2017 IL App (2d) 150250-U
No. 2-15-0250
Order filed March 22, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-2132
MICHAEL SEALS,	)	Honorable Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly denied defendant's motion to suppress his statement: to the extent that defendant had effectively invoked his right to remain silent, the police scrupulously honored that invocation before initiating the interrogation that led to his statement; in light of the admissibility of defendant's statement, any other evidentiary error was harmless; (2) because the trial court, after properly finding the unfit defendant not not guilty, imposed a statutorily unauthorized term of commitment for treatment, we reduced that term to the maximum authorized term, and, because that term had expired, we remanded the cause for proceedings under section 104-25(g).

¶ 2 Defendant, Michael Seals, appeals after a not not guilty finding in a discharge hearing under section 104-25 of Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-25 (West

2014)). He asserts that the court erred when it ruled that his inculpatory statement to police was admissible despite his assertion of the intention to remain silent and when it allowed a police officer to testify about a missing surveillance recording. He also asserts that the court imposed an impermissible term of commitment. We hold that the court properly admitted the inculpatory statement and that any error in allowing testimony about the missing recording was harmless. We therefore affirm the not not guilty finding. The State confesses error as to the term of commitment. We therefore modify the term to a permissible term, and, as that term is up, we remand for further proceedings under section 104-25(g) of the Code (725 ILCS 5/104-25(g) (West 2014)).

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of aggravated domestic battery (great bodily harm to D.J., defendant's stepfather) (720 ILCS 5/12-3.2(a)(1), 3.3(a) (West 2012)), two counts of aggravated battery (great bodily harm to D.J. (720 ILCS 5/12-3, 3.05(a)(1) (West 2012)), and bodily harm to F.S., a physically handicapped person (720 ILCS 5/12-3, 3.05(d)(2) (West 2012))), and two counts of domestic battery (bodily harm to D.J. (720 ILCS 5/12-3.2(a)(1) (West 2012)) and bodily harm to F.S., defendant's mother (720 ILCS 5/12-3.2(a)(1) (West 2012))).

¶ 5 The court found defendant unfit for trial on September 11, 2013. On September 30, 2014, the court received a report stating that no reasonable probability existed that defendant would be found fit within a year—and, in any event, a year had passed. Therefore, with the agreement of the parties, the court set a discharge hearing.

¶ 6 Defendant filed a motion *in limine* to bar testimony from Chris Allbee of the Waukegan police concerning what he had seen on a security camera recording; the recording itself was lost. The court ruled for the State.

¶ 7 The witnesses were Dr. William C. Watson, Allbee and fellow Waukegan patrol officer Chad Lawrence, D.J., and Detective Gerry Grzeda of the Waukegan police, who interviewed defendant. The State also intended to have F.S. testify, but it had not subpoenaed her and could not find her.

¶ 8 Watson testified first. At about 7:30 p.m. on July 30, 2013, D.J. arrived at an area trauma center. When Watson examined him there, he showed signs of a serious head injury. He had bleeding and swelling in his brain and was admitted to the intensive care unit, where he stayed for five days. He had significant neurological deficits including long-term memory deficits, when he was discharged to a rehabilitation facility. While hospitalized, he had limited memories of how he was injured.

¶ 9 Lawrence testified after Watson. He was dispatched to a building in the Whispering Oaks apartment complex (also known as "Woodland Village") based on a report of a fight or a "domestic." He described the scene in the hallway outside of apartment 127:

> "[A] door on the left was open. I could hear people screaming.
>
> I saw [*sic*] broken glass dish in the middle of the hallway.
>
> As I got closer to the door, I saw a gentleman laying inside the apartment unconscious but breathing.
>
> I saw a female, older female, behind him crying.
>
> There were several people in the hallway screaming."

The body of the unconscious man lay half in and half out of the apartment so that it was blocking the door. The woman had blood on her face.

¶ 10 Lawrence spoke to a teenage girl who said that she had seen the attack and who gave him a description of the perpetrator. He relayed that description to the Whispering Oaks security

staff. Security officers quickly detained a man who matched the description and brought him to Lawrence. This was defendant, who was "sweating profusely" and appeared to be agitated. Lawrence spoke to defendant:

> "The Defendant *** said when I asked him what had happened, he said, 'I ain't saying shit. I don't give a fuck.' "

Lawrence "placed [defendant] into custody," read him his *Miranda* rights, and transported him to the Waukegan police station.

¶ 11 After this testimony from Lawrence, defense counsel asked the court to treat defendant's comment as an explicit refusal to speak to the police, made in custody. He suggested that the court reserve ruling on his motion to suppress defendant's later inculpatory statement until the close of evidence. The court agreed to this procedure.

¶ 12 Allbee's testimony followed Lawrence's. Allbee said that he arrived at Whispering Oaks after both Lawrence and the fire department emergency medical technicians or paramedics. He saw D.J. lying in the hallway surrounded by fire department personnel; Allbee got only "a glance" at D.J. Allbee identified a photograph of D.J. but did not explain how he had become familiar with D.J.'s face. Allbee spoke to F.S., who was sitting in her wheelchair with her lip bloodied.

¶ 13 The State made an offer of proof that F.S. told Allbee that she and defendant had been arguing about defendant's coming into the apartment complex without following the rules for guests. Shortly after this, D.J., who had been eating in F.S.'s apartment, got up to take his bowl back to his own apartment across the hall. F.S. heard a disturbance and went to see what was happening. She saw defendant grabbing D.J. and smashing him against the floor. She went into the hallway and tried to pull defendant off D.J. She succeeded in pulling him away, but

defendant struck her in the face. The court ruled that it would consider the statement for some unspecified limited purpose:

> "Well, then, [F.S.'s statement] goes to identify [defendant] being at the scene, and being involved in this.
>
> I'll let the testimony stand, but the details of what happened, I'm not going to consider it as it goes to the offender.
>
> I'll consider it for that purpose."

¶ 14 After speaking to F.S., Allbee went out into the hallway, where he saw a broken bowl and what appeared to be blood. He then walked outside to some steps that went to the parking lot. He found another item that he thought might relate to the incident. The State asked Allbee if he next went to the front security booth. He responded, "Prior to that, I had spoke [*sic*] to [F.S.] in the apartment and do [*sic*] a few more things in the apartment, but then later on, yes, I went to the front security booth."

¶ 15 The State asked Allbee about the recording at issue in this appeal:

> "Q. Did you ask for any video surveillance?
>
> ***
>
> A. Yes.
>
> [Tilio Hernandez, a security guard,] told me that he had some, so I said 'Great, I will be up there to see it'.
>
> Q. And then you went in to see it, is that right?
>
> A. Yes."

¶ 16 Allbee was familiar with the guards and the booth from having regularly patrolled that section of town. Allbee went to the booth, a small freestanding building, and watched the

security recording that is at issue in this appeal. Hernandez replayed video of "[t]he incident that occurred" on one of the security screens, a black and white display about six inches across. Hernandez had no difficulty pulling up the relevant video. Replaying a security recording this way was a common procedure for Allbee when there had been an incident at Whispering Oaks. Hernandez told Allbee that the recording came from the camera that covered the hallway outside of apartment 127. Defense counsel objected to allowing Allbee to describe the recording's contents, but the court permitted that testimony.

¶ 17 Allbee, who had seen defendant in person briefly and from a distance of about 50 feet as security was escorting him to Lawrence, described what he saw defendant do in the hallway according to the video:

> "Well, you could see outside hallway, outside 127-128 apartment doors.
>
> You see the door open to 127.
>
> The Defendant walks out into the hallway. He's just outside the door in the hallway, kind of walking back and forth, pacing, if you will, for a few moments outside the hallway, and then soon after that, the door opens again, [D.J.] walks out.
>
> He's carrying a bowl in his hand, and then the Defendant just grabs a hold of [D.J.], pulls him down to the ground.
>
> He's on top of him. He starts grabbing him by his torso, his upper body and he's lifting him up and push[ing] his head down into the ground several times.
>
> And he's also throwing a few punches at him as well.
>
> This goes on for probably about 10-15 seconds.
>
> The door opens again. You can see [F.S.] come out.

She kind of leans over from her chair, the best she can, and grabs a hold of the Defendant and pulls him.

And then the Defendant gets up and punches her one time in the face and *** Defendant then walks west down that same hallway where you have all the photos that we went over earlier, walks west down that same hallway that's in shot of the video until he goes off screen, off of the view of the camera.

And then you can see different people gathering around, you know, a crowd ***."

Allbee observed that F.S., like D.J., had come out of apartment 127. Defendant came out of the apartment at time-stamp 18:35, and started pacing the hallway. D.J. walked out three minutes later. Defendant came back into view at time-stamp 18:41. When defendant returned, he smashed D.J.'s head into the tile floor of the hallway several times before walking away in the direction from which he had come.

¶ 18 Allbee made notes about the video and then told Hernandez that someone would be back the next day to get a copy; the guards on duty did not have access to the recording system to make a copy from the hard drive.

¶ 19 On cross-examination, Allbee said that he had no idea if anyone had obtained a copy of the security recording. He had expected that an investigator would do that.

¶ 20 D.J. testified for the State. He said that he was in F.S.'s apartment the morning of the incident—D.J.'s testimony suggested that he was unclear on the time of the attack, which he seemed to suggest occurred in the morning. He heard F.S. tell defendant that she had received a warning that she could not allow guests such as defendant to wander unaccompanied around the complex. Defendant nevertheless kept going in and out of the apartment that morning. After a while, D.J. washed out a dish he had brought over and then he left F.S.'s apartment to take it

back to his own apartment (which was directly across the hallway). As he was fumbling to open his lock, defendant grabbed him by the throat from behind and pulled him to the floor:

> "Q. And what happened next?
>
> A. I came off.
>
> I dropped the bowl and I grabbed his arms and he put me to the floor.
>
> Q. Do you remember anything else happening, sir?
>
> A. I remember I punched him and told him don't do that."

D.J. did not remember what happened after that, but he did remember asking defendant, "Why?"

¶ 21 Grzeda was the State's final witness. On July 30, 2013, at about 7:30 p.m., he met defendant in a booking room at the Waukegan police station and escorted him to an interview room. He asked defendant to sit and left to "retrieve his paperwork." He asked "Detective Mandro" to assist with the interview and went to get a rights-waiver form. He read defendant the rights from the form and then handed the form to defendant, who "appeared to read it." Defendant did not ask any questions about the form and signed it without objection. The waiver was dated "7/30/2013 at 9:17 p.m." Defendant spoke to Grzeda, who prepared a typed statement for defendant to sign. Grzeda said that defendant admitted striking his stepfather and mother:

> "He said him and his mother were having an argument about the housing arrangement, had something to do with security problems within management.
>
> During that time, *** her husband, tried to intervene during the arguments.
>
> He said that he snapped, threw him down to the ground and hit his head against the ground until he got tired.
>
> He said that he remembers getting up and then, his mom, either intervening or saying something.

He punched her once in the face, looked for his keys, and couldn't find them and then exited the building but was stopped by the police.

Q. Now, how did the Defendant refer to [D.J.]?

* * *

A. He never even said anything by name.

He referred to mother's husband or the man.

Q. Now, in this particular argument, in this particular argument, was he a little bit more specific about exactly what the argument was about?

A. It was an issue with security that the mother was saying that he wasn't supposed to be on the lease.

He brought up the fact that there is no problem with security, that they haven't approached him about any issues of him living there.

Q. Did he tell you where this particular fight happened?

A. I didn't ask specifically, with the exception in the apartment.

* * *

A. After the altercation happened, he got up, looked for his keys and wallet but was unable to locate them.

So he then he left the building."

Grzeda had spoken to Allbee in advance of interviewing defendant, but had not spoken to Lawrence. As a result, he was not aware that defendant had made any comments to suggest unwillingness to speak to the police.

¶ 22 After Grzeda's testimony, defense counsel argued that Lawrence's question to defendant clearly took place while defendant was in custody and that there were only two hours between Lawrence's question and the formal questioning by Grzeda.

¶ 23 The court questioned whether Lawrence had directed his question to defendant. It noted that the question came before Lawrence took steps to place defendant under arrest and that Lawrence gave *Miranda* warnings immediately after those formal steps.

¶ 24 The court found defendant not guilty as to the charges involving F.S., but not not guilty of the charges involving D.J. The court, in discussing the evidence, mentioned the video-recording-derived evidence and said that Allbee was very credible. The court ruled that the extended period of treatment to which defendant was subject was seven years from the date of the initial finding of unfitness. Defendant filed a post-hearing motion in which he asserted that the court had erred in admitting his inculpatory statement and testimony about the missing recording. The court denied defendant's motion, and defendant appealed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant makes three claims of error. The State has confessed error as to the third.

¶ 27 One, defendant asserts that the court should have suppressed his statement because he invoked his right to remain silent while in the custody of a security officer acting at the behest of the police and because the police did not satisfy the requirements for resuming questioning after a defendant has invoked his right to remain silent.

¶ 28 Two, he asserts that the State failed to establish the reliability of the missing surveillance recording and that the trial court thus erred in allowing Allbee to testify about what he had seen on the recording. Defendant acknowledges that hearsay is permissible at a discharge hearing and

that Rule 1004 of the Illinois Rules of Evidence (eff. Jan. 1, 2011) permits the contents of an unobtainable document to be introduced other than through the original. However, he argues that the State failed to lay a proper foundation for the testimony in that Allbee could not establish the reliability of the recording system. Moreover, Allbee, by testifying about his interpretation of the recording, invaded the province of the trier of fact.

¶ 29 Defendant does not discuss the overall requirements for the reversal or vacatur of a not not guilty finding. However, he suggests that his entitlement to relief depends on our deeming that the court erred in admitting *both* his inculpatory statement and Allbee's testimony about the recording. Specifically, "[w]ithout the testimony from Allbee ***, and without the defendant's statements to police ***, this case would have come down to the credibility of [D.J.], whose memory was shaky at best due to his injuries, and the question of whether the defendant was justified in using force to protect himself from the punch [D.J.] *** threw at the defendant." He thus implies a concession that *either* claimed error, taken by itself, was harmless. The State does not address whether either asserted error might be harmless.

¶ 30 Three, defendant asserts that the court's commitment of defendant to a maximum of seven years' extended treatment was inconsistent with section 104-25(d)(1) of the Code (725 ILCS 5/104-25(d)(1) (West 2014)). He argues that the most serious offense of which the court found him not not guilty was a Class 2 felony, so that the maximum term permissible was 15 months. As that has passed, defendant argues that a remand for proceedings under section 104-25(g) of the Code (725 ILCS 5/104-25(g) (West 2014)) is now required.

¶ 31 The State has responded. First, on the suppression issue, the State argues that defendant was not in custody when he said that he was not going to say anything; it maintains that the security guards were not acting on the behest of the police. It further contends that defendant's

statement to Lawrence was not a clear and unambiguous invocation of his right to remain silent, but rather simply an "excited utterance." Alternatively, it argues that the police adequately re-Mirandized defendant at the police station.

¶ 32 Second, on the issue of the video testimony, the State argues that the court did not abuse its discretion. It contends that Allbee's testimony that the guards had regularly been able to provide him with relevant video recordings was sufficient foundation for his testimony about the video's contents.

¶ 33 Third, on the issue of the term of commitment, the State agrees that the court failed to set a length for an initial term of extended treatment that complied with the requirements of the Code and that the matter therefore must be remanded for proceedings pursuant to section 104-25(g) of the Code.

¶ 34 We accept the State's confession of error as to the length-of-treatment issue. However, we conclude that the court did not err in declining to suppress defendant's statement. We also hold that, given the strength of the unchallenged evidence, any error in admitting Allbee's testimony about the contents of the security camera recording was necessarily harmless. We therefore affirm the not not guilty finding.

¶ 35 Because defendant seeks reversal of the not not guilty finding, we start by describing the overall standard of review for such findings. "[A] discharge hearing is not a criminal prosecution. Rather, it is an 'innocence only' hearing that is civil in nature and 'simply enables an unfit defendant to have the charges dismissed if the State does not have the evidence to prove he committed the charged offenses beyond a reasonable doubt.' " *People v. Cardona*, 2013 IL 114076, ¶ 23 (quoting *People v. Waid*, 221 Ill. 2d 464, 480 (2006)). "If the evidence is found to be sufficient to establish the defendant's guilt, no conviction results. Instead, the defendant is

found *not* not guilty [citation] and may be held for treatment. A criminal prosecution *** does not take place unless or until the defendant is found fit to stand trial." (Emphasis in original.) *Waid*, 221 Ill. 2d at 470. Although a finding of not not guilty is not a finding of guilt resulting in a conviction, the standard of proof is nevertheless the same as that required for a conviction. *People v. Orengo*, 2012 IL App (1st) 111071, ¶ 25. We have thus held that the relevant standard of review is that outlined in *People v. Collins*, 106 Ill. 2d 237, 261 (1985). *People v. Peterson*, 404 Ill. App. 3d 145, 150 (2010). Thus, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). However, "[e]rror will be deemed harmless and a new trial unnecessary when 'the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result.' " *People v. McKown*, 236 Ill. 2d 278, 311 (2010) (quoting *People v. Arman*, 131 Ill. 2d 115, 124 (1989)).

¶ 36 Initially, we agree with defendant's implication that, for any possibility of establishing reversible error, he must show error in the admission of both his inculpatory statement and Allbee's testimony about the recording. We deem that D.J.'s testimony—together with other evidence that defendant does not now challenge, such as the medical evidence and that the police apprehended defendant close to where D.J. was lying—would have been a sufficient basis to sustain the not not guilty finding. See *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). D.J.'s testimony might have had weaknesses, but he identified defendant without hesitation. Moreover, the severity of D.J.'s injuries rendered implausible defendant's theory that the injuries were the

result of defensive blows. Given this, the addition of *either* defendant's inculpatory statement or Allbee's testimony about the recording would result in overwhelming evidence.

¶ 37 With this in mind, we consider the court's denial of the suppression motion. We conclude that, given the particular circumstances here, the police scrupulously honored defendant's right to cut off questioning. We therefore conclude that any error in admitting Allbee's testimony about the missing video recording was harmless.

¶ 38 The State has the burden of showing that it has maintained a defendant's fifth amendment rights as set out in *Miranda v. Arizona*, 384 U.S. 436, 475 (1966). A defendant's invocation of his or her right to remain silent must be unambiguous to be effective. *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010).

¶ 39 In *Michigan v. Mosley*, 423 U.S. 96 (1975), the Supreme Court addressed whether *Miranda* had created a *per se* rule against further questioning of a suspect who had previously invoked his or her right to remain silent. *Mosley*, 423 U.S. at 102-03. The Court concluded that no such *per se* rule was constitutionally required. Instead, the admissibility of statements a suspect makes after invoking the right to silence depends on whether the suspect's "right to cut off questioning was scrupulously honored." (Internal quotation marks omitted.) *Mosley*, 423 U.S. at 104.

> "In deciding [whether that right was so honored], courts should consider whether (1) the police immediately halted the initial interrogation after the defendant invoked his right to remain silent; (2) a significant amount of time elapsed between the interrogations; (3) a fresh set of *Miranda* warnings were given prior to the second interrogation; and (4) the second interrogation addressed a crime that was not the subject of the first interrogation. [Citation.] The fact that the second interrogation addressed the same crime as the first

interrogation does not preclude a finding that the defendant's right to remain silent was scrupulously honored." *People v. Nielson*, 187 Ill. 2d 271, 287 (1999).

¶ 40 When we review a trial court's ruling on a motion to suppress, we are deferential to the court's determinations of fact and credibility and thus will reverse those findings only if they are manifestly erroneous. *People v. Watson*, 214 Ill. 2d 271, 279 (2005). However, we review *de novo* the ultimate legal question of whether the evidence should be suppressed. *Watson*, 214 Ill. 2d at 279.

¶ 41 We assume for the sake of argument that Lawrence's single nonspecific question to defendant constituted custodial questioning. The security guards were delivering defendant into the hands of the police and indeed were physically close enough to doing so that Lawrence could speak directly to defendant. Thus, Lawrence arguably had effective control of defendant as soon as defendant approached him in the guards' control. Further, Lawrence's question to defendant about "what happened" was interrogation, that is, "express [police] questioning, *** [or] any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). However, although Lawrence's single question to defendant fell within the definition of "interrogation," it was qualitatively different from the formal custodial questioning that we typically are referring to when we speak of "interrogation."

¶ 42 Even granting these matters to defendant for the purpose of argument, we conclude that the police scrupulously honored defendant's right to cut off questioning. First, Lawrence's question to defendant was completely nonspecific; it might plausibly have elicited a comment about the guards, or even a comment about another offense altogether. Moreover, no further on-

the-scene questioning occurred after defendant made his remark. In addition, Lawrence advised defendant of his *Miranda* rights promptly upon physically assuming control of him. Further, Grzeda presented him with a rights-waiver form before questioning him formally for the first time.

¶ 43 Under *Mosley* as interpreted by *Nielson*, we must consider four factors to decide whether the resumption of questioning was proper. Here, two factors easily support the conclusion that the resumption was proper. The remaining two also support that conclusion, but require some discussion.

¶ 44 The first factor is whether the police immediately halted the initial interrogation when the defendant invoked his right to remain silent. Here, Lawrence asked his sole question before defendant responded at all. Questioning thus halted immediately.

¶ 45 Second is whether a "significant amount of time elapsed between the interrogations." *Nielson*, 187 Ill. 2d at 287. Although we apply this factor, we do so while rejecting any idea that we should treat the lapse of time between an offhand question and formal questioning as we would the lapse of time between periods of formal questioning.

¶ 46 Here, the record shows that the incident took place shortly before 7 p.m. Grzeda initially testified that it was about 7:30 p.m. when he escorted defendant from a booking room to an interview room. Defendant asserts that Grzeda began questioning at that time. The record does not support that contention. On cross-examination, Grzeda stated that the interview started after 9 p.m., and, consistent with that statement, defendant signed the waiver form at 9:17 p.m. and the voluntary statement form at 9:41 p.m. Grzeda's testimony is not entirely clear about what happened in the interim. Grzeda said that he went to collect the necessary paperwork and to get Detective Mandro. Those errands do not sound like ones that would take an hour and half

ordinarily, but, if Grzeda intended to allow defendant to stew for a while in the interview room, they could have. Thus, Grzeda's testimony implies an interval of something more than an hour and a half between Lawrence's question and the start of formal interrogation.

¶ 47 We conclude that, where the initial interrogation was one question asked in passing during the arrest process, the gap—in conjunction with the complete change of context—was an appropriate lapse of time. There was no attempt to push defendant to abandon his refusal; the lapse was consistent with the police scrupulously honoring his right to remain silent.

¶ 48 Third, the police did give a fresh set of *Miranda* warnings before questioning defendant a second time. Indeed, he received two.

¶ 49 The fourth and final factor is whether "the second interrogation addressed a crime that was not the subject of the first interrogation." *Nielson*, 187 Ill. 2d at 287. Here, the nonspecificity of Lawrence's one question makes this factor nearly inapplicable. The context of Lawrence's question—that he asked it at the scene of the beating—pointed toward this offense. Even so, to call that question "interrogation about the beating" pushes the fine parsing of these factors to the edge of absurdity.

¶ 50 In sum, although a brief, spontaneous interchange at arrest cannot be treated as insignificant "blurt[ing]," as the State implies it should, that does not mean that scrupulously honoring such an assertion of the right to cut off questioning requires the delay that would be necessary between periods of questioning at the police station. The four *Nielsen* factors for proper resumption of questioning were satisfied here.

¶ 51 Because the court did not err in admitting defendant's inculpatory statement, the evidence was overwhelming. Thus, any error in admitting Allbee's testimony could only have been harmless, and we need not address that claim.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the not not guilty findings against defendant, but we reduce the order of commitment to 15 months ending on December 11, 2015, and remand the cause to the circuit court for proper proceedings under section 104-25(g) of the Code. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 54 Affirmed as modified and remanded with directions.