2017 IL App (3d) 140363-U

Order filed January 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0363 Circuit No. 11-CF-1237
RODNEY A. JULUN,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held*: The trial court erred when it denied defendant's request to suppress statements because defendant's waiver of his invoked right to counsel was involuntary. Further, the trial court's error was not harmless. Therefore, defendant is entitled to a new trial.

¶ 2 After being charged by indictment, defendant was convicted of three counts of first degree murder after a merged jury trial. The trial court denied defendant's motions to suppress his statements to police. Defendant appeals.

¶ 3 BACKGROUND

¶ 4 On June 14, 2011, Will County sheriffs found the deceased body of Dwight Jones in his residence. Several days later, on June 23, 2011, Will County Sheriff's Department detectives brought Rodney Julun, defendant, in for questioning regarding Jones' death. Detective Jeremy Viduna and Detective Jeffery Tolbert (detectives) conducted a recorded interview with defendant. The video recording begins at 3:46 p.m. on June 23, 2011, and ends the next day, June 24, 2011, at 4:23 p.m.

¶ 5 The recording documents the following events. At approximately 4:17 p.m. on June 23, 2011, detectives entered the interview room. Viduna first advised defendant of his *Miranda* rights before the following exchange occurred:

"VIDUNA: Do you understand these rights?

DEFENDANT: Mmhmm.

VIDUNA: See, if you start watching cop shows you'll start seeing that stuff all the time. It's just stuff that's gotta be done, okay?

DEFENDANT: Mmhmm."

Thereafter, detectives asked questions about defendant's phone, defendant's nicknames, and advised defendant that the detectives knew defendant recently sold an Android cell phone. In response, defendant denied possessing an Android cell phone and explained he has one phone, a Boost Mobile phone.

¶ 6 Viduna informed defendant that they were investigating the death of Dwight Jones. Viduna stated that Jones' last phone conversation was with defendant. Defendant denied calling Jones. At this point the following conversation took place:

"VIDUNA: My victim, the person we find dead,

DEFENDANT: Mmhmm.

VIDUNA: Talks to you last at 8:49 p.m. on Friday, June 10, which we can prove by phone records. Our Our [*sic*] victim. Are you gonna let me lay this out to you?

DEFENDANT: I'm listening. I'm still listening. But I can actually –

VIDUNA: Our victim is last seen by his family members and his friends on Friday, June 10th.

DEFENDANT: Ok.

VIDUNA: They're not heard from again, by Dwight. Dwight never calls them again. Dwight, unfortunately, dies. How he dies, I'm starting to get a good picture in head. Because [Beep, Beep from Detective Tolbert's phone], it's looking like you killed Dwight.

DEFENDANT: No, now y'all, now y'all tweakin.' [Beep]

VIDUNA: No?

DEFENDANT: Can I talk to a lawyer? [laugh] I need to talk to a lawyer.

TOLBERT'S WALKIE-TALKIE: [overlapping conversation] Even though the name ain't on there, the Boost records will show all the records of all the people he's been talking to and we will go and talk to everyone of 'em, you know?

TOLBERT: Alright.

DEFENDANT: [beep] Y'all gonna have to get that then. 'Cause this is crazy. I don't even know why I'm here.

VIDUNA: Just letting you know, we've got a search warrant for your

DEFENDANT: House?

VIDUNA: No, for your DNA.

DEFENDANT: As far as what DNA?

VIDUNA and TOLBERT: Your DNA.

DEFENDANT: Aw, ok.

VIDUNA: [overlapping] We've got a search warrant, yeah. Because yeah. We've got the search warrant for your DNA that's gonna prove that you're in our victim's house.

DEFENDANT: That I was in their house?

VIDUNA: In his house, year. In his car.

DEFENDANT: In the car?

VIDUNA: Yeah. [Viduna and Tolbert get up to leave.] Anyways–

DEFENDANT: Am I gonna be able to speak to a lawyer, or –?

VIDUNA: You can speak to lawyer.

DEFENDANT: Appreciate it. That's crazy.

VIDUNA: You know what's going to be crazy is when you're sitting in front of a judge looking at first degree murder.

DEFENDANT: I'm not looking at no murder. It's crazy that y'all even got me in here."

Following this comment, both detectives left the interview room at 5:21 p.m.

¶ 7 Approximately one hour later, both detectives and another officer entered the interview room to collect defendant's DNA. At 6:21 p.m., another officer enters the room and announces detectives are leaving to search defendant's home. Defendant asks if he is going to be held for 48 hours. The collection of DNA swabs ends after approximately 24 minutes and defendant is left alone in the interview room starting at 6:40 p.m.

¶ 8 Approximately an hour and a half later, another officer entered the room to take defendant's food order. The officer delivered defendant's meal approximately 25 minutes later and left defendant alone in the interview room.

¶ 9 At 10:15 p.m., defendant knocked on the door. He requested a blanket because he was cold. Defendant fell asleep on the floor with the lights on until 1:16 a.m., when an officer checks on defendant.

¶ 10 At approximately 6:30 a.m., defendant knocked on the door and requested to use the bathroom. Defendant returned minutes later.

¶ 11 At 7:54 a.m., defendant knocked on the door again and asked how long this would take. Approximately ten minutes later, defendant asked to go to the bathroom again. After re-entering the interview room he said to himself "[Y]'all got the wrong person." The defendant then sat down at the table and began to cry at 8:08 a.m.

¶ 12 After a few more minutes, at 8:13 a.m., defendant knocked on the door and said "I wanted to know if I could talk to one of the detectives." While waiting for the detectives, speaking to himself, defendant said "I didn't even do nothing, man. It's stupid."

¶ 13 At 8:16 a.m., Detective Viduna, accompanied by Detective Procarione, entered the room and the following conversation occurred:

> "VIDUNA: Hey Rodney. You wanted to talk?
>
> DEFENDANT: [Crying] I ain't had nothing to do with this.
>
> VIDUNA: [Overlapping] Ok. Well hold on, before, before we do anything, ok, we'll get to all that, alright? But we just wanted to establish the fact that you want to talk to me, talk back with me, right? Are you telling me you want to talk to me? – Rodney?
>
> DEFENDANT: [crying] I didn't even do nothing.

VIDUNA: Okay. I'm just gonna have to advise you of your rights again, okay? And then we'll get to all that, and you can tell me how you had nothin' to do with nothing,' okay? You have the right to remain silent. Anything you say can be used against you in a court or any other proceedings. You have the right to talk to a lawyer for advice before we ask you any questions and have him or her present during questioning. If you cannot afford a lawyer, one will be appointed for you, free of any cost to you before questioning. Do you understand those rights? – So, what's up Rodney?

DEFENDANT: I don't know why I'm here."

Defendant again denied selling the cell phone. He also disputed that anyone saw him in Jones' car. During this part of the conversation, Viduna suggested to defendant that someone "came on to you" and reminded defendant of the mounting evidence against him. While still crying defendant said "I'm not going home, am I?" and "I want to go home."

¶ 14 At 9:01 a.m., defendant told officers that he met Jones on 74th and Halsted in Chicago. Defendant said Jones pulled up in his car and asked for defendant's telephone number. Defendant provided his number to Jones. Defendant told detectives that Jones was "flirting" with defendant and asked if defendant wanted to get a drink sometime and discuss making some money. Later, after several phone conversations between Jones and defendant, defendant agreed to have a drink with Jones. Thereafter, defendant met Jones and entered the passenger seat of Jones' car, with the expectation that Jones would offer him some money once he entered the car. Defendant planned to take the money from Jones and hop out of the car. However, Jones surprised defendant by quickly pulling away and driving directly to his home via the expressway. Defendant said when they arrived at the house, Jones made a drink and asked defendant to come

into his bedroom where a pornographic film was playing. Defendant stated "he tried to take advantage of me, it was self-defense."

¶ 15 Defendant emotionally described that Jones grabbed him from behind, tried to undo his pants, and threw defendant on Jones' bed. Defendant pushed Jones, rolled off of the bed, and tried to run out of the room. However, Jones pushed him down. Defendant then picked up a lamp that was sitting on the bedroom dresser and swung the lamp at Jones, Jones ducked. Consequently, defendant swung the lamp again and struck Jones, causing Jones to fall on the bed. Defendant remembered hitting Jones twice, but admitted he might have struck Jones more than twice. Sobbing, defendant told the detectives he thought Jones was unconscious, but not dead.

¶ 16 Defendant escaped by driving away in Jones' Jetta. Defendant returned in Jones' Jetta the next day to see if Jones was okay. Defendant stated he found Jones on the bed, dead. Defendant poured gasoline on Jones and wrapped him in a blanket because he didn't want his "handprints" to be on the body. Defendant said Jones' body was beginning to have a foul odor.

¶ 17 While in the house, defendant took Jones' television and cell phone. Defendant also removed jewelry from the home and attempted to sell the jewelry at a pawnshop. Defendant also stole a laptop from Jones' home and sold it on the street.

¶ 18 Detectives finished the questioning of defendant at 11:33 a.m. on June 24, 2011. At 1:20 p.m., defendant knocked on the door and again asked another officer if he could speak to a lawyer. The unknown officer stated he could not provide defendant with a lawyer, but he would ask around. At 4:17 p.m., law enforcement removed defendant from the interview room.

¶ 19 On May 18, 2012, defendant filed a motion to suppress statements, alleging that he made incriminating statements while in a distressed mental state due to police coercion and threats.

The trial court denied the motion to suppress on the grounds that defendant received food, a blanket, access to a restroom, and appeared to have slept well. The court also noted that defendant was not going anywhere because he had another warrant. The court concluded the detectives did "brow beat" defendant, found defendant was not intimidated, and found defendant was "treated just fine."

¶ 20 After the court's ruling on the first motion to suppress, the trial court appointed new defense counsel. On June 20, 2013, new defense counsel filed a second motion to suppress defendant's statements. Defendant's second motion to suppress statements asserted that defendant did not voluntarily make incriminating statements, but that detectives continued to interrogate defendant after he invoked his right to counsel.

¶ 21 The next day, defense counsel also filed various motions, including: a motion to reconsider the denial of the first motion to suppress; a motion to sever the murder counts; and a motion to quash arrest. On August 2, 2013, the trial court denied counsel's motion to reconsider and motion to quash arrest, but granted the motion to sever the murder counts. The hearing on defendant's second motion to suppress statements was set over to another date. On August 28, 2013, the court conducted the hearing on the second motion to suppress. The defense called Detective Viduna. Viduna testified that defendant was taken into custody during the course of the investigation into Jones' death. Viduna testified that he remembered advising defendant of his *Miranda* rights, but could not recall whether defendant signed the preprinted waiver form. Viduna testified that although defendant made comments about a lawyer, Viduna was uncertain whether or not defendant actually wanted to speak to an attorney, but stopped questioning defendant. Viduna agreed that after questioning ended, Viduna reentered the interview room for the purpose of executing a search warrant authorizing the collection of defendant's DNA.

¶ 22 When Viduna returned to the interview room the next morning, Viduna repeated the *Miranda* warnings for defendant. Following Viduna's testimony, defense counsel argued that defendant unambiguously invoked his right to counsel. The detective engaged in conduct designed to elicit incriminating statements from defendant after defendant requested an attorney. According to defense counsel, 15 hours later, defendant did not freely and voluntarily reinitiate the conversation with the detective. For that reason, defense counsel argued the defendant's recorded incriminating statement should have been suppressed by the court. The matter was continued so the court could review the entire recording. The court subsequently denied the motion without making any findings.

¶ 23 A jury trial commenced on January 7, 2014, and continued for six days. During opening statements, the prosecutor told the jury they would be allowed to view defendant's interview and would see his "complete and utter deception" regarding defendant's relationship with Jones. The prosecutor indicated the video documented defendant's "sham story" of self-defense.

¶ 24 Following opening statements, Jenean Bell, Jones' niece, testified about Jones' close relationship to his family. Bell testified that the last time she saw Jones alive was on June 10, 2011, at approximately 9:00 p.m. Bell tried contacting Jones on June 11, 2011; however, Jones did not answer his cell phone and did not return any of her voicemails. On Sunday, June 12, 2011, Bell still had not heard from Jones. Jones did not attend Bell's son's graduation on June 14, 2011. Bell spoke with Jones' girlfriend, Veronica, who told Bell that Jones had not shown up for a date night, which was very unlike him. After her son's graduation on June 14, 2011, Bell and other members of the family went to Jones' home to check on him. When they arrived, the back sliding kitchen door was slightly cracked open and unlocked. Upon entering the home, they saw that it was in total disarray and smelled like gasoline. After seeing that the stereo

and television were missing, Jones' family left the house and called police. Bell later learned that Jones was dead. During her testimony, the State introduced photographs of Jones, Jones' home, and Jones' Jetta automobile. Bell also confirmed Jones' telephone number.

¶ 25 The State presented the testimony of the first officers on the scene on June 14, 2011. These officers described the ransacked condition of the residence and described a strong odor of gasoline. In the master bedroom, the officers discovered Jones' decomposing body wrapped in blankets. The officers did not observe any signs of forced entry.

¶ 26 Will County Sheriff's Deputy, Rando Simeon, testified before the jury. Simeon explained that he was part of the team that processed the crime scene at Jones' home on June 14, 2011. Simeon testified that he did not see any signs of forced entry, but noticed the kitchen appeared to be "ransacked or disheveled." Simeon saw a bloody, brass, two-foot tall lamp in front of the refrigerator. The lamp was first photographed and then secured as evidence. The State introduced photographic exhibits depicting a lamp with a broken bulb and blood stains on the inside of the lamp shade and on the lamp base. A matching lamp was found on a nightstand in the master bedroom.

¶ 27 Simeon also observed blood spatter on the walls, mirrors and exercise machine in the master bedroom and noticed the room had a smell of both gasoline and decomposing human flesh. At this point, Simeon turned his attention to Jones' body, which was present in the master bedroom. Simeon noticed that there was glass, consistent with a light bulb, on Jones' body. He observed a gas can near the body's head. Simeon was able to lift latent fingerprints from a few items found in the master bedroom.

¶ 28 The State called Deputy Sheriff Jill Knutsen to testify. Knutsen specialized in crime scene investigation and was present at Jones' home on June 15, 2011. While at the residence,

Knutsen observed an empty TV box, an empty computer box, and remnants of marijuana in the bathtub. Knutsen recovered fingerprints from a man's perfume box, a DVD case, and a cassette tape box.

¶ 29 Knutsen also processed the Volkswagen Jetta as part of the ongoing murder investigation. Knutson recovered a man's watch, a bracelet, an unlit cigarette, and a hair pick from the interior of the Jetta and was able to lift latent fingerprints from some of these items. Knutsen also swabbed various areas of the vehicle for DNA.

¶ 30 Several other persons testified for the prosecution, including Tawan Smith. According to Smith, around June 11, 2011, he saw defendant driving a vehicle, a Volkswagen Jetta, with John White. When Smith saw defendant and White together in the Jetta, he noticed several items, including a television and jewelry, that the men were trying to sell. Defendant told Smith that his aunt or sister had rented the car for him. In addition, Smith testified that White ordered some baseball equipment for Smith by using a credit card in the name of "Dwight Jones."

¶ 31 Donte Brown testified that he was standing on 70th and Peoria Street in Chicago on June 11, 2011, when defendant drove up in a gray Volkswagen and sold Brown a cell phone for $20. Brown used the newly-purchased cell phone to call his girlfriend. The police traced these calls to Brown. Brown identified defendant as the man who sold him the phone.

¶ 32 Joel Morales, a store manager at EZPawn on 4824 South Ashland Avenue in Chicago, Illinois, testified that in June of 2011, two police officers entered the store asking if two men, defendant and White, had come into the store to pawn jewelry. Morales looked up recent transactions and documented that on June 13, 2011, defendant pawned a gold ring and White pawned a Movado watch.

¶ 33 Regina Julun, defendant's sister, testified that defendant lived with her and another sister in Chicago in June of 2011. Regina testified that she spoke with the police in June of 2011 and answered their questions truthfully. When asked about her written statement provided to police, People's exhibit No. 442, Regina admitted writing the first sentence that reported on "Saturday, June 11th, 2011, Rodney Julun, my brother, was invited to a party where I was at." Regina denied writing the remainder of the written statement, which included that defendant came with twin girls in a Jetta rental car at 9 or 10 p.m., everyone was getting ready to leave around 12 or 1 a.m., I got in the house around 1 or 2 a.m., and the Jetta was a dark-colored car. Regina explained that she signed the document when it was blank and claimed the balance of the statement was forged.

¶ 34 Next, Rachel McCadd, another sister of defendant, testified. McCadd testified that she did not remember talking to police on June 23, 2011. McCadd did remember signing a document.

¶ 35 The State called Detective Jeremy Viduna of the Will County Sheriff's Department as a witness. Before interviewing defendant, Viduna learned Donte Brown purchased Jones' cell phone from defendant. Viduna testified about the contents of phone records, demonstrating 10 calls occurred between Jones' cell phone and defendant's cell phone on June 10, 2011, with the last call lasting about seven minutes. Viduna informed the jury that he conducted the interview with defendant on June 23, 2011. By agreement, portions of the video recording of the interview were played for the jury during Viduna's testimony. Viduna testified that he left the interview room at about 5:20 p.m. and, apart from dinner and collecting DNA and fingerprint samples, there was no other interaction between Viduna and defendant overnight. On cross-examination, Viduna confirmed that defendant remained in the interview room alone from approximately 3:46 p.m. until 8:15 a.m. the following morning, but received food, water, and a blanket.

¶ 36 The next witness called was Kenneth Bradley. Bradley was incarcerated in the Will County jail in the same area as defendant in July of 2011. Bradley testified that defendant told him that the reason he was locked up was because of what was intended as a home invasion "but the dude wouldn't cooperate with him so he ended up beating him to death." Defendant told Bradley that he only went into the house "for money." Bradley testified that defendant did not say anything about a sexual advance from the victim. Further, Bradley testified that defendant said he took items from Jones' house, such as a phone and a Jetta, and that defendant returned to the home with two other men. Bradley had three previous convictions for possession of a controlled substance and one theft conviction. On cross-examination, Bradley testified that the prosecution made no promises or deal in exchange for his testimony; although he was hoping for a deal, one never came.

¶ 37 Darnell Luckett also testified that he was incarcerated with defendant. According to Luckett, defendant wrote down certain statements defendant wanted Luckett to memorize. A prison worker delivered defendant's proposed script to Luckett. The document was marked as People's exhibit No. 31. On cross-examination, Luckett testified that he also spoke with White, who told Luckett that he and Reed were going to set up defendant. Luckett had previous convictions for possession of a controlled substance, kidnapping, murder, and robbery.

¶ 38 According to Dr. Valerie Arangelovich, the forensic pathologist who conducted Dwight Jones' autopsy on June 15, 2011, Jones' thyroid cartilage was fractured and there was a hemorrhage on the left side of Jones' neck. Those injuries, Dr. Arangelovich testified, would be caused by a significant blow to the area. There was also a subgaleal hemorrhage in the scalp tissue by the lacerations on Jones' head. Further, she went on to say that the injuries tell her that there were multiple blunt force blows to Jones' head and neck area. Dr. Arangelovich agreed that

the cause of Jones' death was blood loss, the passage of time, and his heart condition, coronary atherosclerosis. Finally, with a reasonable degree of medical certainty, Dr. Arangelovich testified that the cause of Jones' death was "multiple injuries due to assault" with the contributing factor of Jones' heart condition.

¶ 39 Barry Adams, a forensic scientist and latent print examiner for the Northeastern Illinois Regional Crime Lab, testified that the fingerprint lifted from the lamp found in the kitchen was a match with defendant's print. Further, only defendant's prints were on the lamp. Adams also matched three prints taken from the Jetta to defendant.

¶ 40 The next witness to testify was another forensic scientist with the Northeastern Illinois Crime Lab, Sarah Owen. The results from the DNA profile obtained from the front passenger headrest of the Jetta indicated that defendant could not be excluded as the contributor. Owen testified that defendant matched the DNA profile found on a beer can located at Jones' residence. According to Owen, White and Reed were excluded from being possible contributors of any of the DNA evidence obtained in the case.

¶ 41 Defendant testified on his own behalf. Defendant stated that during the summer of 2011 he moved to Chicago to reside with his sisters and nephew. On June 10, 2011, defendant walked to the corner grocery store. He was stopped by a man he did not know. The man, Dwight Jones, was alone in a dark gray Volkswagen Jetta and asked defendant for directions. When defendant exited the grocery store, Jones was still present and resumed the conversation with defendant. Jones asked if defendant wanted to make some quick cash. Defendant said he was interested, yelled his cell phone number to Jones, and walked away. Defendant thought Jones might be an undercover police officer.

¶ 42 After some time, defendant's phone rang. He ignored the call. The same number called approximately six to seven more times in the next five minutes. Defendant finally picked up the call, discovered the caller was Jones, and ended the call. The same number called again, defendant answered and said that he was busy, but would call Jones back later. Defendant later initiated a call to Jones and told him defendant would be interested in making some quick cash. Defendant agreed to meet Jones for drinks.

¶ 43 Defendant met Jones in the parking lot of the same corner grocery store. Once defendant sat in the front seat of Jones' Jetta, Jones drove the Jetta south on the expressway. Jones unexpectedly took defendant to his home in New Lenox, Illinois, which made defendant nervous about this stranger. While defendant and Jones were alone in the home, Jones drank a glass of liquor and gave defendant a beer. Jones then left the room. Approximately ten minutes later, Jones called defendant to join him in another room of the home. When defendant entered the room, there was a pornographic film playing on the television and Jones was in a tank top and boxer shorts. Defendant was shocked. Jones showed defendant money and said he that would give defendant the money for something in return. Jones told defendant that he wanted to watch defendant masturbate. Defendant said he wanted to leave. Jones replied that either defendant take him up on the offer or walk back home.

¶ 44 Defendant began to comply with Jones' request so that he would be permitted to leave the residence. Jones sat in a recliner watching defendant undress and begin to masturbate while Jones touched himself. Defendant tried to stop a few times, but Jones would get frustrated and insisted defendant continue. Jones, in turn, offered defendant more money to be able to "taste" defendant. Defendant agreed because he felt he had no choice. When defendant finished, he tried putting his clothes back on, but Jones told him not to because he wanted defendant to do

something else. Jones began crawling across the bed and told defendant to get on all fours so Jones could see his backside. Defendant complied because he didn't feel that he had a choice.

¶ 45 At this point, defendant testified that Jones grabbed the back of defendant's neck, pushed him down towards the bed, and held him there while Jones forced himself into defendant's anus. Once Jones ejaculated, he loosened his grip on defendant. Defendant was then able to get free and threw a few "wild punches" at Jones. One punch hit Jones' throat, forcing Jones to lose his breath for a moment and allowing defendant to reach for a lamp and swing it at Jones. Defendant testified that he swung the lamp at Jones in an attempt to protect himself from more harm. Defendant testified that after the first time the lamp made contact with Jones he yelled "something crazy" and began to rush him, so defendant swung the lamp at Jones again. Jones was able to dodge this second swing. However, defendant swung the lamp a third time and made contact with the back of Jones' head. Jones fell down on the bed. When Jones attempted to get up from the bed, defendant hit him with the lamp again. Defendant testified that he "didn't stop swinging until [he] seen [*sic*] blood. When blood splashed in [defendant's] face, that's when [he] dropped the lamp." Defendant did not think that Jones was dead, because Jones was cursing and breathing when defendant left the bedroom.

¶ 46 Defendant got dressed, took the money on the dresser, and found Jones' car keys. Defendant got in Jones' Jetta and drove back to Chicago. Jones left his phone in the car. Defendant did not call the police because he is not gay, was sexually assaulted by another man, and was embarrassed.

¶ 47 The next day, June 11, 2011, defendant drove the Jetta back to Jones' home because defendant realized he left his own cell phone there. Defendant brought John White and David Reed "for protection." After entering the home, defendant discovered Jones' lifeless body on the

bed in the bedroom. After finding the body, he returned to the Jetta and asked White and Reed to help him wipe off anything defendant may have touched. Defendant took the lamp he used to hit Jones into the kitchen and tried to clean it off. Defendant saw White unhooking the desktop computer and saw White remove a television from Jones' home and place it in the trunk of the Jetta.

¶ 48 Defendant testified that while he was being interrogated by police, specifically Detective Viduna, he was given a choice to say that he either went to Jones' home with the intent of killing him or robbing him. Defendant said that he wasn't there to kill Jones, so he told Viduna he was there to rob him. Defendant testified that he did not trust the detective during the interview and was too embarrassed to tell anyone about the sexual assault. Defendant also admitted he had prior convictions for arson and burglary.

¶ 49 When pressed by the prosecution during cross-examination, defendant stated that "[e]verything I told the officers was a lie." Defendant admitted to lying to detectives in the videotaped confession about: having Jones' cell phone, Jones' car, meeting Jones, thinking Jones was gay and trying to pick up defendant, not seeing his sister at Burger King, not being seen by his sister in Jones' car, drinking a pop instead of a beer, when he lost his own cell phone, looking around Jones' house after the killing, personally pouring gas on Jones' body, the circumstances of the sexual assault, John White having warrants, popping pills, and smoking crack.

¶ 50 During closing arguments, the State argued that defendant lied about everything–including his claim of self-defense. The State presented the following argument:

> "And one of the most beautiful things about this case is that you have the defendant on video with Detective Viduna, so you get to see the progression of his lies

and how he's confronted and what happens when he is confronted with certain pieces of evidence, and how he changes his story, how he morphs that."

¶ 51 The jury found defendant guilty of first degree murder for knowingly committing an act that created a strong probability of great bodily harm to Jones, ultimately causing his death. The jury also found defendant guilty of two counts of first degree murder for performing actions which caused the death of Jones during the commission of robbery or residential burglary. The court entered judgment only on count I.

¶ 52 On February 10, 2014, defendant filed a motion for a new trial, alleging, among other things, that the court erred in denying both his first and second motions to suppress defendant's statements. The court denied the motion on April 1, 2014.

¶ 53 On April 25, 2014, the court sentenced defendant to 50 years of incarceration. On that same day, defendant filed a motion to reconsider his sentence. The court denied defendant's motion. On April 29, 2014, defendant filed a timely notice of appeal.

¶ 54 ANALYSIS

¶ 55 On appeal, defendant asserts the trial court should have suppressed defendant's redacted videotaped statement that occurred after defendant requested to speak with counsel. Defendant requests a new trial due to the trial court's erroneous pretrial ruling concerning this *Miranda* violation.

¶ 56 The State submits the detectives ended the interview once defendant requested counsel. According to the State, the videotaped interview resumed the following morning, after defendant voluntarily reinitiated conversation with the detectives. Alternatively, the State argues that the court's error, if any, constitutes harmless error because of the weight of the other evidence against defendant.

¶ 57 I. Motion to Suppress

¶ 58 The United States and Illinois constitutions provide a guarantee that no person shall be compelled in a criminal case to incriminate himself. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 10. *Miranda* established that an accused has the right to have counsel present during all custodial interrogations. *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966); *People v. Schuning*, 399 Ill. App. 3d 1073, 1081-82 (2010).

¶ 59 The parties agree defendant unambiguously invoked his right to counsel on June 23, 2011, shortly before 5:20 p.m., when defendant said "[c]an I talk to a lawyer? [laugh] I need to talk to a lawyer?" We agree this request by defendant should have clearly terminated the questioning and ended the interview.

¶ 60 Once a person invokes their right to counsel, the police must cease all questioning. Law enforcement cannot properly reinitiate further conversation with the accused until counsel has been provided. The police are required to abstain from both express questioning and conduct that seems reasonably likely to elicit an incriminating response from the accused suspect. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). However, an exception to these prohibitions arises when the accused reinitiates further communications with the police. *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). In this case, defendant sought the suppression of his statement that occurred after he invoked his right to counsel. It is the State's burden to prove by a preponderance of the evidence the accused showed "a willingness and a desire for a generalized discussion about the investigation." *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983). The burden then shifts to defendant to show that his *Miranda* waiver was not knowing, intelligent or voluntary. *People v. Brown*, 2012 IL App (1st) 091940, ¶ 24.

¶ 61 Generally, this court reviews a trial court's denial of a request to suppress statements in two parts. However, the trial court's factual findings and credibility determinations are upheld unless they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). However, when the facts are based entirely on the documentary evidence in a video recording, the facts are not at issue. Therefore, the instant case presents a question of law as to whether the statements should be suppressed, thus warranting a *de novo* review of the trial court's ultimate legal rulings on the motion to suppress. *People v. Howerton*, 335 Ill. App. 3d 1023, 1025 (2003).

¶ 62 The facts in this case are analogous to those in *People v. Trotter*, 254 Ill. App. 3d 514 (1993). In *Trotter*, after the defendant invoked his right to counsel, instead of taking the defendant to lockup to wait for his attorney, police kept him in the interrogation room. Trotter remained in the interrogation room for 31 hours before he was informed that his lawyer had not yet arrived. *Id*. at 525. During this time, law enforcement officers made repeated visits. An assistant state's attorney came into the interrogation room and asked defendant if he wanted to make a statement, and another officer had a long conversation with defendant. The defendant in *Trotter* then asked to speak with detectives. Subsequently, the defendant made inculpatory statements. *Id*. at 521. The court in *Trotter* found that the defendant's statements violated *Edwards*, and the State failed to meet its burden of proving that defendant made a knowing and intelligent waiver of his *Miranda* rights after the defendant first asserted his right to counsel. *Trotter*, 254 Ill. App. 3d at 524-525; *Edwards*, 451 U.S. 477.

¶ 63 The holding in *Trotter* guides the outcome of this appeal. Based on our careful review of the record, we agree defendant unconditionally invoked his right to counsel at 5:20 p.m. on

June 23, 2011. During the next 14 hours, defendant maintained his silence and law enforcement did not honor his request to speak to counsel.

¶ 64 During the next 14 hours, the videotape reveals defendant was isolated in the interview room, uninformed, uncomfortable, and anxious. Defendant received one meal and several bathroom breaks. The temperature in the room grew cold and defendant asked for a blanket. The lights remained on throughout the night. Defendant slept on the floor, curled in a fetal position, with blankets covering his head. In the morning, defendant began crying and talking to himself. Defendant finally knocked on the interview room door at 8:13 a.m. on June 24, 2011, and asked to speak to the detectives.

¶ 65 When the detectives returned to the interview room at 8:16 a.m., defendant made a spontaneous statement by claiming, "I ain't had nothing to do with this," and "I didn't even do nothin'." Defendant did not indicate he was ready to talk or wished to resume the questioning.

¶ 66 At 8:17 a.m., the detectives provided *Miranda* warnings before engaging in any conversation with defendant. Approximately three hours of questioning followed. Defendant was allowed to leave the interview room at 4:20 p.m. on June 24, 2011, nearly 24.5 hours after detectives began the interview process on June 23, 2011, at 3:46 p.m.

¶ 67 It is well settled that " 'incommunicado interrogation' in an 'unfamiliar,' 'police-dominated atmosphere,' involves psychological pressures 'which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely'." *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010) (citing *Miranda*, 384 U.S. 436 at 456-457). Based on a *de novo* review of this record, we conclude the State failed to meet its burden of demonstrating defendant knowingly and intelligently waived his right to counsel when he requested to speak with detectives at 8:13 a.m. on June 24, 2011. Consequently, the trial court

erroneously denied defendant's motion to suppress his videotaped statement due to a *Miranda* violation. We next determine whether the court's error was harmless.

¶ 68 II. Harmless Error

¶ 69 The State submits that since the other evidence in this case was overwhelming, the trial court's erroneous ruling denying defendant's motion to suppress was harmless. It is the State's burden to establish for purposes of this appeal that the trial court's error was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 23-24 (1967). The case law provides that for harmless error to apply to a *Miranda* violation, this court must be satisfied that defendant's improperly admitted incriminating statements did not *contribute* to the conviction. *Chapman*, 386 U.S. 18 at 23-24.

¶ 70 We agree the evidence gathered by the police investigation in this case was both extensive and compelling. The physical evidence linked defendant to both the murder scene and the murder weapon. In addition, the jury learned from the physical evidence that defendant's fingerprints were found inside Jones' car. Further, thorough detective work linked the sale of Jones' cell phone to defendant and connected personal property removed from the victim's home to defendant via a pawnshop.

¶ 71 Defendant's testimony was consistent with the physical evidence. Defendant admitted in his testimony that he was present in the Jetta, present in the victim's home, and struck the victim with a lamp, causing severe injuries. During both the videotaped confession and his trial testimony, defendant claimed he acted in self-defense. This explanation could not be refuted by the State's physical evidence and boiled down to whether the jury believed defendant's testimony concerning self-defense.

¶ 72 In *People v. St. Pierre*, 122 Ill. 2d 95, 114-115 (1988), our supreme court concluded that the admission of defendant's unlawfully obtained incriminating statements was not harmless in spite of other overwhelming evidence of defendant's guilt. The court focused on the fact that the prosecutor persuasively discussed the defendant's inadmissible statements during both opening statements and closing arguments. On this basis, our supreme court concluded the unlawfully obtained statement in that case *contributed* to the conviction and required a new trial.

¶ 73 Similarly, in this case, the prosecutor also persuasively discussed details contained in defendant's unlawfully obtained confession during opening statements and closing arguments. In addition, the prosecutor methodically discredited defendant's testimony by referring to contradictory statements defendant made during the videotaped confession. Point by point, the prosecutor directed defendant to explain the differences between the details defendant described in his videotaped confession when compared to defendant's trial testimony. During his cross-examination, defendant dramatically conceded to the prosecution that "[e]verything I told the officers was a lie." Hence, the prosecutor relied on the videotaped confession to significantly discredited defendant testimony. Defendant's weakened credibility made it less likely that the jury would accept defendant's testimony regarding self-defense.

¶ 74 Our standard of review is whether we are convinced beyond a reasonable doubt that defendant's illegally obtained confession contributed to his conviction. *Chapman, 3*86 U.S. 18 at 24. We are mindful that the remedy for a *Miranda* violation is very severe, especially in a case where the evidence of guilt is overwhelming.

¶ 75 However, based on this record, we are lead to the conclusion that the unlawfully obtained confession played a significant role in the prosecution's case and *contributed* to the conviction in

this case. Therefore, we must conclude defendant is entitled to receive a new trial without the unlawfully obtained videotaped confession.

¶ 76 However, as previously stated, the State's evidence would be sufficient to support a conviction in this case without the defendant's videotaped confession. Therefore, we reverse defendant's conviction and remand for a new trial.

¶ 77 CONCLUSION

¶ 78 The judgment of the circuit court of Will County is reversed.

¶ 79 Reversed and remanded.

¶ 80 JUSTICE SCHMIDT, dissenting.

¶ 81 I would find that defendant made a knowing and intelligent waiver of his previously-invoked right to counsel when he asked to speak with detectives and initiated further discussion about the investigation into Jones' death. For this reason, I respectfully dissent.

¶ 82 First, I disagree with the majority that this case is analogous to *People v. Trotter*, 254 Ill. App. 3d 514. In *Trotter*, the defendant remained in the interrogation room for a total of 31 hours after he was taken into custody. *Id.* at 525. After the defendant invoked his right to an attorney, the investigating officers visited him multiple times, and the assistant State's Attorney went so far as to ask if he wanted to make a statement about the case. *Id.* When the defendant finally initiated a conversation, he claimed he did not want to discuss the case; he just wanted someone to sit and talk with him. *Id.* at 521. After "shooting the breeze" with one of the investigating officers for over an hour, the defendant finally made a statement about the crime. *Id.* at 521, 525. In ruling that the defendant's incriminating statement should have been suppressed, the court found that the defendant had not initiated an *Edwards*-type inquiry because his initial

comments did not evince a desire to open up a more generalized conversation relating to the investigation. *Id.* at 524-25.

¶ 83 Here, defendant remained in the interrogation room for 14 hours after invoking his right to counsel, several of which he spent asleep. As soon as defendant asked for an attorney, the investigating detectives halted their interrogation and left the room until defendant asked to speak with them the next morning. The only contact defendant had with any police personnel throughout the night was for a meal, two bathroom breaks, blankets, and a cigarette. This type of communication is routine and permissible. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1045 (1983) ("[I]nquiries or statements, by either an accused or a police officer, relating to routine incidents of the custodial relationship, will not generally 'initiate' a conversation in the sense in which that word was used in *Edwards*.").

¶ 84 When defendant awoke the next morning, he knocked on the door and asked to speak with the detectives. When the detectives arrived at the interrogation room, defendant immediately stated, "I ain't had nothing to do with this," and "I didn't even do nothin'." Unlike the defendant's statements in *Trotter*, defendant's statements in this case undoubtedly fell within *Edwards*, as they related directly to the investigation at hand. As a result, the detectives could re-*Mirandize* defendant and resume their interrogation without running afoul of the fifth amendment. See *Bradshaw*, 462 U.S. at 1045-56 (finding that the statement "Well, what is going to happen to me now?" evinced the defendant's willingness and a desire for a generalized discussion about the investigation).

¶ 85 Moreover, to the extent the majority believes that spending the night in an empty interrogation room is inherently more coercive than spending it at the county jail, I disagree. Both situations involve placing the defendant in an environment where he is "cut off from his

normal life and companions, thrust into and isolated in an unfamiliar, police-dominated atmosphere, [citation] where his captors appear to control [his] fate." (Internal quotation marks omitted.) See *Maryland v. Shatzer*, 559 U.S. 98, 106 (2010) (discussing the rationale behind *Edwards'* presumption of involuntariness).

¶ 86 Similarities aside, I posit that a police interrogation room comes with added benefits defendant would have foregone had he been transferred to the Will County jail upon his request for an attorney. For instance, it is highly unlikely that the correctional officers there would have provided defendant with a smoke break, two blankets, use of a private restroom, and a Big Mac. The county jail does not provide room service or guarantee a good night's sleep. While my views no doubt are colored by a life's path different from those of my colleagues, I respectfully suggest that any reasonable person would prefer the comfort, safety, and security of a night in a police interrogation room over that provided in the general population of the Will County jail. The Will County jail (or any county jail in a large, populous county) is nothing like the jail in Mayberry. Would we reverse had defendant been shipped off to the county jail and then told a jailer that he wanted to speak with detectives? The relative comfort of a jail mattress over the floor of the interrogation room does not outweigh the safety and other personal benefits of the police station interrogation room.

¶ 87 Nevertheless, I recognize that " 'incommunicado interrogation' in an 'unfamiliar,' 'police-dominated atmosphere,' involves psychological pressures 'which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.' " See *supra* at ¶ 67 (quoting *Miranda v, Arizona*, 384 U.S. at 456-57). However, where no interrogation is taking place, the defendant's placement in an "unfamiliar, police-dominated atmosphere"—be it an interrogation room or a cell block at the county jail—becomes irrelevant.

As stated above, a defendant makes a knowing and intelligent waiver of his previously-invoked right to counsel when he initiates further discussion about the investigation. *Edwards*, 451 U.S. at 484-85. That is precisely what happened here. I see no problem with the voluntariness of defendant's confession. For these reasons, I would affirm defendant's conviction.