No. 123926

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Illinois Appellate Court, Second District, No. 2-15-1112
Plaintiff-Appellant,	)	There on Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, No. 14 CF 1229
v.	)	
SHADWICK A. KING,	)	The Honorable James C. Hallock,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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I. The Circuit Court Did Not Abuse Its Discretion in Permitting Safarik to Testify as an Expert and Opine on the Victim's Cause of Death.

The People's opening brief demonstrated that the circuit court did not abuse its discretion in permitting Safarik to provide expert crime scene analysis testimony and opine on lividity and Kate's cause of death. Peo. Br. 19-29. But even if this Court were to conclude that Safarik's testimony was inadmissible, its admission was harmless. *Id.* at 25-26.

A. The circuit court appropriately exercised its discretion to permit Safarik to testify about Kate's cause of death.

Defendant's argument that the People were required to present "medical expert testimony" to assist the jury in determining the cause of death, Def. Br. 15, overlooks that the People did present such testimony — from Dr. Kalelkar. And Safarik was not disqualified from *also* presenting his opinion on cause of death merely because he did not have a medical degree.

Defendant's criticism that Safarik opined on an issue beyond his expertise, *id.* at 17, is not well-taken, as his own cases demonstrate. In *People v. Park*, 72 Ill. 2d 203 (1978) — a case he deems "particularly instructive," Def. Br. 17 — the issue was "whether, despite his *complete lack of training* on the subject, [the witness's] limited experience as a deputy sheriff qualified him to reliably identify the substance in question as cannabis." *Id.* at 208-09 (emphasis added).

Unlike the "complete[ly]" untrained deputy in *Park*, Safarik was amply qualified by his education, training, and experience to opine on Kate's cause

of death. *See* Peo. Br. 20 (summarizing qualifications). Not only does he hold a B.S. in physiology, R1274, but in the course of his thirty-year law enforcement career, he has "reviewed, examined, assessed[, and] studied" over four thousand cases, the majority of which were homicide cases. R1285. Safarik's education and experience similarly distinguish him from the doctor in *People v. Hillis*, 2016, IL App (4th) 150703, who had no education, training, or experience in accident reconstruction, *id.* ¶ 115, and the pathologist in *People v. Alvidrez*, 2014 IL App (1st) 121740, who had no education or experience in biomechanical engineering. *See* Def. Br. 18.

People v. McKown, 236 Ill. 2d 278 (2010), also fails to support defendant's contention that Safarik opined on an issue beyond his expertise, for there was no question that the officer in that case was qualified to "testify[] regarding the performance of the test and the results observed." *Id.* at 300 n.3.

Safarik was not offered as a medical expert, nor was the jury led to believe that he was. He was offered as an expert in crime scene analysis, and his testimony as to cause of death fit comfortably within his expertise in evaluating homicides. Though he does not hold a medical degree, no rule or case required that or any other particular qualification. *See Mertz*, 218 Ill. 2d at 72. Indeed, a Wisconsin court upheld admission of Safarik's testimony against a similar challenge, finding that "Safarik had the necessary knowledge to provide helpful answers the jury could use in answering the

central question, whether the [victims] died simultaneously from natural causes or as the result of a homicide." *State v. Swope*, 315 Wis. 2d 120, 136 (Wis. App. Ct. 2008).

Regardless, any error in admitting Safarik's testimony was harmless because "the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt" and retrial without the challenged evidence "would produce no different result." *See McKown*, 236 Ill. 2d at 311. This was not a battle between two equally credible and reliable experts opining on the cause of death, as defendant suggests. Def Br. 20. Although Blum testified that the circumstances "could cause a sudden cardiac event," *id.* at 21 (citing R2631), his testimony was thoroughly impeached on cross-examination, where he conceded that he could not rule out asphyxia, R2678, whomever conducted the autopsy had a better opportunity to view the body, and "the benefit of the doubt should go to the initial pathologist unless it is totally overruled by other evidence," R2668-70. Further, in rebuttal, Kalelkar rejected Blum's opinion as "purely conjecture" that "ignor[ed] the obvious findings at the autopsy." R2787. Kalelkar noted that there was no evidence Kate had exhibited any warning signs of sudden arrhythmic death, R2785-86; further, Kate was healthy, her clothing was in disarray, and her injuries were not sustained by falling onto the railroad tracks, R2788-89. Not only did the remaining evidence strongly support defendant's conviction, Safarik's non-medical expert testimony on cause of death was at most

duplicative of Kalelkar's medical expert testimony on that point, and any error in its admission was therefore harmless.

B. Safarik's testimony synthesizing the circumstantial evidence was helpful to the jury.

Safarik's crime scene analysis testimony, including his opinions that an experienced runner would not have dressed as Kate was found; that Kate would not have gone running without her contact lenses, earbuds, and armband; that she would not have gone running on the railroad tracks when it was her habit to run in the park; and that she would not have put her sock on with the heel at the top of her foot, *see King*, 2018 IL App (2d) 151112, ¶ 82, was helpful to the jury because he interpreted and synthesized the circumstantial evidence, as informed by his extensive crime scene analysis experience. *See* Peo. Br. 23-26 (citing cases). Accordingly, it was admissible. *See People v. Lerma*, 2016 IL 118496, ¶ 23 ("an individual will be permitted to testify as an expert if his experience and qualifications afford him knowledge which is not common to lay persons" and his testimony "will aid the trier of fact").

Similarly, Safarik's testimony about the leafy material in Kate's hair and shorts — that it likely came from her home because the clothes she was dressed in came from her home, leaf debris was found in the home, and no leaf debris was present on the tracks where her body was found, R1365-66 — properly relied on and interpreted the circumstantial evidence. Safarik did not purport to offer expert testimony on the type of vegetation or state

definitively that the unidentified vegetation on Kate's body was from the Kings' backyard, as defendant suggests. Def. Br. 22. He merely noted that the leafy material appeared to be similar.

Notably, defendant's cited cases, *see* Def. Br. 23, fail to address the admissibility of crime scene analysis testimony, much less hold that such testimony is inadmissible because it is unhelpful to the jury. His reliance on *State v. Lenin*, 406 N.J. Super. 361 (2009), is misplaced, for the New Jersey court overlooked that the proper standard is helpfulness, not absolute necessity. Peo. Br. 25.

Defendant's attempts to distinguish *Swope* and *Jackson* — both of which deemed Safarik's crime scene analysis testimony helpful and admissible under their respective state laws — are unpersuasive. Def. Br. 25-26. That Wisconsin applies neither *Frye* nor *Daubert* does not distinguish *Swope*, for defendant did not challenge the admissibility of Safarik's testimony under *Frye*. The People instead rely on *Swope*'s separate holding that a crime scene analyst's unique qualifications render his testimony interpreting crime scenes helpful to jurors. *See Swope*, 315 Wis. 2d at 732-34.

Nor, as a matter of logic, can *Jackson* be distinguished because, in an alternate holding, that court *also* found any error in admitting Safarik's testimony harmless. Defendant wrongly suggests that *Jackson* provides no support for admitting Safarik's crime scene analysis testimony because California uses a more liberal standard to permit expert opinion on matters

of common knowledge. But *Jackson* did not hold that Safarik's testimony was a matter of common knowledge. And it is not. For example, Safarik's testimony here that the scene at the railroad tracks was "staged" derived from his familiarity with thousands of crime scenes, and his synthesis of the evidence pointing to a staged scene was helpful to jurors who were less familiar with crime scenes.

And in any event, even if the testimony were a matter of common knowledge, any error in admitting it was necessarily harmless. As in *Mertz*, even if Safarik's crime scene analysis testimony was erroneously admitted, it was not prejudicial because "any inferences drawn by [the witness] were commonsense ones that the jurors no doubt had already drawn for themselves." 218 Ill. 2d at 74. Indeed, defendant effectively concedes as much when he argues that Safarik's testimony "drew on conclusions the jurors could have drawn for themselves." Def. Br. 33.

C. Safarik did not offer profiling testimony, nor has this Court ever held that such testimony is inadmissible.

Defendant concedes, as he must, that this Court has never held that profiling testimony is inadmissible. Def. Br. 32. And this case presents no occasion to address that question because Safarik offered no profiling testimony of the sort recognized as controversial by *Mertz*. Rather, Safarik opined, based on his education, training, and experience, that the crime scene had been staged to create the impression of an accident. R1362. He further testified that strangers need not engage in staging; because they have no ties

to the victim, they have no need to misdirect the police to draw suspicion away from themselves. R1361-62.

Contrary to defendant's belief, Def. Br. 32-33, Safarik's testimony neither "suggested" that defendant was at the railroad tracks, nor violated the trial court's order, R414-15, prohibiting Safarik from identifying defendant as the killer by direct testimony. Other circumstantial evidence demonstrated that defendant *was* the person with ties to the victim who staged the crime scene: among other things, defendant was alone with the victim at their house shortly before her death and had a motive to kill her. But Safarik did not purport to draw this link, and therefore his testimony was not profiling. And even if Safarik's testimony were interpreted as linking defendant to the crime, it was harmless, because it repeated an inference "the jurors no doubt had already drawn for themselves." *Mertz*, 218 Ill. 2d at 74.

II. No Relief Is Warranted on Defendant's Claim that Evidence of the Family's Reactions Was Introduced Solely for Its Emotional Impact.

The People's opening brief demonstrated that the appellate court wrongly viewed testimony from Kate's sister and father as introduced solely for emotional impact. Peo. Br. 29-35. Because the appellate court was addressing an issue that might arise on retrial, it did not address defendant's forfeitures. *Id.* at 29 n.2.

Defendant complains of testimony from Kate's sister, Kristine, that: (1) Kate was like a mother to her and her best friend; (2) the sisters shopped

together for Kristine's wedding gown; (3) when Kristine told Kurt that Kate was dead, she described Kurt as "frantic" and said that she was crying; (4) Kristine told Kurt to phone the police because she did not want defendant to pick up the boys; and (5) when she arrived at Kurt's house, she and Kurt were "crying" and "shaking." Defendant further complains that (6) Kurt testified that he screamed upon learning that Kate was dead. Def. Br. 36-39. Defendant's first, third, fifth, and sixth objections are forfeited, and he cannot overcome his forfeitures. Regardless, this testimony was properly admitted; alternatively, any error was harmless.

A. Defendant forfeited several objections and cannot show plain error.

Several of defendant's specific arguments are forfeited due to his failure to properly object. *See People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

Defendant's complaints about Kate's "motherly role" and "best friend" status are forfeited because he did not object to this testimony. Counsel had earlier objected to the prosecutor's leading questions, Def. Br. 36 (citing R1186), and later objected to the prosecutor asking Kristine whether, when she got engaged, Kate "did something for [her]," R1187, arguing that a response would elicit "nothing more than emotional testimony," but counsel neither objected to nor moved to strike Kristine's testimony that Kate "kind of took that motherly role" and was her "best friend," *id.*

Defendant's complaint about Kristine's description of her demeanor during her phone call to Kurt is also forfeited. Asked about Kurt's demeanor

upon hearing of Kate's death, over a defense objection, Kristine replied that Kurt was "frantic" and "didn't believe [her]." R1233. Kristine further testified, without objection, that she "didn't know what to do," and was "crying" and "burst into tears." *Id.* Defendant forfeited any challenge to the latter remarks because he failed to object. *Enoch*, 122 Ill. 2d at 186.

Finally, defendant forfeited his challenge to Kurt's volunteered statement that he was "screaming" rather than merely "talking" on the phone because defendant neither moved to strike nor included the issue in a post-trial motion, C613-48; *Enoch*, 122 Ill. 2d at 186.

This Court may excuse a defendant's forfeiture under the plain-error doctrine "when a clear or obvious error occurred" and "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant." *People v. Sebby*, 2017 IL 119445, ¶ 48 (citations and internal quotations omitted).

Even if defendant could show that an error occurred, he cannot show plain error. There is no merit to defendant's assertion that the appellate court held that the evidence was closely balanced. Def. Br. 53. The appellate court did not address forfeiture at all, *see* Peo. Br. 29 n.2, *id.* at 32 n.3, and defendant's reliance on the appellate court's non-existent finding amounts to no argument at all. Accordingly, he cannot establish plain error. *See People v. Hillier*, 237 Ill. 2d 539, 545 (2010) ("defendant who fails to argue for plain-error review obviously cannot meet his burden of persuasion"). And the

evidence was not closely balanced: as discussed, defendant's alternative theory that Kate died due to sudden arrhythmia was thoroughly impeached, *see supra* Section I.A, and the testimony overwhelmingly supported his guilt, *see infra* Section V.

Regardless, none of the testimony (objected to or not) was improperly admitted. *See Hillier*, 237 Ill. 2d at 545 (first step in plain error review is "determining whether there was a clear or obvious error at trial").

B. The testimony was properly admitted; alternatively, any error in its admission was harmless.

First, testimony about Kate's "motherly role" and "best friend" status — as well as testimony that Kristine and Kate had shopped for a wedding dress — was properly admitted as foundation for Kristine's testimony about Kate's habits. Kristine testified that she was five years younger than Kate, they had lived together until Kristine was twelve years old, R1182, and during college, she came home once a month and stayed with Kate, R1193. Given that the sisters had not lived together since Kristine was twelve, the prosecutor sought to admit this evidence to establish that Kristine was nonetheless sufficiently familiar with Kate's life and routines. *See* R1187-88. This testimony was relevant and admissible to establish sufficient foundation for the People's habit evidence.

Testimony about Kristine and Kurt's reactions to learning of Kate's death was also properly admitted. Both witnesses gave limited testimony that described the course of events and put defendant's own demeanor in

context. Defendant's case is not fairly compared to the extreme circumstances presented in *Blue*, *see* Def. Br. 41, where a capital trial was permeated by the presentation of emotionally charged evidence — including display of the police officer victim's blood- and brain-splattered uniform, emotional testimony from the victim's father, and a recitation of the victim's oath of office — and the prosecutor's argument "encouraged the jury to return a verdict grounded in emotion, and not a rational deliberation of the facts." 189 Ill. 2d at 139; *see also Johnson*, 208 Ill. 2d at 75 (as in companion case, *Blue*, "coalescence of improper, emotion-laden evidence, and inflammatory argument obviously designed to exploit that evidence, created a synergism of parallel errors"); *cf. People v. Hall*, 194 Ill. 2d 305, 350 (2000) (denying defendant's cumulative error claim in absence of "the extreme circumstances" that compelled reversal in *Blue*). Not only was the challenged testimony here limited, but the prosecutor did not refer to it in closing argument.

Finally, there is no merit to defendant's contention that Kristine's testimony that she told Kurt to call the police because she did not want defendant to pick up the boys, *see* R1234, is "reversible error because lay witnesses may not opine on the ultimate issue of guilt in a criminal case," Def. Br. 39. Kristine's testimony did not offer an opinion on defendant's guilt or "plac[e] blame on King." Def. Br. 40.

And even if Kristine's testimony could suggest that she feared defendant had killed Kate, that oblique inference would not have been

prejudicial. This case is unlike *People v. Crump*, 319 Ill. App. 3d 538 (3d Dist. 2001) (where prosecutor asked police officer witness whether he had "reason to believe … defendant … committed this offense," and officer responded directly, "Yes, I did."). *Id.* at 540. Kristine was not "a figure of authority whose testimony may be prejudicial if the officer informs the jurors that they should believe a portion of the prosecution's case." *Id.* at 542. That fact also distinguishes this case from *People v. McClellan*, 216 Ill. App. 3d 1007, 1014 (4th Dist. 1991) (where police officer testified to personal opinion that defendant used force against sexual assault victim). And evidence that Kristine called police was relevant to demonstrate the timeline of events and to explain how the Elk Grove Police became involved in this Geneva murder case. *See People v. Simms*, 121 Ill. 2d 259, 268 (1988) (some testimony about victim's family necessary to explain circumstances of defendant's offense).

Even if this Court were to find that some of the challenged remarks were error, because the testimony was not emphasized as proof of defendant's guilt, either during presentation of evidence or in the People's closing argument, R2905-78, any error was harmless. *See Hope*, 116 Ill. 2d at 276 (evidence regarding deceased's family may be harmless error).

III. Defendant Is Not Entitled to Relief on His Claim that the Prosecutor Offered Improper Rebuttal Closing Argument.

Defendant's challenge to the People's rebuttal closing argument similarly provides no basis for granting a new trial. Defendant forfeited this argument by failing to make a contemporaneous objection, R2975-76, or raise

the issue in his post-trial motion, C613-48, and he cannot excuse his forfeiture as plain error. Defendant again notes that this Court may excuse forfeiture where the evidence is closely balanced, Def. Br. 54 n.4, but as discussed, p. 8 *supra*, the evidence was not closely balanced.

Furthermore, the prosecutor's argument was not error, much less plain error. He merely informed the jury that it need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, so long as it is satisfied beyond a reasonable doubt of defendant's guilt. *See Hall*, 194 Ill. 2d at 330.

Defendant cannot complain that the prosecutor's rebuttal argument denied him a fair trial for the additional reason that defense counsel's argument provoked the response. *See People v. Evans*, 209 Ill. 2d 194, 225 (2004). In closing argument, defense counsel asked why, if defendant wanted it to look like Kate had been hit by a train, he would have dressed her in running clothes and told police that she had been running, when he could have left her in her clothing from the night before, R2872-74, why he would put her body on the railroad tracks so close to their home, "in front of all [his] neighbors," R2874-75, which point of access he used to reach the tracks, R2874-79, and how he carried her 150-pound body to the car without "dropping her" or "banging her into anything," R2877-78, and concluded by telling the jury that because "reasonable, educated, intelligent people can all disagree on what exactly happened … this is reasonable doubt." R2898-99.

The prosecutor's rebuttal argument that it was okay to have questions about points tangential to guilt, such as what point of access defendant took, and still convict as long as those questions did not amount to reasonable doubt, was invited by defense counsel's argument; accordingly, he cannot complain this argument deprived him of a fair trial.

Nor did the prosecutor's argument suggest to the jury that it could "overlook" defendant's defense. Def. Br. 48. Contrary to defendant's claim, *id.*, defense counsel did not argue that no evidence showed defendant "took the point of access he would have had to take to bring Mrs. King's body to the tracks without being seen or injuring Mrs. King post-mortem." *Id.* Instead, counsel made a different point: that the evidence did not show *which* of the three separate access points defendant might have used to reach the tracks and dispose of Kate's body. Peo. Br. 35 & n.4 (quoting R2876). The prosecutor's challenged remark was invited by this argument: he noted that the jury did not need to agree on which access point defendant used in order to conclude beyond a reasonable doubt that defendant killed Kate.

And the prosecutor's isolated reference was insufficient to prejudice defendant, particularly where the trial court properly instructed the jury as to the law. *See People v. Burham*, 2013 IL App (2d) 110807, ¶¶ 45-47 (prosecutor's attempt to define reasonable doubt was improper but did not warrant reversal even where error was preserved). Thus, there was no error in closing argument, and this forfeited claim provides no basis for reversal.

IV. The Circuit Court Correctly Denied Defendant's Untimely Motion for Substitution of Judge.

A defendant is entitled to a substitution of judge upon the timely filing of a motion for substitution. 725 ILCS 5/114-5(a); *People v. Walker*, 119 Ill. 2d 465, 470 (1988). Defendant's motion was untimely because he filed it only *after* the court's rulings on the People's motion for an order requiring disclosure of historical cell site data. *People v. McDuffee*, 187 Ill. 2d 481, 488 (1999) (substitution motion must be made before trial judge makes a substantive ruling in the case).

Three days after the case was assigned to Judge Hallock, C3-9, on July 14, 2019, the People moved pursuant to 18 U.S.C. § 2703(d) for an order requiring T-Mobile to disclose historical cell site data pertaining to the locations of defendant's and Kate's cell phones on July 5 and 6, 2014. C11. Under that statute, an order may issue "only if" the government offers "specific and articulable facts" establishing "reasonable grounds" to believe that the records sought are "relevant and material" to an ongoing criminal investigation. 18 U.S.C. § 2703(d). The People's motion stated that (1) Kate's cell phone was found near her body, (2) defendant had been in possession of Kate's cell phone, (3) Kate was not murdered where her body was found, and (4) cadaver dogs had alerted "to the presence of human decomposition" in the backseat of defendant's car. C11-12; R21-23. At the hearing on the People's motion, defense counsel moved to declare § 2703(d) unconstitutional because it did not condition disclosure upon a showing of probable cause. R12-14.

The same day, circuit court granted the People's motion (and denied defendant's motion), C35, and defendant filed his substitution motion the next day, C38.

As the appellate court held, defendant's motion filed immediately after this adverse ruling was untimely. *See Colagrossi v. Royal Bank of Scotland*, 2016 IL App (1st) 142216, ¶ 30 ("'rulings on substantial issues' include situations in which the trial court has . . . made pretrial rulings of law"). The appellate court rightly rejected defendant's contention that the People's motion was a routine motion for "court-ordered discovery": the motion sought disclosure pursuant to a federal statute that required the People to present "specific and articulable facts" establishing "reasonable grounds" to believe that the records were "relevant and material"—a showing that "depend[ed] upon the underlying facts of the case," *King*, 2018 IL App (2d) 151112, ¶ 58. The court also correctly concluded that the denial of defendant's motion to declare the federal statute unconstitutional was substantive because "[i]t went to the State's ability to acquire evidence to use in prosecuting defendant." *Id.* ¶ 60.

Defendant's reliance on *People v. Birt*, 157 Ill. App. 3d 363 (2d Dist. 1987), is misplaced. Def. Br. 56-57. There, the court held that a ruling denying discovery motions filed by non-parties seeking to avoid subpoenas for depositions that were unrelated to the case was not substantive. 157 Ill. App. 3d at 367. Here, by contrast, the court considered particularized facts about

defendant's crime and determined that they were relevant and material to the criminal investigation before ordering disclosure of the cell site data. *People v. Ehrler*, 114 Ill. App. 3d 171 (2d Dist. 1969), cited at Def. Br. 56, is even further afield. There, "the single act relied upon to defeat the [substitution motion] was the *setting of a date* for a competency hearing." *Id.* at 180 (emphasis added). Indeed, under *Ehrler*'s reasoning, the court's rulings here were substantive, because they "'relate[] to an[] issue of the crimes charged.'" Def. Br. 56 (quoting *Ehrler*, 114 Ill. App. 2d at 179). Because the circuit court's substantive ruling preceded defendant's substitution motion, the appellate court correctly held that the motion was untimely.

V. The People Presented Sufficient Proof that Kate Was Murdered.

A murder conviction requires proof (1) that a death was produced by a criminal agency, such that a crime occurred; and (2) that the crime was committed by the defendant. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). When assessing the sufficiency of the People's proof, this Court asks "'whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.'" *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). *Jackson* "makes clear that it is the responsibility of the jury — not the court — to decide what conclusions should be drawn from evidence admitted at trial." *Cavazos v. Smith*, 565 U.S. 1, 2 (2011). The relevant question is "'whether,

after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson*, 443 U.S. at 319). The reviewing court "must allow all reasonable inferences from the record in favor of the prosecution." *Id.* at 280.

Dr. Kalelkar's testimony that Kate died as a result of asphyxiation due to manual strangulation, *see* R883-84, was alone sufficient to prove that her death was the result of criminal agency. Kalelkar supported that opinion with findings that were consistent with strangulation and inconsistent with falling while running and landing on the railroad tracks. R880-83. Kalelkar testified that had Kate been running on the tracks, she would have suffered more and different injuries and that the "lack of [such] injuries tells me that she was laid there after death." R879. Defendant's complaint of Kalelkar's testimony that Kate died by manual strangulation, whereas her report listed Kate's cause of death more generically as "asphyxiation," Def. Br. 60, does not undermine Kalelkar's testimony. As the appellate court noted, "asphyxiation" "certainly encompasses a killing," and Kalelkar plainly testified at trial that Kate's death was caused by strangulation and compression of her neck. *King*, 2018 IL 151112, ¶ 66. And, of course, Kalelkar's opinion as to cause of death was corroborated by Safarik, who similarly testified, based on his experience investigating homicides, that Kate's body bore indicia of strangulation.

Defendant argues that because Kalelkar's testimony was impeached and contradicted by Blum's, it was insufficient to prove that Kate's death was a homicide. Def. Br. 59. But it was for the jury to evaluate the experts' testimony. *King*, 2018 IL 151112, ¶ 63; *accord Cavazos*, 565 U.S. at 2. Furthermore, it was Blum who was successfully impeached. Although he opined on direct examination that Kate died of sudden arrhythmia, on cross-examination, Blum conceded that he could not rule out asphyxia. R2678. Blum further conceded that Kalelkar had a better opportunity to view the body than he did, R2668-69, and that "the benefit of the doubt should go to the initial pathologist unless it is totally overruled by other evidence," R2670.

This Court should reject defendant's argument that testimony from a train engineer and a paramedic "suggest[ ]" that Kate was alive "when she reached the railroad tracks," Def. Br. 61, as it is contradicted by the record. *No one* testified to seeing Kate "reach" the railroad tracks. And rather than "suggest[ing]" that Kate was alive, the Metra engineer testified that after noticing her body on the tracks, he never saw it move. SR400. The brakeman did not even attempt CPR because she "clearly looked deceased." SR439-43. Finally, the conductor testified that he did not see the body move; in fact, he initially radioed that she appeared to have been decapitated. SR457. Although he later radioed, "I believe this broad is still breathing," he explained that he had done so because the wind had lifted the back of her

shirt, and he was merely "hoping" that she was still breathing. SR458; SR484.

Other evidence demonstrates that Kate had been dead for some time. Sergeant Carbray, who arrived on the scene shortly thereafter, testified that her body appeared grayish in color, and he noticed "possible lividity" in her lower leg. SR333, 356-58. A responding paramedic noted that Kate was not breathing, "her skin was quite pale," and he observed lividity in her legs. SR494-95. An EKG detected electrical activity but confirmed that there was no heartbeat. SR497. Paramedics did not attempt resuscitation because she appeared to have been dead for "quite some time." SR499; *see also* SR520.

The circumstantial evidence further corroborated that Kate's death was the result of criminal agency. The evidence established that Kate was happy and healthy — first at the family barbeque and later at the Dam Bar — in the hours before her death. R1224-25, 1387, 1924; R1121, 1138, 1158-59, Peo. Exh. 505. The positioning of Kate's body (with her neck draped over the rail) and cell phone (propped against two railroad spikes), gives rise to the reasonable inference that they were placed on the tracks so that a passing train would hit them. SR354-56; Peo. Exh. 110 (photo). The fact that Kate's known running routes did not take her along the railroad tracks, coupled with the fact that a reddish substance found on the first responders' shoes was absent from Kate's running shoes, leads to the reasonable inference that she had not been running on the tracks. R566. Kate's

clothing, too, suggested that she had not dressed herself and had not been running: her underwire bra strap and sock were twisted, the sock contained a tuft of hair, and she wore neither underwear nor a liner beneath her untied shorts. R819, 828, 870-72. Nor was Kate wearing the running bra, contact lenses, armband, or earbuds that she customarily wore when running. R828-29. And the dried trail of spittle that ran *up* Kate's cheek was further evidence that she had been killed elsewhere and her body later placed on the tracks. R714.

Defendant's own statements and actions are evidence of his criminal agency and motive to kill Kate. Defendant told police that he and Kate were "kind of separated" after he had learned that Kate was having an affair. Peo. Exh. 73 1.13:13-15:00; 1.17:10-:51; 2.19:50. Defendant admitted (and his son confirmed, R1756-59) that shortly after Kate's return from military training, he angrily "chucked" her prior cellphone into a pond after viewing messages from Keogh. Peo. Exh. 74 at 34:00-36:25. Later that same month, when Kate went to the Cubs game with Keogh, defendant monitored her activities via Facebook and their joint bank account. R2197-2200; Peo. Exhs. 522S-Z; R2143-48; R2769 (defendant's testimony). Defendant admitted that at 4:00 or 5:00 on the morning of Kate's death, he took Kate's iPhone and saw the explicit text messages she had exchanged with Keogh. *Id.* 1.1:01:15-:02:50, 1.1:07:41. Apparently upset by these messages, around 4:45 a.m., he used Kate's phone to text Keogh a series of messages commencing with, "I am

fucking my husband right now." R2237-38. And when police asked defendant why he did not bring Kate to pick up the kids at Kurt's house, he admitted that they had fought about Keogh. R1168. Construing this and other evidence in the light most favorable to the prosecution, any rational juror could have concluded that Kate's death was a homicide and that defendant killed her.

CONCLUSION

For these reasons, and those stated in the People's opening brief, this Court should reverse the appellate court's judgment that (1) admission of Safarik's crime scene analysis testimony was improper and entitled defendant to a new trial, (2) testimony from Kristine and Kurt was improperly admitted, and (3) the prosecutor's closing argument was error. The Court should affirm the appellate court's judgment rejecting defendant's claims that the trial court erred in denying his motion for substitution of judge and that there was insufficient proof.

August 30, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 5503 words.

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 30, 2019, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

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