No. 130110

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, Fourth Judicial District, Nos. 4-21-0630, 4-22-0017 & 4-22-0018 (cons.)
Plaintiff-Appellee,	)	
v.	)	There on Appeal from the Circuit Court for Fifth Judicial Circuit, Vermilion County, Illinois, Nos. 17-CF-725, 19-CF-732 & 19-CF-733
OCHEIL D. KEYS,	)	
Defendant-Appellant.	)	The Honorable Nancy S. Fahey, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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TABLE OF CONTENTS

Page(s)

POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant killed his girlfriend, moved her body to a secluded location, and burned it. After being interviewed by detectives who were investigating his girlfriend's disappearance, defendant returned to the burn site, cut up her body, and placed her remains in a garbage bag in his mother's car. A jury convicted defendant of first degree murder, two counts of dismembering a human body (an offense that prohibits, among other things, dismembering and mutilating a body), and three counts of concealment of a homicidal death, and the trial court sentenced him to 96 years in prison. C299; 17C105; 18C104.[1] The appellate court affirmed, A7-46, and this Court allowed defendant's petition for leave to appeal. No issue is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether trial counsel reasonably declined to seek suppression or redaction of, or request a limiting instruction with respect to, various parts of defendant's videorecorded police interviews, and whether defendant was not prejudiced by those decisions in any event given the overwhelming additional evidence of his guilt.

[1] "C" and "R" refer to the common law record and report of proceedings filed below in No. 4-21-0630. Citations to the common law record and report of proceedings filed in Nos. 4-22-0017 and 4-22-0018 are preceded by "17" and "18," respectively. The People's trial exhibits are cited as "PE." Defendant's opening brief and appendix are cited, respectively, as "Def. Br." and "A."

2. Whether both of defendant's dismemberment convictions and two of his concealment convictions are proper because each conviction relates to a discrete course of conduct.

JURISDICTION

This Court allowed leave to appeal on January 24, 2024. Jurisdiction lies under Supreme Court Rules 315(a) and 612(b)(2).

STATEMENT OF FACTS

I. Trial Evidence

The evidence at trial established that in October 2017, defendant killed his girlfriend, Barbara Rose, and then, over a period of several days, moved her body to multiple locations where he separately burned and dismembered it.

A. Rose is last seen with defendant early on October 22.

At the time of the murder, defendant lived with Rose and her daughters (ages 8 and 18) at Rose's home in Danville, Illinois. R522-23, 541. On the night of October 21, Rose and her friend, Jennifer Veatch, arranged via text message exchange to meet the following day to celebrate Veatch's birthday. R559-62. The last text was sent sometime after midnight. R562. During the exchange, Rose made no mention of going to Indiana to buy a car on October 22. *Id.*

Around 3 a.m. on October 22, Ebonnie Bryant saw Rose and defendant when she brought her daughter to Rose's house for Rose to babysit. R572-76, 582-83. Around 11 a.m., defendant messaged Bryant via Facebook to pick up

her daughter. R576-80. Bryant was surprised that defendant, rather than Rose, contacted her because Rose regularly babysat Bryant's children and never left them alone with defendant. R576-80.

Bryant asked Brytney Harrier to pick up Bryant's daughter from Rose's house. R580. When Harrier arrived around 11:30 a.m., defendant cracked open the front door and handed Harrier the baby. R588. He told Harrier that she could not come inside because he and Rose had a "vicious" dog, but Harrier was familiar with the dog and had never known it to be vicious. R588-89. Around the same time, Veatch began to text and call Rose, but Rose never responded. R563.

B. Later that day, defendant buys supplies to dispose of Rose's body.

Shortly after 5 a.m. on October 22 — around two hours after Rose was last seen at home with defendant — surveillance cameras at a nearby gas station recorded two men getting out of a station wagon. PE14-1, 102041.mjp; PE14-2; R632-38, 660-61. A man in a gray shirt stood near a pump filling a container with gasoline while the other man — identified at trial as defendant's cousin, Nick Patton — walked toward the convenience store to pay. PE14-2, 102300.mjp; R601, 638-39, 661.

Twenty minutes later, surveillance cameras recorded the same station wagon entering a Walmart parking lot. PE15-1, Exterior Front Crosswalk; R732-33. The car stopped near the store's front doors and the man in the gray shirt — now clearly identifiable as defendant, *see* PE15-6 — exited the

passenger seat and entered the store. PE15-1, GROC Crosswalk; R733-35. Inside, defendant bought a comforter and two rolls of plastic tarps, PE15-1, POS 11; PE15-4; R742-49, before exiting the store, smiling, PE15-1, GROC Vestibule 2; PE15-8, 15-9; R750-51.

Around 5 p.m., defendant returned to the same Walmart with another man. PE15-2, GM Vestibule 1; PE15-10; R760-64. They walked through the store together — selecting a gas can, camping fuel, and a lighter — which the other man purchased as defendant exited the store alone. R764-76; PE15-3.

C. Defendant does not report Rose missing until October 24.

Late on October 22, defendant drove to the home of his other girlfriend, Rhonda Crippin, where he ate, watched movies, and spent the night. R603-06. Crippin testified that defendant acted normally that evening. R607. Over the next week, defendant spent every night but one at Crippin's house. *Id.* The one night he was not with Crippin, he came to her house and requested a lighter, even though he did not smoke. R607-08.

On October 23, the day after Rose was last seen alive, defendant called his cousin, Lennie Strader, and asked to borrow Strader's truck to move some weights. R55-57, 597-600; PE60 at 4:40-5:02. Strader refused to loan defendant the truck. R600.

The next day, defendant informed Rose's adult sons that he had not seen Rose in two days. R525-28. He showed them what he said were text messages between Rose and a woman in Indiana and said that Rose had gone to Indiana to buy a car from the woman and never returned. R529, 544-46.

Rose's sons called and texted Rose but got no response. R531, 547. They then called police to make a missing-person report. R518, 530-31.

D. Detectives interview defendant on October 26 and 29.

On October 26, two detectives spoke with defendant about Rose's disappearance. R673. In the videorecorded interview, defendant said he last saw Rose around 6 a.m. on October 22. PE17 at 9:50-10:01, 29:30-29:40. He claimed that he passed out from low blood sugar as Rose was making breakfast and that she was gone when he woke up. *Id.* at 9:50-10:01, 11:05-11:50, 29:30-30:35. He said Rose texted him around 10:30 a.m. saying she was on her way to Indiana to buy a second car for him and Rose, which defendant said they needed because he was "fighting [his] cases" and needed to be able to "see [his] attorneys." *Id.* at 10:12-10:50. Defendant said that he left the house that afternoon and when he returned around 3:30 p.m., he saw Rose's car but not Rose. *Id.* at 31:05-31:45. He said he went to his mother's house around 8:30 that evening, spent the night with Crippin, and started driving Rose's car the next day. *Id.* at 31:50-34:05.

After the interview, the detectives spoke with Patton and retrieved the gas station and Walmart surveillance videos. R172-75.

The detectives then conducted a second videorecorded interview with defendant on October 29. R172-75, 658-59. After waiving his *Miranda* rights, PE21 at 27:50-30:00, defendant again asserted that he had last seen Rose around 6 a.m. on October 22, repeating the story that he passed out from low blood sugar caused by his diabetes and the stress of "fighting three

cases" and that Rose was gone when he woke up, *id.* at 32:45-33:50, 36:50-37:40, 39:22-39:33, 41:10-41:50. He denied having been with Patton on October 22, and — when told that surveillance videos showed them at a gas station and Walmart that morning — claimed that he cannot remember what he does when his blood sugar is low. *Id.* at 34:30-36:50.

When defendant later denied harming Rose either intentionally or accidentally, the detectives told him that Patton was "worried that you did something that you didn't mean to do . . . based on the way you described things to him." *Id.* at 52:00-53:10. They also told defendant that their investigation made it "very clear that you caused [Rose's] disappearance" and asked whether Patton "got the right impression [that] this was not something that you wanted to happen." *Id.* at 53:58-54:30. Defendant replied: "No, actually, I didn't do anything, period, point blank. And if that's the case, if you feel like . . . based off your [investigation] that I did something, then do what you gotta do, ain't nothing furthermore for us to talk about." *Id.* at 54:30-54:45.

The detectives then told defendant that they knew Rose was dead at 6 a.m. — not making breakfast as defendant claimed — and asked "is there something you need to get off your chest . . . something you need to tell us?" to which defendant responded "no, there's not." *Id.* at 54:47-57:02.

Recalling that defendant had said during the first interview that he was "not used to . . . talking to the police without being in handcuffs," the

detectives urged defendant to come clean about what happened, explaining that the evidence now was "starting to stack against you." *Id.* at 58:30-59:05. After telling defendant that it was up to him to decide whether to stick with his story or tell the truth, the detectives asked "fair enough?" and defendant responded "yeah." *Id.* at 59:20-59:40. The detectives then asked defendant whether he had any involvement in Rose's disappearance, and defendant said he did not. *Id.* at 59:50-1:00:02.

After a break in the interview, defendant identified himself in several images taken from the surveillance videos, *id.* at 2:30:10-2:31:35, but he continued to insist that he could not remember what he did that morning, repeating the story about passing out around 6 a.m., *id.* at 2:31:35-2:32:45. The detectives told defendant that they knew that story was untrue because the surveillance videos showed him with Patton around that time and because it would have been impossible to do what he did that morning if he was suffering from low blood sugar. *Id.* at 2:33:30-2:34:10, 2:41:05-2:41:55.

The detectives asked defendant how it would look when the evidence "show[ed] that you did all these things" yet "looked [us] dead in [the] eye and said [you] didn't do nothing," suggesting that it would make him seem remorseless and "paint[ ] [him] as a cold-hearted person" who "killed a mother in cold blood." *Id.* at 2:42:40-2:43:00. Defendant replied: "So you're saying I did something to Barb out of cold blood?" *Id.* at 2:47:00-2:47:50. The

detectives said it was starting to look that way, to which defendant replied, "I ain't did nothing, period, so do what you gotta do." *Id.* at 2:47:50-2:48:15.

E. Police find presumptive blood in Rose's house and car.

On October 29 and 30, a crime scene investigator searched Rose's house and car. R831-33. The investigator found stains in the bedroom, kitchen, living room, backyard, and garage that reacted to luminol, a chemical used to identify "the presumptive presence of blood." R258-65, 859-76. She also identified a stained, partially cut area of carpet in the bedroom that appeared to have been cleaned. R848-51. In a bedroom drawer, the investigator found a starter pistol — a device that looks like a gun but cannot fire a bullet. R853-54.

In Rose's car, the investigator detected the presumptive presence of blood on the steering wheel and driver-side floorboard and found plant debris and charred material in the trunk. R291-305, 833-34.

F. Rose's remains are found in defendant's mother's car.

On October 31, defendant's mother told detectives that defendant had borrowed her Pontiac Grand Prix on October 28 and returned it the following day. R800-02. The detectives found the car parked in the driveway next door to defendant's mother's house. R61-62, 185. In the back seat, the detectives saw a partially open garbage bag, which contained a comforter and emitted a foul odor. R186-87. Inside the bag, the crime scene investigator found several charred body parts, which were identified as Rose's through DNA testing. R109-11, 320, 446-48. A fingerprint on the outside of the bag

matched defendant. R89-100. Behind the driver's seat, the investigator found an intact dental palate hidden in a sock and wrapped in a piece of cloth that resembled the shirt defendant wore during his first police interview. R315, 314-26, 677-78; *compare* PE3-20 and PE4-3 *with* PE17 at 8:25.

Based on an autopsy of the remains found in the car, the medical examiner determined that Rose died of a gunshot wound to the head and that her body had been burned and dismembered after death. R199-201, 234-35. The lower portions of her arms and legs had been amputated and were not in the car; the body parts in the car were "extensively charred." R206, 214-17. Rose's dental palate and part of her jaw had been separated, likely after her body had been burned. R205-11.

G. Defendant confesses to Carroll Hamilton.

On October 31, after his arrest, defendant was placed in a cell at the county jail next to Carroll Hamilton, who had been incarcerated there since February. R160-64. Hamilton and defendant had met several years earlier, and Hamilton lived with defendant and Rose for a brief period. R118-22. On defendant's first night in jail, Hamilton heard defendant scream and asked if he was okay. R125-27. Defendant said he needed to get something off his chest and then told Hamilton about Rose's death. R128.

Defendant told Hamilton that while he and Rose "were joking around," she pointed (what he knew to be) a starter pistol at him, and he pointed a .22 caliber revolver at her; the starter pistol then went off, and the next thing defendant remembered was seeing blood on Rose's face. R130-31. He said

that he held Rose for 30 minutes until her heart stopped beating and then wrapped her in a comforter. R133-34. He called Patton, who helped defendant move Rose's body to the garage and drove him to several gas stations and to Walmart. R134-35. Defendant told Hamilton that he later moved the body to a secluded area near abandoned houses and set it on fire using gasoline and camping fuel. R136-38. One or two days later, he said, he returned to the location where he had burned Rose's body, cut off her hands and feet and severed her jaw, and put the remains in his mother's car. R138-40.

Hamilton wrote down what defendant said and mailed it to police, who spoke with Hamilton on November 7. R140-41, 189-90. The following day, Hamilton was granted a medical release and led detectives to 1519 Lyons Street, R190-93, where a crime scene investigator detected a strong odor of gasoline, identified an area that appeared to have been the site of a large fire, and found what appeared to be burned bones and melted plastic, R383-96. Several items at the scene tested positive for the presence of gasoline, R430-35, and the medical examiner concluded that several of the bones found at the scene were of human origin and consistent with body parts that were missing from the remains found in defendant's mother's car, R224-34.

In exchange for Hamilton's cooperation, prosecutors agreed to a deal in which Hamilton received a three-year sentence on a burglary charge that

would otherwise have subjected him to a sentencing range of 6 to 30 years. R141-44.

II. Charges, Verdicts, and Sentencing

The People charged defendant with first degree murder, alleging that he personally discharged a firearm that proximately caused Rose's death, C32-34, two counts of dismembering a human body, 720 ILCS 5/12-20.5, and three counts of concealment of a homicidal death, 720 ILCS 5/9-3.4.

The dismemberment counts alleged that (1) on or about October 23 to October 26, 2017, defendant "knowingly mutilated [Rose's deceased body] by use of fire," 17C16, and (2) on or about October 27 to October 29, 2017, defendant "knowingly dismembered, severed, and separated body parts from [Rose's deceased body]," 18C16.

The concealment counts alleged that (1) on or about October 22, 2017, defendant "knowingly concealed [Rose's death] by transporting her body from the place of her death and hid or otherwise disposed of her remains," C34; (2) on or about October 23 to October 26, 2017, defendant "knowingly concealed [Rose's death] by moving her body to the property near 1519 Lyons St[reet]," 17C17; and (3) on or about October 27 to October 29, 2017, defendant "knowingly concealed [Rose's death] by placing her body parts in a sock and bag and placed them into a 2000 Pontiac Grand Prix," 18C17.

With respect to the dismemberment and concealment charges, the trial court provided the jury with separate verdict forms that were denominated as follows: "dismembering a human body, mutilation by fire"; "dismembering a

human body, dismember, sever, separate"; "concealment of a homicidal death, move the body from the bedroom"; "concealment of a homicidal death, move the body to 1519 Lyons Street"; and "concealment of a homicidal death, move the body to a Pontiac Grand Prix." R1262-63.

The jury returned guilty verdicts on all counts. C246-48; 17C52-53; 18C51-52. After denying defendant's motion for a new trial, the trial court sentenced defendant to consecutive sentences of 60 years for murder, 15 years for each dismemberment conviction, and 2 years for each concealment conviction. R934-37.

III. Appeal

On appeal, defendant argued, among other things, that his multiple dismemberment and concealment convictions were improper because he dismembered only one body and concealed only one death, and that his trial counsel was ineffective for (1) not moving to suppress the portion of his second police interview that followed what he alleged was an invocation of his right to remain silent that the detectives ignored, (2) not moving to redact from both interviews statements by defendant and the detectives suggesting that defendant committed prior crimes, as well as the detectives' statements expressing their belief in defendant's guilt and referring to Patton's out-of-court statements allegedly implicating defendant, and (3) not requesting a limiting instruction concerning the statements just mentioned. A19-20.

The appellate court affirmed. A46. With respect to the ineffective assistance claim, the appellate court held that trial counsel's performance

was not deficient because (1) defendant did not unambiguously invoke his right to remain silent in a manner that would support a suppression motion, (2) there was no basis to redact the interview videos because the detectives' comments about defendant's guilt and references to Patton's out-of-court statements were admissible to give context to defendant's statements and behavior during the interview and because the references to defendant's involvement in other crimes were both fleeting and relevant to establishing defendant's version of events, and (3) no Illinois precedent addressed defendant's suggested limiting instruction. A23-26.

Alternatively, the appellate court held that there was no reasonable probability that the trial's result would have been different had counsel successfully suppressed, redacted, or secured an instruction limiting the jury's consideration of the police interviews because the other evidence of defendant's guilt was "compelling" and "overwhelming." A29-30.

Finally, the appellate court rejected defendant's claim that his actions supported only a single conviction each of dismemberment and concealment. A41-46. The court explained that, while each statute authorizes only one conviction for acts committed as part of a single course of conduct, nothing in either statute "immunize[s] [a] defendant from being punished separately for successive commissions of the same offense." A45. Here, the court held, defendant was properly convicted of multiple, "legally distinct" violations of each statute where the evidence established that he dismembered Rose's

body and concealed her death "by different acts" committed "on different days," "at different locations," and "separated by intervening events." A43-46.

STANDARDS OF REVIEW

When, as here, a claim of ineffective assistance of counsel does not turn on a question of fact, this Court reviews the claim *de novo*. *People v. Johnson*, 2021 IL 126291, ¶ 52.

Defendant's claim that the dismemberment and concealment statutes do not authorize multiple convictions for dismembering one body and concealing one death presents a question of statutory interpretation that this Court also reviews *de novo*. *People v. Hartfield*, 2022 IL 126729, ¶¶ 67-68.

ARGUMENT

The appellate court correctly rejected defendant's ineffective assistance claim because defendant cannot show that trial counsel's decision not to move to suppress, redact, or seek a limiting instruction with respect to portions of his videorecorded police interviews was objectively unreasonable, nor, in any event, that there is a reasonable probability that the result of his trial would have been different absent counsel's alleged shortcomings.

The appellate court also correctly determined that the dismemberment and concealment statutes permit multiple convictions when a defendant successively violates the respective statute through multiple discrete courses of conduct. Applying that interpretation of the statutes, the appellate court correctly upheld defendant's two dismemberment convictions and two of his

concealment convictions because the evidence established that defendant dismembered Rose's body and concealed her death through two courses of conduct that involved dissimilar acts, occurred on different days, and were separated by a significant intervening event.

I. Defendant Did Not Receive Ineffective Assistance of Counsel.

Defendant argues that trial counsel was ineffective for not (1) moving to suppress the portion of defendant's second police interview that followed his alleged invocation of his right to remain silent; (2) moving to redact defendant's and the detectives' allegedly inadmissible statements from both interviews; and (3) requesting a limiting instruction concerning the allegedly inadmissible statements. Def. Br. 10-48. To prevail on this claim, defendant must show both that counsel's performance was deficient and that defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). He makes neither showing.

A. Counsel's performance was not deficient.

Defendant cannot show that his counsel performed deficiently. The Sixth Amendment affords criminal defendants the right to "a reasonably competent attorney," but it "does not guarantee perfect representation." *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (cleaned up). Thus, to establish constitutionally deficient performance, defendant must show that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." *Strickland*, 466 U.S. at 687. That, in turn, requires defendant to show that "counsel's representation

fell below an objective standard of reasonableness under prevailing professional norms." *People v. Haynes*, 2024 IL 129795, ¶ 23. To do so, he must overcome the "strong presumption" that counsel's conduct fell "within the wide range of reasonable professional assistance" and could "be considered sound trial strategy." *Strickland*, 466 U.S. at 689 (cleaned up). "Surmounting [this] high bar is never an easy task," *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010), and defendant has not done so here.

1. Counsel could have reasonably concluded that the evidence did not support a motion to suppress.

First, it was not objectively unreasonable for counsel to forgo filing a motion to suppress the latter portion of defendant's second police interview because counsel could have reasonably concluded that such a motion would have been meritless because defendant never unambiguously invoked his right to remain silent. *See Premo v. Moore*, 562 U.S. 115, 124 (2011) (relevant question is not whether a suppression motion "would have succeeded," but whether "no competent attorney would think a motion to suppress would have failed").

Under *Miranda v. Arizona*, 384 U.S. 436 (1966), when a person subject to custodial interrogation indicates, either before or during questioning, that he wishes to remain silent, questioning must cease. *Id.* at 473-74. But that rule applies only when the person "unambiguously" invokes the right to remain silent. *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). Making that determination calls for an objective inquiry into whether the person did

or said something "that can reasonably be construed to be an expression of a desire" to end the questioning. *Davis v. United States*, 512 U.S. 452, 459 (1994). Put differently, "[t]he key inquiry . . . is whether a reasonable officer under the circumstances would understand the defendant's statements as an unequivocal invocation of the right to remain silent." *Smith v. Boughton*, 43 F.4th 702, 709 (7th Cir. 2022).

Contrary to defendant's contention, *see* Def. Br. 12-17, his statement — "No, actually, I didn't do anything, period, point blank. And if that's the case, if you feel like . . . based off your [investigation] that I did something, then do what you gotta do, ain't nothing furthermore for us to talk about," PE21 at 54:30-54:45 — was not an unambiguous invocation of his right to remain silent. Defendant made the statement in response to the detectives' statements informing him that, contrary to his denials, their investigation had established that he was responsible for Rose's disappearance. *See id.* at 53:58-54:30. And he did not state that he did not *want* to say anything further or that *he* had nothing further to say, but only that there was nothing further for *us* (him and the detectives) to talk about. In this context, the statement is best — and, more importantly, can at least reasonably be — understood as expressing defendant's view that further discussion would be pointless, not that he wished to terminate the interview.

That distinguishes defendant's statement from those in the other cases on which he relies, *see* Def. Br. 14-16, where the defendants were deemed to

have unambiguously invoked the right to silence by making statements such as "I don't want to talk about it," *McGraw v. Holland*, 257 F.3d 513, 515-18 (6th Cir. 2001), "I don't want to talk no more," *Jones v. Harrington*, 829 F.3d 1128, 1140 (9th Cir. 2016), and "[I've] decided not to say any more," *Tice v. Johnson*, 647 F.3d 87, 97, 104 (4th Cir. 2011) (cleaned up).[2] In each of these cases, the defendant unambiguously expressed his desire to stop talking, while here defendant merely expressed a belief that further discussion was unlikely to prove fruitful.

Similarly, the two additional statements on which defendant relies — answering "no, there's not," when asked "is there something you need to get off your chest . . . something you need to tell us?," PE21 at 54:47-57:02, and "yeah" when the detectives said it was up to him whether to stick with his story or tell the truth and asked "fair enough?," *id.* at 59:20-59:40; *see* Def. Br. 17-18 — are best (or at least reasonably can be) construed as reiterating defendant's claim that he was not responsible for Rose's disappearance, not expressing a desire to end the interview.

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[2] *See also People v. Ward*, 2023 IL App (1st) 190364, ¶ 115 ("[I] don't want to say nothing else about it"); *People v. Cox*, 2023 IL App (1st) 170761, ¶ 52 ("I don't wanna answer no more questions"); *People v. Flores*, 2014 IL App (1st) 121786, ¶ 57 (responding "[n]ot really[,] [n]o" when asked if he wanted to talk); *United States v. Nam Quoc Hoang*, No. 1:16-CR-193, 2017 WL 1197243, at *3-6 (E.D. Va. Mar. 31, 2017) (unpublished) (defendant who did not speak English natively said, among other things, "I don't talk no more," "I don't want to talk no more," and "Put me in jail[,] [w]e don't have to talk about it").

Nor does the detectives' decision to pause the interview after defendant responded "yeah" to the detectives' "fair enough?" comment, PE21 at 59:20-59:40, suggest that the detectives subjectively believed that defendant had invoked his right to remain silent, *see* Def. Br. 19. In *People v. Nielson*, 187 Ill. 2d 271 (1999), on which defendant relies, detectives ended an interview and "returned [the] defendant to his cell" after the defendant "placed his hands over his ears, looked up at the ceiling, and began repeating, 'nah nah nah nah nah.'" *Id.* at 284. "By placing his hands over his ears, turning his head to the ceiling, and chanting 'nah nah nah,'" the Court held, "defendant clearly indicated his desire to cut off questioning," and that conclusion was "bolstered by the fact that" the detectives responded by ending the interview and returning defendant to his cell, which indicated that the detectives had "interpreted defendant's conduct as an expression of his desire to terminate the interview." *Id.*

Here, in contrast, defendant responding "yeah" when the detectives said it was his choice whether to stick with his story or tell the truth and asked "fair enough?," PE21 at 59:20-59:40, can hardly been characterized as a "clear[ ] indicat[ion]" of defendant's "desire to cut off questioning," *Nielson*, 187 Ill. 2d at 284, rather than (as discussed above) a reiteration of his claim of innocence. Given that, nothing about the detectives' decision to pause the interview — while keeping defendant in the interview room — suggests that

the detectives interpreted defendant's response (or any of his prior remarks) as invoking his right to remain silent.

In sum, because a "competent attorney" could conclude that a motion to suppress the latter portion of defendant's second police interview under *Miranda* would have failed because defendant did not unambiguously invoke his right to remain silent, *Premo*, 562 U.S. at 124, the decision not to file such a motion did not fall "below an objective standard of reasonableness," *Haynes*, 2024 IL 129795, ¶ 23.

2. Counsel could have reasonably concluded that the challenged interview statements were admissible, strategically valuable, or too fleeting to necessitate redaction.

Nor was counsel deficient for not moving to redact various statements from both interviews because counsel could have reasonably concluded that the statements were either admissible, strategically valuable, or too fleeting to require redaction.

Defendant first faults counsel for not seeking to redact the detectives' assertions that their investigation had established that he caused Rose's disappearance, arguing that the statements were irrelevant and prejudicial. Def. Br. 23-25. But the statements were plainly relevant in that they supplied important context for evaluating defendant's repeated insistence that he was not involved in Rose's disappearance, *see* PE21 at 54:30-54:35, 59:50-1:00:01, 2:48:00-2:48:35, 2:51:15-2:51:20, as well as his stone-faced silence when the detectives repeatedly poked holes in his story — all of which

seriously undermined defendant's later argument at trial, *see* R1233-34, and on appeal, *see* Def. Br. 45, that he may have killed Rose accidentally. *See People v. Whitfield*, 2018 IL App (4th) 150948, ¶ 49 ("Without the officers' statements and questions, the meaning and significance of defendant's answers, comments, behaviors — or even, at times, his silence — would be difficult to discern."). Indeed, the detectives gave defendant numerous opportunities to assert that Rose's death was an accident, and the fact that he rejected those opportunities and insisted that he had no involvement in her death was clearly relevant to establishing his intent.

Nor, considering the totality of the circumstances, was the probative value of the detectives' statements substantially outweighed by a danger of unfair prejudice. *Cf. People v. McCallum*, 2019 IL App (5th) 160279, ¶ 70 (finding limited danger of prejudice where detectives' challenged statements were "relatively brief," "the interview generally remained conversational," and detectives "were not threatening or overly aggressive").

And, as noted above, the question is not whether a motion to redact the detectives' statements "would have succeeded," but whether "no competent attorney would think [such] a motion . . . would have failed." *Premo*, 562 U.S. at 124. Defendant largely (and his supporting *amicus* entirely) ignores that distinction. But because the admissibility of the statements presents (at the very least) a close question, counsel's decision not to seek their redaction

cannot be said to have fallen "below an objective standard of reasonableness." *Strickland*, 466 U.S at 688.

The same is true for the detectives' references to Patton's alleged out-of-court statements that defendant told him he killed Rose accidentally. *See* Def. Br. 27-29. Those references were likewise relevant to give context to defendant's repeated denials of involvement in Rose's death and refusal to describe Rose's death as an accident, further undermining his later attempts to suggest that Rose's death may not have been intentional.

Alternatively, counsel could have reasonably concluded that the defense would benefit from permitting the jury to hear that defendant allegedly described Rose's death as an accident shortly after the shooting. Doing so allowed the defense to advance an argument that defendant did not kill Rose intentionally without having to put defendant on the stand and subject him to cross-examination. And it is reasonable to conclude that this strategy carried little risk, given that defendant's alleged statement to Patton was largely cumulative of his separate confession to Hamilton, and that, in any event, the jury was likely to conclude from defendant's extreme actions after Rose's death that he had killed her intentionally. At the very least, with no evidence in the record about counsel's reasons for not seeking to redact the detectives' references to Patton's statements, defendant cannot overcome the "strong presumption" that counsel's decision rested on "sound trial strategy." *Strickland*, 466 U.S. at 689 (cleaned up).

Defendant further faults counsel for not moving to redact defendant's statements that he and Rose needed a second car because he was "fighting [his] cases" and had to "see [his] attorneys," PE17 at 10:12-10:50, and that his low blood sugar on the morning of Rose's disappearance was caused by the stress of "fighting three cases," PE21 at 35:52-37:40, as well as the detectives' statement that defendant was "not used to . . . talking to the police without being in handcuffs," PE21 at 58:30-58:55, all of which defendant contends improperly "suggested his involvement in other crimes," Def. Br. 31. Not so.

With respect to defendant's statements, counsel could have reasonably concluded both that the statements were admissible on the ground that they were inextricably intertwined with defendant's false exculpatory statements, which were "probative of [his] consciousness of guilt," *People v. Milka*, 211 Ill. 2d 150, 181 (2004), and that their admission was strategically beneficial — despite the vague references to defendant "fighting" other "cases" — because it allowed him to present his own version of events without taking the stand. Indeed, the fact that defendant was "fighting" other "cases" was an essential component of his attempts to explain both his and Rose's conduct on the day of her disappearance. And counsel could have reasonably concluded that the detectives' single, vague allusion to defendant's prior interactions with police was simply too fleeting and insubstantial to demand redaction.

For all these reasons, defendant cannot show that counsel performed deficiently in not moving to redact the challenged remarks.

3. Absent relevant precedent, counsel cannot be deemed deficient for not requesting a limiting instruction concerning the detectives' interview statements.

Defendant's contention that counsel was deficient for failing to request a limiting instruction concerning the detectives' statements about their belief in defendant's guilt and references to Patton's alleged out-of-court statements, Def. Br. 36-42, is similarly meritless. Indeed, defendant argues merely that Illinois law would have supported such a request, rather than that "no competent attorney would think [such] a [request] . . . would have failed." *Premo*, 562 U.S. at 124. And given that defendant identifies no Illinois precedent requiring a limiting instruction in the circumstances presented here — and conceded in the appellate court that none existed, A28 — it cannot be the case that no competent attorney would have failed to request such an instruction. For that reason, counsel's failure to request the limiting instruction defendant now proposes cannot be deemed to fall below an objective standard of reasonableness. *Cf. People v. English*, 2013 IL 112890, ¶ 35 (counsel not deficient "for failing to predict" changes in law).

B. Defendant was not prejudiced.

In any event, even were the Court to find that counsel performed deficiently on any or all of the grounds defendant argues, defendant's ineffective assistance claim still fails because he was not prejudiced by those deficiencies.

To establish prejudice, defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of [his trial] would have been different." *Strickland*, 466 U.S. at 694. To satisfy that standard, the "likelihood of a different result must be substantial." *Harrington*, 562 U.S. at 112.[3] Here, given the overwhelming evidence of defendant's guilt apart from the police interviews, there is no reasonable probability that the jury would not have found defendant guilty of murdering Rose had counsel succeeded in suppressing, redacting, and/or limiting the jury's consideration of portions of the police interviews.[4]

The unchallenged evidence "compelling[ly]" demonstrated defendant's guilt. A30. A mere two hours after Rose was last seen alive — at her home, with defendant — surveillance footage showed defendant at a gas station and a Walmart buying a comforter, plastic tarps, and gasoline. *See supra* pp. 3-4. A week later — after finding presumptive blood throughout Rose's house and in her car — police discovered her charred and dismembered remains in a garbage bag in defendant's mother's car, which defendant had recently borrowed, with defendant's fingerprint on the outside of the garbage bag and

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[3] Defendant notes that he "need not show that counsel's deficient conduct more likely than not altered the outcome in the case," Def. Br. 42 (quoting *Strickland*, 466 U.S. at 693), but, as the Supreme Court has explained, "the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case," *Harrington*, 562 U.S. at 112.

[4] Defendant does not argue that counsel's alleged deficiencies undermine his other convictions. Def. Br. 48 (requesting new trial on murder charge only).

a comforter inside it along with the remains. *See supra* pp. 8-9. Days later, at a nearby burn site, police found evidence of gasoline, melted plastic, and human bones consistent with those missing from the remains found in the garbage bag. *See supra* p. 10.

If all that were not enough, defendant confessed to Hamilton that he shot Rose in the head and then burned and dismembered her body. *See supra* pp. 9-10. To be sure, Hamilton received a benefit in exchange for his cooperation. *See* R141-44. But Hamilton's testimony recounting defendant's description of the manner of Rose's death and defendant's subsequent actions included details that were corroborated by other evidence, including the medical examiner's testimony and the surveillance videos. And because Hamilton was incarcerated at the time of the shooting, he is unlikely to have learned those details other than from defendant.

Defendant argues that had the jury not heard the detectives opine on his guilt or state that Patton told them that defendant confessed to killing Rose accidentally, it either "could have found that someone else killed Rose," "that Rose killed herself," or that defendant did not intentionally kill Rose. Def. Br. 45. But there was no evidence that anyone other than defendant killed Rose — who was last seen alive with defendant in her home where police later found a trail of presumptive blood — and it strains credulity to suggest that defendant would have taken the extraordinary steps he did to

conceal Rose's death merely to "cover[ ] for someone else" or hide her suicide. *Id.*

It is likewise difficult to imagine the jury finding that defendant shot Rose "accidentally or unknowingly," *id.*, when — in portions of the police interviews that he does not challenge — he disclaimed any knowledge of what had happened to Rose, *see* PE17 at 9:50-13:55, 29:40-33:20; PE21 at 41:15-42:15, and denied having accidentally killed her, *see* PE21 at 52:08-52:30.

And even if he had not previously denied it, the notion that defendant shot Rose in the head accidentally is thoroughly rebutted by the evidence. At trial, a firearms expert testified that to discharge a .22 caliber revolver — the type of gun defendant told Hamilton he had used, R130-31 — one must either pull both the hammer and trigger (for a single-action revolver) or perform a long pull of the trigger (for a double-action revolver), R71, either of which is exceedingly unlikely to be done accidentally. And, of course, the jury also heard evidence of defendant's extreme efforts to cover up Rose's death and saw his calm and smiling demeanor while walking out of the Walmart just hours after Rose's death, both of which provided strong circumstantial evidence that the shooting was not accidental. *See People v. Garcia*, 407 Ill. App. 3d 195, 201 (1st Dist. 2011) (defendant's "intent to kill can be inferred from . . . his words and conduct after the shooting").

Given all this evidence of defendant's guilt, there is no reasonable probability that the challenged interview statements affected the verdict. While the detectives' references to their conversation with Patton implied that defendant confessed to Patton, the jury heard that defendant made a similar, more detailed confession to Hamilton. The references to defendant "fighting . . . cases," PE17 at 10:12-10:50; PE21 at 32:45-33:50, and "talking to the police . . . in handcuffs," PE21 at 58:30-59:05, were vague and isolated. And having seen and heard the extensive evidence of defendant's guilt, there is no reason to think that jurors relied on the detectives' opinions — rather than their own assessments — in finding defendant guilty of murdering Rose.

In sum, because defendant has shown neither that counsel performed deficiently nor that defendant was prejudiced by counsel's alleged errors, the appellate court correctly rejected defendant's ineffective assistance claim.

II. Multiple Dismemberment and Concealment Convictions Are Proper.

This Court should also reject defendant's claim that his multiple convictions for dismembering a human body and concealing a homicidal death are improper because they arise from the dismemberment of one body and the concealment of one death. Def. Br. 48-56. The Court should instead hold that each statute authorizes multiple convictions when a defendant violates the statute more than once through separate and discrete courses of conduct. And because the evidence established that defendant dismembered Rose's body and concealed her death through a series of actions that

constituted two discrete courses of conduct, the Court should affirm his two dismemberment convictions and two of his concealment convictions.

A. The dismemberment and concealment statutes each authorize multiple convictions to punish discrete courses of conduct.

To resolve defendant's contention that the multiple acts he committed to dismember Rose's body and to conceal her death constitute only one violation of the dismemberment and concealment statutes, this Court must determine each statute's "unit of prosecution," meaning "what act or course of conduct the legislature has prohibited for purposes of a single conviction and sentence." *Hartfield*, 2022 IL 126729, ¶ 67.

1. Dismembering a human body

Neither the plain language of the dismemberment statute nor general principles of criminal of law support defendant's contention that the statute permits only one conviction for "multiple acts of dismemberment of the same body." Def. Br. 52.

"A person commits [the offense of] dismembering a human body when he or she knowingly dismembers, severs, separates, dissects, or mutilates any body part of a deceased's body." 720 ILCS 5/12-20.5(a). While this language could be broadly construed to authorize a separate conviction for each "part of a deceased's body" that a defendant "dismembers, severs, separates, dissects, or mutilates," *id.*, the People agree that a series of such acts committed as a single course of conduct cannot give rise to multiple convictions under the statute, *cf. People v. Manning*, 71 Ill. 2d 132, 135 (1978) ("If a person steals

four horses from the barn of another, all being of different color, it would not be competent to charge the thief with four different larcenies when the horses were all taken at the same time and place.") (cleaned up).

But defendant's contention that the statute allows only one conviction for all acts of dismembering the same body — no matter how distinct in time and place, dissimilar in method, or whether later acts were motivated by an intervening event — is equally unsound. That extreme interpretation finds no support in the dismemberment statute's language and cannot be squared with the principle that "in certain circumstances convictions for multiple counts of the same offense can be proper." *People v. Coats*, 2018 IL 121926, ¶ 24; c*f. United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022) (rejecting interpretation of murder-for-hire statute that would "forbid multiple charges where an individual orchestrates separate murder-for-hire schemes on the same target years apart").

Nor is defendant's position supported by his cited cases, *see* Def. Br. 49, 54-56, which involved multiple convictions based on *simultaneous* acts or a *single* course of conduct, *see United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 226 (1952) ("a single course of conduct does not constitute more than one offense under . . . the Fair Labor Standards Act"); *People v. Carter*, 213 Ill. 2d 295, 304 (2004) ("simultaneous possession" of multiple firearms did not support multiple convictions under unlawful use of a weapon statute); *People v. Cox*, 53 Ill. 2d 101, 104 (1972) (indecent liberties statute did not

permit multiple convictions for "two acts almost simultaneous in time" against same victim). Those decisions do not stand for the proposition that a defendant may not be "punished separately for successive commissions of the same offense," even under a statute that otherwise "prescribes a single unit of prosecution." *Friend v. People*, 429 P.3d 1191, 1195 (Colo. 2018).

Moreover, permitting multiple convictions when a defendant commits numerous acts of dismemberment in discrete courses of conduct furthers the statutory purpose of discouraging murderers from dismembering the bodies of their victims to avoid detection. *See* Def. Br. 53 (discussing legislative history). Given that purpose, the legislature could not have intended to give a murderer who dismembers his victim free rein to do so again with the intent of further impeding an ongoing investigation that he suspects is beginning to focus on him, as defendant did here. *See People v. Smith*, 2019 IL 123901, ¶ 31 ("[T]o treat both offenses as being carved from a single act would require us to ignore the separate harms caused by defendants' conduct as well as the legislature's intent to punish those distinct harms.").

2. Concealment of a homicidal death

The same is true of the concealment statute, which applies when "[a] person . . . knowingly conceals the death of any other person with knowledge that such other person has died by homicidal means." 720 ILCS 5/9-3.4(a).

By defining "conceal" as "the performing of some act *or acts* for the purpose of preventing or delaying the discovery of a death by homicidal means," 720 ILCS 5/9-3.4(b-5) (emphasis added), the statute makes clear that

a defendant may not be convicted of separate offenses based on a series of acts committed as a part of a single course of conduct. But like the dismemberment statute, nothing in the concealment statute suggests an intent to exempt it from the general rule that a defendant who violates a statute more than once through separate and discrete courses of conduct may be "punished separately for successive commissions of the same offense." *Friend*, 429 P.3d at 1195.

And, as with the dismemberment statute, it would be inconsistent with the clear legislative purpose behind the concealment statute to construe it in a manner that failed to deter defendants from acting repeatedly to "prevent[ ] or delay[ ] the discovery" of a homicidal death, 720 ILCS 5/9-3.4(b-5), through separate and distinct courses of conduct.

B. Defendant successively violated both statutes in two discrete courses of conduct.

The evidence established that defendant successively violated the dismemberment and concealment statutes via discrete courses of conduct, making multiple convictions under each statute proper.

In a similar context, this Court has analyzed whether charges brought under *multiple* statutes arose from a single course of conduct by employing a multi-factor test that considers

> (1) whether the defendant's actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instruments.

People v. Sienkiewicz, 208 Ill. 2d 1, 7-8 (2003). These factors are likewise relevant to determining whether multiple charges brought under a *single* statute arise from one or more courses of conduct, as the question in both instances involves an assessment of how best to group a series of potentially related acts. Here, these factors establish that defendant's series of acts of dismemberment and concealment comprised two discrete courses of conduct supporting two convictions under each statute.

To start with the dismemberment convictions, defendant's burning of Rose's body, and his subsequent dismembering of her body, undoubtedly consisted of dissimilar acts. Those acts, according to Hamilton, occurred at least one day apart. R138-40. And, perhaps most importantly, the evidence that some of Rose's dismembered remains were found wrapped in a piece of cloth resembling the shirt defendant wore during his first police interview, *compare* PE3-20 & PE4-3 *with* PE17 at 8:25, strongly suggests that the burning and dismembering were separated by the significant intervening event of the first police interview, which likely caused defendant to believe that further actions were needed to prevent the discovery and identification of Rose's body. Finally, the People charged each act as a distinct offense, 17C16; 18C16, and the jury returned separate verdicts on each count, 17C52; 18C52. While defendant's acts were directed at the same victim and occurred in the same location, the combined effect of the other factors strongly

supports a conclusion that the burning and dismemberment of Rose's body constituted two distinct courses of conduct.

As for the concealment convictions, defendant's act of moving Rose's intact body from her home to the burn site, and his subsequent act of moving her severed remains to his mother's car, were materially dissimilar in nature, occurred at least one day apart, involved different locations, were very likely separated by the intervening event of defendant's first police interview, and were charged and submitted to the jury as distinct offenses. The only countervailing factor is that both series of acts were directed at concealing the same death, but that alone cannot overcome the combined strength of the other factors in establishing that defendant's acts constituted discrete courses of conduct.

For all these reasons, the evidence established that defendant engaged in two discrete courses of conduct that each independently violated both the dismemberment and concealment statutes, thus supporting two convictions under each statute.[5]

[5] In the appellate court, the People also defended the concealment conviction that was based on defendant's movement of Rose's body from the bedroom to the garage. After further consideration, the People concede that this Court should vacate that conviction because defendant's acts of moving Rose's body to the garage and to the burn site are best categorized as a single course of conduct, given the similarity of conduct, proximity in time, and absence of an intervening event.

CONCLUSION

The Court should vacate one of defendant's convictions for concealment of a homicidal death and affirm the appellate and circuit courts' judgments in all other respects.

March 7, 2025

Respectfully submitted,

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RULE 341(C) CERTIFICATE OF COMPLIANCE

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. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 35 pages.

/s/ Eric M. Levin
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CERTIFICATE 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 March 7, 2025, the **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

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