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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lee County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-CF-15
	)	
CHARLES T. GEORGE,	)	Honorable
	)	Ronald L. Jacobson,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Schostok concurred in the judgment.

**ORDER**

*Held:* The trial court erred in suppressing defendant’s statements to police, where defendant stated during the interview: “I’m not answering that question. I ain’t answering no more questions cuz the way you putting—you—every—you ask me one question then you ask something else at the end. I don’t know (unintelligible) trick me.” Reversed and remanded.

¶ 1 Following a taped interview with police, defendant, Charles T. George, was charged with involuntary manslaughter (720 ILCS 5/9-3(a) (West 2010)), two counts of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)), and aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)). Defendant moved to suppress his statements, arguing that, during his interview with

police, he invoked his *Miranda* right to end questioning. The trial court granted the motion, and the State appeals. We reverse and remand.

¶ 2

## I. BACKGROUND

¶ 3 According to an affidavit prepared by Dixon police sergeant Matthew Richards, at approximately 10:00 p.m. on Monday, September 20, 2010, defendant's three-month-old daughter, T.G., was brought to the emergency room at Katherine Shaw Bethea Hospital. T.G.'s mother, Heather Pitchford, told police that T.G. was lethargic, had slept most of the day, and had a swollen eye. Emergency room personnel determined that T.G. suffered severe head trauma and reported the potential abuse to the police. Emergency room doctors found fractures in both rear skull plates, as well as retinal hemorrhages and detachments in both eyes. They also found evidence of multiple other skull fractures, prior retinal tears, and a previously broken rib, all consistent with shaken baby syndrome. T.G. was airlifted to Rockford Memorial Hospital, where she died three days later. An autopsy revealed that T.G. died from blunt force trauma to the head.

¶ 4 On September 29, 2010, Dixon police interviewed Pitchford. She stated that, within the prior two weeks, she had observed defendant shake T.G. Police investigators determined that, from September 17, 2010, until she was brought to the hospital, T.G. had been only in Pitchford's and/or defendant's care. On September 30, 2010, Richards and Dixon police chief Dan Langloss interviewed defendant for over seven hours. The interview was videotaped. There is no dispute that defendant initially waived his *Miranda* rights and spoke with the officers. However, prior to making certain incriminating statements, defendant made the statement at issue, which, he argued in his motion to suppress, constituted an invocation of his right to remain silent.

¶ 5 At the August 3, 2011, hearing on defendant’s motion to suppress, the relevant portion of the video of the September 30, 2010, police interview with defendant was played for the court. This portion begins over four hours into the interview at the 17:47 time marker. Viewed in its entirety, the video reflects that, almost immediately, defendant expressed concern about accusations that he killed T.G. and stated that he did not want to be there. Langloss explained that he and Richards wanted to hear defendant’s side of things. Defendant explained how he and Pitchford disciplined their children, explaining that they did not hit their children “hard.”

¶ 6 Richards and Langloss discussed with defendant the events of the weekend leading up to Pitchford bringing T.G. to the hospital on Monday, September 20, 2010. At first, defendant maintained that he had not noticed anything wrong with T.G. Later, defendant stated that he noticed T.G. had not been eating and looked “out of it” the day Pitchford brought her to the hospital. Richards and Langloss explained to defendant that the doctors determined that the fractures in T.G.’s skull likely occurred within 24-72 hours of when Pitchford brought T.G. to the hospital. Defendant agreed that he and Pitchford were the only people caring for T.G. during that time.

¶ 7 Leading up to the statement at issue, Langloss explained to defendant that he did not think that defendant would intentionally hurt T.G., but that he may have accidentally done so. Langloss stated that people had observed defendant shaking T.G. and that police were questioning defendant to determine whether he knew that shaking a baby could hurt it.

¶ 8 The interview continued:

Langloss: “By shaking her just like this—by shaking her did you have any idea that that could hurt her? Do you think that that would hurt a baby, Charles? Do you think that that would hurt a baby and—and cause injuries that could kill the baby? I mean, I would

hope the answer to that question is no, but you know in your heart sitting here if it had to be either [Pitchford] or you that mistakes that you made are what led to this and I know that's a hard thing to—to swallow—it's a hard thing to accept—it's a hard thing to deal with—but that's—we're here helping ya deal with it, alright. We care about what happens to you guys. I've got a lot of respect for the way you're doing things at your house. I got a ton of respect for you in that. You know what, you're in a bad situation—a bad relationship before. You finally got the strength to get outta that relationship; right? You've got a good relationship here with a good girl; right? You guys are—are getting along. You got your things just like any other couple but you aren't resorting to violence with her or different things like that. You're—you're a strict guy. You got some different beliefs and feelings and that's fine. I agree with ya, ya know, you can't spoil a baby, ya know. My wife and I—luckily I knew some people and we talked to 'em and hey, how do we do this—how do we—ya know, and—and we used some different techniques and—and they worked but I guarantee at that point in my life I wouldn't have known that by—by grabbing a baby and saying stop crying that could hurt 'em. Did you know that—that if you grab a baby and just shake 'em just like this—say stop crying—that could hurt 'em? Did—did you know that? I don't think ya did. I don't think ya had any idea what it could hurt the—that it'd hurt [T.G.], right, because I don't think you would ever do anything to hurt [T.G.]. Would you ever do anything to hurt [T.G.] on purpose, Charles?"

Defendant: "I'm not answering that question. I ain't answering no more questions cuz the way you putting—you—every—you ask me one question then you ask something else at the end. I don't know (unintelligible) trick me."

Langloss: “I’m not doing that, okay. No, no, I’m not trying to trick ya. No, I’m not. I’m not trying to trick ya. This is the thing, Charles—this is the thing—the investigation shows very clearly, alright, that on a few occasions that you shook [T.G.]”

Defendant: “(unintelligible) man, look...”

Langloss: “And I’m asking how many different occasions was it cuz I need to know that from you but the other question I’m asking—I’m not trying to confuse or trick or put anything together here okay is did you realize that by shaking her like that that you could hurt her.”

Defendant: “You keep saying shake her like that because some bitches told you I shook her. I don’t care what they told you.”

¶ 9 The interview continued for over two more hours. Defendant (repeatedly) admitted that he had shaken T.G., and that he did not know it would hurt her. He also admitted that, on the morning of September 20, 2010, as he was changing her diaper, she would not stop crying, he shook her, and her head hit the floor.

¶ 10 In his motion to suppress, defendant argued that, at approximate interview time 17:49, he stated “clearly and unequivocally that he was exercising his rights not to incriminate himself” when he stated: “I’m not answering that question. I ain’t answering no more questions cuz the way you putting—you—every—you ask me one question then you ask something else at the end. I don’t know (unintelligible) trick me.” He urged that the officers ignored his request to remain silent and continued the interview, eliciting incriminating statements.

¶ 11 The trial court granted defendant’s motion to suppress, suppressing all of defendant’s statements following the foregoing statement. The court stated:

“At [the point where defendant made the statement at issue] what should have occurred, in my opinion, is questions that would clarify exactly what [defendant] intended if the police had that concern at that point. I’ve seen that done before in cases, it was not done in this case. It should have been done in this case. I know their job is difficult but I think in the circumstances my job is to make sure that the Defendant and everyone’s constitutional rights are upheld and it’s my decision that [defendant]’s statement was an unequivocal statement and if there was clarification necessary the police should have done that, they didn’t do that, and for that reason I’m granting the motion to suppress.”

¶ 12 Subsequently, the court denied the State’s motion to reconsider. The State filed a certificate of impairment pursuant to Rule 604(a) (Ill. S. Ct. R. 604(a) (eff. July 1, 2006)), and this appeal followed.

¶ 13

## II. ANALYSIS

¶ 14 The State argues that the trial court erred in granting defendant’s motion to suppress. Generally, a trial court’s ruling on a motion to suppress will be reviewed under a two-part standard adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). The trial court’s factual findings will be disturbed only if they are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). The trial court’s ultimate legal ruling is reviewed *de novo*. *Id.* However, when neither the facts nor the credibility of the witnesses is in dispute, as in this case, *de novo* review is appropriate. *People v. Nielson*, 187 Ill. 2d 271, 286 (1999).

¶ 15 Immediately prior to a custodial interrogation, police must inform an individual of his or her *Miranda* rights. *Davis v. United States*, 512 U.S. 452, 457 (1994). If the individual voluntarily agrees to speak with police, he or she has waived those rights, and law enforcement is free to

question the individual. *Id.* at 458. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court declared: “if the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. \*\*\* If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” *Miranda*, 384 U.S. at 473-74.

¶ 16 The Supreme Court held in *Davis* that if, subsequently during an interview, an individual states his or her desire to have *counsel* present, that statement must be unambiguous and unequivocal:

“if a suspect makes a reference to [his or her *Miranda* rights] that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.” (Emphasis in original) *Davis*, 512 U.S. at 459.

The Court reasoned that the unambiguous-and-unequivocal standard:

“provides a bright line that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information. But if we were to require questioning to cease if a suspect makes a statement that might be [an invocation of his or her *Miranda* rights], this clarity and ease of application would be lost.” *Id.* at 461;

see also *In re Christopher K.*, 217 Ill. 2d 348, 380 (2005) (adopting *Davis*).

¶ 17 Subsequently, in *Berghuis v. Thompkins*, 130 S. Ct. 2250, 2260 (2010), the Court applied the *Davis* “bright line” test in the context of assessing an individual’s *right to remain silent*. Consequently, the same standard is used to determine whether an individual has invoked his or her right to remain silent or right to counsel—an individual must make an unambiguous and unequivocal invocation of his or her rights.

¶ 18 Here, the central issue is whether defendant made an unambiguous and unequivocal invocation of his right to silence when he stated: “I’m not answering that question. I ain’t answering no more questions cuz the way you putting—you—every—you ask me one question then you ask something else at the end. I don’t know (unintelligible) trick me.” (Defendant concedes that, in his first substatement, “I’m not answering that question,” he did not invoke his right to silence.)

¶ 19 The determination whether an accused has invoked his or her right to remain silent or to counsel is an objective inquiry. *Davis*, 114 S.Ct. at 2355. “There is no talismanic word or phrase with which to invoke the right to remain silent, and the *Miranda* safeguards must be applied with ‘flexibility and realism.’ ” *State v. Woods*, 374 N.W. 2d 92, 99 (1985) quoting *United States v. Rodriquez-Gastelum*, 569 F. 2d 482, 486 (9th Cir. 1978). An individual may invoke his or her rights verbally and/or through conduct that clearly indicates his or her desire to cease questioning. *People v. Hernandez*, 362 Ill. App. 3d 779, 785 (2005).

¶ 20 We first consider defendant’s statement. A verbal statement must be specific. *Id.* at 785. Further, “[t]he statement must be examined in the factual context of its utterance.” *People v. Milner*, 124 Ill. App. 3d 656, 660 (1984). The statement: “ ‘Well, I’m done talking then,’ ” has been held to be unambiguous on its face and in its context (*i.e.*, even though defendant made the statement to terminate the interview because he was afraid of retaliation). *Munson v. State*, 123 P.3d 1042, 1046-47 (Alaska 2005). See also, *Hernandez*, 362 Ill. App. 3d at 782 (an answer of “ ‘No, not no more’ ” when police asked if the defendant wished to speak to them held to be clear and unequivocal); *People v. Arroya*, 988 P.2d 1124, 1134 (Colo. 1999) (“ ‘I don’t wanna talk no more’ ” in response to question asking if the defendant wanted a break held to be unequivocal); *United States v.*

*DeMarce*, 564 F.3d 989, 994 (8th Cir. 2009) (“ ‘You know, I don’t want to talk to you. I’m not going to sign anything,’ ” held to be unambiguous and unequivocal).

¶ 21 On the other hand, if a defendant makes a statement that may or may not be an invocation of his or her right to silence, police may continue to question the individual. The statement: “ ‘I’m tired, I can’t answer no more,’ ” has been held to be ambiguous when the defendant wanted to rest before police continued to interview him. *People v. Milner*, 123 Ill. App. 3d. 656, 658 (1984). See also, *People v. Aldridge*, 79 Ill. 2d 87, 95 (1980) (mere resistance during a confession to answering questions concerning details of an offense is not sufficient to trigger *Miranda*); *People v. Troutman*, 51 Ill. App. 3d 342, 344 (1977) (the defendant’s statement that she was not going to make a confession was not “specific enough to constitute a demand that questioning cease”); *People v. Williams*, 233 P.3d 1000, 1023 (Cal. 2010) (“ ‘I don’t want to talk about it,’ ” not unambiguous, as it was an expression of the defendant’s frustration with the police’s failure to accept his repeated assertion that he did not know the victim); *State v. Thomas*, 673 N.W.2d 897, 908 (Neb. 2004) (“ ‘I’m done talkin’ man, I know what I did, how can ya’ll keep on saying I did it[?]’ ” ambiguous, as the defendant interrupted an accusation that he had committed the crime and may have been responding in frustration to the police’s unwillingness to believe that he was not involved in the crime; also, he asked a question requesting further information), *abrogated on other grounds State v. Rogers*, 760 N.W.2d 35 (2009); *State v. Murphy*, 747 N.E.2d 765, 779 (Ohio 2001) (“ ‘I’m ready to quit talking and I’m ready to go home, too,’ ” not unequivocal because the defendant apparently wanted to be released and “his words did not necessarily mean that he wanted to stop talking, no matter what”); *State v. McCorkendale*, 979 P.2d 1239, 1247-48 (Kan. 1999) (“ ‘So that’s all I [got] to say,’ ” at the end of a response to a question not unequivocal, as it could have meant the defendant

had finished his explanation of that matter), *overruled on other grounds by State v. King*, 204 P.3d 585 (Kan. 2009).

¶ 22 Statements are not considered in isolation. We must consider the entirety of the statement and the context in which it was made. *Milner*, 124 Ill. App. 3d at 660. Prior to defendant's statement, Langloss repeatedly asked defendant if he knew shaking T.G. could hurt her and if he would ever do anything to hurt her. Defendant's response that he "ain't answering no more questions" included the qualification "cuz the way you putting \*\*\* you ask me one question then you ask something else at the end." In our view, the statement as a whole was not unambiguous and unequivocal. Defendant was not requesting to terminate questioning, but, rather, was indicating that he did not like the form in which the questions were being asked. He essentially protested being asked compound questions and perceived that the police were trying to "trick" him. Defendant specified a question that he did not want to answer, which the defense concedes was not a revocation of his waiver, and then went on to explain why he did not want to answer that question or any more questions that came in that form. After Langloss assured him he would stop asking him such questions and that he was not trying to trick him, defendant continued to talk with police.

¶ 23 We next consider whether defendant's conduct evinced an invocation of his right to remain silent. Our supreme court has held that by putting his hands over his ears, turning his head toward the ceiling, and chanting "nah, nah, nah," a defendant indicated his desire to cease questioning. *People v. Nielson*, 187 Ill. 2d 271, 287 (1999). See also, *State v. Murphy*, 467 S.E.2d 428, 434 (1996) (defendant stood up and stated "I got nothing to say"; conduct and statement "were clear indicators that he wished to terminate the interrogation and invoke his right to remain silent," where he had similarly stood up to end two prior interrogations); *State v. Cauthern*, 778 S.W. 2d 39, 46

(Tenn. 1989) (the defendant invoked his right to remain silent, where, after declining to tell police what happened, he attempted to turn off a tape recorder); *Commonwealth v. Boncore*, 593 N.E.2d 227, 229 (Mass. 1992) (the defendant's general unresponsiveness and "No comment" responses, together with a call to his father to request that he locate an attorney constituted an invocation of right to remain silent).

¶ 24 On the other hand, conduct can create ambiguity when it is inconsistent with a defendant's previously invoked waiver. See, e.g., *State v. Forte*, 629 S.E.2d 137, 145 (2006) (a defendant's unexpected "no" when asked if he wanted to answer more questions was sufficiently ambiguous, where he had been cooperative from the beginning of the questioning and where, after his statement, in response to officer's request for explanation, the defendant stated that he was tired and would answer more questions after he slept); *State v. Perkins*, 364 N.W.2d 20, 24 (Neb. 1985) (defendant closed his eyes and did not respond for almost two hours; not a revocation of waiver).

¶ 25 While there is no requirement that a defendant exhibit certain conduct in order to invoke his or her right to silence, here, defendant's conduct before, during, and after he made the statement at issue were consistent with his continued waiver. He had been voluntarily speaking with police for over four hours, and continued to do so for over two more hours, for a total interview time of over seven hours. He did not look away, stand up, try to leave, or cease speaking at any time. His tone and manner did not change. Again, in sum, considering the overall context of defendant's words and conduct, we believe defendant's statement was ambiguous and equivocal and did not warrant a cessation of the interview.

¶ 26 Finally, although we need not reach the issue because we are reversing the trial court's order, we note that, while the Supreme Court held in *Davis* that it is good police practice to clarify (in the

context of ambiguous statements or conduct) whether or not a defendant is invoking his or her *Miranda* rights, such clarification is not constitutionally required. *Davis*, 512 U.S. at 461-462. Further, if a defendant's statement is unambiguous and unequivocal, as is required to invoke his or her rights, police are required to immediately cease questioning in order to "scrupulously honor" those rights. *People v. Easley*, 148 Ill. 2d 281, 303-04, (1992). Therefore, only when a defendant's statement is ambiguous or equivocal do police have the *option* to clarify; they do not have the *obligation* to do so.

¶ 27 Here, the trial court erred in determining both that defendant's statement was unequivocal and also finding that the officers should have clarified defendant's intent. The latter is inconsistent with a finding that a defendant's statement is unambiguous. It appears that, initially, the court agreed with the State's position that defendant's statement was ambiguous. The court stated "what should have occurred, in my opinion, is questions that would clarify exactly what [defendant] intended if the police had that concern at that point." The court, having viewed the videotape, was aware that the officers did not show any concern about defendant's statement. The officers did not pause, look up, look at each other, or hesitate in any manner, and they said nothing to indicate that they thought defendant's statement was a matter of concern. Rather, they proceeded with the interview. Further, the court stated that police should have clarified defendant's statement to learn his intent. However, the court also held that defendant's "statement was an unequivocal statement and if there was clarification necessary the police should have done that[.]" This finding is inconsistent with the court's immediately preceding findings.

¶ 28 In summary, the trial court erred in granting defendant's motion to suppress.

¶ 29

### III. CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Lee County is reversed and the cause is remanded.

¶ 31 Reversed and remanded.