2018 IL App (1st) 153357-U
Order filed: September 28, 2018

FIRST DISTRICT
Fifth Division

No. 1-15-3357

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 CR 23411
	)	
TRAVIS CARTER,	)	
	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We reversed defendant's conviction of unlawful use of a weapon by a felon and remanded for a new trial, holding that the trial court erred in denying his motion to suppress his first statement to police who were executing a search warrant. We found that defendant's statement was the product of a custodial interrogation and that *Miranda* warnings should have been given.

¶ 2 Following a bench trial, the trial court convicted defendant, Travis Carter, of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2016)), for knowingly possessing firearm ammunition after having previously been convicted of the felony offense of aggravated battery. The court found that defendant was in constructive possession of the firearm ammunition, meaning that the State proved he had knowledge of the ammunition and

exercised immediate and exclusive control over the area where the ammunition was found. See *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 28 (defining constructive possession). On appeal, defendant contends: (1) the trial court erred by denying his motion to suppress his statements; (2) the court erred by failing to conduct a hearing under *People v. Krankel*, 102 Ill. 2d 181 (1984), on his posttrial claim of ineffective assistance of trial counsel; and (3) his mittimus must be corrected to accurately reflect his pre-sentence credit for the number of days in custody. We reverse and remand for a new trial.

¶ 3 The State charged defendant with violating section 24-1.1(a) of the Criminal Code of 2012, which states:

> "It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any *** firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2016).

¶ 4 Prior to his trial, defendant filed a motion to suppress two statements he made to police officers during the execution of a search warrant at 1129 West 104th Place in Chicago on November 15, 2013, based on the officers' failure to give him *Miranda* warnings.

¶ 5 At the hearing on the motion, Officer Wrobel testified that, around 10 a.m. on November 15, 2013, he and seven other police officers executed a search warrant at defendant's residence at 1129 West 104th Place. Defendant was the subject of the search warrant; the officers were looking for "possession of a controlled substance, any proof of residency, weighing, narcotics equipment."

¶ 6 After entering the residence, Officer Wrobel and a "couple" of other officers went into a bedroom in the basement, where they discovered defendant and a female. Officer Wrobel

"detained" defendant and asked him whether "there was anything illegal in the home that should not be there." Defendant responded and, as a result of the information obtained from defendant, the officers discovered and seized bullets in the home. Officer Wrobel did not give defendant his *Miranda* warnings prior to speaking with him.

¶ 7 On cross examination, Officer Wrobel testified that the officers entered the basement after they "breached the door." There were two bedrooms in the basement, the "southeast bedroom," and the "northeast bedroom," as well as a "common area" that was outside both bedrooms. Defendant and his female companion were located in the southeast bedroom.

¶ 8 For safety purposes and to prevent any tampering of evidence, the officers "secured" defendant and his female companion by placing handcuffs on them and led them to the common area, where Sergeant O'Brien provided a copy of the search warrant. Officer Wrobel and Sergeant O'Brien stood next to defendant and Officer Wrobel asked defendant whether there was anything illegal inside the home, and defendant responded that he had "some bullets." Defendant also asked: "What are you looking for?" Officer Wrobel did not ask defendant for any more information, nor did defendant provide any.

¶ 9 The officers searched the basement and recovered items in the southeast and northeast bedrooms. In the northeast bedroom, the officers recovered "a holster, a black magazine for a .9 millimeter handgun, a shotgun, one shotgun ammunition" in the ceiling panel, and they recovered two .40-caliber ammunitions from the floor.

¶ 10 As the officers were recovering the items from the ceiling panel, defendant "spontaneously stated[:] 'That's old.' " The officers had not asked defendant any questions prior to him making that statement, and defendant made no further statements.

¶ 11 On redirect examination, Officer Wrobel testified that he "placed" defendant and his female companion in the common area and left them with Officer Simmons and some other officers while he searched the northeast bedroom. Defendant and his female companion were not free to leave at that time.

¶ 12 Following Officer Wrobel's testimony, the defense rested and the trial court admitted People's exhibit number 1, the search warrant, and People's exhibit number 2, a photograph of the common area. The trial court then denied defendant's motion to suppress, finding that Officer Wrobel's question regarding whether there was anything illegal in the house was a "general question" meant to determine whether there were dangerous weapons that could imperil the officers' safety. The question was also meant to "save the police officers some effort or keep them from tearing apart his house if in fact he wanted to tell them where the items were." The court concluded that defendant was not under custodial interrogation at the time of the questioning which led to his first statement regarding the presence of bullets in the house, and therefore no *Miranda* warnings were required. As to the second statement, that the items pulled from the ceiling panel were "old," no *Miranda* warnings were required because the statement was voluntarily and spontaneously made.

¶ 13 At the bench trial, Officer Wrobel testified similarly to his testimony at the suppression hearing that, just after 10 a.m. on November 5, 2013, he and seven other officers on his team executed a search warrant at 1129 West 104th Place in Chicago. The officers made entry through the rear basement door and began searching the residence, which had two stories and a basement. There were stairs leading from the basement to the first floor entryway. The door between the basement and first floor was not locked. An "old, old man" was present on the second floor.

¶ 14 The officers discovered defendant and a female in the southeast bedroom in the basement, handcuffed them, and "put them in the common area where we thought it was safe. We cleared an area." Officer Wrobel spoke with defendant in the common area and asked him if there was anything illegal in the house; defendant responded that "all he had was some bullets." The officers had not yet conducted a search of the house at the time Officer Wrobel questioned defendant. Officer Wrobel did not give defendant his *Miranda* warnings.

¶ 15 Officer Wrobel and some other officers searched the southeast bedroom and found "a plate underneath the bed with a razor and cocaine—or a white powdery residue, two Ziploc bags, small Ziploc bags on the dresser with cannabis. There was some cash in there. There was narcotic equipment with *** two scales in there plus *** a box of bags." Officer Wrobel testified that defendant and his female companion were still in the common area, near the northeast bedroom, at the time of the search, and he also identified People's exhibit number 1 as a photograph of defendant and his female companion in the common area.

¶ 16 The officers next searched the northeast bedroom and recovered from the ceiling tile "a holster, a magazine, a shotgun—a 12-gauge shotgun ammunition, just one; then there were two 40-caliber munitions on the ground." Defendant and his female companion remained detained just outside that bedroom in the common area and were not free to leave. When the officers pulled the items out of the ceiling tile, defendant said: "Oh, that's old stuff." Officer Wrobel never saw defendant handle the items that were recovered from the southeast and northeast bedrooms.

¶ 17 The officers searched the common area and found a cabinet that was four to five feet tall. In the drawer of the cabinet, the officers recovered a white baggy containing eight .380-caliber

live ammunition, as well as proof of defendant's residency, specifically, a piece of mail addressed to him at 1129 West 104th Place.

¶ 18 Following Officer Wrobel's testimony, the State introduced defendant's prior conviction as the qualifying predicate conviction for the charge of UUWF. The trial court heard and denied defendant's motion for a directed finding.

¶ 19 Defendant then presented the testimony of his sister, Tanisha Carter. Ms. Carter testified that she was 34 years old at the time of trial and that she had lived at 1129 West 104th Place, the Carter family home, for her entire life until she moved out in October 2012.

¶ 20 Ms. Carter testified that the house had four bedrooms and a bathroom on the second floor, a living room, dining room, kitchen, two bedrooms, and a bathroom on the first floor, and two bedrooms, a bathroom, and a laundry area in the basement. To get from the basement to the first floor, there were stairs leading to a door. The door was unlocked, and everyone in the house had access to the basement.

¶ 21 In November 2013, the people living at 1129 West 104th Place included her father, brother (defendant), uncle, as well as "whoever else needed a place to sleep." Her father slept on the second level, her uncle slept on the first floor, and defendant generally slept in their mother's bedroom on the second floor. Ms. Carter testified that her parents "always opened their doors for anyone if you needed a place to sleep, so I'd come in and see different [persons] all the time." Some of those persons slept "in the basement area."

¶ 22 Defendant testified on his own behalf that he was 38 years old at the time of trial and that, in November 2013, he resided at the house at 1129 West 104th Place. Defendant's father, uncle, and girlfriend, Shontay Armstrong, also resided in the house. Cousins and friends also

frequently spent the night in one of the basement bedrooms and/or came over to do their laundry. Defendant slept in the basement "[e]very now and then," but most of the time he slept upstairs.

¶ 23 Defendant testified that on November 15, 2013, officers "tore the bedroom door to my uncle's room down, and they tore the front door of the house down since they entered through the front door, as well as the basement door." The officers handcuffed defendant and Ms. Armstrong and moved them to the common area in the basement. Defendant did not recall Officer Wrobel asking him any questions.

¶ 24 Following all the testimony, the trial court convicted defendant of UUWF, finding he was in constructive possession of the firearm ammunition based on all the following facts: he lived in the residence and slept in the basement area where the ammunition was found; he admitted there were bullets in the house, which admission was made to prevent the officers from tearing apart the house; and he expressed his recognition of the ammunition in the ceiling panel when he stated: "Oh, that's old stuff."

¶ 25 Defendant has appealed.

¶ 26 First, defendant argues that the trial court erred by denying his motion to suppress his first statement to Officer Wrobel, that he had "some bullets" in the house. The suppression motion was based on the officer's failure to give him his fifth amendment *Miranda* warnings prior to questioning him.

¶ 27 "In determining whether a trial court has properly ruled on a motion to suppress, findings of fact and credibility determinations made by the trial court are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. [Citations.] We review *de novo*, however, the ultimate question posed by the legal challenge to the trial court's ruling on a suppression motion." *People v. Slater*, 228 Ill. 2d 137, 149 (2008). "Further, it is

proper for us to consider the testimony adduced at trial, as well as at the suppression hearing." *Id*.

¶ 28 The fifth amendment to the United States constitution (U.S. Const., amend. V.) states that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that, in order to ensure that the fifth amendment right against self-incrimination is protected, an accused subject to a custodial interrogation must be informed by the police that he has the right to remain silent, any statement he makes may be used as evidence against him, and that he has the right to an attorney, either retained or appointed. *Id.* at 444. Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id*. The ultimate inquiry is whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983). "The finding of custody is essential, as the preinterrogation warnings required by *Miranda* are intended to assure that any inculpatory statement made by a defendant is not simply the product of the compulsion inherent in custodial surroundings." [Internal quotation marks omitted.]. *Slater*, 228 Ill. 2d at 149-50.

¶ 29 Defendant argues that the trial court erred in determining that he was not in custody and not subjected to an interrogation at the time he made his first statement to the officer regarding the presence of bullets in the house.

¶ 30 We begin by discussing whether defendant was in custody. "To determine whether a defendant is 'in custody' for *Miranda* purposes, courts must first consider the circumstances surrounding the interrogation, and in light of those circumstances, whether a reasonable person would have felt that he was free to terminate the interrogation and leave." *People v. Hannah*,

2013 IL App (1st) 111660, ¶ 43 (citing *Slater*, 228 Ill. 2d at 150). The Illinois Supreme Court has identified a number of relevant factors to be considered in determining whether a statement was made in a custodial setting, including: "(1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Slater*, 228 Ill. 2d at 150. "No single factor is dispositive and the court should consider all of the circumstances in the case." *Hannah*, 2013 IL App (1st) 111660, ¶ 43.

¶ 31 With regard to the first factor, the location, time, length, mood, and mode of questioning, the State points out that defendant was in the southeast basement bedroom of his own home when the police entered at around 10 a.m. He was detained in the common area where Officer Wrobel "thought it was safe." The State contends that there was no evidence that Officer Wrobel's tone was threatening, and the length of questioning lasted just seconds. Therefore, the State argues that the first factor inures in favor of a finding that defendant was not in custody at the time of the questioning.

¶ 32 We disagree, as the State's argument ignores the uncontradicted evidence that the officers *forcibly* entered defendant's residence; according to defendant, the officers "tore" down the front door of the house, and also "tore" down his uncle's bedroom door upon entering the residence. The officers then moved defendant and his girlfriend from the bedroom into the common area and handcuffed them both. On all these facts, we cannot agree with the State that the mood and mode of questioning was so familiar and non-threatening as to lull a reasonable person into

thinking that he was not in custody for *Miranda* purposes; to the contrary, a reasonable person in defendant's position would have felt that he was in custody and unable to leave based on the officer's intimidating conduct in breaking down multiple doors of the house, physically moving him and his girlfriend from the bedroom, and placing them both in handcuffs. See *e.g.*, *Hannah*, 2013 IL App (1st) 111660, ¶ 44 (discussed in more detail later in this order).

¶ 33 As to the second factor, the number of police officers present during the interrogation, the evidence shows that eight police officers entered the residence at the same time. After multiple officers entered defendant's bedroom and moved him and his girlfriend to the common area and placed them in handcuffs, Officer Wrobel and Sergeant O'Brien stood next to defendant while Officer Wrobel questioned him. Given the large number of officers that forcibly entered defendant's residence, removed him from his bedroom, and were present during questioning, this factor inures in favor of a finding that defendant was in custody at the time of the questioning for purposes of *Miranda*.

¶ 34 As to the third and fourth factors, the presence or absence of defendant's family or friends, and any indicia of a formal arrest procedure, the State argues that his girlfriend was standing right next to him at the time of questioning, which favors a finding of noncustodial restraint for *Miranda* purposes. We disagree, because, as discussed, the evidence shows that both defendant and his girlfriend were physically removed from the bedroom and placed *in handcuffs* at the time of the questioning, which would lead a reasonable person to believe that neither he nor his girlfriend were free to stop the questioning and leave. See *People v. Coleman*, 2015 IL App (4th) 140730, ¶ 38 ("Handcuffing an individual by a state officer is indicative of an arrest. When a reasonable person is placed in handcuffs by law enforcement, he will not feel free to leave until the handcuffs are removed.").

¶ 35 The State argues that the officers placed defendant and his girlfriend in handcuffs only for safety reasons and so that they would not have to "tear the house apart." However, there was no evidence presented that defendant was informed of the officers' safety concern, and therefore we cannot assume that a reasonable person in his situation would understand that the handcuffing would likely last only until the officers had completed their search. *Id*. ¶ 48.

¶ 36 The State also contends that an "old man", who it presumes was defendant's father, was present in the home at the time of the detention. The State contends that the presence of such a family member favors a finding of noncustodial restraint for *Miranda* purposes. However, there was no evidence identifying the man as defendant's father or as another member of his family; further, Officer Wrobel testified that the man was on the second floor, away from the basement where the detention occurred, and that he was only seen by the officer as they were leaving the residence. The presence of an unidentified man on the second floor of the residence, away from view of defendant and the officers at the time of the detention, does not support a finding that defendant was under noncustodial restraint at the time of his detention.

¶ 37 As to the fifth factor, the manner by which the individual arrived at the place of questioning, the State argues that this factor "strongly" favors a determination that defendant could not have felt he was in custody for *Miranda* purposes because, "[a]t no time was defendant forced to leave the comfortable confines of his own home." However, although the questioning took place in defendant's home, such questioning only occurred *after* the officers had broken down multiple doors of his home, physically removed him and his girlfriend from his bedroom, and handcuffed them both. On these facts, we cannot say that the manner by which defendant arrived at the place of questioning inures in favor of a finding that defendant was in a noncustodial setting for *Miranda* purposes.

¶ 38 As to the sixth factor: the age, intelligence, and mental makeup of the accused, the evidence at the suppression hearing and trial indicated that defendant was 38 years old at the time of trial and had a prior felony conviction. No other evidence of his intelligence and mental condition was otherwise presented at the suppression hearing or at trial.

¶ 39 After considering the relevant factors and all the circumstances in the case, we find that defendant was in custody for *Miranda* purposes. The present case is similar to *Hannah*, in which the appellate court found that the defendant there was in custody for purposes of *Miranda* where nine officers made a forced entry into the residence with their weapons drawn, moved defendant from the bedroom to the living room, and handcuffed him. *Hannah*, 2013 IL App (1st) 111660, ¶ 44. The defendant was constantly monitored by several officers while the search of the residence was in progress. *Id*. The appellate court held:

> "Under these circumstances, we find that no reasonable person would have felt free to refuse or to terminate the police questioning. Certainly, the defendant was not free to leave. Indeed, it would be unlikely that the defendant would have had the fortitude to resist police interrogation under these conditions." *Id*.

¶ 40 The only difference between the present case and *Hannah*, is that the officers here did not draw their weapons.[1] Otherwise, the facts are largely identical; as in *Hannah*, numerous officers forcibly entered defendant's residence, moved him from his bedroom to the common area, handcuffed him, and stayed with him while the search proceeded. We agree with *Hannah* that under all these circumstances, no reasonable person in defendant's position would have felt free

[1] The drawing of weapons is not a necessary prerequisite for a finding of custody under *Miranda*, where the facts of the case otherwise show that a reasonable person in defendant's position would not have felt free to leave. See *e.g.*, *People v. Rivera*, 304 Ill. App. 3d 124, 128-29 (1999) (defendant was in custody where six police officers and four squad cars assisted in the investigative stop, even though the officers did not draw their weapons).

to terminate the police questioning and, therefore, defendant was in custody for *Miranda* purposes.

¶ 41 The State argues that the public safety exception to *Miranda* warnings applies here, distinguishing *Hannah*. Under the public safety exception, "police faced with an immediate threat to public safety may ask questions necessary to secure the safety of the public or themselves prior to issuing *Miranda* warnings." *People v. Williams*, 173 Ill. 2d 48, 77 (1996) (citing *New York v. Quarles*, 467 U.S. 649 (1984)). In *Hannah*, the appellate court found that the public safety exception did not apply because the officers had recovered the defendant's weapon prior to questioning him and, therefore, there was no immediate risk to the safety of the officers or the public that would have allowed for questioning prior to the giving of *Miranda* warnings. *Hannah*, 2013 IL App (1st) 111660, ¶ 47. The State contends that, in contrast to *Hannah*, the officers here had not yet recovered any firearms or firearm ammunition prior to questioning defendant, and therefore the officers were still at a stage where they needed to ascertain if dangers were present in the house; accordingly, the State argues that the officers could reasonably have determined that public safety necessitated immediate questioning without first giving *Miranda* warnings.

¶ 42 The State's argument fails, because the public safety exception, which was first announced by the United States Supreme Court in *Quarles*, did not apply here. In *Quarles*, the police were informed that an armed rapist had entered a supermarket. *Quarles*, 467 U.S. at 651-52. The police spotted the defendant, who matched the description of the rapist in the supermarket and apprehended him. *Id*. at 652. An officer frisked the defendant and found an empty shoulder holster. *Id*. After handcuffing the defendant, and without giving *Miranda* warnings, the officer asked where the gun was, and the defendant nodded in the direction of

some empty cartons and said: "The gun is over there." *Id*. The Supreme Court reasoned that the police were confronted with the immediate necessity of ascertaining the whereabouts of the gun which they believed had been removed from the holster and discarded in the supermarket. *Id*. at 657. Because the concealed gun posed a danger to public safety, the Court created a limited exception to *Miranda*, holding that "the need for answers to questions in a situation posting a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Id*.

¶ 43 In contrast to *Quarles*, where the officers were confronted with a situation in which the defendant had just discarded/concealed a weapon in a populated area, Officer Wrobel had no reason to believe that there was a concealed gun in defendant's residence, or that there was any other threat to public safety. The officers were not looking for weapons when they searched the house; rather, Officer Wrobel testified that they were searching for "possession of a controlled substance, any proof of residency, weighing, narcotics equipment." When asked what prompted his detention of defendant, Officer Wrobel did not cite public safety but, instead, testified that he wanted to avoid "hav[ing] to tear the house apart." Even to the extent that there *was* any safety risk posed by defendant, the officers effectively neutralized the risk by detaining defendant and his girlfriend in the common area, handcuffing them, and constantly monitoring them. The public safety exception is "a narrow exception to the *Miranda* rule" that "will be circumscribed by the exigency which justifies it." *Id.* at 658. No such exigency existed here justifying the officer's questioning of defendant without first giving him the *Miranda* warnings.

¶ 44 Further, the form of Officer Wrobel's question reveals the inapplicability of the public safety exception here. The public safety exception allows for prewarning questioning necessary to secure the safety of the officers or the public, but does not allow for questions designed solely

to elicit testimonial evidence from a suspect. *Id*. at 659. In contrast to *Quarles*, where the officer only asked where the gun was, Officer Wrobel asked defendant if he "had *anything* in the house that was illegal." (Emphasis added.) The breadth of Officer Wrobel's question shows that it was designed to elicit testimonial evidence from defendant, rather than to secure the safety of the officers and/or the general public.

¶ 45 The State next argues that we should affirm the trial court's finding that defendant was not in custody for *Miranda* purposes based on a pair of United States Supreme Court cases, *Michigan v. Summers*, 452 U.S. 692 (1981), and *Muehler v. Mena*, 544 U.S. 93 (2005). *Summers* and *Mena* addressed whether the respective defendants' detentions were permissible under the fourth amendment, which protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. The central inquiry under the fourth amendment is " 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' " *Summers*, 452 U.S. at 700 n. 11 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)).

¶ 46 The instant case does not concern an issue of defendant's fourth amendment rights to be free from unreasonable search and seizure, nor does defendant here claim that he was unlawfully seized. Rather, the issue here is whether defendant was in custody for purposes of defendant's fifth amendment *Miranda* rights, which is an issue separate and apart from the fourth amendment issues addressed in *Summers and Mena*. See *United States v. Revels*, 510 F. 3d 1269, 1274 (10th Cir. 2007) ("whether an individual is subject to a lawful investigative detention within the meaning of the Fourth Amendment does not necessarily answer the separate question of whether a suspect is in custody for purposes of *Miranda*"). Accordingly, *Summers* and *Mena* are inapposite and need not be discussed further. See also *Coleman*, 2015 IL App (4th) 140730, ¶ 41

(the officers' ability to detain the defendant under the fourth amendment was not at issue where the defendant's only argument was whether his fifth amendment rights were violated when he underwent custodial interrogation without being given his *Miranda* warnings); and *Hannah*, 2013 IL App (1st) 111660, ¶ 45 (finding that a case addressing an allegedly unlawful seizure under the fourth amendment was inapposite where the issue before it was whether the defendant was in custody for *Miranda* purposes).

¶ 47 The next issue we address is whether the trial court erred in finding that defendant was not under "interrogation" at the time he made his first statement to Officer Wrobel regarding the presence of bullets in the house. For the safeguard of *Miranda* to apply, the defendant must be "subjected to interrogation" at the time he is in custody. *Miranda*, 384 U.S. at 467.

¶ 48 "[T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to 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, 300-01 (1980).

¶ 49 The State contends that the trial court was correct in finding that Officer Wrobel's single question of defendant, as to whether "there was anything illegal in the home that should not be there," did not amount to an "interrogation" under *Miranda* and, therefore, defendant's responsive statement regarding the presence of bullets in the house need not be suppressed.

¶ 50 *People v. Fort*, 2014 IL App (1st) 120037, is instructive. In *Fort*, police obtained a warrant to search a home for cocaine and paraphernalia relating to cocaine trafficking. *Id.* ¶ 3. Several officers, with guns drawn, forcibly entered the home listed on the search warrant, where

they encountered the defendant and other persons. *Id.* The defendant asked Officer Delcid if he would permit her to get her baby from the bedroom, rather than leave the baby unsupervised while the officers executed the search warrant. *Id.* ¶ 4. Officer Delcid escorted the defendant to the bedroom door, saw the baby in the room, and asked the defendant "if there [was] anything in the room [police] should know about because the room eventually is going to get searched anyway." *Id.* The defendant told the officer that she had some cocaine inside the pillowcase on her bed. *Id.*

¶ 51 On appeal from her conviction for possessing cocaine, the defendant argued that the trial court should have granted her motion to suppress testimony about her response to Office Delcid's question, which he asked without giving any *Miranda* warnings. *Id.* ¶ 9. The State countered, in pertinent part, that the officer's question did not amount to interrogation and, thus, that *Miranda* did not apply. *Id.* ¶ 12.

¶ 52 The appellate court found that Officer Delcid's question constituted interrogation for purposes of *Miranda*, reasoning:

> "[Officer] Delcid testified that he asked [the defendant] whether police should know about anything in the room only for security purposes, because he feared that [the defendant] might have guns in the room. But instead of asking about weapons, he asked a question which applied to any contraband police might find. *** The question asks for anything in [the defendant's] room that might interest police, when police were executing a warrant to search for narcotics. [Officer] Delcid candidly admitted that he did not limit the scope of his question to weapons. A question as to whether a defendant has contraband qualifies as interrogation, likely to elicit an incriminating response." *Id.* ¶ 18.

¶ 53 Similar to *Fort*, Officer Wrobel testified that he detained defendant for safety purposes, but instead of asking about weapons, he asked a question about anything illegal in defendant's home, which applied to any contraband the police might find. The officer should have known that his question, as to whether defendant had any contraband in his home, was reasonably likely to elicit an incriminating response and, thus, qualified as interrogation under *Miranda*. *Id*.

¶ 54 In summary, Officer Wrobel engaged in custodial interrogation of defendant when he forcibly entered defendant's residence along with seven other officers, moved defendant and his girlfriend from the bedroom to the common area, handcuffed them both, and questioned him about whether there was anything illegal in the house. Because the officer did not advise defendant of his *Miranda* rights prior to asking that question, the trial court should have suppressed evidence of defendant's response.

¶ 55 Next, defendant argues that the trial court erred by denying his motion to suppress his second statement to the police, in which he told them that the items recovered from the ceiling panel in the northeast basement bedroom (the holster, magazine, and shotgun ammunition) were "old stuff." Defendant was not given his *Miranda* warnings prior to making that statement.

¶ 56 Defendant contends that the *Miranda* warnings should have been given because he was still in custody (handcuffed, moved from the bedroom to the common area, monitored by multiple police officers) at the time he made the second statement, and that he made the second statement following the "functional equivalent" of an interrogation. Specifically, defendant contends that, when Officer Wrobel earlier asked him whether he had anything "illegal" in the house, defendant responded that he only had some bullets and he also asked: "What are you looking for?" Officer Wrobel never responded to defendant's question and, instead, began searching the northeast bedroom in full view of defendant. Defendant contends that the officer

thereby "left the conversation open," creating a reasonable likelihood that defendant would feel compelled to explain the objects which the officers subsequently recovered from the ceiling panel and which they "placed in front of him."

¶ 57 The State counters that the officers did not engage in the functional equivalent of an interrogation when they recovered the items from the ceiling panel, and that defendant's statement that those items were "old stuff" was a spontaneous, voluntary statement for which *Miranda* warnings were not required to be given. See *People v. Pawlicke*, 62 Ill. App. 3d 791, 796 (1978) (volunteered or spontaneous statements, as opposed to admissions elicited by custodial interrogation, are expressly excepted from the *Miranda* requirements and, thus, a volunteered statement is admissible even in the absence of *Miranda* warnings).

¶ 58 We agree with the State, as Officer Wrobel's testimony at the suppression hearing shows that, after his initial interrogation of defendant resulted in the statement that there were bullets in the house, the officer ended the questioning and did not ask defendant for any further information, nor did defendant offer any further information, prior to the search of the northeast bedroom. Contrary to defendant's argument, there was no ongoing, "open" conversation at the time that the holster, magazine, and shotgun ammunition were recovered from the ceiling panel in the northeast bedroom; Officer Wrobel specifically testified that no questions were asked of defendant when those items were recovered, and that defendant "spontaneously" stated: "That's old." Also contrary to defendant's argument, there was no evidence presented either at the suppression hearing or at trial indicating that the items recovered from the ceiling panel were ever placed in front of defendant prior to his statement; rather, Officer Wrobel's testimony was that defendant made his statement as the items were pulled from the ceiling, without any prompting from the officers.

¶ 59 The trial court found Officer Wrobel to be credible, and we will not substitute our judgment for that of the trial court. *People v. Motzko*, 2017 IL App (3d) 160154, ¶ 18. Officer Wrobel's testimony supported the trial court's finding that defendant's statement that the items recovered from the ceiling panel were "old" was "clearly spontaneous." As defendant's second statement was volunteered and spontaneous, it was admissible even in the absence of *Miranda* warnings. *Pawlicke*, 62 Ill. App. 3d at 796.

¶ 60 The State next argues that the error in admitting Officer Wrobel's testimony regarding defendant's first statement that there were bullets in the house was harmless given all the properly-admitted evidence against him, including the testimony of his second statement identifying the firearm ammunition recovered from the ceiling panel in the northeast basement bedroom.

¶ 61 "In determining whether a constitutional error is harmless, the test to be applied is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). The State bears the burden of proof. *Id*.

¶ 62 We cannot say that the State has met its burden. In convicting defendant, the trial court noted that defendant lived in the residence and was found in the southeast basement bedroom. Because numerous other people lived in and/or visited the house and had access to the northeast basement bedroom and the cabinet in the common area where all the firearm ammunition was found, the trial court expressly relied on both of defendant's statements to the officers as proof of his constructive possession of the firearm ammunition. The trial court stated in pertinent part:

> "There's no question he had control over that area at the time of the recovery of the contraband. He made admissions, which makes sense. I mean, every one of those

> admissions the defendant made makes sense, *particularly him doing the right thing before they tore his father's house apart. Telling them, 'Yeah, I have bullets in the house*,' and admitting when they found the ones up in the ceiling tile, different from the ones recovered from the proof of residency, saying, '*** that's old stuff.' There's no question that the People have been able to prove beyond a reasonable doubt this offense." (Emphasis added.)

¶ 63 Thus, the court's own words make clear that, defendant's first statement regarding his knowledge of the bullets in the house, contributed to the verdict. Had the trial court properly suppressed defendant's first statement based on the officer's failure to give *Miranda* warnings, it would have been left with only defendant's second statement "that's old stuff," which he made upon seeing the officers pull the holster, magazine, and single shotgun shell from the ceiling panel in the northeast basement bedroom. In rendering its verdict, the trial court did not find that either statement was alone sufficient to prove defendant's constructive possession but, rather, the court expressly found that both statements, considered together along with defendant's presence in the basement, were sufficient to prove defendant's constructive possession beyond a reasonable doubt.

¶ 64 Absent the improper admission of defendant's first statement, the remaining evidence of defendant's constructive possession of the firearm ammunition was not overwhelming, where the firearm ammunition was discovered in a house where other people lived, in a basement regularly accessed by friends and neighbors, and not in the bedroom occupied by defendant at the time of his detention. On this record, we cannot say that the State has proven beyond a reasonable doubt that the court would have come to the same conclusion regarding defendant's constructive

possession of the firearm ammunition absent its error in admitting defendant's first statement. Accordingly, we reverse and remand for a new trial.

¶ 65 As a result of our disposition, we need not address defendant's remaining arguments on appeal. We find no double jeopardy bar to a retrial, as the evidence of record is sufficient to support a finding of guilty on the offense charged. See *People v. Olivera*, 164 Ill. 2d 382, 393 (1995).

¶ 66 Reversed and remanded.