2025 IL App (1st) 240671-U

SIXTH DIVISION

September 26, 2025

No. 1-24-0671

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL MATEUS, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 23 CR 60112 Honorable Ursula Walowski, Judge, presiding.

PRESIDING JUSTICE C.A. WALKER delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm defendant's conviction for residential burglary over his claims that the evidence was insufficient, the circuit court advocated for the State, and the court committed a jury instruction error.

¶ 2 Following a jury trial, defendant Michael Mateus was found guilty of residential burglary and sentenced to five years' imprisonment. He appeals, arguing the State's evidence was insufficient to sustain the verdict, the circuit court advocated for the State, and the court made a jury instruction error. We affirm.

¶ 3 BACKGROUND

¶ 4 Mateus was charged via indictment with two counts, including count I for residential burglary (720 ILCS 5/19-3(a) (West 2020)), based on an incident occurring on April 23, 2023. The State *nolle prossed* count II before trial.

¶ 5 At trial, Marnette Morgan testified that she was inside a residence on the 1200 block of South Federal Street in Chicago, Illinois on April 23, 2023. The residence belonged to her friend Zerrie Campbell. Morgan was there with Campbell's daughter Sydney Adams. At around 7:20 p.m., Morgan and Adams were on the second level of the three-level home. The first floor had a gated back patio with a glass door entrance. The patio contained decorative rocks. Morgan heard someone try to open the glass door, then heard a "crash."

¶ 6 After the crash, Morgan and Adams reacted by "running around yelling someone is in the home, we're home, we're home." The two retrieved kitchen knives, then Morgan went downstairs. The glass door was immediately visible to her right as she descended the staircase. She saw "a figure leaving out of the door." He was "inside [the] patio part," but outside of the home itself, standing a foot from the glass door. Morgan noticed that a wooden bench inside the home had been "moved out of the way." Much of the first floor looked different because "glass was broken, the screen. The blinds were hanging off, [and] a lamp was on the floor." There was also a "big brick" in the center of the room.

¶ 7 On cross-examination, Morgan testified that Campbell's home was a townhouse in a gated community, where each of the townhouses looked similar and had glass patio doors.

¶ 8 Adams testified that she lived in the townhouse with Campbell on April 23, 2023. After she and Morgan heard the crash, Adams yelled "someone is home" then called 911. During the call, Adams described the intruder, whom she could see because as she "was on the phone with [911]," she looked through a second-floor window and saw the individual exit the patio. This person put a black knit cap on his head as he exited and wore a blue jacket and jeans. After the call, Adams went downstairs and noticed "a rock in the middle of the floor," shattered glass on the floor, and a broken lamp. She did not see anyone in the home. Adams exited the home and went to speak with Campbell, who had been sitting in her vehicle across the street. Chicago police officers arrived shortly thereafter. During their investigation on scene, Adams saw them detain an individual, whom she identified as Mateus in open court.

¶ 9 Campbell testified that on April 23, 2023, at around 7:20 p.m., she was in her vehicle "outside of my townhouse double-parked" on a conference call. At some point, she heard a loud "thump," and looked towards the right, where she "saw a man coming out of my townhouse." Campbell "saw him fighting through my blinds trying to gain his way out stepping out onto the patio." She identified Mateus in court as that man. When exiting, Mateus "stepped over the glass" and was "climbing out basically *** because there was a stool there that blocked the entrance on the other side." Campbell's "jaw dropped," and she said to her friend on the call, "I don't believe this. Somebody just busted out of my townhouse. I'll call you back." She was so upset she dialed 411 initially instead of 911 but corrected her error. Chicago police officers arrived quickly. Campbell did not know Mateus before the incident and did not give him permission to enter her home.

¶ 10 The State's attorney showed Campbell a series of photographs that she identified as depicting her townhouse and the rock garden outside of it, which contained different-sized "boulders." She also identified a photograph taken after the incident which depicted "the boulder that was used to come through the door."

¶ 11 On cross-examination, Campbell testified that she was double-parked and using her phone outside of her town home for seven to eight minutes before the incident and agreed that during that time she did not notice anyone enter her patio. After the police arrived, Campbell told them what she knew regarding the incident. Campbell responded to the question "Now, you never told the officers that arrived that you saw any individual fighting with the blinds, did you?" with "I really don't remember, but it's possible. I was so stunned." She did not see anything in Mateus' hands as he exited.

¶ 12 Defense counsel asked if Campbell told an officer, "I don't even know if he walked in, I think he was empty-handed." Campbell responded that she could not recall. At this point, counsel marked video from a responding officer's body-worn camera as Defense Exhibit No. 5, put the video on a screen, paused it, and said "If I may approach to lay the foundation." The following exchange occurred:

"CAMPBELL (in apparent reference to the screen): That's a picture of me.

DEFENSE COUNSEL: So, Ms. Campbell, you would agree that what you're seeing on the screen right now is yourself as well as some of your neighbors; is that true?

CAMPBELL: Yes.

DEFENSE COUNSEL: And do you remember speaking to—you were talking to the police officer at this time; is that right?

CAMPBELL: I guess, yes. The police officer is not in the picture. These are my neighbors here." ***

At this point, the video apparently malfunctioned. The transcript reads:

"DEFENSE COUNSEL: There's been a malfunction. I apologize.

STATE'S ATTORNEY: Judge, may I also approach to view what's being shown to the witness?

THE COURT: Sure. I'm not quite sure how this is admissible but go ahead.

DEFENSE COUNSEL: I apologize, Judge. I just need a minute.

THE COURT: [Counsel], can you first ask a question before you go on with this line of questioning that's an appropriate question?

DEFENSE COUNSEL: Judge, I had asked Ms. Campbell if she had told the police—and I had a direct quote—of I don't even know if he walked in. I think he was empty handed.

THE COURT: Okay.

DEFENSE COUNSEL: And she said that she did not remember saying that.

THE COURT: Okay. How is this—ask another question.

DEFENSE COUNSEL: I apologize, Your Honor. I will in one second.

(Brief pause).

THE COURT: Nope, you're not going [to be] able to approach. No. We are not going to continue this line of questioning. It's inappropriate. Ask another question.

(Whereupon, a video recording was played.)

THE COURT: Turn that off.

STATE'S ATTORNEY: Objection.

THE COURT: Objection sustained. Stop playing that.

(Whereupon, a video recording was stopped.)

THE COURT: Objection sustained. Ask another question.

DEFENSE COUNSEL: Judge, I am attempting to—

THE COURT: Objection sustained. I know what you're attempting to do. You're not doing it properly. Objection sustained. Ask another question.

DEFENSE COUNSEL: So I'm asking for a sidebar.

THE COURT: No. Move on. Ask another question."

¶ 13 Noel DeSierto testified that he was at a playground with his daughter and nephew on Federal Street near Campbell's townhouse at the time of the incident. At around 7:20 p.m., he "heard glass breaking pretty loudly." He looked towards the townhouse across the street and started walking in that direction. As he did so, he "noticed the door that was being broken, so I walked in that direction. Glass started falling from the top of the window and then it just started crashing down. At which point I saw a gentleman emerge from that particular door." He saw glass "being broken from inside out." DeSierto continued, "Once the glass was pushed out, I saw someone emerge from that particular door and then walk out, left the gate, and proceeded north on Federal." He identified Mateus in court as the individual he saw exiting the townhouse. DeSierto followed Mateus, approached him, and asked "what's going on." Mateus ignored DeSierto and kept walking away. DeSierto then flagged down a Chicago police vehicle that was driving past. The officers "stopped and then took the gentleman into custody."

¶ 14 Chicago police officer Emma Jolliff-Blake testified that she was with her partner Officer Rimsky near the 1200 block of South Federal Street at around 7:20 p.m. on April 23, 2023, responding to a call of a "suspicious person." After an initial survey was unsuccessful, someone flagged the officers down, and as a result they located and arrested Mateus. Blake had a body-worn camera that day and verified that the footage it recorded accurately depicted the events. The State published the footage to the jury, which showed the officers arriving in the area and taking Mateus into custody.

¶ 15 The State rested. The circuit court then stated to defense counsel,

> "I know you were trying to perfect impeachment and then you were trying to show a witness something. It was improper because you didn't ask her—she said I don't remember. You didn't say anything about whether showing her a video would refresh her recollection or anything to that effect. But you did lay a foundation and are you going to perfect your impeachment and is the State stipulating to the video to perfect that impeachment of that statement?"

The parties then stipulated that "if called to testify, the officer that was wearing body-worn Camera X60AC669 will testify this is a true and accurate depiction of his body-worn camera on April 23, 2023, at approximately 19:28, which is 7:28 pm., and that the body-worn camera captured the words of Ms. Zerrie Campbell and they are true and accurate." Because of an issue with the sound of the video, the parties further stipulated that the video depicted Campbell saying, "I don't even know if he walked in, I think he was empty-handed." The court instructed the jury, "So that was the stipulation of the words on the four-second video that they're trying to play. So that's in evidence. You could consider that."

¶ 16 The circuit court denied Mateus' motion for a directed verdict. Mateus testified that his stepmother lived in the same area as Campbell, and he was trying to find her house before the incident. He was unhoused and had been for "a couple of weeks," and off of his medication. Mateus decided to find his stepmother's home because "it was raining out and it was cold out," and he believed she would let him in. He approached the home he thought belonged to his stepmother (but later learned belonged to Campbell). He "knocked on the door," then "opened the latch for the back patio." He thought it was the right house because it looked the same. When no one answered, he decided to break the glass door, explaining "my mind was racing because I was off

my meds, and I thought that I would be able to break the window and explain to my mom that I would be able to pay for the window with my disability check." Mateus broke the glass door, then heard a voice from inside saying "someone lives here." He realized it was the wrong house and walked away. He never entered the house and never took anything from it. On cross-examination, Mateus stated he could not remember if he had glass in his hair at the police station.

¶ 17 In rebuttal, the parties stipulated that if re-called, Officer Blake would testify that "glass fragments were taken from [Mateus'] hair."

¶ 18 During the jury instruction conference, defense counsel requested that the circuit court instruct the jury that it could consider the statement Campbell made on the bodycam video as substantive evidence. The circuit court denied the request, stating, "What do you want to come in substantively?" Counsel responded, "Judge, we want substantively to come in that she said I don't even know if he walked in, I think he was empty-handed." The court responded that the statement was relevant for impeachment only, stating, "the impeachment says I don't know if he walked in. There's nothing substantive to use."

¶ 19 Following closing arguments, the circuit court instructed the jury in relevant part:

> "The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom. It is for you to determine whether the witness made the earlier statement, and, if so, what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made."

¶ 20 The jury found Mateus guilty of residential burglary. Mateus filed a motion for a new trial, in which he argued in relevant part that the evidence was insufficient, and the circuit court improperly denied him a sidebar when defense counsel first attempted to admit Campbell's prior inconsistent statement. On March 14, 2024, the circuit court denied the motion for a new trial, and the matter moved to sentencing, where, following a hearing, the court sentenced Mateus to five years' imprisonment. The court denied his motion to reconsider sentence, and this appeal followed.

¶ 21 JURISDICTION

¶ 22 The circuit court denied Mateus's motion to reconsider sentence on March 18, 2024, and he filed his notice of appeal that same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Apr. 15, 2024).

¶ 23 ANALYSIS

¶ 24 Mateus raises three claims on appeal: (1) sufficiency of the evidence, (2) the circuit court displayed bias by delaying the admission of Campbell's prior inconsistent statement and making objections for the State in doing so, and (3) the court erred by refusing to instruct the jury that Campbell's prior inconsistent statement could be used as substantive evidence.

¶ 25 We begin with the sufficiency of the evidence. When a criminal defendant claims on appeal that the evidence against them was insufficient to sustain the verdict, the reviewing court will construe the evidence in the light most favorable to the State and determine whether any rational factfinder could have found the defendant guilty beyond a reasonable doubt. *People v. Conway*, 2023 IL 127670, ¶ 16. "It is not [the reviewing court's] function to retry the defendant, and we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses." *Id.* Additionally, the reviewing court must draw all

reasonable inferences in favor of the State. *People v. Harvey*, 2024 IL 129357, ¶ 19. Reversal on sufficiency of the evidence review is inappropriate unless "the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Bush*, 2023 IL 128747, ¶ 33.

¶ 26 Mateus was convicted of residential burglary. To prove residential burglary, the State must show that a defendant "knowingly and without authority enters *** the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2020). The factfinder may infer that a defendant had the intent to commit a theft inside a residence from "proof of an unlawful breaking and entry into a building containing personal property that could be the subject of larceny." *People v. Ranstrom*, 304 Ill. App. 3d 664, 678 (1999).

¶ 27 We find a rational factfinder could conclude the State's evidence satisfied the elements for residential burglary. While no witness saw Mateus inside of the townhouse itself, there was more than enough evidence for the jury to infer entry. First, there is no dispute that Mateus shattered the glass door with a rock, and that Campbell did not consent to his entry. Next, both Campbell and DeSierto testified that they saw Mateus exit from inside the home onto the patio, which is functionally equivalent to eyewitness testimony of entry. Indeed, even if the State had not introduced the testimony of Campbell and DeSierto, the accounts provided by Morgan and Adams by themselves could have permitted a factfinder to infer that Mateus entered after he smashed the door, as Morgan confirmed that items inside the home were moved from the position they were in before Mateus smashed the glass, and Adams saw Mateus leave from the patio moments after she heard the glass shatter. This testimony, taken as a whole, permitted the jury to conclude that Mateus entered the home, then left after hearing Morgan's and Adams' voices. See *Bush*, 2023 IL 128747, ¶ 33 (A factfinder need not disregard inferences that arise generally from the evidence.).

¶ 28 With the entry and lack of authorization elements in place, the remaining issue is whether the State offered evidence that Mateus had the intent to commit a felony or theft once inside Campbell's townhouse. Well-established Illinois law demonstrates that it did. While Mateus did not exit with anything from the home on his person and never confirmed his intent in a statement or his testimony, the law maintains that the factfinder may make this inference from the fact of entry alone in these circumstances. *Ranstrom*, 304 Ill. App. 3d at 678 (intent can be inferred from entry into a building containing personal property that could be subject of larceny). There is no dispute that Campbell's home contained personal property that could be the subject of larceny. Thus, with the evidence giving rise to the inference that Mateus entered the home, the law states the jury could then infer that he entered with the requisite intent, a rule in place because, "people rarely express their intention to commit a criminal act, and thus intent may be proven by circumstantial evidence." *People v. Lee*, 2015 IL App (1st) 132059, ¶ 53.

¶ 29 Mateus argues that the jury should have accepted his version that he was looking for his stepmother's house and never entered, defeating the core elements of entry of a dwelling and intent to commit a crime therein. 720 ILCS 5/19-3(a) (West 2020). This argument fails because on a sufficiency of the evidence review, we cannot substitute our judgment for that of the factfinder on issues of witness credibility. *Conway*, 2023 IL 127670, ¶ 16. The jury heard both Mateus' version and the versions of the State's witnesses. It decided not to credit Mateus' version of events and instead draw the permissible inferences from the State's witnesses that he entered Campbell's home and had the intent to commit a theft therein when he did so. As explained above, the evidence supported these inferences, even if it could have supported others, and accordingly reversal is inappropriate. *Id.*

¶ 30 Anticipating this issue, Mateus argues that the contradictions in certain witness testimony meant the jury should not have credited their accounts. None of his arguments on these points constitute grounds for reversal.

¶ 31 His primary issue is Campbell's allegedly inconsistent statements, first to the police that she did not know if Mateus entered, but then in court that she saw him exit. First, these statements are not so inherently contradictory that the jury had to accept they were inconsistent—on the scene, Campbell testified without dispute that the incident shocked her, and she never maintained she saw Mateus throw the rock and enter, making her comment on the scene understandable in context and not mutually exclusive with her seeing Mateus exit the home. Even accepting there is a contradiction, however, this does not render her testimony unreliable, as it is the province of the jury to determine how much weight to give a witness' testimony in light of a prior inconsistent statement. See *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 15 (A factfinder can accept some or all of a witness' testimony as credible despite that witness being impeached.).

¶ 32 Next, Mateus complains that DeSierto's testimony "violated the laws of nature," a mischaracterization that borders on the histrionic. DeSierto testified that he saw glass breaking from the inside out as Mateus exited, not that the glass door was intact after Mateus entered, and then Mateus first broke it as he exited the home. This was the obvious conclusion from DeSierto's testimony, and a reasonable scenario, as DeSierto testified that he saw glass continue to break apart and fall in the moments after the glass door initially shattered.

¶ 33 Finally, Mateus' argument regarding alleged inconsistencies in Morgan's and Adams' testimony on whether they saw Mateus on the patio fails because these contradictions, even accepting they exist, are irrelevant; Mateus does not dispute that he was on Campbell's patio, threw the rock through the door, then walked to the sidewalk from the patio.

¶ 34 Mateus next argues that the record did not contain any evidence of entry, but this contention is facially inconsistent with the record. The factfinder may make inferences which arise naturally from the record, inferences to which we must defer if reasonable on sufficiency of the evidence review. *Bush*, 2023 IL 128747, ¶ 33. The record here contained sufficient evidence from which the jury could infer Mateus' entry. Specifically, it was reasonable for the jury to infer from the facts that Mateus broke the glass door with a rock, and the room then made immediately accessible contained a newly broken lamp and objects moved from their original position, that Mateus entered after he smashed the glass, and in doing so he broke the lamp and moved the objects. Moreover, as described above, the jury was within their purview to credit the testimony of Campbell and DeSierto that they saw Mateus exit from the doorway with the broken glass door. The State also offered evidence in rebuttal from Officer Blake that Mateus had glass in his hair following the incident. A rational factfinder could conclude from this record that the State proved Mateus entered the home beyond a reasonable doubt.

¶ 35 Finally, Mateus argues there is no direct evidence of his intent to commit a theft or felony even if the evidence could establish his entry. He does not, however, distinguish his case from the body of law maintaining intent can be inferred from the entry alone, nor does he present any argument on why this law should not be applied in this context, and this argument fails accordingly. *Ranstrom*, 304 Ill. App. 3d at 678; see also *People v. Moreira*, 378 Ill. App. 3d 120, 129 (2007).

¶ 36 Mateus' next claim is that the circuit court exhibited bias by objecting for the State, then delaying the admission of Campbell's prior inconsistent statement per that objection.

¶ 37 The State first responds that the issue was not preserved because Mateus did not raise it in his posttrial motion. We disagree. It is, of course, a requirement for preserving an issue on appeal that a defendant both object at trial and raise the issue in a posttrial motion. *People v. Galarza*,

2023 IL 127678, ¶ 45. The record shows, however, that Mateus did enough to satisfy this requirement. There is no dispute defense counsel extensively contested the circuit court's initial refusal to play the video in which Campbell made the statement, satisfying the first requirement. As to the second, while the posttrial motion lacks the desired clarity, the motion does raise the issue that the court improperly denied a sidebar—and it was in that sidebar request where defense counsel contested the court's decision not to admit Campbell's statement. It follows that the issue was presented in the posttrial motion, albeit more obliquely than would be advisable in the future, and the issue was preserved for this appeal.

¶ 38 Moving to the substance of this claim, while a circuit court has "wide discretion in the conduct of a trial, it must not invade the province of the jury by making comments, insinuations or suggestions indicative of belief or disbelief in the integrity or credibility of a witness." *People v. Marino*, 414 Ill. 445, 450 (1953). Similarly, the court may raise objections and question witnesses *sua sponte*, but in doing so, it must refrain from conduct that constitutes advocating for the position of one of the parties. *People v. Moore*, 2023 IL App (1st) 211421, ¶ 115. "If the trial court acted improperly, a new trial is warranted only if the defendant was prejudiced by the court's misconduct." *Id.*

¶ 39 Mateus contends that during Campbell's testimony, while defense counsel prepared the video of Campbell's prior inconsistent statement, the circuit court improperly interjected that the statement may not be admissible, then refused to admit it before the State objected to it. Acknowledging that the court later permitted the statement via stipulation, Mateus still complains that in delaying admission, the court tainted the proceedings, showed bias in favor of the State, and prevented the jury from properly considering the statement.

¶ 40 The transcript suggests that both attorneys and the circuit court had unusually casual exchanges as the video was prepared, and that it was during this period that the court expressed uncertainty with the statement's admissibility and asked defense counsel to ask another question, which counsel did not do before the court refused to admit the video. There is no dispute that the court decided not to admit the video without the State first objecting. It is unclear, however, why the court had doubts about admissibility. Mateus contends it is based on the court's misconception that defense counsel intended to play the video to refresh Campbell's recollection instead of impeachment, while the State responds that the court was concerned because defense counsel had not laid the proper foundation for the video (See Ill. R. Evid. 901 (eff. Sept. 17. 2019)). Later, before admitting the stipulation to Campbell's statement, the court mentioned refreshing recollection but took no official position on why it did not initially admit the video.

¶ 41 On this record, we find that the circuit court did not exhibit bias in favor of the State or taint the proceedings by delaying admission of Campbell's statement. The court was navigating a confused situation, and at worst could be said to have erred on the side of not permitting the jury to see potentially inadmissible evidence, conduct well within its purview. See *Moore*, 2023 IL App (1st) 211421, ¶¶ 116-22. And we need not conjecture as to whether the court was concerned about refreshed recollection or authentication because, regardless, the court resolved the situation by later admitting the statement—further demonstrating that it did not favor the State. See *People v. Arze*, 2016 IL App (1st) 131959, ¶ 85 (Explaining that public policy favors resolving errors at the trial level, and a court in a criminal case has the inherent power to correct its own rulings).

¶ 42 Moreover, even if we accept Mateus' argument that the circuit court's initial conduct in excluding the evidence *sua sponte* without an objection from the State was improper, there is no indication that Mateus suffered any prejudice such that there would be grounds for reversal. See

People v. Jackson, 250 Ill. App. 3d 192, 204 (1993) ("Even if the court's conduct were improper, reversal would be warranted only if the court's conduct played a material role in defendant's conviction or prejudiced him."). The record shows that the court took it upon itself to cure any potential prejudice by ensuring the statement made it into the evidence (albeit in an unconventional fashion), then instructed the jury it could be considered, an act of self-correction that reviewing courts in Illinois encourage. *Arze*, 2016 IL App (1st) 131959, ¶ 85. Mateus makes a general argument that the unconventional admission tainted the proceedings but cites to nothing in the record from which this court could conclude the jury did not follow the circuit court's instruction to consider the statement as potential evidence for impeachment purposes, meaning we must accept that the jury properly considered this evidence. *People v. Wilmington*, 2013 IL 112938, ¶ 49 ("Absent some indication to the contrary, [the reviewing court] must presume that jurors follow the law as set forth in the instructions given them."). If anything, the procedure by which the court admitted the statement was so unusual it may very well have drawn more attention to it than if it had been admitted in the typical course of testimony. Thus, even interpreting the conduct as Mateus proposes, his claim still fails.

¶ 43 Mateus cites *People v. Wiggins*, 2015 IL App (1st) 133033, for his position that the circuit court's conduct prejudiced him. In *Wiggins*, the court found reversal was proper where the lower court made multiple objections on behalf of the State and attempted to impeach a defense witness. *Id.* ¶ 65. The Judge also told defense counsel, "watch yourself, man" and referred to the court and the State with the term, "we." *Id.* ¶¶ 50-51. This comparison fails because the circuit court's conduct in Mateus' trial is not comparable to the conduct at issue in *Wiggins*, primarily because the court here corrected any error it may have made and never indicated its thoughts regarding the credibility of witnesses. We also emphasize the exchange in which the court raised its doubts about

the video was not in the typical context where a lawyer asks a question to which an objection may or may not result; it came during exchanges between both counsels and the court while a video was being prepared, and involved the court prompting defense counsel to ask more questions, which counsel failed to do. Thus, unlike in *Wiggins*, it is unclear to this court that the circuit court judge did anything to display any favoritism.

¶ 44 Mateus' final claim is that the circuit court erred by refusing to instruct the jury that it could consider Campbell's prior inconsistent statement as substantive evidence. As an initial matter, we note that Mateus did not properly preserve this argument because he did not raise it in his posttrial motion. *Galarza*, 2023 IL 127678, ¶ 45. The State does not contest preservation on this issue, thus they have waived this objection. *People v. Avdic*, 2023 IL App (1st) 210848, ¶ 52.

¶ 45 "A defendant is entitled to a jury instruction where there is some evidence to support it." *People v. Sloan*, 2024 IL 129676, ¶ 14. The decision whether to give a jury instruction is within the discretion of the circuit court and will not be reversed absent an abuse of discretion. *Id.* ¶ 15. Whether an instruction accurately conveys the law, however, is reviewed *de novo*. *People v. Herron*, 215 Ill. 2d 167, 174 (2005). The parties dispute which standard of review applies, with Mateus arguing *de novo* review is appropriate, while the State maintains it should be abuse of discretion.

¶ 46 At issue is Illinois Pattern Criminal Jury Instruction 3.11, which generally explains that prior inconsistent statements can be used "only for the limited purposes of deciding the weight to be given" to certain testimony—*i.e.*, as impeachment. Illinois Pattern Jury Instructions, Criminal, No. 3.11 (approved Oct. 17, 2014) (hereinafter IPI Criminal No. 3.11). The pattern instruction contains bracketed language that a court may read when appropriate, which includes a passage which reads, "However, you may consider a witness's earlier inconsistent statement as evidence without this

limitation when *** the statement was accurately recorded by a tape record, videotape recording, or a similar electronic means of sound recording." *Id.*

¶ 47 Mateus requested that the circuit court include the substantive use bracketed language because Campbell's statement was recorded on video. The circuit court disagreed, contending the statement had no substantive use.

¶ 48 We find that the circuit court did not err in concluding that Campbell's statement had no substantive use, and as such did not err in refusing to include the bracketed language in IPI Criminal No. 3.11. In so finding, we note that we need not resolve the parties' dispute over whether the appropriate standard of review is abuse of discretion or *de novo*, as the result would be the same under either standard. Campbell's statement was that she did not know whether Mateus entered. This statement has no independent, substantive evidentiary value. It is not proof of anything other than Campbell lacked knowledge on this issue, which is only admissible to contradict her testimony at trial that she did have knowledge. See *People v. Guerrero*, 2021 IL App (2d) 190364, ¶ 49 ("A prior inconsistent statement is admissible as substantive evidence" only where it is both "relevant and material."). Had Campbell's prior inconsistent statement been, "Mateus did not enter," our resolution may be different, but that is not the record.

¶ 49 CONCLUSION

¶ 50 The evidence was sufficient to support the conviction, the circuit court did not exhibit bias towards the State, and the court did not abuse its discretion by refusing to include the additional bracketed language in I.P.I. Criminal No. 3.11. Accordingly, Mateus' conviction is affirmed.

¶ 51 Affirmed.