2021 IL App (5th) 180246-U

NO. 5-18-0246

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 16-CF-2175
	)	
AARON E. CROWDER,	)	Honorable
	)	Kyle A. Napp,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to suppress statements that were made prior to being Mirandized where the statements were made spontaneously before the interrogation began. The trial court also did not err in denying defendant's tendered instruction No. 1, a non-IPI instruction regarding self-defense, where neither party presented evidence sufficient to raise the issue of self-defense.

¶ 2 BACKGROUND

¶ 3 On August 23, 2016, Officer Michael Morelli attempted to arrest defendant based on an incorrect belief that defendant was another man who had a warrant out for his arrest. As a result of this incident, defendant was charged with disarming a peace officer (720 ILCS 5/31-1(a) (West 2014)), in that defendant took Officer Morelli's taser without his

consent, knowing him to be a peace officer engaged in the execution of his official duties, aggravated battery (*id.* § 12-3.05(d)(4)) in that defendant knowingly and without legal justification bit Officer Morelli on the hand, knowing him to be a peace office engaged in the execution of his official duties, and a misdemeanor count of resisting a peace officer.

¶ 4 On November 3, 2017, defense counsel filed a timely notice that defendant would assert self-defense. At a subsequent pretrial hearing, counsel clarified that self-defense would be asserted only to count 2, the aggravated battery of a police officer. At the same hearing, the State averred that it would proceed to trial only on the felony charges, and dismissed the misdemeanor resisting arrest charge.

¶ 5 The court declined to issue any ruling on any jury instructions and instead directed the attorneys to provide the court with their proposed jury instructions for everyone to review. The cause proceeded to trial on December 5, 2017.

¶ 6 Officer Morelli testified that he and his K-9 partner, Jax, were patrolling Brown Street in Alton, Illinois, on August 23, 2016. Officer Morelli was stopped at the intersection of Pearl Street and Brown Street when he observed defendant—who he believed to be Brandon Singleton—walking west around the 600 block of Highland. Officer Morelli knew of Singleton from an incident in May 2016 around the same location in which Singleton fled the scene. After running a search, he discovered Singleton had an active warrant for his arrest. While confirming a warrant for Singleton's arrest, Officer Morelli circled around the area, ending at the Highland and Brown intersection again. At this time, Officer Morelli observed defendant was in the approximate 700 block of Highland. Defendant had not yet reached the driveway when the officer parked his car on the street in front of 708 Highland

Street.

¶ 7 Once parked, Officer Morelli exited the vehicle and stated "hey, man, I need to holler at you." Defendant then fled towards the residence at 708 Highland Street despite Officer Morelli's directive to stop. Officer Morelli averred that he pursued defendant on foot and made contact with him at the front door of the residence, which led to the porch. Officer Morelli was able to grab defendant's arm once he was halfway in the door, and informed defendant that he had a warrant. Defendant told Officer Morelli that he did not have a warrant.

¶ 8 Officer Morelli testified that although defendant was pulling toward the house, he was able to handcuff defendant's right hand. He told defendant to put his hands behind his back, reiterating that he had a warrant for defendant's arrest. Defendant failed to comply, so Officer Morelli pulled defendant out of the house and defendant fell to one knee. Officer Morelli testified he continued to tell defendant that he had a warrant for his arrest and warned defendant that if he did not put his hands behind his back, he would tase defendant.

¶ 9 When defendant failed to comply, Officer Morelli grabbed his department-issued taser with this left hand and deployed one of two sets of probes. After the first set did not affect defendant, Officer Morelli believed both probes were not making contact. Accordingly, Officer Morelli testified he used the drive-stun technique, where the muzzle end of the taser serves as a second point of contact, but that also had no effect because defendant was able to grab the taser with his left hand and push it away from his body. As defendant grabbed the taser, Officer Morelli deployed the second set of probes before

defendant threw the taser down.

¶ 10 Officer Morelli testified that he and defendant then struggled back-and-forth almost as if they were playing tug of war. Eventually, he pulled defendant close to the police vehicle. He averred, during this time, he continued attempting to take defendant into custody and decided that he needed backup. Officer Morelli removed his left hand from the cuffs to use the radio on his hip. When he looked down, he saw defendant's hand move toward his duty belt and believed defendant was reaching for his firearm. Officer Morelli testified that he quickly keyed the radio for help as he observed defendant moving closer towards his firearm. Immediately after, he used his right hand—which was still holding the handcuff—to pull the hood over his holster. At this point, Officer Morelli observed defendant lean in and bite the top of his knuckle on his right index finger.

¶ 11 At this point, Officer Morelli deployed Jax, using a remote control to open the squad car door, and commanded him to apprehend defendant. Officer Morelli clarified that he warned defendant about the dog several times, but defendant failed to comply with his demands. Jax engaged and bit defendant a total of three times. With the assistance of a helpful civilian and the arrival of backup, Officer Morelli finally apprehended defendant and removed himself from the situation. It was not until after Officer Morelli was discharged from the hospital and returned to the police station that he realized defendant was not Singleton.

¶ 12 As a result of the incident, Officer Morelli averred he suffered a puncture wound from one of the probes inadvertently striking him in the cuticle of his left middle finger, a

human bite mark on the knuckle of his right index finger, and small lacerations on his right hand from the handcuffs.

¶ 13 The State also called Detective Mike Roderfeld, who interviewed defendant the day after his arrest, as a witness. At this time, defense counsel made an oral motion to suppress pre-Mirandized statements from that interview. The court held a hearing outside of the jury, in which Detective Roderfeld testified.

¶ 14 He averred that he approached defendant while he was in his cell at the jail to ask him if he wanted to make an official statement. After defendant indicated he wanted to make a statement, Detective Roderfeld took defendant to an interview room in the Detective Bureau. He informed defendant that he would turn on a device that would audio-video record the interview, and asked defendant if he would like a drink. He then left the room for a short time. Upon returning, defendant immediately began providing his statement before the detective could sit down or Mirandize defendant. Detective Roderfeld averred he attempted to interrupt defendant several times to get through the formalities but was unable to Mirandize defendant until after he revealed much of his story. Once Detective Roderfeld obtained defendant's signature on the *Miranda* waiver form, defendant continued with the same story as before.

¶ 15 Defense counsel argued that because defendant was not informed of his constitutional rights as required by *Miranda v. Arizona*, 384 U.S. 436, 461 (1966), prior to making the statements, the statements should be suppressed. The State responded the interrogation had not yet begun before the statements. Detective Roderfeld in no way posed

a question or provoked defendant. The State further argued that before any question was asked, Detective Roderfeld Mirandized defendant and obtained his signed waiver.

¶ 16 Upon reconvening the following day, the court denied defendant's oral motion to suppress the statements prior to being Mirandized. It first noted there was no allegation, and it did not appear, that there was any type of coercion or threat. Further, there was no dispute that defendant was in custody at the time of the statements. The court found, while the events prior to sitting in the interview room were important to consider the perspective and defendant's point of view, the statements were spontaneous and not a result of interrogation because defendant immediately started volunteering information once Detective Roderfeld returned to the room and closed the door. It also noted that Detective Roderfeld tried to interrupt and stop defendant. Consequently, the audio-video recording of the interview was admitted into evidence.

¶ 17 Defendant testified on his own behalf. On the morning of August 23, 2016, he observed an officer parked on Highland as he left his home on Brown Street to walk to his mother's home at 708 Highland. She was going to give him a ride to open his business. While he walked, defendant believed the officer was watching him in an "ugly" way. The officer turned down Brown Street but quickly returned from the same way and parked in front of defendant's mother's home. Defendant averred, at this point, he was seven or eight feet from the screen door of his mother's house.

¶ 18 Defendant continued to walk up the step to the door, tapped on the door, and notified his mother that the police were out front. He then turned around and walked off the porch with his hands up. At that time, the officer jumped out of his car, and defendant heard him

say “hey, dude, let me talk to you or something like that, you got a warrant.” Defendant testified that he told the officer he was coming with his hands up and was going to obey him. He also informed the officer that there was a paper on the porch which would show that defendant did not have an active warrant. Defendant stated Officer Morelli was yelling and looked like “he wanted to kill somebody that day.”

¶ 19 Officer Morelli walked towards defendant—while his hands were up—and placed the cuff on defendant’s right wrist. Because of Officer Morelli’s attitude and the pain from being cuffed, defendant testified that he fell to the ground once cuffed. He further contended that Officer Morelli would not let him get down and attempted to lift him up by the cuff. Officer Morelli also kept repeating that he would break defendant’s wrist.

¶ 20 Defendant testified that after he sat down with his hands up, Officer Morelli tased him while he also cursed at him and called him insulting names. Defendant remembered “just shaking and shaking.” Eventually, Officer Morelli pulled defendant to his feet and fired the second set of prongs. Defendant stated that Officer Morelli dropped the taser because he accidentally tased the handcuff that he was touching, which made the taser jump out of his hand.

¶ 21 The two men struggled around the yard with Officer Morelli dragging defendant until he pushed defendant’s back against his mother’s car. Defendant fell and Officer Morelli kicked him between the legs then punched defendant in the mouth. After Officer Morelli dragged defendant a little longer, another man came up and grabbed him. The dog was released at that time. Defendant contended the dog first ran to Officer Morelli and started biting him until the officer corrected the dog to apprehend defendant.

¶ 22 Throughout his testimony, defendant reiterated that he never attempted to disarm or take the taser from the officer, nor made any movement to indicate that he was going for the officer's gun. Defendant also repeatedly testified that he never bit the officer at any point.

¶ 23 The defense also called Officer Jason Cole, who responded to Officer Morelli's call for assistance, to testify. Officer Cole averred that he reviewed Officer Morelli's injuries immediately after the altercation. He observed a puncture wound to Officer Morelli's left index finger, lacerations to his right index and middle fingers, and general redness and swelling on Officer Morelli's right hand and neck. He did not observe a puncture wound or bleeding on Officer's Morelli's right hand. During his examination, Officer Morelli also averred that his right hand somehow got caught in the handcuffs and that he had been bitten by defendant, which prompted Officer Cole's recommendation that Officer Morelli go to the hospital.

¶ 24 The physician assistant who treated Officer Morelli, Alisia Klostermann, also testified for the defense. Klostermann revealed that the "Exam" section of the hospital records showed Officer Morelli suffered superficial scraping of his skin on his right index and middle finger. On cross-examination, she clarified that the diagnosis, history, and discharge papers all show that Officer Morelli suffered from a human bite of the right hand and injury from the electro-shock gun.

¶ 25 Every other witness, for the State and defense, testified that they did not see anyone, including defendant, bite Officer Morelli. Most of the remaining witnesses lacked any information of the events that occurred before Jax was released.

¶ 26 Once the defense rested its case, the court addressed the jury instructions. From the outset, defense counsel informed the court it would not request self-defense. Consequently, the State asked to withdraw its tendered instruction No. 19, which mirrored Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000) (hereinafter IPI) for self-defense, but requested both IPI 24-25.12 and 24-25.20 (hereinafter State's instructions). IPI 24-25.20 states "[a] person is not authorized to use force to resist an arrest which he knows is being made by a peace officer, even if he believes that the arrest is unlawful and the arrest in fact is unlawful." IPI 24-25.12 provides that:

> "A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend himself from bodily harm while making the arrest.
>
> A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that such warrant is invalid."

¶ 27 Over defense's objection, the court granted both instructions. Because the defense felt providing the State's tendered instructions without further clarification would mislead the jury, defense counsel offered a non-IPI instruction which stated:

> "A person is justified in the use of force against a police officer when and to the extent that he reasonably believes the peace officer has used excessive force in arresting the person and the person reasonably believes that such conduct is

necessary to defend himself against the peace officer's imminent use of excessive force."

¶ 28 Defense counsel further argued that the instruction clearly states Illinois law in regard to a person's rights when they encounter circumstances similar to this case. The State responded that IPI 24-25.20 and 24-25.12 clearly states the law on what kind of force to be used against a peace officer. It further explained that if defendant is now claiming that he used force against Officer Morelli, a self-defense instruction should be given, but defendant had yet to assert that he used any force against Officer Morelli.

¶ 29 The trial court agreed with the State and denied defendant's non-IPI instruction, stating:

"[Defendant] testified that at no time did he resist. He testified from the git-go that he put his hands up, he—that he was drug, that at no time did he kick, hit, bite, this entire time *** there was never an issue of self-defense at any time, and the defense hasn't request self-defense because of that.

This IPI is a non-IPI. It does not accurately state the law, and this—in the Court's eye *** So with that, the Court is not going to give this instruction, but I would make it a part of the record so that it's contained within the Court file."

¶ 30 In its closing, defense counsel continued its theory of innocence, reiterating that "the details show that [defendant] did not disarm Officer Morelli. The details show that [defendant] did not bite Officer Morelli on the right hand."

¶ 31 The jury was given the State's tendered instructions, among others not at issue here, and defendant was found guilty on both counts. This appealed followed.

¶ 32 ANALYSIS

¶ 33 I. Motion to Suppress

¶ 34 On appeal, defendant first argues that the trial court erred in denying his oral motion to suppress videotaped statements that were made before he was Mirandized. Because Detective Roderfeld initiated contact for the sole purpose of obtaining a video-recorded statement and asked defendant if he would make an official statement, the detective should have known the ensuing circumstances would elicit an incriminating response.

¶ 35 Conversely, the State argues that the pre-Mirandized statements were voluntary and spontaneous. As such, *Miranda* does not insulate those statements from being admitted at trial. The State also contends that asking if defendant wanted to make an official statement or wanted anything to drink are the absolute definition of actions normally attendant to arrest and custody, which have been determined unlikely to elicit an incriminating response.

¶ 36 As an initial matter, we note the State contends that defendant forfeited this argument by failing to specify which portion of the interview was improperly played in his posttrial motion. Based on our review of the record, we find defendant sufficiently preserved the argument for appeal.

¶ 37 We review a trial court's decision regarding a motion to suppress under a two-part standard. The trial court's factual findings are reviewed against the manifest weight of the evidence. *People v. Hunt*, 2012 IL 111089, ¶ 22. In applying the established facts, however, we review *de novo* the ultimate question of whether suppression was warranted. *Id.*

¶ 38 The facts are largely undisputed. Defendant was in the custody of the Alton Police Department for roughly 24 hours when Detective Roderfeld arrived at defendant's cell and asked him if he would like to give an official statement. Defendant indicated he wanted to make a statement[1] and was taken to an interview room in the Detective Bureau. Detective Roderfeld informed defendant that he would be turning on a device to audio and video record the interview, and asked defendant if he wanted a drink. The detective then exited the room for a few minutes. When Detective Roderfeld returned to the room and closed the door, defendant began talking. The detective attempted to interrupt defendant a few times but only successfully Mirandized defendant after defendant provided much of his story.

¶ 39 The fifth amendment under the United States Constitution provides that "[n]o person *** shall be compelled in any criminal case to be a witness against himself" (U.S. Const., amend. V), which applies to the states through the fourteenth amendment. *Hunt*, 2012 IL 111089, ¶ 23. The self-incrimination privilege protects against compulsion to testify not only in criminal court but also custodial interrogation. *Miranda*, 384 U.S. at 461. This is so because custodial interrogation is an inherently coercive environment that undermines an individual's "will to resist" or "compel[s] him to speak where he would not otherwise do so freely." (Internal quotation marks omitted.) *Hunt*, 2012 IL 111089, ¶ 23.

¶ 40 To ensure the privilege against self-incrimination during custodial interrogations, the United States Supreme Court in *Miranda* imposed prophylactic measures, requiring:

[1]The record does not reveal how the defendant "indicated" that he wished to make a statement.

> "officers to warn a suspect before a custodial interrogation that: he has the right to remain silent; anything he says can be used against him in a court of law; he has the right to have an attorney present; and if he cannot afford an attorney, one will be appointed for him before questioning if he so desires." *Id.* ¶ 25.

The failure to adhere to these procedural safeguards renders any statements obtained from the custodial interrogation inadmissible against defendant at trial. *Miranda*, 384 U.S. at 479.

¶ 41 Not all statements obtained from a defendant in custody, however, are the product of interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 299 (1980). Interrogation encompasses only express questioning or its functional equivalent. *Hunt*, 2012 IL 111089, ¶ 30. Any statement given voluntarily without compelling influence is admissible. *Miranda*, 384 U.S. at 478.

¶ 42 This case presents circumstances in which the detective asked defendant if he wished to make an official statement and took several steps to prepare for the interview before defendant began making statements. We therefore address the detective's express question and whether the subsequent surrounding circumstances amounted to an interrogation for *Miranda* purposes, in turn.

¶ 43 "Express questioning" for purposes of *Miranda* does not encompass all questions directed at a suspect. See *Pennsylvania v. Muniz*, 496 U.S. 582, 601 n.14 (1990). The underlying foundation for *Miranda* protections—the self-incrimination privilege—is aimed at protecting defendants from "the cruel trilemma of self-accusation, perjury or contempt" when they are compelled to provide testimonial evidence. (Internal quotation

marks omitted.) *Id.* at 595-97. A defendant confronts the trilemma whenever he or she is "asked for a response requiring him to communicate an express or implied assertion of fact or belief." *Id.* at 597. The privilege thus protects an accused only from being compelled to provide testimonial evidence, or a communication that itself relates to a factual assertion or discloses information. *Id.* at 589 (citing *Doe v. United States*, 487 U.S. 201, 210 (1988)). Consequently, the privilege and therefore *Miranda* does not apply whenever the accused is asked for a response that does not require revealing personal beliefs or knowledge of fact. *Id.* at 597-98.

¶ 44 The question at issue here is "whether defendant wanted to make an official statement." While the act of making a statement would disclose testimonial evidence, the question here asked only if defendant wanted to disclose his facts and beliefs. The question did not—itself—seek defendant's statements or require defendant to communicate his beliefs. Rather, the question sought only whether defendant wanted to make a statement, which required a nonfactual answer of "yes" or "no." *United States v. Wallace*, 753 F.3d 671, 674 (7th Cir. 2014); see *Muniz*, 496 U.S. at 598. We further note that defendant's own actions indicating that he would like to make a statement without also divulging his knowledge supports that such question did not elicit testimonial evidence.

¶ 45 The Seventh Circuit Court of Appeals case, *United States v. Wallace*, 753 F.3d 671, 674 (7th Cir. 2014), also supports our position that a question merely asking whether a defendant wants to make a statement is not protected by *Miranda*. In *Wallace*, the Seventh Circuit found the officer's question " 'would you mind stepping out to talk about [the crime]' " is not interrogation. *Id.* at 673. It reasoned that questions asking the defendant to

make a statement are not the same as asking the defendant whether he *wanted* to make a statement. *Id.* The proper and expected answer to the latter is "yes" or "no". *Id.* Thus, the defendant's inculpatory answer was neither responsive to the agent's question nor elicited by an interrogation. *Id.*

¶ 46 Accordingly, without more, the question of whether defendant wanted to make an official statement did not render defendant's subsequent statements in the interrogation room the result of custodial interrogation. *Id.*; *State v. Harris*, 2017 WI 31, ¶ 18, 892 N.W.2d 663; *contra State v. Eli*, 273 P.3d 1196, 1208-09 (Haw. 2012) (based on state constitutional grounds).

¶ 47 However, our analysis does not end here. We must consider all the events leading up to defendant's statements to determine whether the detective's actions, beyond his words, nevertheless amounted to the functional equivalent of interrogation. *People v. Smith*, 2016 IL 119659, ¶ 50.

¶ 48 Due to the inherent coerciveness of the interrogation environment, *Miranda* safeguards extend to not only express questioning but also its functional equivalent, which is "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." *Innis*, 446 U.S. at 301. While this requires a fact-specific inquiry, a review of precedent elucidates the boundaries of the functional equivalent of interrogation.

¶ 49 In *Rhode Island v. Innis*, the Court clarified that while the standard primarily focuses on the suspect's perspective, police intent may have bearing on determining whether its

acts amounted to interrogation. *Id.* at 301 nn.7, 8. In that case, defendant was arrested for killing a man with a shotgun. *Id.* at 294. After being read his *Miranda* rights, defendant invoked his right to counsel. *Id.* While being transported to the police station, defendant overheard a conversation between two officers discussing the missing gun, in which one stated that " 'there's a lot of handicapped children running around in this area, and God forbid one of them might find a weapon with shells and they might hurt themselves.' " *Id.* at 294-95. Defendant then interrupted the officers and led them to the missing gun. *Id.* at 295.

¶ 50 In concluding the officers could not have known that their conversation would likely elicit a response, the Court reasoned police action must reflect more than "subtle compulsion" or striking a responsive chord. *Id.* at 303. The measure of compulsion must also be beyond that inherent in custody itself. *Id.* at 300.

¶ 51 The Court provided further clarification in *Arizona v. Mauro*, 481 U.S. 520, 522 (1987), where officers allowed defendant to speak to his wife in an interrogation room, while an officer was present, although defendant had clearly invoked his right to have a lawyer present. The conversation was also recorded. *Id.* After summarizing the history of the self-incrimination privilege in the context of custodial interrogation, the Court seemed to equate interrogation with subjection "to compelling influences, psychological ploys, or direct questioning." *Id.* at 525-27, 529. Because defendant was not subjected to such by being allowed to speak to his wife in the presence of an officer, his statements were voluntary and not a result of interrogation. *Id.* at 529.

¶ 52 The Court emphasized that the determination of whether police conduct is interrogation should be made in light of the purpose of *Miranda* to prevent "government officials from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment." *Id.* at 529-30. While officers knew there was a possibility defendant could incriminate himself if they allowed him to speak to his wife, officers do not interrogate a suspect simply by hoping the suspect will incriminate himself. *Id.* at 529.

¶ 53 Based on these principles, the Seventh Circuit in *Easley v. Frey*, 433 F.3d 969, 974 (7th Cir. 2006), affirmed an Illinois Supreme Court determination that officers do not interrogate a suspect by informing him of the charges against him, the evidence to support those charges, and punishment he may face. While being interviewed about the murder of the superintendent at a correctional center, the defendant in *Easley* invoked his right to remain silent. *Id.* at 971. An investigator acknowledged defendant's invocation of the right to remain silent then informed defendant that witnesses indicated he and another inmate murdered the superintendent which could subject him to the death penalty. *Id.* Relying on a case from a sister circuit, the Seventh Circuit held that a "provision of information, even if its weight might move a suspect to speak," does not amount to interrogation. *Id.* at 974. Rather, it is a matter-of-fact communication that is not comparable to the "psychological ploys" that *Miranda* was intended to protect. *Id.*

¶ 54 In light of the above precedent, we find this case falls outside the context of the inherently coercive custodial interrogation for which the *Miranda* safeguards were designed. Certainly, Detective Roderfeld should have reasonably known that interviewing

a defendant would likely elicit incriminating statements. But the interview here had not yet begun.

¶ 55 The detective informed defendant the interview would be recorded, asked defendant if he wanted a drink, and left the room to begin the recording. Defendant was left in the room for a few minutes before the detective returned. Upon returning, Detective Roderfeld was not able to even sit down before defendant started speaking. There is no evidence that Detective Roderfeld indicated that the interview would immediately begin once he returned or that he engaged in any other furtive or blatant act that would elicit any response from defendant at the time the detective closed the door.

¶ 56 Detective Roderfeld did nothing more than what was normally attendant to conducting an interview. He first ensured the interview would happen, then proceeded through the normal course of procedures to prepare for the interview, including the activation of a recording device so he could make a record of himself conducting a constitutionally valid interview. There was no physical or psychological pressure on defendant. Nothing in the record suggests that the detective knew defendant was particularly susceptible in some way to the circumstances here or had a history of blurting out information absent questioning. Moreover, defendant does not allege—and the record does not support—that Detective Roderfeld's question and subsequent actions were intentionally designed to surreptitiously cause defendant to divulge incriminating evidence.

¶ 57 On this record, it is apparent that defendant was not subjected to any "compelling influences, psychological ploys, or direct questioning" that *Miranda* was intended to protect. *Mauro*, 481 U.S. at 529. Although both parties knew the interview would begin at

some point, Detective Roderfeld could not have reasonably known that his mere return to the interview room after preparing the interview—but before he said anything or even sat down to start the interview—would likely elicit an incriminating response from defendant. See *Innis*, 446 U.S. at 301-02 ("police surely cannot be held accountable for the unforeseeable results of their words or actions"). While the preparation and return of the detective certainty struck a responsive chord in defendant, he was subject to less "subtle compulsion" than that in *Easley*. We decline to find that the completion of the normal steps to prepare for an interview is the functional equivalent of interrogation.

¶ 58 Accordingly, Detective Roderfeld's actions did not amount to the functional equivalent to interrogation under *Miranda* and its progeny. Defendant's statements were therefore voluntary and the trial court's denial of defendant's motion to suppress his statements was correct.

¶ 59 II. Jury Instructions

¶ 60 Defendant also contends the trial court erred in denying his tendered non-IPI self-defense instruction, despite its grant of the State's instructions. He explains this instruction was necessary because the admission of the State's instructions—alone—were misleading and confusing. Defendant also contends the error was exacerbated by the fact that defendant was not on trial for resisting arrest, but for disarming and assaulting Officer Morelli.

¶ 61 The parties' briefs focus primarily on the issue of whether defendant resisted before Officer Morelli's force such that defendant was not entitled to a self-defense instruction. See *People v. Wicks*, 355 Ill. App. 3d 760, 763 (2005); *People v. Haynes*, 408 Ill. App. 3d

684, 691 (2011). We need not address this issue, as defendant failed to present evidence to sufficiently raise the issue of self-defense.

¶ 62 The sole function of jury instructions is to convey the correct legal principles applicable to the evidence presented, so that the jury may arrive at a correct conclusion. *People v. Bannister*, 232 Ill. 2d 52, 81 (2008). Jury instructions should not be misleading or confusing. *People v. Herron*, 215 Ill. 2d 167, 188 (2005). In determining whether an instruction accurately states the law, a reviewing court does not review an instruction in isolation, but rather looks to the instructions as a whole. *People v. Nere*, 2018 IL 122566, ¶ 67.

¶ 63 A defendant is entitled to an instruction on a theory of defense that has some foundation in the evidence, however slight. *People v. Everette*, 141 Ill. 2d 147, 157 (1990). Self-defense is an affirmative defense, meaning that unless the State's evidence raises the issue, the defendant bears the burden of presenting evidence sufficient to raise the defense. *Id.* As such, a defendant cannot combine the State's evidence establishing the act required by the charge with the defense's evidence of defendant's fear to construct a theory of self-defense. *People v. Lewis*, 2015 IL App (1st) 122411, ¶ 65; *People v. Freeman*, 149 Ill. App. 3d 278, 281 (1986).

¶ 64 We review the sufficiency of the evidence to justify giving a jury instruction under an abuse of discretion standard. *People v. McDonald*, 2016 IL 118882, ¶ 42. Whether a particular jury instruction accurately conveys the applicable law, however, is reviewed *de novo*. *Nere*, 2018 IL 122566, ¶ 29.

¶ 65 The prior Fifth District decision in *People v. Robinson*, 92 Ill. App. 3d 972, 975 (1981), is instructive. In *Robinson*, the State presented evidence that after a disturbance in a prison, inmate defendant used a stolen brass nozzle from a hose to attack an officer during a tactical search to retrieve the nozzle. *Id.* at 973. Defendant testified that he feared for his life before the officers opened his cell and rushed inside to beat him without justification. *Id.* Also, in conducting his own closing arguments, defendant averred he did not attempt to hurt anyone with the nozzle. *Id.* at 975. No other witnesses for the defense claimed to have seen any physical contact with the defendant and the officers prior to the time defendant was taken away from his cell. *Id.* at 974-75.

¶ 66 The *Robinson* court found that denying a self-defense instruction was proper because no testimony revealed that defendant struck the officer out of fear. *Id.* at 975. At most, the State's evidence demonstrated that defendant committed the act of striking an officer and the defense's evidence showed he was in fear. *Id.* It found such evidence was insufficient to raise an issue of self-defense based on the Illinois Supreme Court decision in *People v. Dukes*, 19 Ill. 2d 532, 539-40 (1960), which found no error in denying a self-defense instruction where an officer claimed defendant shot him and defendant testified that he did not shoot him. *Robinson*, 92 Ill. App. 3d at 975. Other appellate court districts have also held, based on the reasoning in *Dukes*, the evidence sufficient to construct a self-defense theory cannot come from a combination of both the State's and defendant's evidence. *Lewis*, 2015 IL App (1st) 122411, ¶ 65; *Freeman*, 149 Ill. App. 3d at 281 (collecting cases).

¶ 67 Turning to the facts here, we similarly find that the evidence failed to present an issue of self-defense. The State's evidence indicated that defendant bit an officer in the course of the officer using reasonable force while arresting a resisting defendant. Defendant's evidence contended that he submitted peacefully. Defendant specifically denied biting the officer—several times—and his testimony implied Jax bit the officer. No witness for the defense testified that defendant bit Officer Morelli and no State witness claimed that defendant bit Morelli out of fear.

¶ 68 Consequently, the State's evidence and the defense's evidence—independently—lacked a foundation to claim defendant bit the officer out of fear. Defendant cannot combine both parties' evidence to construct the theory of self-defense. *Lewis*, 2015 IL App (1st) 122411, ¶ 65; *Freeman*, 149 Ill. App. 3d at 281. Under these circumstances, we find that defendant was not entitled to an instruction on self-defense. See *Robinson*, 92 Ill. App. 3d at 975; *Dukes*, 19 Ill. 2d at 539-40.

¶ 69 For the same reason, we further reject defendant's claim that providing the State's instructions without further clarification misled the jury into believing that a person is never justified in defending him or herself against an officer's excessive force during an arrest. Because self-defense was simply not an issue presented by the evidence, the exclusion of the self-defense instruction did not mislead the jury on applicable legal principles in this case. Moreover, despite defendant's conclusory argument to the contrary, it has been established that the use of the State's instructions, relating to resisting arrest, in an aggravated battery of a peace officer case involving an arrest benefits the jury in explaining when a peace officer may make an arrest and the amount of force a peace officer may use

in making an arrest. *People v. Taylor*, 53 Ill. App. 3d 810, 818-19 (1977); *People v. Taylor*, 112 Ill. App. 3d 3, 5 (1983) (collecting cases). We therefore find the instructions provided to the jury accurately stated the applicable law and did not confuse or mislead the jury.

¶ 70 CONCLUSION

¶ 71 Because Detective Roderfeld could not have known the mere preparation for an interview of defendant would likely elicit an incriminating response before the interview began, defendant's statements were voluntary. As such, the trial court properly admitted the statements and the audio-video recording thereof into evidence. The trial court's decision to deny defendant's non-IPI self-defense instruction was also proper because neither party presented sufficient evidence to raise the issue of self-defense. Accordingly, we affirm the trial court's judgment.

¶ 72 Affirmed.