from the safe and register. Morgan took Pagan and Peltier to the restaurant's cooler where he took Pagan's cell phone and smashed it. He told them to stay in the cooler for 10 minutes and left. Pagan hit the alarm in the cooler and called 911. He later identified defendant and Morgan in a police lineup.

¶ 12 Pagan also testified that he was familiar with guns because he had witnessed friends use them at shooting ranges. He had held a gun before. He had seen the handle of the weapon when Morgan displayed it and the tip and a couple inches of the barrel in the office. He thought what Morgan used was a gun. On cross-examination, Pagan testified that he did not know if the gun was able to shoot bullets, but he "kn[e]w it was a gun." Defendant then showed Pagan a picture of a BB gun and asked if the handle of the BB gun looked like the

handle of the gun he had seen. Pagan answered, "That does look like the handle." Later, Defendant asked if it was "possible that the weapon used could have been a BB gun?" Pagan replied "Under the circumstances that we were there, it was a firearm. So I don't know if it could have been a BB gun or – but it was a firearm." Defendant asked multiple times whether the weapon "could have been" a BB gun and Pagan repeatedly answered it was a gun, but acknowledged it "possibly could" have been a BB gun.

¶ 13 Peltier testified that Pagan brought Morgan and another man[3] into the restaurant's pantry on December 11, 2010. Morgan pulled out a black, semi-automatic handgun and said, "Just be cool. Let's go to the safe." In the office, Peltier tried to open the safe but had difficulty. Morgan placed the gun to the back of his head and told him it would "help [him] get it done." As Peltier continued to struggle with the safe, Morgan pressed the gun harder into his neck. He eventually got the safe open and gave Morgan around $1,800 in cash, although Morgan did not want the rolls of change. Morgan then brought Peltier to the register and its drop safe. Opening both the safe and register, he gave Morgan all the cash. Morgan then ordered Peltier and Pagan into the cooler and told them to wait 10 minutes before exiting. He also threw Pagan's phone against the wall.

¶ 14 Peltier also testified that he grew up hunting and had "been around guns quite a bit." He had seen and handled guns previously. During the robbery he saw the entire gun and knew it was a semi-automatic because of its "bottom load clip" and its appearance. When it was pressed into his neck, "it felt like a gun." On cross- and recross-examination, defendant showed Peltier a picture of a BB gun and Peltier testified that "it could resemble" the gun he had seen. Defendant asked, "Are you sure that the weapon you saw was designed to shoot

[3] Peltier testified that defendant resembled the second man, but he was not certain.

real bullets?" Peltier began to answer, "I can't be sure about that, but –" when defendant interrupted him and ended his examination.

¶ 15 The State introduced surveillance tapes depicting the robbery from a camera over the cash register and a camera over the safe. It also presented other crimes evidence involving the December 26, 2010, robbery underlying defendant's conviction in 11 CR 13186. Martin Perez, the manager of the other Bakers Square, testified that an employee informed him that a customer wanted to place an order to go shortly before the restaurant's closing time. Perez approached the counter and greeted Morgan who lifted up his shirt to show the handle of a black gun. Perez was familiar with guns and testified that it looked like a semi-automatic. Morgan said, "This is a robbery, take me to the office" as defendant entered the store. Walking back to the office, Perez felt something sharp in his back. Morgan demanded all the bills in the safe and Perez gave it to him. He then ordered the employees into the restaurant's cooler. On cross-examination, Perez reiterated that the gun appeared to be a real gun, but acknowledged it was possible that the gun "could have been" a toy.

¶ 16 Chicago police officer Paul Cirrincione testified that he and another officer were surveilling Perez's Bakers Square following previous robberies at other Bakers Squares. Shortly after 11:00 p.m., defendant and Morgan, who matched a general description of the suspects, exited the restaurant. Cirrincione and his partner followed them. They caught up to them as they stood in the middle of a nearby alley off Estes Avenue. When the officers exited their vehicle and told the men to "come here," defendant and Morgan fled in different directions. Cirrincione got back into the car and chased Morgan south towards a mini-mall parking lot while his partner chased defendant on foot. He eventually found Morgan hiding behind a car. The officer exited his car and chased Morgan through a gangway, eventually

subduing and arresting him. A night deposit bag from Bakers Square was found in Morgan's waistband and a stack of bills was in his pocket. Defendant was apprehended in a van by other officers. There was a lot of snow that night and a gun was not recovered. After the snow melted, a BB gun was found on Estes Avenue "in the area of where [Morgan] ran."

¶ 17 Other officers testified that defendant was stopped driving a van shortly after the officers received a call of an armed robbery at the Bakers Square. Rolls of coins were recovered from the van and from the area through which defendant had run.

¶ 18 A sidebar was held prior to the testimony of Sergeant Allen Lee. The State sought to prevent defendant from asking Lee if Morgan had told the officer that he had committed the robbery but used "only a BB gun" that he then tossed to the ground before jumping a fence. Defendant argued that the statement was admissible as a statement against the declarant's penal interest. The trial court barred the statements.

¶ 19 Lee testified that he had viewed the surveillance video from the robbery at issue in the case at bar. Following defendant's arrest after the latter robbery, Lee went through the van defendant was found in and recovered a gray vest similar to the vest Morgan wore during the earlier robbery. Lee also testified that a black BB gun was discovered near Estes Avenue on January 2, 2011. The BB gun was submitted for fingerprint analysis, but no suitable prints were found. On cross-examination, defendant asked Lee about Morgan's statement regarding a BB gun and the trial court sustained the State's hearsay objection.

¶ 20 Following the State's case in chief, defendant presented the testimony of several witnesses regarding a police lineup in which he was identified[4]. Defendant asked one of the

[4] On appeal, defendant does not contest that the State sufficiently proved beyond a reasonable doubt that he took part in the robbery, instead challenging only whether the State proved that a firearm was used.

witnesses, a police officer, if he had interviewed Morgan. The State objected and the trial court sustained the objection. Following another sidebar conference regarding Morgan's statement, the trial court stated that it would not allow testimony regarding Morgan's admission.

¶ 21 Defendant also called Morgan to testify. Outside of the presence of the jury, Morgan stated that he was exercising his constitutional right against self-incrimination.

¶ 22 The parties stipulated a woman walking down Estes Avenue near a small strip mall saw a "black, semi-automatic-looking gun" that fit the description of the gun used in the robbery. The recovered BB gun "did not expel a single globular projectile exceeding 0.18 inches in diameter" and had a "maximum muzzle velocity of 450 feet."

¶ 23 The jury found defendant guilty of two counts of armed robbery with a firearm. Defendant elected to be represented by counsel for post-trial motions and sentencing. The court sentenced him to concurrent terms of 50 years' imprisonment.

¶ 24 C. Appeals in 11 CR 13186

¶ 25 Defendant appealed his conviction in 11 CR 13186, arguing, *inter alia*, that the trial court had failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), that it had improperly excluded Morgan's statement about the BB gun, and that the State failed to prove him guilty beyond a reasonable doubt that a firearm had been used in the robbery. A panel of this court found the trial court's admonishments to be insufficient and reversed defendant's conviction. *People v. Wright*, 2015 IL App (1st) 123496. However, during the course of the current appeal, our supreme court reversed that decision in *People v. Wright*, 2017 IL 119561, which we discuss in more detail below.

¶ 26 II. ANALYSIS

¶ 27 A. Rule 401(a) Admonishments

¶ 28 Defendant contends that the trial court failed to admonish him pursuant to Supreme Court Rule 401(a) during pretrial proceedings and thus his waiver of counsel was invalid. He admits that he received sufficient admonishment immediately prior to trial, but asserts that he received no admonishment prior to his pretrial litigation and thus his conviction must be reversed.

¶ 29 The sixth amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel at all critical stages of criminal proceedings. U.S. Const., amends. VI, XIV; *People v. Hughes*, 2012 IL 112817, ¶ 44. However, a defendant may waive that right to as long as the waiver is voluntary, knowing, and intelligent. *People v. Haynes*, 174 Ill. 2d 204, 235 (1996). In order to ensure that any waiver of counsel is voluntary, knowing and intelligent, a trial court must first admonish the defendant in accordance with Rule 401(a) before accepting the waiver. *People v. Campbell*, 224 Ill. 2d 80, 84 (2006). The rule provides:

> "The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S.Ct. R. 401(a).

Strict compliance with Rule 401(a) is not required; substantial compliance is sufficient when the record indicates that the waiver was both knowing and voluntary and the defendant was not prejudiced. *Haynes*, 174 Ill. 2d at 236.

¶ 30 Our supreme court has already determined that the admonishments given to defendant were sufficient. See *Wright*, 2017 IL 119561, ¶ 57. In the appeal of defendant's conviction in 11 CR 13186, the supreme court considered the admonishments given to defendant when he was simultaneously arraigned for both offenses. Although the court noted that the trial court had incorrectly understated the maximum sentence facing defendant, it stated that the trial court had correctly admonished defendant of the nature of the charges against him and his right to an attorney. *Id.* ¶ 54. Finding defendant's waiver to be freely, knowingly, and intelligently made, the court explained that defendant had attended 2 years of college and represented himself on appeal in a previous felony case. *Id.* ¶ 55. Moreover, defendant's reason for proceeding *pro se* did not involve the maximum sentence, but rather clearly stemmed from his desire for a speedy trial, despite being repeatedly informed of the potential pitfalls of self-representation. *Id.* Finally, the court found that defendant was not prejudiced because he did not allege that he would not have represented himself if he knew the maximum sentence was 75 years and he was ultimately sentenced to only 50 years. *Id.* ¶ 56. Thus the court concluded that the given admonishments were sufficient. *Id.* ¶ 57.

¶ 31 We are bound by the supreme court's holding in *Wright*. Although the court considered defendant's separate conviction in 11 CR 13186, the facts before us are identical. The admonishments at issue are the same because defendant was admonished for both crimes at the same time. The charged offenses were the same. As in 11 CR 13186, defendant was not sentenced beyond the 60-year sentence of which he was admonished, but rather, was

sentenced to 50 years. Therefore, like the supreme court, we must conclude that defendant's waiver was freely, knowingly, and intelligently made and that the trial court's error did not prejudice him. Accordingly, the trial court's admonishments substantially complied with Rule 401(a).

¶ 32 Defendant argues that the admonishments accepted as sufficient by the supreme court could not serve as proper admonishments in the case at bar because they took place in a previous proceeding. This mischaracterizes the record. The preliminary matters in both 11 CR 13643 and 11 CR 13186 were not isolated events; the record reveals that pretrial proceedings for the two cases were often interwoven and connected. Moreover, even if we accept defendant's assertion that we should consider the present case as beginning only after his demand for trial, we still cannot say that his waiver was not knowingly, and intelligently made. Immediately after litigating his final post-sentencing motion in 11 CR 13186, defendant demanded trial in the factually similar 11 CR 13643. We cannot find that defendant had voluntarily and intelligently chosen to defend himself in the first case, but that his valid waiver evaporated when he continued, without any indication of a desire to seek counsel, to represent himself in the legally and factually similar second case. Under the "continuing waiver" doctrine, a valid waiver of counsel continues to apply to all phases of a trial so long as circumstances do not significantly change. *People v. Redd*, 173 Ill. 2d 1, 24 (1996). That principle logically extends to the current case, where defendant was charged with the same offense in both 11 CR 13186 and 11 CR 13643, the facts of the cases were substantially similar, and there was no break between the proceedings in the two cases.

¶ 33 Defendant also analogizes his case to *People v. Jiles*, 364 Ill. App. 3d 320 (2006). In that case, a panel of the appellate court found that the trial court had not substantially complied

with Rule 401(a) when it provided only a partial admonishment, and this partial admonishment occurred a full three months before "defendant first inquired about waiving his right to counsel." *Id.* at 329-30. The admonishment was partial because the trial court failed to inform defendant "regarding the most serious crime with which he was charged * * * or the possible penalties for that crime." *Id.* Here, defendant was admonished when he requested and began to proceed *pro se* and he was admonished on all the charges against him. Thus, we find *Jiles* readily distinguishable.

¶ 34 B. Sufficiency of the Evidence

¶ 35 Defendant contends that the trial court did not prove beyond a reasonable doubt that a firearm was used during the robbery. He argues that the BB gun later found by police and the doubt expressed by the witnesses creates a reasonable doubt as to whether Morgan had a firearm or a BB gun.

¶ 36 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham,* 212 Ill. 2d 274, 278 (2004) (citing *In re Winship,* 397 U.S. 358, 364 (1970)). When reviewing the sufficiency of evidence, a reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins,* 214 Ill. 2d 206, 217 (2005). This court may not retry a defendant on appeal (*People v. Milka,* 211 Ill. 2d 150, 178 (2004)), and must resolve all reasonable inferences in favor of the prosecution (*Cunningham*, 212 Ill. 2d at 280).

¶ 37 A reviewing court must also give due consideration to the fact that a trier of fact is able to see and hear the witnesses. See *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279.

¶ 38 Defendant was charged with armed robbery under section 18-2(a)(2) of the Criminal Code (Code) (720 ILCS 5/18-2(a)(2) (West 2010)) because Morgan was armed with a firearm. A firearm, as defined by the relevant statutes, is “any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas,” but specifically excluding any BB gun and other devices. 430 ILCS 65/1.1 (West 2010); see also 720 ILCS 5/2-7.5 (West 2010). The State does not have to prove the gun is a firearm by direct or physical evidence; the credible testimony of a single witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant was armed during a robbery. See *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007).

¶ 39 Much of defendant’s argument relies on his assertion that Morgan used a BB gun in the robbery at issue in 11 CR 13186. On appeal in that case, defendant raised a substantially similar argument before our supreme court. He argued that the State had failed to prove Morgan possessed a firearm because the victims only briefly encountered the gun and the BB gun was later recovered from the area through which Morgan had run. See *Wright*, 2017 IL 119561, ¶ 69. Rejecting that argument, the supreme court noted that a witness, who had experience with firearms, had seen what he thought was a black, semi-automatic gun and was prodded in the back with what “felt like” the barrel of a gun. *Id.* ¶ 76. The witness was

"100% sure" that the gun was an actual firearm. *Id.* Another witness also saw the handle of the weapon and believed it was a gun based on prior experience. *Id.* Taking this evidence in the light most favorable to the State, the supreme court found the evidence sufficient to find defendant guilty beyond a reasonable doubt. *Id.* ¶ 77.

¶ 40 In the current case, both Pagan and Peltier testified that they had prior experience with guns and that they "knew" Morgan possessed a gun. Pagan saw the handle of the gun and some of its barrel. Peltier knew the gun was a semi-automatic because of its "bottom load clip." He felt the gun pressed into his neck. The only significant difference we find between the current appeal and the appeal in 11 CR 13186 is that here, neither witness testified that they were "100% sure" it was an actual firearm. However, we do not find this difference to be dispositive. Both witnesses testified that they "knew" Morgan used a real gun. After extensive questioning by defendant, the witnesses acknowledged that it was possible that the weapon "could have been" a gun, but both made clear that they believed the weapon was a firearm. Their acknowledgment that it was "possible" that they were mistaken does not render the jury's belief in their testimony unreasonable. As such, we are bound by the supreme court's reasoning in *Wright*. Taking the evidence in the light most favorable to the State, a rational fact-finder could find beyond a reasonable doubt that Morgan possessed an actual firearm.

¶ 41 C. Morgan's Statement

¶ 42 Finally, defendant contends that the trial court erred in barring Morgan's statement that he had committed the robbery using a BB gun, rather than an actual firearm. He argues that the statement was not subject to the hearsay rule because it was made against Morgan's own penal interest. He raised an identical argument in the appeal of 11 CR 13186.

¶ 43 Initially we note that, as in the previous appeal, defendant frames this contention as a constitutional issue, rather than an evidentiary matter, and argues that *de novo* review is proper. As we held previously, the facts of this case do not rise to the level of a constitutional due process violation, and defendant's contention is more appropriately reviewed for admissibility as a statement against penal interest under Illinois Rule of Evidence 804(b)(3) (eff. Jan. 1, 2011). Consequently, we review for an abuse of discretion. See *People v. Wright,* 2015 IL App (1st) 123496, ¶¶ 65-66, aff'd in part, rev'd in part, 2017 IL 119561, ¶ 65.

¶ 44 A hearsay exception applies to declarations against the declarant's penal interest. *People v. Tenney*, 205 Ill. 2d 411, 433 (2002). Illinois Rule of Evidence 804(b)(3) provides that a corroborated statement that tends to subject the declarant to civil or criminal liability is admissible. *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 135. Our supreme court in examining Federal Rule of Evidence 804(b)(3), which is identical to the Illinois rule, identified three conditions that must be satisfied before a statement will be admitted under the rule: "(1) the declarant must be unavailable; (2) the declarant's statement must have been against his or her penal interest; and (3) corroborating circumstances must support the trustworthiness of the statement." *Id.* (citing *People v. Rice*, 166 Ill. 2d 35, 43 (1995)).

¶ 45 In the prior appeal, defendant argued that the same statement by Morgan should have been allowed into evidence at his trial in 11 CR 13186. In that case, defendant had also questioned Lee about Morgan's statement and the trial court barred the statement as hearsay. Subsequently, Morgan invoked his right not to testify under the fifth amendment. Yet defendant did not recall Lee to ask him about the statement and did not question any other witness on the matter. On appeal, the supreme court held that Morgan was clearly unavailable to testify due to his invocation of the fifth amendment. *Wright*, 2017 IL 119561,

¶ 83. However, noting that defendant had not recalled Lee or addressed the statement's admissibility again after Morgan's invocation, the supreme court explained:

> "The trial court was simply not asked to make any further rulings on [the statement's] admissibility. We recognize that his failure to pursue this evidence may have occurred because defendant was not represented by counsel. Nevertheless, as the trial court admonished him before trial, if he proceeded *pro se*, he is to be held to the same standards as an attorney and cannot complain on appeal of his own lack of competency. We conclude that the trial court did not err by not admitting codefendant's statement to Detective Lee because defendant did not seek its admission after codefendant invoked his fifth amendment right not to testify."

¶ 46 As in the prior case, defendant sought to admit Morgan's statement only prior to Morgan actually invoking his right not to testify. Once Morgan became unavailable, defendant did not ask any witness about the statement nor did he seek to address its admissibility again. We therefore must conclude, as the supreme court did, that defendant effectively abandoned the issue, and the trial court made no further rulings on the admissibility of the statement. Therefore, the trial court did not abuse its discretion when it excluded Morgan's statement because defendant had not established, at the time of the court's ruling, the conditions for admissibility under Rule 804(b)(3).

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we hold that the trial court substantially complied with Rule 401(a) in admonishing defendant of his right to an attorney, that the State sufficiently proved beyond a reasonable doubt that Morgan used a firearm in the course of the robbery, and that the trial court did not abuse its discretion in barring Morgan's statement prior to his

invocation of the fifth amendment. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 49 Affirmed.