2013 IL App (2d) 120963-U
No. 2-12-0963
Order filed July 30, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JUAN GONZALEZ-REYES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 11-CF-331 Honorable C. Robert Tobin, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State did not violate the rules of discovery when it failed to produce defendant's vehicle or to allow defendant to inspect his vehicle because defendant sought the return of the vehicle only for the purpose of selling it; the trial court properly denied defendant's motion to quash arrest and suppress evidence because (a) the citizen who questioned defendant was not an agent of the State and did not act outside of his authority; (b) the officer's search of the vehicle was justified; and (c) defendant was not coerced into giving a statement; the trial court properly denied defendant's motion to suppress lab results because defendant failed to establish that the contraband was tampered with or otherwise tainted; defendant forfeited review of his challenge to alleged juror misconduct by failing to cite to the standard of review or supporting legal authority; no *Brady* violation occurred when the State failed to disclose the initial versions of defendant's account to the police because defendant failed to establish he was prejudiced by the State's failure to disclose; the State did

not violate defendant's due process rights when it referred to beer that was found in defendant's vehicle; and defendant's due process rights were not violated during the State's rebuttal closing argument. We affirmed the judgment of the trial court.

¶ 2 Following a trial, a jury found defendant, Juan Gonzalez-Reyes, guilty of possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2010)). The trial court sentenced defendant to 48 months' probation and various fines and fees. On appeal, defendant presents challenges related to (1) the State's purported violations of the rules of discovery by failing to produce defendant's vehicle or to allow defendant to inspect his vehicle; (2) the trial court's denial of his motion to quash arrest and suppress evidence; (3) evidence tampering; (4) alleged juror misconduct; (5) the State's alleged *Brady* violation; (6) testimony referring to beer that was found in defendant's vehicle; and (7) the State's purported shifting the burden of proof during closing argument. We affirm.

¶ 3 On December 16, 2011, defendant was charged by indictment with unlawful possession of a controlled substance with intent to deliver. The offense was alleged to have occurred in Belvidere. According to the indictment, on November 20, 2011, defendant knowingly and unlawfully possessed with the intent to deliver to another 1 or more grams but less that 15 grams of a substance containing cocaine.

¶ 4 On December 16, 2011, defendant filed a motion for production of documents and tangible objects and motion for pretrial discovery (discovery motion); a motion to quash arrest and suppress evidence (motion to quash); and a motion to release vehicle. Defendant's discovery motion requested the State to produce various pretrial discovery documentation and other evidence. Defendant filed the motion to release vehicle for the express purpose of selling the vehicle to support himself and maintain legal fees. On February 21, 2012, defendant filed an amended motion to quash

arrest and suppress evidence and a motion to suppress statements. In his motion to suppress statements, defendant supported his pleading, indicating that, "[a]fter making a full statement to officers, [d]efendant was coerced by officers to change his statement."

¶ 5 On March 15, 2012, the trial court commenced a hearing on the motion to quash arrest and suppress evidence. Robert Haynes testified that he was employed as an auxiliary police officer in the Chicago area and as a security officer for Security Professionals of Illinois (SPI). In that capacity, he wears a uniform, badge, and a side firearm. Haynes testified that, upon returning home from work, he observed a vehicle parked on the public way where he normally parked his own car. Haynes observed the driver of the vehicle drinking a Corona beer. Haynes approached the vehicle while attired in his security officer uniform, badge, and firearm. Haynes testified that, while he was speaking with the occupants, he never informed them that he was not a police officer, stating, "They didn't ask, I didn't tell."

¶ 6 Haynes testified that he was prompted to ask a passenger to step out of the vehicle after he observed the passenger shove a brown canister into his jacket, since Haynes feared that it may have been a weapon. Haynes performed a consensual search of the vehicle, whereupon he found alcohol and what he believed to be cocaine. Haynes called 911 to report the incident, where he identified himself as "Officer Haynes."

¶ 7 At the hearing for the motion to quash, defendant next called Officer Michele Bogdonas of the Belvidere police department. Bogdonas testified that she arrived on the scene after dispatch had advised her that an off duty security officer was with a suspicious vehicle and four individuals. Haynes had informed her of the canister containing what he believed to be cocaine. Bogdonas began a search of the vehicle and found additional packages of a white powdery substance.

¶ 8 On March 15, 2012, the trial court continued with a hearing for the motion to suppress statements. Defendant called Detective Leon Berry of the Belvidere police department to testify on his behalf. Berry testified that he and Detective Patrick Gardner interviewed defendant after reading defendant his *Miranda* rights. When asked, defendant said that he spoke English. Berry testified that defendant never indicated that he did not want to speak to them. Berry kept notes of the interrogation, but indicated that he does not keep the notes after a written report has been created. Regarding the oral statements that defendant gave to detectives, defense counsel raised the following questions to Berry:

"Q. [Defense Attorney]: Is the first statement [defendant] gave you the only information that you put in your report?

A. I believe [defendant] initially gave us information regarding the possession of the cocaine. It was a different story than what he— this last statement that he gave.

Q. So his first statement was different than the one that you put in your report?

A. That is correct.

Q. And did you indicate that he had given you a different statement in his report?

A. No, I did not."

Defense counsel continued in his examination of Berry:

"Q. What, if anything, did you recall Detective Gardner telling him to get him to change his statement based on your belief that he wasn't telling the truth?

A. I believe it was right around the time [defendant] stated that he had found the cocaine that was in his vehicle and pretty much— or Detective Gardner and I pretty much advised him

that we did not believe him. Obviously there is no cocaine fairy that leaves cocaine laying around. And he decided to tell us the true story."

Berry denied telling defendant to tell the truth so his pregnant fiancée, who was also in the car, would not go to jail. Berry also denied trying to persuade defendant to change his statement; he only told defendant to tell the truth. Berry testified that he did not include the first version of defendant's statement given in the transcripts because it was not defendant's final statement.

¶ 9 On cross-examination, Berry admitted that the defendant indicated that he understood the *Miranda* warnings both by verbally communicating it to him and by signing the form. The form also reflected that defendant had not been threatened or mistreated. After the interview, Gardner typed up both the questions and the answers from the oral interview. Defendant had the opportunity to review the typed statement, which he did, and he signed and initialed in agreement that that was his final statement. Berry did not observe Gardner threaten defendant.

¶ 10 Defendant next called Detective Patrick Gardner of the Belvidere police department. Gardner first interviewed Janet Bautista, defendant's fiancée, followed by another passenger in defendant's car, before he interviewed defendant. Defendant spoke in English and the *Miranda* warnings were given in English. Defense counsel questioned Gardner with respect to the differing versions of defendant's oral statement as follows:

"Q. Did he give any additional statements that weren't recorded in your report?

A. I believe initially he gave a different statement, then changed his story and said that he wanted to tell us the truth and then proceeded to give the statement that was memorialized in his statement."

Gardner encouraged defendant to tell the truth because he had already heard discrepancies from the previously conducted interviews. Gardner told defendant that "this is a point where you are able to claim responsibility for anything that you are responsible for and you can move on from here and have this moment hopefully not mark your life in a permanent manner."

¶ 11 Gardner further testified that he did not include defendant's original statement, and instead typed defendant's new statement. Gardner denied that he told defendant that it would be better for his fiancée if he told the truth. Defendant never indicated that he did not want to talk to them, nor did defendant ask for a lawyer.

¶ 12 On cross-examination, Gardner acknowledged that he observed defendant initial and sign the forms. Gardner stated that at no point did defendant indicate that he did not understand English. Gardner acknowledged that Berry never threatened or promised defendant anything.

¶ 13 Defendant testified on his own behalf through an interpreter. Defendant testified that he had several issues communicating with the officers. Defendant asked the detectives if they could understand what he was saying. Defendant told the police that he did not want to continue speaking to them. After defendant told the officers that he could not say anything more, he saw one get mad and tell the other to "go pick up Janet and charge her with the same thing."

¶ 14 On cross-examination, defendant admitted his understanding of English is limited, but that he could understand what the officers said to each other. Defendant stated that the interpreter was at the hearing to make him feel more comfortable. Also, defendant admitted that he understood that the officer told him to sign and initial his name if defendant agreed to what had happened on the typed statement.

¶ 15 The proceedings continued, and on April 9, 2012, the parties returned to court on defendant's motion to quash and suppress. Defense counsel presented his arguments on his motion to quash, having already presented testimony from Haynes and Bogdonas. Defense counsel argued in favor of his motion to suppress, citing to defendant's testimony that he was coerced into giving a statement incriminating himself. Defense counsel also argued that a *Brady* violation occurred when the police, as "agents of the State," destroyed their notes from their interview of defendant and when Bogdonas destroyed evidence of the beer that was purportedly at the crime scene. With respect to the motion to quash, the State responded that Haynes, as a private person and by his own observation, had reasonable grounds to believe that defendant was committing something more than a mere ordinance violation. With respect to the motion to suppress, the State responded that the officers had no reason to threaten to arrest defendant's girlfriend because she and the others were under arrest at the same time, so there could be no coercion to defendant. The State argued that defendant received *Miranda* warnings; he initialed and signed the document reflecting that his statements were given freely and voluntarily; that he was not threatened, mistreated, or promised anything; and never invoked his right to remain silent or to request an attorney. The State further argued that, in non-homicide cases, the *Brady* statute requires reports and memoranda to be retained, but not field notes.

¶ 16 Following arguments, the trial court took the matter under advisement and indicated it would present a written decision in a week's time. The court and the parties then discussed other scheduling matters, and defense counsel brought up the motion to release vehicle. Defense counsel stated, "There was a motion earlier on for a returning of the vehicle which I guess ultimately doesn't – it sort of became moot *** based on everything." Defense counsel continued, "So we might end up having the hearing on that. I don't know if they would object to returning it *** [j]ust that it is

out there." When the trial court inquired whether the vehicle would be subject to forfeiture, the assistant State's Attorney responded, "I don't do [forfeiture prosecutions], so I don't know if they did that or not."

¶ 17 On April 12, 2012, the trial court issued a memorandum of decision on defendant's motion to quash arrest and suppress evidence. In its decision, the trial court presented a history of the case, the evidence presented at the hearings, and a legal analysis of the motions. With respect to defendant's motion to quash, the trial court found that the actions of Haynes were not government action, and defendant's Fourth Amendment rights did not commence until Bogdonas arrived at the scene of the incident. The trial court next considered the actions of Bogdonas, and reviewed *Arizona v. Gant*, 556 U.S. 332 (2009). The trial court determined that other alcohol could have been found in the vehicle and a further search was reasonable. The trial court concluded Bogdonas's search was reasonable as a search incident to arrest pursuant to *Gant*.

¶ 18 The trial court next ruled on defendant's motion to suppress statements. The trial court noted that the statement defendant provided implicated his fiancée rather than relieve her of criminal liability; therefore it determined that it was unlikely that the detectives threatened prosecution of her unless he provided a written statement. The trial court also noted all four passengers were charged, so the trial court rejected the defendant's theory of a *quid pro quo*. The trial court considered the duration of the interview and the *Miranda* documents; it concluded that defendant knowingly and voluntarily waived his *Miranda* rights and suffered no undue duress in providing the written statement.

¶ 19 The trial court considered defendant's motion to suppress for discovery sanctions. The trial court reviewed *Brady v. Maryland*, 373 U.S. 83 (1963), and other authority, and concluded that the

police in the present case were not acting in bad faith by pouring out the contents of the bottles of beer. The trial court noted that, although the defendant and the other passengers were arrested for the illegal possession of alcohol, the main focus of the police was the possession of the powdery white substance that allegedly tested positive for the presence of cocaine. The trial court concluded that "[t]he likelihood that the bottles found in the vehicle were not alcoholic in nature was minuscule." In its analysis, the trial court reasoned that the police had no statutory duty to retain their field notes; the interview was of short duration; the police identified in the police report that defendant had provided a version of the incident different from the written statement; and determined that the police were not acting in bad faith by the officers not retaining their field notes. The trial court ruled that no constitutional rights were violated that would lead to discovery sanctions allowable under *Brady*.

¶ 20 Last, the trial court found the police officers had no statutory duty to retain their field notes. The trial court reviewed the plain language of section 114-13 of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/114-13 (West 2010)), and noted that the requirement for "field notes" was omitted for non-homicides, which applied to defendant. The trial court denied defendant's amended motion to quash arrest and suppress evidence; it denied defendant's motion to suppress statements; and it denied defendant's motion to suppress for discovery sanctions.

¶ 21 On April 16, 2012, a hearing commenced on defendant's March 15, 2012, motion to suppress lab results. The State first called Bogdonas, who testified that she placed evidence found at the scene, including the canister found by Haynes, into separate paper bags. Bogdonas placed the paper bags containing evidence into her squad car. She next brought the evidence back to the public safety building where she conducted a field test of the evidence, which tested positive for the presence of

cocaine. Bogdonas sealed the evidence and placed it into a secured storage area. On cross-examination, Bogdonas admitted that she had counted 11 baggies containing the white powdery substance inside of the canister. Bogdonas later received a call from the Illinois State Police forensic lab saying that they had counted only 10 baggies, and Bogdonas was unable to explain the discrepancy.

¶ 22 The State next called Detective Daniel Smaha from the Belvidere police department, who served as the evidence custodian. Smaha testified that only two keys opened the evidence storage area, one in his possession and another, which was in a sealed metal lock box that the Belvidere police department administration could access. Smaha transported the sealed exhibit containing the canister to the Illinois State Police forensic lab. On cross-examination, Smaha admitted that the bag did not appear to have been tampered with, and that no one opened or removed anything from the sealed bag.

¶ 23 On April 24, 2012, the trial court issued its memorandum of decision on defendant's motion to suppress lab results. The trial court discussed the evidence presented at the hearing and considered the relevant case law. The trial court stated that the Belvidere police department's procedures provide "reasonable protective measures to ensure that the substance recovered from the defendant was the same substance tested by the forensic chemist" and that Bogdonas followed that procedure. The trial court determined that defendant failed to produce evidence of actual tampering, substitution, or contamination. The trial court rejected defendant's argument of tampering based on the discrepancy in the number of baggies, declining to find a *per se* violation. Rather, the trial court reflected that any deficiencies in the chain of custody would go to the weight, and not the

admissibility, of the evidence. Following its discussion, the trial court denied defendant's motion to suppress lab results.

¶ 24 On June 20, 2012, *voir dire* for the jury trial commenced. The trial court asked the first 14 potential jurors whether they "know either the Assistant State's Attorney LoPiccolo or the two defense attorneys," and none of the jurors indicated that they had. A potential juror named Chapko stated that he knew one of the witnesses, Berry, and also knew two law enforcement officials. Defense counsel moved to have Chapko stricken for cause due to his relationships with a witness and police departments officials. The trial court, however, denied defense counsel's request, and defense counsel employed a peremptory challenge to excuse Chapko. At the conclusion of *voir dire*, defense counsel still had one remaining peremptory challenge.

¶ 25 At trial, the State called Haynes as its first witness. Haynes testified regarding the circumstances of returning home from work and how he came upon approaching defendant's vehicle. Haynes noticed defendant's car was running and the windows were fogged up. Haynes was attired in his S.P.I. uniform. Haynes testified that he noticed "the driver was drinking a bottle of--," and defense counsel objected, arguing that any reference to an alcoholic beverage would constitute a prior bad act. The State responded that the beer was part of the circumstances leading up to the arrest. Following arguments, the trial court ruled that, with respect to a minor consuming beer, there would be "no discussion as to the age of the defendant," or, at defendant's request, that the consumption of beer could not be used to show that Haynes had "probable cause to stop [defendant']s car based on being [*sic*] illegal." Testimony resumed, and Haynes, in response to being asked by the State what he did when he "saw the driver drinking a bottle of beer," testified that he approached the driver's side window. Haynes testified that the defendant rolled down the window

and said "Good evening, Officer," as he approached the vehicle. Haynes' testimony was thereafter substantively similar to that presented at the hearing on defendant's motion to quash. As the testimony continued, the trial court instructed the parties that they could ask Haynes about "beer being in the car" and identifying how many bottles that were found in that location.

¶ 26 Next, the State called Bogdonas, and her testimony was substantively similar to that at the hearings on defendant's motion to quash and motion to suppress lab results. Later, during the cross-examination of Berry, defense counsel posed the following questions:

> "Q. Officer, what, if anything, do you recall about the initial statement the defendant gave you?
>
> A. [Defendant] indicated that he had gotten cocaine from a person in Rockford when he was at a quinceanera earlier in the evening, and he indicated that he had had no idea who that person was, that he had never gotten before from that person, but he decided to sell cocaine because his girlfriend was pregnant and he wanted to send money to his mother in Mexico.
>
> Q. And is that statement what you put in your report?
>
> A. No.
>
> Q. Why not?
>
> A. It was a type written statement from [defendant] which Detective Gardner typed, and they were, after questioning [defendant], regarding whether he was being truthful or not, he indicated that he had lied to us initially and the story of him getting cocaine from a guy in Rockford actually did not happen and he was going to be truthful with us and tell us where he got the cocaine from. And at that point, he indicated that he got it from his supplier in

Chicago in one large bag and brought it out to Belvidere, where he was in the process of packaging it up."

Berry also admitted that the original statement was not included in the report because defendant told them that he had lied and changed his story. Next, defense counsel posed questions to Gardner on cross-examination regarding the versions of defendant's oral statement:

"Q. Initially, did [defendant] give you a different statement than the one you just read?

A. Yes.

Q. What do you recall that statement being?

A. I recall his initial story was that he had gone to a quinceanera in Rockford, and that someone had given him the cocaine without having him pay for it.

Q. And was that statement put in any of your reports?

A. No.

Q. *** Once he gave you that statement what did you do?

A. I recall that I questioned the integrity of that statement, as he claimed that he did not know the person who gave him the cocaine, had never met him before, and generally speaking, with the hundreds of state, local, federal and international drug investigations that I've been a part of, generally speaking, drug dealers do not give out those types of quantities of cocaine, fronting them in advance without money."

¶ 27 The State next called Martin Skelcy, a forensic scientist for the Illinois State Police. Skelcy testified that, when he opened the evidence containing the canister, he counted 10 baggies of the white powdery substance, which weighed 4.03 grams. Skelcy testified that the total weight of the evidence was 5.08 grams, all of which tested positive for cocaine. On cross-examination, Skelcy

admitted that, when there is a discrepancy regarding evidence sent to his lab, it is usually about weight, not count.

¶ 28 Following the close of evidence, the parties presented their closing arguments. During the State's rebuttal argument the prosecutor stated:

> "[Defense counsel]— I agree with one thing he said. The evidence showed that the police made no threats to this defendant. They made him no promises to give a statement. And that evidence is un-contradicted. There's no evidence to support— "

Defense counsel objected and argued that the State's remarks were burden-shifting. The State responded that, during defense counsel's closing argument, defense counsel had inferred that the police had made threats to defendant and had made promises to defendant, and it should be able to reply to the arguments. The trial court noted that defense counsel had raised the issue, but asked the State to rephrase its statement so it did not indicate that defendant produced any evidence. Before the State resumed its rebuttal argument, the court explained to the jury:

> "At no point does the burden shift to the defendant to prove his innocence. *** Defendant, again, has no obligation to present any evidence whatever. The burden is always on the State to prove their case. *** But again, not that either side did anything wrong in their arguments, I just wanted to make sure that it was clear as to who has the burden throughout."

¶ 29 Following deliberations, the jury found defendant guilty of unlawful possession of a controlled substance with intent to deliver. Afterward, defendant requested a preservation order for all evidence, including the automobile, which defendant had learned was still in the possession of Boone County. The State informed the court that it had learned that the vehicle had been forfeited

on March 27, 2012, and that the only reason that it was still in Boone County was because the State Police had not yet picked it up. The trial court stated that it would enter an order of preservation for the vehicle if the proper procedures for forfeiture had not been followed.

¶ 30 On August 24, 2012, the trial court commenced a hearing on the defendant's motion for a new trial, which it denied. On August 31, 2012, following a sentencing hearing, the trial court sentenced defendant to 48 months' probation along with various fines and fees. Defendant filed a timely notice of appeal.

¶ 31 Prior to reaching the merits of the appeal, the State has filed a motion to cite additional authority, *Coe v. Bell*, 161 F.3d 320 (6th Cir. 1998), and we allow the motion.

¶ 32 On appeal, defendant lists 11 issues for our review; however, some are merely alternate arguments and theories in support of reversal. We will address the contentions in an order consistent with the proceedings below. Accordingly, we consider (1) whether the State violated the rules of discovery by failing to produce defendant's vehicle or to allow defendant to inspect his vehicle, and if so, whether it violated his due process rights; (2) whether the trial court erred in denying defendant's motion to quash arrest and suppress evidence because (a) Haynes was an agent of the State; (b) Haynes, in his capacity as an officer, did not have probable cause to stop defendant's vehicle; (c) Haynes, in his capacity as a private citizen, acted outside of his authority; (d) Bogdonas' warrantless search of the vehicle was unjustified; and (e) defendant was coerced into giving a statement; (f) whether the contraband was tampered with or otherwise tainted; (3) whether defendant was denied his right to a fair trial because of juror misconduct; (4) whether the State hid or destroyed evidence, constituting a *Brady* violation and therefore, denied defendant his right to a fair trial; (5) whether the State violated defendant's due process rights when it referred to beer that was found in

defendant's vehicle; and (6) whether the State shifted the burden of proof during closing argument and violated defendant's due process rights.

¶ 33 Turning to the first issue, defendant contends that the State violated the rules of discovery by failing to produce defendant's vehicle or to allow him to inspect his vehicle. Defendant's contention is based on his December 2011 motion to release his vehicle. In that motion, defendant sought the return of the vehicle "[b]ased upon the current economic climate and current pending charges, defendant needs to sell the vehicle and use the proceeds in order to support himself and to maintain legal fees." Defendant asserts that, by not being allowed to inspect the vehicle, his due process rights were violated.

¶ 34 In a criminal case, the provisions of Illinois Supreme Court Rule 412 (eff. Mar. 1, 2001) require the State, upon a defendant's request, to disclose material and information within its possession or control, subject to certain qualifications. The rule makes the State's compliance with defendant's discovery request mandatory. See *People v. Moore*, 266 Ill. App. 3d 791, 798 (1994) (citing *People v. Burns*, 75 Ill. 2d 282 (1979)). However, in the present case, the State argues, and the record supports, that defendant did not file a discovery motion seeking an inspection of the vehicle. Rather, defendant filed a motion seeking the release of the vehicle so that it could be sold and the proceeds used to pay attorney fees. In that motion, defendant made no mention or any request to inspect the vehicle prior to its sale. Moreover, at a later hearing conducted on April 9, 2012, defense counsel brought up the motion to release vehicle. Defense counsel stated, "There was a motion earlier on for a returning of the vehicle which I guess ultimately doesn't – it sort of became moot *** based on everything." Defense counsel continued, "So we might end up having the

hearing on that. I don't know if they would object to returning it *** [j]ust that it is out there." Again, defense counsel never mentioned or sought to inspect the vehicle.

¶ 35 After trial, the State informed the court that the vehicle had been forfeited on March 27, 2012; however, it was still in Boone County because the Illinois State Police had not yet picked it up. The trial court ruled on defendant's motion for release of the vehicle and entered an order to preserve the vehicle if the proper procedures for forfeiture had not been followed. For discovery sanctions, the decision is left to the discretion of the trial court and its judgment is entitled to great weight. *In re Julio C.*, 386 Ill. App. 3d 46, 52 (2008). Defendant has failed to explain how his due process rights were violated by not being able to sell the vehicle. Further, defendant has failed to show that the trial court abused its discretion in ruling on the motion for release of the vehicle. We hold the State did not violate Supreme Court Rule 412 in failing to provide the defense with an inspection of the vehicle, and we decline to find any other discovery violation or due process violation with respect to the vehicle.

¶ 36 Defendant next contends that the trial court erred in denying his motion to quash arrest and suppress evidence. In support of this contention, defendant argues that his statement was coerced and should have been suppressed. Defendant also argues that Haynes was acting as an agent of the State and in that capacity, did not have probable cause to stop his vehicle. Alternatively, defendant argues that, as a private citizen, Haynes acted outside his authority and violated his fourth amendment rights. Defendant further argues that Bogdonas' warrantless search of the vehicle was unjustified. Defendant also argues that missing evidence demonstrated *per se* that the evidence was tainted and should have been suppressed.

¶ 37 The burden of proof is on the defendant at a hearing on a motion to suppress evidence. 725 ILCS 5/114-12(b) (West 2010); *People v. Gipson*, 203 Ill. 2d 298, 306 (2003). If the defendant makes a *prima facie* case that the evidence was obtained through an illegal search, then the State can counter with its own evidence. *Id.* at 306-07. Review of a trial court's ruling on a motion to suppress involves a mixed question of law and fact. See *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Findings of historical fact made by the trial court will be upheld on review unless such findings are against the manifest weight of the evidence. *Id.* However, we undertake our own assessment of the facts in relation to the issues presented and draw our own conclusions with regard to the relief that should be granted. *Id.* Accordingly, we review *de novo* the ultimate question of whether to grant the motion to quash arrest and suppress evidence. *Id.*

¶ 38 With the standard of review set, we turn to defendant's first argument that his confession was coerced and should have been suppressed. Defendant asserts that police threatened to arrest his pregnant fiancée if he did not confess to the crime. To determine whether a confession is voluntary and legally obtained, we consider the totality of the circumstances, including (1) the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; (2) the duration of the interrogation; (3) whether *Miranda* warnings were given to the defendant; (4) the presence of any physical or mental abuse; and (5) the legality and duration of the detention. *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005).

¶ 39 With these guidelines in mind, we turn to a consideration of the circumstances presented in the instant case. Our consideration of the first factor does not support defendant's assertions that his statements were involuntary. The record reflects that defendant was 19 years of age at the time of his detention and interrogation. Whether defendant may or may not have consumed alcohol, there

is no evidence in the record that his physical condition was impaired at the time of detention and interrogation. Though defendant received little education since coming to the United States at the age of 15, the record supports his understanding of his *Miranda* rights. See *Nicholas*, 218 Ill. 2d at 118. The next relevant factor to consider is the duration of the interrogation. See *id.* Defendant was interrogated at approximately 4 a.m., and at a length of approximately one hour, it was not excessively long. See *People v. Mayoral*, 299 Ill. App. 3d 899, 907-08 (1998) (finding three interview sessions over a period of 17 hours reasonable).

¶ 40 The next relevant factor to consider is whether *Miranda* warnings were given to the defendant. *Nicholas*, 218 Ill. 2d at 118. Both detectives testified that they read *Miranda* warnings to defendant first before taking a statement. Defendant cites *People v. Bernasco*, 138 Ill. 2d 349, 354-55 (1990), asserting that, for a *Miranda* waiver to be valid, there must be both an uncoerced choice and a requisite level of comprehension. Defendant asserts that he did not understand the fundamental terms contained within the *Miranda* warnings; however, the record and defendant's own testimony belie his assertion of error. The record reflects that the defendant testified that he understood English and what he was signing and initialing on the statement. Our consideration of this factor does not support defendant's assertion that his statement was coerced.

¶ 41 The next relevant factor to consider is the presence of any physical or mental abuse. Defendant testified that he overheard one detective say "go pick up [defendant's pregnant fiancée] and charge her with the same thing," after defendant decided to remain silent. However, the detectives denied making the statement, and the record reflects that all of the occupants had already been placed under arrest. The trial court remarked that defendant implicated his fiancée in his statement rather than relieve her of criminal liability; therefore it determined that it was unlikely that

the detectives threatened her prosecution unless he provided a written statement. Our consideration of this factor does not support defendant's assertion that his statements was coerced. The record supports that the detention was legal and the duration reasonable. Because the totality of the circumstances indicate that the confession was not coerced, we affirm the trial court's determination.

¶ 42 Next, defendant argues that Haynes was acting as an agent of the State. In support of his argument, defendant asserts that Haynes testified he was a police officer, and as an "auxiliary police officer," he should be deemed an agent of the State. Defendant also asserts that Haynes further demonstrated his agency to the State "when he testified to the State's Attorney's coaching of his testimony." The State counters that the trial court properly relied on an Attorney General opinion dated December 30, 2010, when the trial court found:

> "[T]he Illinois Police Bureau is a not-for-profit corporation that provides auxiliary police services to units of local government. *** Not only are they not agents of the State, that attorney general opinion expressly restricts many of the actions of these organizations (and their ability to contract for services with local units of government[.]) Based upon the status of the Illinois Police Bureau, the statutory restrictions on the use of auxiliary police and this attorney general opinion, Mr. Haynes was not acting as an agent of the State of Illinois nor [*sic*] the City of Belvidere in this incident."

¶ 43 The statutory section that governs auxiliary police officers (65 ILCS 5/3.1-30-20 (West 2010)), provides that "[a]uxiliary police officers, *when on duty*, shall also be conservators of the peace and shall have the powers specified in Section 3.1-15-25." (Emphasis added.) The section further authorizes auxiliary police officers "to exercise all other powers as conservators of the peace prescribed by the corporate authorities." 65 ILCS 5/3.1-15.25 (West 2010).

¶ 44 We agree with the trial court's decision that Haynes was not an agent of the State. The Attorney General's opinion clearly indicates that members of the Illinois Police Bureau, a not-for-profit corporation, were not agents of the State. Also, Haynes was not on duty as an auxiliary police officer when the incident occurred; rather, he was returning home from his employment as a security officer at S.P.I. The statute clearly states that an auxiliary police officer is only a conservator of the peace while the officer is on duty. 65 ILCS 5/3.1-30-20 (West 2010). Because defendant has failed to show that Haynes was on duty and therefore, an agent of the State, we reject his argument.

¶ 45 Because we determine that Haynes was not acting as an agent of the State, we need not consider whether Haynes, as such agent, violated the defendant's fourth amendment rights.

¶ 46 Defendant next argues that Haynes acted outside of his authority as an ordinary citizen and violated defendant's fourth amendment rights. Defendant asserts that all of the evidence obtained by Haynes was based upon his representation of being a police officer, and not based on his actions as an ordinary citizen. Defendant asserts that he would not have complied with Haynes' investigation had he known that Haynes was merely acting as a citizen.

¶ 47 Under section 107-3 of the Code (725 ILCS 5/107-3 (West 2010)), "[a]ny person may arrest another when he has reasonable grounds to believe an offense other than an ordinance violation is being committed." Defendant asserts that Haynes did not have sufficient evidence to conduct a citizen's arrest. However, the State counters, and the record supports, that Haynes possessed the authority to effect a citizen's arrest because he observed defendant consuming a bottle of beer, an offense under section 11-502(a) of the Illinois Motor Vehicle Code (625 ILCS 5/11-502(a) (West 2010)). See also *Hoffa v. United States*, 385 U.S. 293, 302-03 (1966) (the fourth amendment does

not protect anything that the defendant knowingly exposes to another member of the public, including a government agent).

¶ 48 Defendant also asserts that all evidence obtained by Haynes was based upon his representation of being a police officer and not based upon his actions as a private citizen. Defendant consented to a search by Haynes, and asserts that the evidence gained from this search was a violation of his fourth amendment rights. Defendant cites *People v. Carrera*, 321 Ill. App. 3d 582 (2001), in which the reviewing court stated that, because "[the officer] obtained evidence needed for the arrest by identifying himself as a police officer in an area outside of his jurisdiction, he was using a means to obtain evidence not available to an average citizen, and the officers therefore did not make a valid citizen's arrest." *Id.* at 594.

¶ 49 Defendant concedes that he consented to the search. As the *Hoffa* Court stated, the fourth amendment does not protect against 'a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it.' *Hoffa*, 385 U.S. at 302. Moreover, unlike the circumstances in *Carrera*, in which the citizen identified himself as a police officer while out of his jurisdiction, the circumstances in the present case reflect that, although Haynes carried a firearm and wore a uniform that was similar to that of a police officer, he never identified himself as a police officer. See *Carrera*, 321 Ill. App. 3d at 586.

¶ 50 Because Haynes did not identify himself as a police officer to defendant; because defendant allowed Haynes to search his vehicle; and because Haynes had the authority to make a citizen's arrest, we conclude that Haynes did not violate defendant's fourth amendment rights.

¶ 51 Defendant further argues that Bogdonas warrantless search of the vehicle was unjustified. Defendant asserts that Bogdonas should have obtained a warrant to search the vehicle after the

occupants were placed under arrest for alcohol consumption. Defendant asserts that all of the alcohol was already accounted for and the search by Bogdonas was for the sole purpose of finding further evidence of the drug crime.

¶ 52 In addressing the issue of a search of a vehicle without a warrant, the United States Supreme Court in *Arizona v. Gant*, 556 U.S. 332, 351 (2009) held:

> "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."

¶ 53 Also, section 108-1 of the Code (725 ILCS 5/108-1 (West 2010)) provides when a police officer may conduct a search of a vehicle:

> "When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
>
> (a) protecting the officer from attack; or
>
> (b) preventing the person from escaping; or
>
> (c) discovering the fruits of the crime; or
>
> (d) discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense."

¶ 54 Defendant argues that at no time was he charged or cited with an alcohol infraction that would have led to the search of the vehicle. In support, defendant cites *Chimel v. California*, 395 U.S. 752, 763 (1969), where the Court held that a search incident to arrest may take place only of

the arrestee's person and "within his immediate control." Here, defendant asserts that the vehicle was not in his immediate control when Bogdonas arrived and that he was never cited or charged with an alcohol infraction that would give rise to a search of the vehicle. Defendant concludes that, because he was not in control of the vehicle when Bogdonas arrived, she would not have been able to search the vehicle.

¶ 55 The fourth amendment of the United States Constitution requires searches and seizures to be reasonable, "measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). There are two steps in the analysis of whether a search is reasonable under the fourth amendment: "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968). There is no doubt that there is an exigent circumstances exception to the fourth amendment's warrant requirement (*Payton v. New York*, 445 U.S. 573, 590 (1980)), but that exception applies to warrantless searches and seizures when police are acting in a crime-fighting role.

¶ 56 In the present case, the record and relevant case law fully support the authority of Bogdonas to conduct a search of defendant's vehicle. First, Haynes was not acting as an agent of the State, and Haynes observed defendant consuming alcohol in his vehicle. Second, defendant consented to the search of his vehicle, and Haynes discovered bottles of alcohol. Haynes called 911 and reported his observations, and Bogdonas responded to the scene. With this information, it was reasonable for Bogdonas to believe that there was additional evidence in the vehicle, and it was reasonable for her to search the vehicle. At this stage, the record belies defendant's assertion that he was never charged or cited with an alcohol violation. Bogdonas testified that she initially placed the defendant under

arrest for alcohol. Thus, Bogdonas did not need a warrant to search the vehicle, because it would have been reasonable for her to believe that the vehicle contained evidence relating to the arrest for alcohol consumption. Moreover, defendant's reliance on *Chimel* is misplaced because the *Gant* court clarified the prior decision and held that authorities may not conduct an unwarranted search of the passenger compartment of a vehicle unless "it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest." See *Gant*, 556 U.S. at 351. We uphold the trial court's findings.

¶ 57 Defendant next argues that the missing evidence of contraband demonstrates *per se* that the evidence was tainted and should have been suppressed. Defendant asserts that the discrepancy between the number of bags counted by Bogdonas and the number counted by the forensics lab constituted a *per se* demonstration of the evidence being tainted.

¶ 58 The State is required to prove a chain of custody to negate the possibility of tampering with or substitution of the evidence. *People v. Herrero*, 324 Ill. App. 3d 876, 881 (2001) (citing *People v. Lach*, 302 Ill. App. 3d 587, 593-94 (1998)). To prove this, the State must establish that it took reasonable protective measures after the substance was seized and that it was probable the evidence was not changed in any important respect or substituted. *Herrero*, 324 Ill. App. 3d at 881-82 (citing *Lach*, 302 Ill. App. 3d at 593-94). Once the State has established the probability that the evidence was not compromised, and unless the defendant shows actual evidence of tampering or substitution, deficiencies in the chain of custody go to the weight, not admissibility, of the evidence. *Herrero*, 324 Ill. App. 3d at 882. Even when the chain of custody has a missing link, drug evidence may be properly admitted where there was testimony that sufficiently described the condition of the evidence when delivered which matched the description of the evidence when examined. *Id.*

¶ 59 In the present case, defendant claims that reasonable protective measures must not have taken place. However, defendant has not cited to any case law that supports his argument that a discrepancy in the total number of bags demonstrates that evidence has been tainted. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Taylor*, 2013 IL App (2d) 110577, ¶ 31. The State has demonstrated that reasonable protective measures have taken place and that it was probable that the evidence was not changed in any important respect or substituted. The record reflects that the testimony of Bogdonas, Smaha, and Skelcy all indicated that the evidence was secure from the time it was first counted to the time that it was counted in the forensics lab. Thus, because defendant is unable to cite to any case law or otherwise indicate any actual evidence of tampering or substitution, we reject his argument.

¶ 60 The burden of proof is on the defendant at a hearing on a motion to suppress evidence. 725 ILCS 5/114-12(b) (West 2010); *People v. Gipson*, 203 Ill. 2d 298, 306 (2003). Because the trial court's findings were not against the manifest weight of the evidence, we affirm the trial court's decision to deny defendant's motions to quash arrest and suppress evidence and to suppress the lab results.

¶ 61 Defendant next contends that he was denied his right to a fair trial because of juror misconduct. Defendant argues that the first juror on *voir dire*, Chapko, was not forthcoming about his relationship with the trial judge. Defendant further argues that Chapko's presence on the juror panel was prejudicial. The State convincingly asks us to find defendant's argument waived for failing to cite to any authority in his argument.

¶ 62 Our supreme court has held that a party waives a point by failing to cite to authority. *People v. Ward*, 215 Ill. 2d 317, 332 (2005); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Defendant's only

citation in his argument is to a "Google search" that he used to establish that Chapko was a purported donor to the trial judge's election campaign. Defendant also failed to address the standard of review for his contention. See Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). A review of defendant's contention reveals it to be merely argument and conclusory statements. Because defendant's violations of the supreme court's rules regarding briefs makes meaningful review of his contention unacceptable, we affirm the trial court's ruling on this issue.

¶ 63 Defendant next contends that the State hid or destroyed evidence, constituting a *Brady* violation and therefore, denied his right to a fair trial. Specifically, defendant argues that the destruction and hiding of notes taken by detectives Berry and Gardner that pertained to his first version of events was a violation of *Brady v. Maryland*, 373 U.S. 83 (1962). Defendant asserts that, as agents of the State, the detectives should have preserved the notes for discovery.

¶ 64 In *Brady*, the Supreme Court held that the suppression by the prosecution or police of evidence favorable to an accused upon request is a violation of due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. *Brady*, 373 U.S. at 87. Illinois Supreme Court Rule 412(c) (eff. Mar. 1, 2001) codified the *Brady* rule in Illinois and requires the State to disclose to the defense any material or information within its possession or control that tends to negate the guilt of the accused. Even when material or information should have been disclosed, however, a reviewing court will find a due process violation only if the defendant can establish: (1) the undisclosed evidence was favorable to the accused because it was either exculpatory or impeaching; (2) the evidence was suppressed by the State either willfully or inadvertently; and (3) the accused was prejudiced because the evidence was material to

guilt or punishment. *People v. Beamen*, 229 Ill. 2d 56, 73-74 (2008) (citing *People v. Burt*, 205 Ill. 2d 28, 47 (2001)); see also *Strickler v. Greene*, 527 U.S. 263, 296 (1999).

¶ 65 Defendant asserts that the difference in testimonies of Gardner and Berry between the hearing on the motion to suppress and trial, along with their destruction of field notes, constituted a *Brady* violation. See *Beamen*, 229 Ill. 2d at 74. With respect to the officers' field notes, the trial court reviewed the plain language of section 114-13 of the Code (725 ILCS 5/114-13 (West 2010)), and noted that the requirement for "field notes" was omitted for non-homicides, which applied to defendant. The trial court properly found that the police officers had no statutory duty to retain their field notes. With respect to the initial versions of defendant's account, the criteria have been met for the first *Brady* element because the undisclosed evidence may have been used for impeachment purposes. Because the State conceded at oral argument that the evidence was inadvertently suppressed, the second element has been met.

¶ 66 However, to succeed on the last element, the defendant must show that the withheld information was material, *i.e.*, that there is a reasonable probability that if the evidence had been disclosed to the defendant, the outcome of the case would have been different. *People v. Rapp*, 343 Ill. App. 3d 414, 418 (2003). In the present case, defendant has failed to show that a reasonable probability existed that the result of the proceeding would have been different had the State disclosed the initial versions of how defendant came into possession of cocaine. Defendant was aware of the initial versions as early as February 2012, when defendant filed his motion to suppress statements, stating that, "[a]fter making a full statement to officer, [d]efendant was coerced by officer to change his statement." Also, during the hearing on the motion to suppress, defense counsel was the first party to question Berry and Gardner about the initial versions of defendant's account.

¶ 67 Defendant similarly asserts that the difference in testimonies by Gardner and Berry constituted a *Brady* violation. At oral argument, defense counsel argued that the difference in testimonies, "found" the drugs at the hearing on the motion to suppress statements and "given" the drugs at a quinceanera at trial, was a prejudicial violation of *Brady*. However, the differing testimonies relates to the first element in that this undisclosed evidence could have been used for impeachment purposes and not toward the element of prejudice. See *id.* at 418-19. The versions of how defendant came into possession of the cocaine were not material to proving whether the defendant committed the offense of possession with intent to deliver; rather, the versions were merely relevant to the context in which the criminal offense was committed. See *id.* Defendant has failed to establish a reasonable probability that the outcome of the trial would have been different had the State disclosed the prior versions of his account. Because defendant has not established prejudice, we conclude no *Brady* violation occurred. See *id.*

¶ 68 Next, defendant contends that the State violated his due process rights when it referred to beer that was found in defendant's vehicle. Defendant argues that the State's reference to beer during trial prejudiced him. The State counters first, that defendant has forfeited this issue for review by failing to cite to the record other than one initial reference, and second, that the questions regarding beer were to lay a foundation for the events leading up to defendant's arrest.

¶ 69 During trial, the admissibility of evidence is a matter within the sound discretion of the trial court, and the court's decision may not be overturned on appeal unless there is a clear abuse of discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would

take the view adopted by the trial court. *Id.* Also, for the inclusion of prior bad acts, Illinois Rules of Evidence 404(b) (eff. Jan. 1, 2011) provides:

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith except as provided by sections 115-7.3, 115-7.4, and 115-20 of the Code of Criminal Procedure ***. Such evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

¶ 70 Defendant cites to *People v. Moss*, 205 Ill. 2d 139, 156 (2001), and argues that even if evidence is offered for a permissible purpose, such evidence will not be admitted if the prejudicial effect outweighs its probative value. In *Moss*, the defendant was awaiting trial for the sexual assault of his girlfriend's daughter. *Id.* at 144-45. While incarcerated, the defendant orchestrated the deaths of his girlfriend and her daughter. *Id.* at 145-46. On appeal, the court found that the testimony of witnesses regarding the defendant's alleged sexual assault was admissible. *Id.* at 157-58. The court reasoned that "the prejudicial effect was minimized when the trial court instructed the jury as to the limited purpose of other-crime evidence." *Id.*

¶ 71 In the present case, the State correctly notes that, other than the initial reference, defendant has failed to cite to any other objectionable instances. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Notwithstanding defendant's failure to cite to any other pages in the record, the references to beer appear to have been part of a discussion between the parties and the trial court before the State's questioning of Haynes. As stated earlier in the facts, Haynes testified that he noticed "the driver was drinking a bottle of--," when defense counsel objected. At that point, Haynes had not been discussing the consumption of alcohol by any party. Following arguments, the trial court ruled that,

with respect to a minor consuming beer, there would be "no discussion as to the age of the defendant," or, at defendant's request, that the consumption of beer could not be used to show that Haynes had "probable cause to stop [defendant']s car based on being [*sic*] illegal." Testimony resumed, and Haynes, in response to being asked by the State what he did when he "saw the driver drinking a bottle of beer," testified that he approached the driver's side window. As the testimony continued, the trial court instructed the parties that they could ask Haynes about "beer being in the car" and identifying how many bottles that were found in that location. The trial court also gave specific jury instruction that read: "Any evidence that was received for a limited purpose should not be considered by you for any other purpose." Other than raising it as an issue, defendant has done little to establish any abuse of the trial court's discretion. On our review of the record, we uphold the trial court's decision to allow the foregoing evidence because the record does not support any abuse of the trial court's discretion.

¶ 72 Defendant's final contention is that the State shifted the burden of proof during closing argument and violated defendant's due process rights. Specifically, defendant argues that the prosecutor improperly shifted the burden when he told the jury that the police made no threats to the defendant and there was no supporting evidence.

¶ 73 "Every defendant is entitled to [a] fair trial free from prejudicial comments by the prosecution." *People v. Young*, 347 Ill. App. 3d 909, 924 (2004). "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). A reviewing court "will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that

real justice was denied or that the verdict resulted from the error." *People v. Runge*, 234 Ill. 2d 68, 142 (2009).

¶ 74 "When determining whether the accused right to not testify has been violated, a reviewing court must examine the challenged prosecutorial comments in the context of the entire proceeding." *People v. Johnson*, 208 Ill. 2d 53, 112 (2004). A prosecutor may respond to comments made by defense counsel in closing argument that clearly invite a response, and the arguments must be considered in their context by examining the entire closing argument of the parties. *Id.* at 113.

¶ 75 Defendant cites *People v. Keene* , 169 Ill. 2d 1 (1995), and argues that, when the State points the finger at the defendant for failing to testify, it crosses a "danger line" on the boundary of proper testimony. *Id.* at 21. However, the supreme court found that the burden does not shift when the State is making its comments in regard to uncontradicted evidence. *Id.* at 22-23. The supreme court stated, "the State may comment that evidence is uncontradicted and may do so even if the defendant was the only person who could have provided contrary proof." *Id.* at 21.

¶ 76 Here again, as stated above, during the State's rebuttal argument, the prosecutor stated:

> "[Defense counsel]— I agree with one thing he said. The evidence showed that the police made no threats to this defendant. They made him no promises to give a statement. And that evidence is un-contradicted. There's no evidence to support— "

During the conference with the parties, the trial court noted that defense counsel had raised the issue, but nevertheless asked the State to rephrase its argument to not indicate that defendant failed to produce any evidence. See *Johnson*, 208 Ill. 2d at 112. Before the State resumed its rebuttal argument, the trial court explained to the jury:

> "At no point does the burden shift to the defendant to prove his innocence. *** Defendant, again, has no obligation to present any evidence whatever. The burden is always on the State to prove their case. *** But again, not that either side did anything wrong in their arguments, I just wanted to make sure that it was clear as to who has the burden throughout."

¶ 77 The prosecutor rephrased his argument and stated:

> "The evidence that is presented in this case, the judge told you in the beginning, comes from the witness stand and the testimony, as well as the physical evidence you receive. [The defense attorney] asked the question, did you tell the defendant that if he didn't give a statement, his girlfriend was going to go to jail? And the answer was "no." That's the evidence that was presented during this case. There is no evidence that was presented to show any threats or promises. The evidence that was presented shows the opposite."

¶ 78 Our review of the record reflects that, because the prosecutor was commenting only on evidence that was uncontradicted, even though the defendant's testimony may have provided contrary proof, no infringements on defendant's due process rights occurred. See also *People v. Garcia*, 231 Ill. App. 3d 460, 469 (1992) (trial court's instruction cures prejudice from alleged improper remark in closing); accord *People v. Macri*, 185 Ill. 2d 1, 52 (1998). Defendant has failed to demonstrate that any remarks were improper or that any remarks were prejudicial to the extent that real justice was denied or that his verdict resulted from the error. See *Runge*, 234 Ill. 2d at 142.

¶ 79 Accordingly, for the foregoing reasons, we affirm the judgment of the circuit court of Boone County.

¶ 80 Affirmed.