

NOTICE
Decision filed 11/21/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 130084-U

NO. 5-13-0084

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 10-CF-616
)	
JAMES PIERSON,)	Honorable
)	John Baricevic,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's conviction for first-degree murder is affirmed, as the State proved his guilt beyond a reasonable doubt, and the trial court did not abuse its discretion when responding to questions posed by the jury during its deliberations.

¶ 2 In July 2010, Dennis "DJ" Iagulli and the defendant, James Pierson, were indicted for the first-degree murder of 22-year-old Zachary Irvin. See 720 ILCS 5/9-1(a) (West 2010). The defendant was 36 years old at the time; DJ was 41, and both were associated with the St. Louis area homeless community. Prior to their June 2010 arrests, the defendant and DJ had been living together in an abandoned warehouse off of Front Street in East St. Louis, near the Mississippi River.

¶ 3 In June 2012, the cause proceeded to a jury trial where the State maintained that the defendant was guilty of first-degree murder under multiple theories of accountability (see 720 ILCS 5/5-2 (West 2010)), one of which was that he was guilty of felony murder predicated on the offense of aggravated kidnapping (see 720 ILCS 5/9-1(a)(3) (West 2010); 720 ILCS 5/10-2(a) (West 2010)). The jury ultimately returned a general verdict finding the defendant guilty as charged.

¶ 4 On appeal from his conviction, the defendant argues that the State failed to prove his guilt beyond a reasonable doubt and that the trial court abused its discretion when responding to questions that the jury submitted during its deliberations. For the reasons that follow, we affirm.

¶ 5 **BACKGROUND**

¶ 6 On Thursday, June 17, 2010, Irvin, who had been living with his grandmother in St. Elmo, Illinois, took a bus to St. Louis hoping to become a live-in volunteer at a faith-based outreach mission for the homeless. Irvin's grandmother later explained that "he was interested in learning more about homelessness" and "wanted to go down there and try to help out."

¶ 7 On the morning of Tuesday, June 22, 2010, while investigating a fire in a remote wooded area near Front Street, an officer with the East St. Louis police department found what was later identified as Irvin's mutilated corpse burning in a metal landscaping cart. After the East St. Louis fire department extinguished the fire, the St. Clair County coroner collected Irvin's burnt remains, and the Major Case Squad of Greater St. Louis,

which is a group of police detectives "pulled" from various agencies to work area homicides, was assigned to investigate Irvin's death.

¶ 8 An autopsy performed that afternoon revealed that Irvin's body was "incomplete" and had been extensively damaged by the fire. Irvin's arms were missing, and his legs had been "sawed off around the middle of the femoral bones." Most of the soft tissue of Irvin's head, neck, and trunk was either burned off or severely charred. As a result, his remains included "heaps and whole bunches" of burnt debris and portions of burnt bones. Irvin's body had been "wrapped in some kind of material," and a "strong smell of some kind of flammable liquid" was also noted.

¶ 9 The pathologist who performed Irvin's autopsy indicated that because his body had been burned and dismembered, it was not possible to detect every injury that he might have sustained prior to his death. Nevertheless, X-ray images of Irvin's remains resulted in the removal of a .22 caliber bullet from his third cervical vertebra. It was thus determined that Irvin had "died from a gunshot wound to the neck."

¶ 10 Later that day, while canvassing the woods north of where Irvin's remains were discovered, investigators came upon an abandoned warehouse. The warehouse was "all metal and concrete" and included a multi-room office area with a basement. The warehouse had no electricity or running water, and the rooms on the northeast side of the office area were the only rooms with exterior windows. By all accounts, the warehouse was a dark, "creepy" place "in the middle of nowhere."

¶ 11 When measured, the daytime temperature of the ambient air in the office area was over 150 degrees, and the nighttime temperature was estimated to be well over 100. In

the woods surrounding the warehouse, investigators found numerous trails, one of which led to where Irvin's remains had been burnt.

¶ 12 When investigators entered the basement of the warehouse through an unlocked door at the bottom of an external stairwell, they discovered that the basement was being used as living quarters and was comprised of three rooms. One of the rooms had its own doorway, a sink, and a urinal and was arranged as a bedroom with shelving, a small table, and an elevated mattress. In this bedroom, books, food, clothing, a prescription medicine bottle with the defendant's name on it, and numerous other personal effects belonging to the defendant were discovered. A semi-automatic .22 caliber rifle, .22 caliber ammunition, two pellet guns, an identification tag issued to Brian Lumpkins, and a pair of jeans later identified as Irvin's were also found.

¶ 13 Next to the bedroom was a larger room with a makeshift kitchen at one end and a tent set up at the other. A hole in the wall near the tent led into an even larger room where camping chairs, propane tanks, tools, scattered trash, additional tents, and a stairway leading upstairs were found.

¶ 14 When investigators proceeded upstairs, they saw what appeared to be another living quarters along the northwest wall of the large common area of the office area (the common area). On the floor by the wall, there was a gym mat and a sleeping bag. The sleeping bag was spread out, and at its foot, a camping chair was set up facing it. A pair of brass knuckles, a 9mm pistol, Irvin's driver's license, and various documents and personal items belonging to DJ were discovered nearby. Along the opposite wall, Irvin's shirt and underwear were found near the double doorway leading into a large room

adjacent to the common area (the large room). On the floor several feet away, a .22 caliber shell casing was found lying by a small strip of wood.

¶ 15 In the middle of the large room, investigators found a collapsed camping chair tied to a rope that was looped at the end. The rope led away from the chair and across the room towards the wall near the double doorway. Where the looped end of the rope rested on the floor, dozens of "ninety-degree drops" of blood were observed. Along the lower half of the wall in front of the blood drops, several bloody handprints and fingerprints were found.

¶ 16 When investigators entered a small corner room connected to the large room (the corner room), they saw several ceiling tiles arranged together on the floor. Blood had seeped through some of the tiles, and the room smelled like "an animal carcass." When the tiles were moved, a large area of dried blood and several smaller areas were visible on the floor. On the floor along the wall on one side of the blood, a blood-stained hacksaw, a blood-stained meat cleaver, and two blood-stained pairs of tin snips were found. On the other side, there was a second blood-stained hacksaw, a blood-stained saw knife, and a .22 caliber shell casing. On and around the frame of the doorway leading back into the large room, more bloody handprints and fingerprints were observed. Two of the bloody fingerprints discovered in the office area were suitable for forensic comparison, and both were later identified as Irvin's.

¶ 17 In a small room between and connected to the common area and the corner room (the small room), two additional .22 caliber shell casings were found on the floor. Ballistics later established that the bullet recovered from Irvin's neck and all four shell

casings found in the upstairs office area had all been fired from the .22 rifle found in the defendant's basement bedroom. When test fired, the rifle was unable to fire in rapid succession due to ejection and "feeding problems."

¶ 18 At approximately 7 p.m., two investigators driving to the warehouse observed the defendant walking northbound through a vacant parking lot off of Front Street near the Eads Bridge. As the officers passed the defendant, he pretended not to see them. When the officers turned their car around to make contact with the defendant, he hunched down and started "messaging with" one of his shoes. When the officers stopped and spoke with him, he showed them a Missouri identification card and was not further detained.

¶ 19 At approximately 9 p.m., as another group of detectives was driving away from the warehouse, the defendant was again observed walking northbound along Front Street. When the officers stopped and identified themselves, the defendant stated that he had seen "the police activity down by the warehouse" and was "curious as to what was going on." The defendant was asked to go to the East St. Louis police department, and he agreed to do so.

¶ 20 The defendant was subsequently interviewed by various investigators three times over the next three days. Including breaks, the sessions collectively yielded more than 20 hours of video, approximately 11 of which were shown to the jury at the defendant's trial. The defendant also participated in a video-recorded walk-through of the warehouse after the third interview, which the jury also viewed.

¶ 21 The defendant's first interview commenced on the night of Tuesday, June 22, 2010, at approximately 9:30 p.m. During the first interview, the defendant explained,

among other things, that he lived in St. Louis and spent his days collecting bottles and cans to make money for food and cigarettes. He further advised that he took lithium salt for a bipolar disorder and walked with a cane because he suffered from a degenerative bone disease. When the interviewing detectives asked the defendant about the warehouse, he first claimed that he "sometimes" stayed there. He then stated that he had moved into the warehouse in May and had recently been staying there "more and more frequently." The defendant explained that the warehouse had been discovered and set up by a man named Brian, whose last name he did not know. The defendant advised that Brian had recently been incarcerated. The defendant further advised that he lived in the basement bedroom that was once Brian's. The defendant claimed that DJ lived upstairs.

¶ 22 The defendant explained that he had met DJ through Brian, that Brian and DJ had been living at the warehouse long before he had moved in, and that DJ stayed there all the time. The defendant indicated that he did not socialize with DJ, that he did not know DJ's real name, and that he never went upstairs. The defendant further indicated that he did not like unknown people hanging around the warehouse because they might steal his stuff.

¶ 23 The defendant claimed that the only rifles he possessed were pellet guns. He further claimed that although Brian might have once owned a .22 rifle, he had never seen it, and he believed that it had been "lost in the woods." The defendant suggested that DJ might have kept a rifle upstairs. The defendant indicated that DJ had been at the warehouse all weekend but that he had not seen him. The defendant stated that he had

last seen DJ around noon on Monday, June 21, 2010, in St. Louis, and that they had waved to each other but had not talked.

¶ 24 When the investigators advised the defendant that they had discovered a crime scene at the warehouse, the defendant asserted that he had spent the night there on the 21st but had not seen or heard anything. He claimed that when he left the warehouse on the morning of the 22nd at around 9 a.m., he had not seen or heard anything, either. The defendant stated that whatever had happened had to have occurred upstairs. The defendant further stated that DJ had been acting "weird" lately.

¶ 25 The defendant told the investigators that DJ was gay and had a "steady parade" of boyfriends upstairs. The defendant suggested that one of DJ's boyfriends was a man named Rick, who lived in Soulard. The defendant claimed that two of DJ's friends, Kenny and Joe, had stayed at the warehouse on Friday, June the 18th, and Saturday, June the 19th, but had since left and joined a carnival. When asked if his fingerprints or DNA would be found in the upstairs office area of the warehouse, the defendant stated, "Absolutely not." Insisting that he had nothing to do with whatever crime was being investigated, the defendant explained that he kept to himself and tried to avoid being "caught up in other people's stupidity."

¶ 26 The defendant's second interview began on the night of Wednesday, June 23, 2010, at approximately 8 p.m. After identifying DJ from a photograph, the defendant repeated his earlier assertions that he did not socialize with DJ, that DJ had a "parade" of boyfriends upstairs, that one of DJ's boyfriends was named Rick, and that Kenny and Joe

had recently visited DJ before joining a carnival over the weekend. The defendant again indicated that he never went upstairs and tried to keep to himself.

¶ 27 The defendant maintained, among other things, that he had last seen DJ on the morning of Sunday, June the 20th, in St. Louis, but he then claimed that he had spoken with DJ at the warehouse later that night. The defendant stated that on the night of the 20th, DJ and two or three unknown men had been upstairs in the warehouse loudly arguing and fighting over money. The defendant claimed that when he had gone upstairs to confront DJ about the noise that they were making, he had seen what he thought was a rifle under DJ's sleeping bag. The defendant indicated that DJ and the unknown men had subsequently settled their disagreement and left. Stating that he had a "no-noise" policy, the defendant complained that DJ had often done things that could attract attention to the warehouse. The defendant further complained that DJ had often done things without thinking about the consequences.

¶ 28 When the defendant was shown a picture of Irvin, he initially said that Irvin might have recently visited DJ at the warehouse but was not one of the men who had been fighting upstairs on the night of the 20th. The defendant also recalled seeing Irvin's driver's license in a wallet upstairs on the night of the 20th. The defendant posited that Irvin was one of DJ's friends, like Kenny and Joe. The defendant again claimed that he had spent the night of the 21st at the warehouse and had not seen or heard anything upstairs. The defendant claimed that on the morning of the 22nd, he had gotten up around 10 a.m. and had spent the day in St. Louis. As he was coming home that night, he

saw the police cars headed towards the warehouse and had a brief encounter with two detectives who had checked his identification.

¶ 29 When the defendant was advised that a .22 rifle was found in his basement bedroom, he stated that he had no idea how it got there. He subtly suggested, however, that DJ might have put it there. The defendant further claimed that he had never seen or shot the rifle and that his fingerprints would not be on it. The defendant again claimed that he did not know Brian's last name, but he also stated that he had recently met with Brian's mother to give her some of Brian's property. At one point, the defendant described how Brian's friend, Grant, had once driven a Jeep onto the main level of the warehouse.

¶ 30 During a break in the second interview, while the defendant was alone, he opened a bag of his personal effects, removed Irvin's belt from the bag, and put the belt on. After the break, the defendant informed the investigators that he thought that DJ was dead and that Irvin might have killed him. Explaining that DJ had "enemies," the defendant asserted that Irvin was one of DJ's boyfriends and that they "had a beef" that had started long before the defendant had moved into the warehouse in May. He further claimed that Irvin had been to the warehouse on Thursday the 17th or Friday the 18th. The defendant again indicated that Irvin was not one of the men who had been arguing upstairs on the night of Sunday the 20th.

¶ 31 When the defendant was given the opportunity to state that he was only a witness to what had occurred and that he might have just "walked up on it," he redirected the conversation and intimated that he could only offer speculation. When asked why he was

protecting DJ if he believed that DJ was dead, the defendant stated it was because "things that [DJ had done] could come back later onto the house." The defendant explained that DJ was a sadomasochist who had raped homeless boys from St. Louis in the past. The defendant suggested that the rapes might have been religiously motivated and that Irvin might have been one of DJ's victims. The defendant indicated that the investigators had only a "small, small idea" of the kinds of things that had happened at the warehouse.

¶ 32 The defendant conceded that he generally had first-hand knowledge as to everything that went on at the warehouse and that he tried to protect its secrecy. He explained, for example, that to avoid being seen when he came and went, he took specific paths and routes and preferred to travel at night. When the defendant was again given the opportunity to say that he had merely seen what had happened to Irvin, he sat silent.

¶ 33 Although the defendant continued to deny having witnessed anything relevant, he eventually acknowledged that he had been at the warehouse when "it happened." The defendant also tried to distance himself from the tools that had been found upstairs.

¶ 34 When the defendant was accused of lying about what he knew and was advised that Irvin was dead and DJ was alive, the defendant again suggested that DJ was dead and that Irvin might have killed him. The defendant claimed that Irvin and DJ were lovers who had previously lived together. The defendant explained that Irvin and DJ had since had a "falling out" and that DJ did not like to discuss the matter. When the interviewers falsely claimed that they had DJ in custody, the defendant acted surprised and again indicated that DJ might have been the victim.

¶ 35 When asked about the times that DJ had raped homeless boys at the warehouse in the past, the defendant claimed that on each occasion, he had left and spent the night elsewhere. When the defendant was asked why he had not told the police about DJ's "ritualistic rape of boys," he stated, "That is a very, very good question." He then complained that thanks to DJ, he was now "homeless times two" and was a suspect in a murder investigation. When the defendant was again accused of withholding information, he stated that he was afraid to talk because he might get in trouble for not talking about the things that he had previously seen. He also claimed that he was afraid of DJ's boyfriends. The investigators subsequently advised the defendant that he "was living in a crime scene" and that things did not look good for him.

¶ 36 The defendant eventually indicated that on morning of Sunday the 20th, DJ had come downstairs to borrow the .22 rifle that had later been found in the defendant's bedroom. The defendant further explained that DJ had used the gun to bring Irvin back to the warehouse that night. The defendant stated that he had been upstairs when he had seen DJ and Irvin enter the warehouse together and that DJ had been carrying the rifle. The defendant had then collected some tools for DJ. Meanwhile, Irvin was just sitting there with his head down. The defendant claimed that Joe had been there, too. The defendant advised that he had then gone to the Lumiere casino in St. Louis. When he returned to the warehouse a few hours later, he went upstairs and saw Irvin's wallet and driver's license, but no one was there. The defendant suspected that DJ might have raped Irvin.

¶ 37 The defendant claimed that he had subsequently gone back to the Lumiere, where he ran into his friend, Rose, and had spent Sunday night at her house in St. Louis. The next morning, Rose's husband, Luis, gave him a ride to a Metro station, and he got back to the warehouse around 10 a.m. The defendant claimed that no one was there on the morning of the 21st, but he noticed that Irvin's wallet and the landscaping cart were gone. The defendant left the warehouse again, spent the day in St. Louis, and never saw DJ. The defendant claimed that when he returned to the warehouse that night, no one was there, and he had gone to bed.

¶ 38 The defendant stated that on the morning of Tuesday, June 22nd, he had gone upstairs around 9 a.m., and DJ and another man were there. The other man abruptly left, and D.J. asked the defendant to retrieve some tires for him. When the defendant asked DJ about the cart, DJ told him that it was "occupied." The defendant explained that DJ had gathered a large pile of blankets and clothing and had given him Irvin's jeans and belt. When the defendant returned with the tires, DJ told him to stay away from the warehouse for the day. The defendant claimed that he had no idea what was going on, but DJ indicated that he had the situation under control. The defendant advised that he had left and spent the day in St. Louis. The defendant stated that as he was returning to the warehouse that night, he saw a procession of cars heading in the direction of the warehouse and realized that DJ had "screwed up." When the defendant was reminded that Irvin's body had been found on the morning of the 22nd before 9 a.m., the defendant stated that he had the days mixed up and that what he claimed had occurred on Tuesday the 22nd had actually occurred on Monday the 21st.

¶ 39 When specifically asked if he had seen anything in the corner room of the office area, the defendant claimed that from a distance, he had seen what appeared to be someone lying on the floor covered with a blanket or a sleeping bag. The defendant claimed that he had also seen the handle of a hacksaw.

¶ 40 The defendant eventually stated that he believed that DJ might have killed Irvin and then cut up and burned his body. The defendant admitted that he had gotten some tires for DJ, but he denied having participated in Irvin's murder or the destruction of his corpse. At one point, the defendant claimed that DJ had gone to the Lumiere before cutting Irvin up.

¶ 41 When the defendant was again accused of withholding information, he claimed that he feared that he was already in trouble for seeing Irvin's body and collecting the tires and tools. When the defendant was subsequently placed under arrest for Irvin's murder, he proclaimed that what he had told the investigators didn't "mean squat."

¶ 42 The defendant's third interview commenced on the afternoon of Thursday, June 24, 2010. At the outset, the defendant acknowledged that he had previously been untruthful with the investigators. He stated that he knew, among other things, that Brian's last name was Lumpkins. The defendant then indicated that on Saturday the 19th, DJ had come downstairs to retrieve a pair brass knuckles that the defendant had inherited from Brian. DJ advised that he and Joe were going to bring Irvin to the warehouse to beat him up for robbing Joe. The defendant indicated that DJ had also asked him for the .22 rifle, which the defendant found odd since DJ kept a 9mm pistol upstairs. Nevertheless, the defendant "said fine" and gave DJ the rifle and a "handful" of rounds. The defendant

then left for the day. When he later returned, he went upstairs and saw Irvin sitting on a pallet in the common area with his head down. DJ and Joe were talking quietly nearby. It was dark outside, so DJ had his "little head-light thing on." When DJ asked the defendant if he intended to sleep at the warehouse that night, the defendant told him that he would leave and sleep somewhere else. The defendant explained that he had "walked in" on DJ raping a young man before and did not want to stay around because he knew that DJ was going to do something "stupid." The defendant claimed that he had gone to the Lumiere and had later spent the night at Rose's.

¶ 43 The defendant claimed that when he returned to the warehouse on the morning of Sunday the 20th, DJ and Joe were upstairs and had the cart loaded with blankets. After DJ and Joe advised the defendant that they had "a problem," the defendant and DJ went downstairs. After hearing a scuffle upstairs, DJ and the defendant ran back up; DJ grabbed the .22 rifle, and Joe held the defendant at bay at the top of the stairs. The defendant indicated that Joe knew that the defendant did not want to be involved in what might happen next. The defendant explained that Irvin had apparently been stripped naked and tied to a camping chair with rope. The defendant saw Irvin standing naked and then saw him sit down on the floor. The defendant heard five or six gunshots in rapid succession. As he was headed back downstairs, the defendant heard two additional "quick shots" followed by a single shot. The defendant later helped Joe retrieve some tires and roll them through the woods. Joe then collected the tools. The defendant examined Irvin's wallet before Joe placed it on a crate. DJ assured the defendant that the situation was "covered." The defendant then left. When he returned around midnight, DJ

and Joe were asleep upstairs. DJ advised the defendant that the situation had been taken care of, and the defendant went to bed. On the morning of Tuesday the 22nd, the defendant left for the day. When he returned later that evening, he saw police cars headed towards the warehouse.

¶ 44 When the defendant was confronted with the fact that he could not have possibly seen everything that he claimed to have seen from the top of the stairs, he indicated that he had briefly been in the common area before Joe had held him back and escorted him to the stairway. Before Joe had led him out, however, he had seen Irvin tied to a chair in the small room next to the corner room. While the defendant and DJ were talking, Irvin broke free from the chair. Irvin then ran from the small room to the corner room while DJ fired shots at him. When DJ finally hit Irvin, Irvin sat down on the ground. The defendant thought that DJ had shot Irvin in the back, but he did not see any blood. As Joe pushed him towards the stairway, the defendant heard more shots. At that point, the defendant told DJ that he was leaving, and DJ asked him to gather up the tires and the tools, which he did. The defendant claimed that DJ had asked him to help cut up Irvin's body, but he declined. The defendant then left the warehouse. When he returned that night, Joe was gone, and DJ stated that he had the situation covered. When the defendant awoke the next morning, the cart and tires were gone. The defendant acknowledged that his fingerprints might be found on the .22 because he had used it to go hunting after DJ had shot Irvin.

¶ 45 When the defendant was asked why his stories kept changing, he claimed that he had needed time to reflect and think about what had happened. The defendant indicated

that he knew what had happened but was afraid to implicate himself. Insisting that he had not killed Irvin and had not helped cut up his body, the defendant asked the investigators why he had been charged with murder. The defendant stated that he did not understand why DJ had killed Irvin, because DJ had advised that he was only going to beat Irvin up.

¶ 46 When the interviewing detectives questioned whether Joe had actually been present during the events in question, the defendant insisted that he had been. He emphasized, however, that he did not know Joe and had never seen him before. He further indicated that Joe had severe mental problems and seemed like a heavily-medicated "follower" who was "just along for the ride."

¶ 47 The defendant reiterated that Brian had set up the warehouse. The defendant explained that Brian had basically been the "boss" of the place. At one point, the defendant suggested that DJ had been trying to take over and run the warehouse in Brian's absence. Other times, however, the defendant indicated that DJ had been responsible for doing their laundry. The defendant stated that he had lived in the basement in the tent opposite the kitchen area before moving into Brian's room. The defendant explained that it was too hot to sleep upstairs and that downstairs was more secure.

¶ 48 The defendant stated that he, Brian, and DJ used to hunt small game in the woods around the warehouse. The defendant claimed that although Brian and DJ were very familiar with the trails in the woods, he was not. The defendant described a trail that led to an area off of Front Street where there were several large holes in the ground.

¶ 49 When asked whether DJ might have killed someone at the warehouse "before this," the defendant indicated that he had "heard a rumor from Brian" that DJ had. The defendant intimated that before he had moved in, DJ had raped and murdered at the warehouse on three prior occasions. The defendant further indicated that on the prior occasions, what had "started upstairs had ended off the premises."

¶ 50 When again asked to describe what he had witnessed, the defendant claimed that when he had gone upstairs on the morning of Sunday the 20th, he had seen Irvin sitting on a pallet in the common area, fully dressed with his head down. The defendant then left for a while. When he returned that afternoon and went upstairs again, he had seen Irvin naked and bound to a chair. The defendant demonstrated how Irvin's hands and feet had been tied. The defendant also added that Irvin's eyes had been covered with gauze pads and tape taken from the medical supplies that were kept in the basement. Irvin was not gagged and was not saying anything. He just sat there, silently looking down and sweating profusely.

¶ 51 The defendant indicated that there were no signs that Irvin had been beaten or injured. The defendant did not understand what was happening, because pursuant to the plan that he was "cool" with, DJ and Joe were merely going to beat Irvin up. The defendant suspected that Irvin had been tied naked to the chair because DJ had "probably" been having sex with him. The defendant advised that DJ had "played these types of games before" and again indicated that DJ had done so on three prior occasions. When the defendant asked DJ what he was doing, DJ said, "I got it." The defendant

acknowledged that DJ must have realized that at that point, Irvin could not be allowed to leave.

¶ 52 As the defendant was about to go back downstairs, Joe whispered something to Irvin, and with a roar, Irvin broke free from the chair. At that point, DJ grabbed the .22 and fired five or six rounds at Irvin. The defendant stated that Irvin had grabbed onto the doorjamb between the corner room and the large room and had peeked around the doorway into the large room. The defendant demonstrated how DJ had crouched down while aiming the rifle at Irvin. The defendant indicated that Irvin had sat down on the floor after DJ had shot him in the back. Irvin was not screaming or saying anything and was basically trapped. As the defendant was leaving, he heard two quick shots followed by a single shot. The defendant asserted that the entire event was like "a bad dream."

¶ 53 The defendant stated that after witnessing these events, he had thought about packing up and fleeing the warehouse but remembered that his DNA and fingerprints were all over the place. The defendant claimed that when he had subsequently gone back upstairs, DJ had asked him to get some tires and saws. DJ advised that he and Joe were going to cut Irvin up and burn him. The defendant stated that DJ had not asked him to help cut up Irvin's body. The defendant claimed that while he and Joe were gathering the tires, he had advised Joe to leave the warehouse and never come back. The defendant then got the cart and the tools. DJ again said, "I got it." The defendant explained that DJ had seemed "excited" and "happy" to cut up Irvin's body and had a "smile on his face." At one point, the defendant rhetorically pondered whether DJ was going to "serve [Irvin] up for dinner."

¶ 54 The defendant stated that after Irvin had been shot and killed, DJ had spent the night upstairs with one of his boyfriends. Meanwhile, Joe left, and the defendant spent the night at Rose's house in St. Louis. When the defendant returned to the warehouse on the morning of Monday the 21st, DJ's boyfriend abruptly left, and DJ gave the defendant the .22 rifle, which he secured downstairs. The defendant then went to the Lumiere while DJ cut up Irvin's body. The defendant indicated that when he left the warehouse, he had been anxious and nervous, but he couldn't just tell someone, "My roommate just killed somebody."

¶ 55 When the defendant returned to the warehouse later that afternoon, DJ told him to stay out of the corner room because it was "a mess." The defendant went to St. Louis again and returned to the warehouse sometime before midnight. The defendant initially claimed that he had not gone upstairs at that point but later stated that he had. The defendant claimed that when he had gone upstairs, DJ had appeared and without saying anything, had given him Irvin's jeans and belt. DJ was wearing the same clothes that he had been wearing before, but they had no blood on them. The defendant claimed that he had subsequently gone to Rose's house for a second night and had spent the early morning hours playing video games with her children. He then returned to the warehouse before dawn on Tuesday morning and slept a couple of hours before going back to St. Louis. The defendant claimed that he had later returned to the warehouse sometime between 9 a.m. and 11 a.m.

¶ 56 When asked specific questions about his accounts of what had occurred, the defendant stated, among other things, that on Saturday the 19th, he and DJ had been

upstairs when DJ had advised that he and Joe were going to bring someone back to the warehouse and beat them up for robbing Joe. The defendant explained that downstairs, when he had subsequently given DJ the brass knuckles and the .22 rifle, DJ had stated, "We're going to go take care of him." The defendant indicated that he had told DJ, "Do what you gotta do." The following morning, the defendant saw DJ and Joe escorting Irvin to the warehouse with the .22. He then watched as they entered through one of the upstairs bay doors.

¶ 57 Throughout the course of the interviews, the defendant expressed no remorse for Irvin, repeatedly referring to him as "the subject," to his body as "it," and to the dismemberment of his body as "the cutting." During one of his accounts of the shooting, the defendant explained how DJ had "caught up with [Irvin]" and "tagged him." The defendant explained that he had been wearing Irvin's belt because he "needed something to keep [his] pants up" and that he had accepted Irvin's jeans because they fit him. The defendant repeatedly indicated that his primary concern had been getting Irvin's body out of "the house."

¶ 58 Eventually, the defendant asked if he was going to be released from custody or placed in a witness protection program. The defendant estimated that on a 1-to-10 scale of dangerousness, DJ was an 8. The defendant was advised that he was considered a suspect and a participant, not just a witness. The defendant was further advised that when formally interviewed, DJ might try to blame him for everything. Acknowledging that he had been lying and giving conflicting stories, the defendant indicated that he

might have more to tell but was "still in shock." At the conclusion of the third interview, the defendant agreed to do a walkthrough of the warehouse that night.

¶ 59 During the walkthrough, the defendant demonstrated where he had allegedly been standing or walking when he had seen the various things that he claimed to have witnessed upstairs. The defendant indicated that he had seen Irvin tied to the chair in the small room next to the corner room where Irvin had been dismembered. The defendant further indicated that all of the eight or nine shots that he had heard had been fired in those two rooms.

¶ 60 In the large basement room, the defendant showed the investigators the cabinet where the medical supplies were kept. He also noted that one of the tents, several propane tanks, and numerous other items of property were missing. The defendant described the various items that had been used for cooking, heat, lighting, and sanitation. The defendant demonstrated how two of the upstairs bay doors were opened and kept locked from the inside. At one point during the tour, the defendant noted that they had a "[h]ell of a setup here."

¶ 61 At the defendant's trial, the defense presented expert testimony establishing that no gunshot residue had been found on the shirt that he had been wearing when he was arrested and that the prints of his shoes did not match footprints identified on three floor tiles that were taken from the office area of the warehouse. The State, in turn, elicited testimony that the prints of the shoes that DJ had been wearing when he was arrested did not match the footprints, either. The defendant did not testify.

¶ 62 In its closing arguments to the jury, the State contended, among other things, that the defendant had been a "willing participant and a willing accomplice during the kidnapping and murder" and was "just as responsible as if he, himself, [had] pulled the trigger." The State argued that the defendant was "the Lord of the warehouse" and that nothing occurred there without his permission, knowledge, and participation. The State maintained that the defendant was guilty of first-degree murder under general principles of accountability and under principles of felony-murder accountability, which the State referred to as a "more specific type of accountability."

¶ 63 In response, defense counsel argued, among other things, that the defendant's various statements to the police were too unreliable and contradictory to sustain a conviction for first-degree murder. Counsel suggested that the defendant's incriminating statements had been "manipulated and coerced." Emphasizing that Irvin had been detained and murdered upstairs "where DJ lived," counsel argued that DJ could have easily planted the .22 rifle in the defendant's bedroom. Counsel contended that the defendant had "no stake" in DJ's scheme to bring Irvin back to the warehouse for a beating. Counsel argued that although the defendant "lived with a psychopath" and "knew where things were in the warehouse," he was not guilty of first-degree murder.

¶ 64 The jury deliberated for approximately two hours before returning its general verdict finding the defendant guilty. The trial court subsequently imposed a 38-year sentence on the defendant's conviction. In February 2013, the defendant filed a timely notice of appeal.

¶ 65

DISCUSSION

¶ 66 The defendant argues that his conviction should be reversed because the State failed to prove his guilt beyond a reasonable doubt. Alternatively, he maintains that the cause should be remanded for a new trial because the trial court abused its discretion when responding to questions posed by the jury during its deliberations. We disagree with both contentions and accordingly affirm.

¶ 67

Reasonable Doubt

¶ 68 It is well established that "[a] reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). When considering the sufficiency of the evidence, it is not our function to retry the defendant. *Id.* The relevant question is whether, after reviewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Id.*

¶ 69 A criminal conviction may be sustained on circumstantial evidence, provided the elements of the crime have been proven beyond a reasonable doubt. *People v. Sutherland*, 223 Ill. 2d 187, 242-43 (2006). "The trier of fact need not, however, be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). "It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.* "Further, in weighing evidence, the trier of fact is not required to disregard inferences

which flow normally from evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992) (internal citations omitted).

¶ 70 A person commits first-degree murder when he kills an individual without lawful justification and in performing the acts which cause the death,

"(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or

(3) he is attempting or committing a forcible felony other than second degree murder." 720 ILCS 5/9-1(a) (West 2010).

Because first-degree murder "is but a single offense," a general verdict of guilty "need not rest on a unanimous finding of a particular theory of murder." *People v. Smith*, 233 Ill. 2d 1, 16-17 (2009).

¶ 71 Aggravated kidnapping is a forcible felony. See 720 ILCS 5/2-8 (West 2010). A person armed with a firearm who secretly confines an individual against his will or who by force or threat of force, carries or escorts an individual from one place to another with the intent to secretly confine him against his will commits the offense of aggravated kidnapping. See 720 ILCS 5/10-1(a)(1), (2) (West 2010); 720 ILCS 5/10-2(a)(6) (West 2010); *People v. Casiano*, 212 Ill. App. 3d 680, 687 (1991). "The secret confinement element may be shown by proof of the secrecy of the confinement or the secrecy of the place of confinement." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 227 (2009).

¶ 72 Under Illinois law, a person is legally accountable for the conduct of another when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). "To prove that the defendant possessed the intent to promote or facilitate the crime, the State may present evidence which establishes beyond a reasonable doubt that the defendant either shared the criminal intent of the principal or that there was a common criminal design." *In re W.C.*, 167 Ill. 2d 307, 337 (1995). "The law is well established that since intent can seldom be proved by direct evidence, it may be inferred by the trier of fact from acts committed and circumstances in evidence." *People v. Baum*, 219 Ill. App. 3d 199, 201 (1991).

¶ 73 Under the common-design rule,

"[w]hen 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts." 720 ILCS 5/5-2(c) (West 2010); see also *People v. Fernandez*, 2014 IL 115527, ¶ 13.

Under the common-design rule, a person who aids or abets another in the commission of an offense is thus legally accountable for every criminal act committed in furtherance of the offense or " 'in connection therewith.' " *Fernandez*, 2014 IL 115527, ¶ 16 (quoting *People v. Kessler*, 57 Ill. 2d 493, 499 (1974)).

¶ 74 Evidence of a common criminal design need not be supported by words of agreement, but may be drawn from the circumstances surrounding the commission of an act by a group. *In re W.C.*, 167 Ill. 2d at 338. Evidence demonstrating that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another. *Id.*

¶ 75 "While mere presence at the scene of a crime, alone, does not render a person accountable, it is a factor that may be considered with other circumstances when the trier of fact determines accountability." *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 38. "Accountability may be established through a person's knowledge of and participation in the criminal scheme, even though there is no evidence that he directly participated in the criminal act itself." *In re W.C.*, 167 Ill. 2d at 338. Factors that will support a finding that a defendant is legally accountable for the criminal acts of another under the common-design rule include his approving presence at the crime scene, his flight from the scene, his close affiliation with his codefendant after the commission of the crime, his failure to report the crime, his sharing in any proceeds of the crime, and his destruction or disposal of evidence. *Fernandez*, 2014 IL 115527, ¶ 17; *People v. Taylor*, 164 Ill. 2d 131, 141 (1995); *People v. Gabriel*, 398 Ill. App. 3d 332, 345 (2010).

¶ 76 Where a defendant's statements are contradicted by other facts and circumstantial evidence, the trier of fact need not believe the statements, even though other witnesses do not directly contradict them. *People v. Batchelor*, 171 Ill. 2d 367, 376-77 (1996). When a defendant gives inconsistent statements regarding his involvement in a crime, the trier

of fact is free to accept or reject as much or as little of the statements as it pleases. See *People v. Wesley*, 65 Ill. App. 3d 25, 31-32 (1978). A trier of fact may also consider a defendant's false exculpatory statements and false alibis as evidence of his consciousness of guilt. *People v. Milka*, 336 Ill. App. 3d 206, 227-28 (2003). Additionally, "[a] defendant's involvement can be inferred from inconsistent statements and after-the-fact behavior that amount to an attempt to conceal the truth." *People v. Reeves*, 385 Ill. App. 3d 716, 727 (2008); see also *People v. Hommerson*, 399 Ill. App. 3d 405, 410 (2010); *People v. Rish*, 208 Ill. App. 3d 751, 767-68 (1991). "When a defendant elects to explain the circumstances of a crime, he is bound to tell a reasonable story or be judged by its improbabilities and inconsistencies." *People v. Nyberg*, 275 Ill. App. 3d 570, 579 (1995); see also *Rish*, 208 Ill. App. 3d at 768 ("Perhaps the most telling evidence of all was the inconsistent statements given to the police after the defendant's arrest.").

¶ 77 With these principles in mind, we find that the evidence adduced at trial overwhelmingly established the defendant's guilt beyond a reasonable doubt. Among other things, the evidence demonstrated that the defendant was intimately familiar with the contents, features, and history of the warehouse and had been living there much longer than he had claimed. Additionally, prior to his arrest, the defendant had been staying in what the State aptly referred to at trial as the "deluxe suite in the basement."

¶ 78 The defendant was very security-minded and protective of the warehouse. The jury could have reasonably concluded that only a few people knew about the warehouse, that the defendant had been managing it in Brian's absence, and that despite the defendant's suggestions that DJ had a "parade" of unknown boyfriends upstairs where he

allegedly slept during the summer months, no one was allowed in "the house" without the defendant's approval or authorization.

¶ 79 The jury could have concluded that knowing that his "roommate" DJ was a violent sadomasochist who had raped and killed young homeless men at the warehouse on previous occasions, the defendant had given DJ the brass knuckles, the .22 rifle, and a "handful" of rounds knowing that DJ was going to use them to bring someone back on the weekend of June 19, 2010. The defendant described, among other things, how he had watched Irvin enter the building through one of the upstairs bay doors, and his descriptions of Irvin's murder included details such as how Irvin had been tied naked to a chair with gauze pads over his eyes. The defendant acknowledged that after the murder, he had collected the tools and tires for DJ, knowing that DJ was going to use them to cut up and burn Irvin's body. The defendant further acknowledged that he had nonchalantly taken possession of Irvin's jeans and belt.

¶ 80 Viewed in the light most favorable to the State, the jury could have concluded that at the very least, the defendant was voyeuristic and complicit of DJ's sadistic activities and that he had approvingly witnessed the events that culminated in Irvin's murder. The jury could have further concluded that the defendant would not have left the warehouse while "the subject" was there and that he had assisted DJ in the dismemberment and disposal of Irvin's corpse beyond merely gathering the tires and tools.

¶ 81 The jury could have concluded that when the investigators discovered the warehouse, the defendant fled, leaving behind evidence that he knew would incriminate him. Anxious to learn what the police had discovered, the defendant had later allowed

himself to be apprehended so that he could try to convince them that he was a hapless victim of DJ's "stupidity" before DJ could state otherwise.

¶ 82 When interviewed, the defendant had attempted to conceal the truth of his involvement with elaborate stories and self-serving lies. The defendant's varying accounts conflicted in glaring respects and included characters who may or may not have existed. Moreover, as the State suggests on appeal, much of what the defendant claimed was wholly at odds with the physical evidence.

¶ 83 The defendant maintained, for instance, that Irvin, who had no observable signs of injury, had been shot and killed in the corner room moments after breaking free from the chair in the small room. The defendant further claimed that all of the eight or nine shots that he had heard, including the volleys of "quick shots," had been fired in those two rooms. The chair was discovered in the large room, however, and the defendant's accounts failed to explain the blood evidence found on the floor and the wall near the looped end of the rope that was tied to the chair. His accounts further failed to explain the blood evidence found on and around the frame of the doorway leading from the corner room into the large room. The jury also heard that the .22 rifle was incapable of firing rounds in rapid succession due to "feeding problems," that a total of only four .22 caliber shell casings had been found in the upstairs office area, and that one of the casings had been found in the common area.

¶ 84 Considering the evidence in its entirety, the jury could have ultimately concluded that regardless of who fired the fatal shot into Irvin's neck, at the very least, the defendant had played a facilitative role in the entire sequence of events that occurred before, during,

and after Irvin's kidnapping and murder. The evidence supports a finding that the defendant and DJ were equally responsible for the crimes under the common-design rule, and we note that all of the aforementioned factors that will support such a finding were proven in the present case. The evidence further supports the inferences that the crimes were committed pursuant to a preconceived plan and that the defendant and DJ shared the same criminal intent. On appeal, the defendant maintains that the State's evidence was insufficient to prove that he intended to personally participate in either the kidnapping or the murder, but as previously indicated, "active participation has never been a requirement for imposing criminal liability under a theory of accountability." *Batchelor*, 171 Ill. 2d at 376.

¶ 85 We lastly note that by his own admissions, the defendant gave DJ the brass knuckles, the .22 rifle, and a "handful" of rounds, knowing that DJ was going to use them to bring Irvin back to the warehouse for an alleged beating. By his own admissions, the defendant was "cool" with DJ's plan, and when DJ indicated that he was "going to take care of [Irvin]," the defendant had told him, "Do what you gotta do." On these facts alone, if credited, the jury could have determined that with the intent to facilitate the offense of aggravating kidnapping, the defendant had aided in its commission prior to its occurrence and was thus guilty of felony murder. See *People v. Pollock*, 202 Ill. 2d 189, 211 (2002); *People v. Ernst*, 219 Ill. App. 3d 51, 57-58 (1991). Under the circumstances, we need not address the State's contention that the evidence adduced at trial was sufficient to support a finding that the defendant "was the one who shot Irvin with the requisite mental state." See, e.g., *Reeves*, 385 Ill. App. 3d at 728.

¶ 87 During closing arguments, using a digital slideshow, the State gave the jury a preview of the instructions that it would receive and discussed at length how the first-degree murder and accountability instructions should be applied and considered in conjunction with each other. Specifically referencing the first-degree murder issues instruction, the State emphasized that the phrase "legally responsible" was "accountability language."

¶ 88 Referencing the State's slideshow presentation, defense counsel countered that the jury had to consider the reliability of the evidence that the State was asking the jury to apply to the instructions. Stating, "It's not a math equation," counsel suggested that the State's "[i]nset this here, inset that there" approach was too simplistic.

¶ 89 The instructions that the jury subsequently received included the issues instruction for first-degree murder when accountability is also an issue. See Illinois Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. 2000) (hereinafter IPI Criminal No. 5.03), Committee Note at 146; IPI Criminal No. 7.02 (4th ed. 2000), and Committee Note at 193. In pertinent part, the modified instruction stated the following:

"To sustain the charge of first[-]degree murder, the State must prove the following propositions:

First Proposition: that the defendant or one for whose conduct he is legally responsible performed the acts which caused the death of Zachary Irvin[.]"

¶ 90 After deliberating for approximately an hour and a half, the jury sent out a note asking the following questions: 1) "In the first proposition, what does the phrase

'performed the acts which caused the death' mean?"; 2) "Are these considered physical acts that literally caused the death of Zachary Irvin (giving gun)?"; and 3) "What is the specific definition of the phrase?"

¶ 91 The parties subsequently agreed that the jury's confusion would be resolved once it realized that the phrase "one for whose conduct he is legally responsible" should be read in conjunction with the accountability definition instruction that they had been given, *i.e.*, IPI Criminal No. 5.03, which stated,

"A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense.

The word 'conduct' includes any criminal act done in furtherance of the planned and intended act."

The parties thus agreed that the trial court could properly answer the jury's questions by directing it to consider the instructions that it had already been given. When the court indicated that it was going to instead direct the jury to read IPI 7.02 in conjunction with IPI 5.03, the State did not object, and defense counsel acknowledged that the court had the discretion to do so. The trial court then answered the jury's questions with the following response:

"You should give all jury instructions equal weight and not emphasize one over the other[.] [H]owever[,] you should read the issues instruction while keeping the accountability instruction in mind."

Shortly thereafter, the jury returned its general verdict finding the defendant guilty of first-degree murder.

¶ 92 On appeal, claiming that the trial court overemphasized IPI 5.03 and "effectively directed a verdict against [him]," the defendant argues that the trial court erred in its response to the jury's inquires. We disagree.

¶ 93 "Jurors are entitled to have their questions answered." *People v. Reid*, 136 Ill. 2d 27, 39 (1990). "Thus, the general rule is that the trial court has a duty to provide instruction to the jury where it has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion." *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994). "This is true even though the jury was properly instructed originally." *Id.* at 229.

¶ 94 When the jury expresses explicit difficulties, "the court should resolve them with specificity and accuracy." *Id.* "However, in providing an explanation to a jury, a trial court may not misstate the law or infringe on the province of the jury." *People v. Hasselbring*, 2014 IL App (4th) 131128, ¶ 47. Accordingly, the court must refrain from answering a question that requires it to "make a conclusion on the issues at trial" (*People v. Boose*, 256 Ill. App. 3d 598, 604 (1994)) or "express an opinion which would probably direct a verdict one way or the other" (*Reid*, 136 Ill. 2d at 39).

¶ 95 When determining whether a trial court's response to a jury question was appropriate, a reviewing court initially determines whether the court abused its discretion in deciding to answer the question in the first place. *Hasselbring*, 2014 IL App (4th) 131128, ¶ 46. An abuse of discretion will be found only when the trial court's decision was arbitrary, fanciful, or unreasonable "or where no reasonable person would take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). A reviewing court next decides, as a question of law reviewed *de novo*, whether the trial court's response was accurate. *Hasselbring*, 2014 IL App (4th) 131128, ¶ 46.

¶ 96 Here, we cannot conclude that the trial court abused its discretion in addressing the jury's confusion regarding the interrelationship of IPI 7.02 and IPI 5.03. Further, it is undisputed that the court's response accurately stated the law.

¶ 97 As indicated, a trial court is obligated to provide instruction to the jury when it seeks clarification on a specific point of law, "even though the jury was properly instructed originally." *Childs*, 159 Ill. 2d at 229. As the State suggested below, the jury's confusion in the present case likely stemmed from the fact that unlike IPI 7.02, IPI 7.01, *i.e.*, the definition instruction for first-degree murder that the jury received, is not modified when accountability is an issue. See IPI Criminal No. 7.01, and Committee Note; see also *People v. Moon*, 107 Ill. App. 3d 568, 574-75 (1982) (noting that "the jury's inquiry evidenced confusion concerning the possibility of convicting [the] defendant on an accountability theory where the murder instruction referred solely to an act performed by [the] defendant"). It is arguable that counsel's comments regarding the State's "[i]nset this here, insert that there" approach might have also contributed.

¶ 98 In any event, by correctly informing the jury that IPI 7.02 should be read in conjunction with IPI 5.03, the trial court was able to alleviate the jury's confusion without having to directly answer its specific questions. The trial court's response was accurate and objective and did not include opinions or conclusions that might have improperly directed the jury's verdict as the defendant suggests on appeal. Under the circumstances, we cannot say that the trial court's response was inappropriate. *Cf. People v. Banks*, 281 Ill. App. 3d 417, 422 (1996) (finding that where the trial court's comments "decided the crucial fact question for the jury," the comments "had the effect of directing a verdict of guilty"). Moreover, even assuming that the trial court should have simply advised the jury to consider the instructions that it had already been given, we would conclude that any resulting error was harmless. See *People v. Dennis*, 181 Ill. 2d 87, 107-09 (1998).

¶ 99

CONCLUSION

¶ 100 For the foregoing reasons, the defendant's conviction is hereby affirmed.

¶ 101 Affirmed.