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2012 IL App (3d) 100734-U

Order filed April 30, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-10-0734
	)	Circuit No. 08-CF-732
	)	
REGINALD D. CHANDLER-MARTIN,	)	Honorable
	)	Richard C. Schoenstedt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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ORDER

¶ 1 *Held:* Any error in the admission of defendant's afternoon statements was harmless because the statements were cumulative to defendant's morning statement, which was properly admitted.

¶ 2 Following a jury trial, defendant, Reginald D. Chandler-Martin, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2008)) and home invasion (720 ILCS 5/12-11(a)(3) (West 2008)). Defendant was sentenced to consecutive terms of 31 and 8 years' imprisonment, respectively. Defendant appeals, arguing that the trial court erred in admitting statements he

gave to the police because the they were not audio-recorded. We affirm.

¶ 3

### FACTS

¶ 4 After midnight on April 1, 2008, the victim, John Rosales, was at his home playing video games with his friends when two masked men with firearms entered the house. The men told Rosales and his friends to get down on the ground and demanded their drugs and money. One of the men fired a shot, and the bullet hit Rosales in the neck. The two robbers ran out of the house. Soon after, Rosales left in his vehicle, drove a few blocks and hit a median. Rosales subsequently died from the gunshot wound to his neck.

¶ 5 On April 2, 2008, defendant was taken into custody and questioned by the police at several points that day. He admitted that he was involved in the robbery. Defendant was subsequently charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 2008)), two counts of home invasion (720 ILCS 5/12-11(a)(3), (a)(5) (West 2008)), and one count of armed robbery (720 ILCS 5/18-2(a) (West 2008)). Prior to trial, defendant filed a motion to suppress the oral and written statements he gave to the police during his 3 p.m. interrogation because the interrogation was not properly recorded pursuant to section 103-2.1 of the Code of Criminal Procedure of 1963 (the Code). 725 ILCS 5/103-2.1 (West 2008).

¶ 6 At the hearing on defendant's motion, the two detectives that interviewed defendant, James Griffith and Nick Liberio, testified that they met with defendant on April 2, 2008, in Villa Park at 9 a.m. Defendant denied any involvement in the robbery and was then placed under arrest and put into the back of Griffith's vehicle. Defendant was read his Miranda rights, and he verbally waived his rights. The detectives questioned defendant during the 30-minute drive to

the Naperville police department. The entire interrogation was audio-recorded.

¶ 7 Defendant initially denied any involvement in the robbery, but once he arrived at the sally port of the police department, Detective Robert Lee showed defendant pictures of the two guns that were used during the robbery. Defendant admitted that he and Tyrell Jackson went to Rosales's house to rob him. Defendant told the detectives that he recognized the guns in the picture because he used the black gun, a .22-caliber revolver, during the robbery, but it was unloaded. Jackson used the silver gun, a .32-caliber revolver. Defendant and Jackson entered Rosales's house and told everyone to get down on the ground. Rosales appeared to move towards defendant and Jackson or reach for something, and Jackson fired his gun. Then defendant and Jackson ran out of the house and left on their bicycles. Defendant did not find out until later that Rosales had been shot. Defendant stated that he and Jackson intended to rob Rosales, but defendant thought no one was going to get hurt.

¶ 8 At approximately 9:30 a.m., defendant was placed in interview room 154, which was equipped with a video-recording system. The recording system was being monitored by Detective Michael Caruso. Defendant was briefly questioned by Griffith and Liberio, but Caruso informed the detectives that the sound was not recording properly. Defendant was relocated to an interview room in the investigations section, where the sound was properly recording. Defendant admitted that he participated in the robbery, but the robbery was not supposed to end in a shooting. Defendant then requested an attorney, and the interrogation ended.

¶ 9 At approximately 11:30 a.m., defendant asked the detention officer to tell the detectives that he wanted to talk. Defendant made a second request at 2 p.m. At approximately 3 p.m., defendant was brought to room 154, where Caruso was monitoring the recording system.

Defendant was read his Miranda warnings and then questioned by Griffith and Liberio for approximately 50 minutes. Defendant admitted that he was approached about a month earlier with a plan to rob Rosales of his drugs and money. On the day of the robbery, defendant had a gun that was unloaded, and Jackson had a gun that was loaded. When defendant and Jackson entered Rosales's house, Jackson fired his gun. Defendant pulled his gun out after Jackson fired a shot. Then defendant and Jackson left the scene by vehicle. Defendant subsequently made a similar written statement. It was determined a few days later that the statements made during defendant's afternoon interrogation were video-recorded, but the audio was of very poor quality and mostly inaudible.

¶ 10 After hearing all the evidence, the trial court denied defendant's motion to suppress his statements. Defendant's motion to reconsider was also denied. The matter proceeded to a jury trial, where defendant's first statement to the police, given in the car and at the sally port, was played for the jury. Additionally, Liberio testified about the additional questioning of defendant at the police department. Liberio stated that defendant was questioned shortly in the morning, but he then requested an attorney and the interrogation ended. Upon defendant's request, he was interviewed again in the afternoon. Liberio testified that defendant gave a more detailed description of the crime and how they planned to rob Rosales. Defendant also stated that he and Jackson left the house by car, not by bicycle. Defendant's written statement was also admitted into evidence.

¶ 11 At the close of all the evidence, the jury found defendant guilty of first degree murder and home invasion. Defendant's motion for a new trial was denied. Defendant appeals.

¶ 12

#### ANALYSIS

¶ 13 Defendant argues that the trial court erred in admitting his oral and written statements made during the afternoon interrogation because his statements were not adequately audio-recorded as required by section 103-2.1(b) of the Code. 725 ILCS 5/103-2.1(b) (West 2008). Defendant further asserts that it was feasible for the police to audio-record the statement, and without the audio recording it cannot be determined if the interrogation of defendant was coercive.

¶ 14 In reviewing a trial court's ruling on a motion to suppress, we will defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence; however, *de novo* review is appropriate for the ultimate determination of whether the evidence should be suppressed. *People v. Absher*, 242 Ill. 2d 77 (2011).

¶ 15 Section 103-2.1(b) of the Code provides that custodial statements, whether oral or written, made by a suspect in a homicide case are presumed inadmissible if the interrogation was not electronically recorded or the recording was not substantially accurate or intentionally altered. 725 ILCS 5/103-2.1(b) (West 2008). The statute permits an unrecorded statement to be admitted into evidence if the State establishes by a preponderance of the evidence that a statutory exception is applicable, including that an electronic recording of the statement was not feasible, or that the statement was voluntary and reliable based upon a totality of the circumstances. 725 ILCS 5/103-2.1(e)(ii), (f) (West 2008).

¶ 16 The statements defendant made during his afternoon interrogation lacked audio due to a recording system failure. As such, defendant's oral and written statements from the afternoon interrogation were presumed to be inadmissible. See 725 ILCS 5/103-2.1(b) (West 2008). Assuming, *arguendo*, that the State would be unable to prove an exception under the statute to

allow the admission of defendant's afternoon statements (725 ILCS 5/103-2.1(e)(ii), (f) (West 2008)), we find any error in the admission of defendant's afternoon statements harmless. An error is considered harmless where the reviewing court can conclude beyond a reasonable doubt that the error did not contribute to defendant's conviction. *People v. Dennis*, 373 Ill. App. 3d 30 (2007).

¶ 17 In the instant case, defendant is unable to establish that he suffered any prejudice from the admission of his afternoon statements, in light of the fact that defendant made similar admissions in his first statement in the sally port, which was properly admitted at trial. Although defendant's afternoon statements provided a few more details regarding the plan to rob Rosales and the use of a vehicle to flee the scene, this was at most cumulative to defendant's properly admitted statement, where he admitted his involvement in the robbery. Therefore, we hold that even if the trial court erred in admitting his afternoon statements at trial, this error constituted harmless error beyond a reasonable doubt. See *People v. Mulvey*, 366 Ill. App. 3d 701 (2006) (error in admitting evidence was harmless because it was cumulative of properly admitted evidence).

¶ 18 **CONCLUSION**

¶ 19 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.