No. 129054

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JESSICA A. LOGAN, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 4-21-0492. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, No. 19-CF-1648. Honorable Thomas E. Griffith, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

I. Because a reasonable person in Jessica Logan's shoes would not have felt free to decline to participate in the video-recorded police interrogation and "re-enactment" of her child's death, Jessica was in "custody" under *Miranda v. Arizona*, 384 U.S. 436 (1966), such that her un-Mirandized responses should have been suppressed.

Jessica "made it clear" she did not want to return to her former apartment, but did so only after the "obvious[ly]" coercive statements by DCFS investigator Tate about the "'need' for a reenactment." *People v. Logan*, 2022 IL App (4th) 210492 ("Op."), ¶97. Because neither Detective Matthews nor Tate ever corrected this impression, a reasonable person in Jessica's shoes already would not have felt free to decline to participate. But then Matthews "isolated [Jessica] from the support of her 'mother figure'" by "keeping" Taylor outside. (R98); Op.¶97. Alone with five law-enforcement agents, Jessica entered the apartment, the most distressing venue possible and the venue chosen by the police. And while Tate and Matthews only told Jessica she would be performing a "reenactment," never mentioning questioning, the encounter primarily consisted of a "criminal interrogation of [Matthews's] one and only suspect." Op.¶97.

Miranda warnings were necessary under these circumstances, but never given. Because this error required suppression of the State's most important evidence, this Court should remand for a new trial.

A. Test for "*Miranda* Custody"

The State agrees the test for "*Miranda* custody" asks whether the totality of the circumstances indicates a reasonable person in the defendant's shoes would have felt free to decline to answer police questioning, but implies

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the analysis is limited to circumstances present *during* the questioning, which must be "equivalent to" a "station house" interrogation with "menacing" police tactics. (StBr28-30) (quoting *Howes v. Fields*, 565 U.S. 499, 509 (2012)). *Howes*, however, emphasized that *Miranda* "'custody' is a term of art that specifies circumstances ... thought generally to present a serious danger of coercion." 565 U.S. at 508-09. The necessary equivalency to the "paradigmatic *Miranda* situation," therefore, lies not in whether the police employed menacing tactics, but whether *all* of the circumstances, whatever their nature, would have led a reasonable person to feel she was required to answer law-enforcement questioning. *Id*. at 511.

When enumerating factors relevant to this question, no court anticipated law enforcement would tell someone she was required to participate in a police interrogation, the opposite of what our constitutions guarantee. *Howes*, 565 U.S. at 509; *People v. Slater*, 228 Ill. 2d 137, 150 (2008). And nothing like that happened in the State's cases. *See Howes*, 565 U.S. at 515 (officers repeatedly said defendant was free to leave); *Maryland v. Shatzer*, 559 U.S. 98, 101 (2010) (officers Mirandized defendant); *Oregon v. Mathiason*, 429 U.S. 492, 493 (1977) (officer asked if defendant would talk, allowed defendant to choose venue, and said defendant not under arrest); *Slater*, 228 Ill. 2d at 140-44 (defendant agreed to talk, but when she made self-inculpatory statement, detective ended questioning and Mirandized her).

However, in the rare case where law enforcement tells someone she must talk to the police, that surely implicates *Miranda* just as much as a detective's raised voice. *United States v. Fred*, 322 Fed. Appx. 602, 603-07

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(10th Cir. 2009). "Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly" in such a case. *Howes*, 565 U.S. at 514.

B. Application of "*Miranda* Custody" Test

Like the courts below, the State focuses on the absence of strong-arm police tactics. (StBr31-32) But this Court must look to the combined effect of *all* relevant circumstances, which here included DCFS telling Jessica she had to do a re-enactment, a fact coloring every subsequent interaction.

Tate told Jessica DCFS and the police "would need" her "to do a [video-recorded] reenactment" in J.C.'s bedroom as part of a "DCFS and ... criminal investigation." (StBr34; R48-51) The State urges this Court to reject the appellate court's finding that Tate's statements to Jessica constituted "DCFS [telling Jessica] she had to participate in the reenactment." Op.¶84. Instead, according to the State, Tate was merely stating a benign truth that she and Matthews had a duty "to speak with" Jessica. (StBr34) (quoting *United States v. Johnson*, 39 F.4th 1047, 1052 (8th Cir. 2022)). But Tate's statements were not the equivalent of the "colloquial phrase 'we need to talk.'" (StBr34-35) (quoting *United States v. Braxton*, 112 F.3d 777, 781 (4th Cir. 1997)). Tate did not tell Jessica *they* had to talk to her, she said DCFS and the police needed *Jessica* to perform a re-enactment. *See Fred*, 322 Fed. Appx. at 603-07 (*Miranda* custody where "social services" agent told defendant he "would need to speak with the FBI" about criminal accusations and "told [him to] go to the FBI office").

This is also why Tate's description of the re-enactment as "standard procedure" does not help the State. (StBr35) Tate told Jessica the re-

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enactment was necessary for the investigations, but also that this was "just a process" DCFS does in "all ... child death cases." (R48-51) Tate never mentioned this purportedly standard procedure implicated Jessica's Fifth Amendment rights. The State argues this is distinguishable from *Giddins*, but that is correct only because those detectives *Mirandized the defendant*. *United States v. Giddins*, 858 F.3d 870, 876-77 (4th Cir. 2017). Even so, *Giddins* found undue coercion when police told the defendant answering their "robbery-related questions was the normal procedure for obtaining his car." *Id.* at 877-83.

That leads to another difference supporting Jessica's argument: Tate only told Jessica she would be performing a "re-enactment," never mentioning – unlike the *Giddins* detectives – that this would involve answering a detective's homicide-related questions. Tate misinformed Jessica as to her legal position, which favors finding *Miranda* custody. *See People v. Salamon*, 2022 IL 125722, ¶107 ("a subtly coercive tactic under the guise of a routine procedure allows police to trespass on the rights shielded by *Miranda*").

Tate's status as a DCFS agent only heightened the coercive impact of her statements. Op.¶¶84, 97. The State is wrong that this "cannot be reconciled with ... *Slater*." (StBr36) Unlike the lower courts here, *Slater* actually included in its analysis the statements of the DCFS agents, then found they did not trigger *Miranda* in *that* case. 228 Ill. 2d at 154-58; (R96-99); Op.¶¶83-84. Specifically, where DCFS said the defendant's child could be removed due to abuse *by another person*, this did not coerce her into making

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self-inculpatory statements. *Id.* at 155-56. Then, the moment the defendant began discussing *her own* conduct, the police Mirandized her. *Id.* at 142-43, 156. *Slater* found these procedures were not so coercive as to taint the subsequent, fully Mirandized confession. *Id.* at 144-45, 162. Here, by contrast, Tate's statements never concerned anyone but Jessica and her re-enactment of her own conduct.

The State parses Tate's testimony, arguing her specific words did not constitute telling Jessica "she was required to participate." (StBr34) But Tate could not recall her exact words, only what she "basically" said. (R48) Such paraphrased testimony is not conducive to drawing fine distinctions. Instead, this Court should look to the most reasonable inference from the record. Tate told Jessica DCFS and the police "need[ed]" her to do the re-enactment. (R48-51) Taylor recalled Tate telling Jessica "she would have to do" the re-enactment. (R55) And Jessica testified that after talking to Tate, she "didn't feel like [she] had a choice." (R66) Contrary to the State, Jessica's testimony here was not inconsistent with her belief that she was not "in trouble," because a reasonable person hearing Tate's words could have believed both that she was innocent and that she was required to perform the re-enactment. (StBr33n.4; R48-51, 465) And no reasonable reading of the record supports the State's notion that Jessica felt compelled to participate by "internal pressures" unrelated to Tate's words. (StBr35-36) Instead, the most reasonable inference is that Tate told Jessica "she had to participate in the reenactment," and that was the primary reason she did so. Op.¶¶84, 97.

Detective Matthews denied asking Tate to tell Jessica she had to

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perform the re-enactment, but Matthews called Jessica only after she talked to Tate. (R60, 69, 73-74) According to the State, the appellate court's finding that Tate told Jessica she "had" to perform the re-enactment cannot "survive" Matthews's phone call to Jessica because he asked if she was "willing" to participate. (StBr39; R73-74) The State is wrong, not only because Matthews never said she was free to decline, but because he misled Jessica as to what she was agreeing to do.

Matthews told Jessica *Dr. Denton* "request[ed] ... a reenactment." (R73) This differed from what Jessica heard from Tate, who said Jessica's participation was required by DCFS and the police. But if anything, Matthews's reference to the doctor only made the re-enactment sound more like "standard procedure," (R69), while doing nothing to dispel the impact of Tate's statements to Jessica.

Additionally, Matthews, like Tate, only requested that Jessica perform a "reenactment," (R73-74), saying nothing about "questioning." While *Matthews* knew he would be asking Jessica homicide-related questions, a reasonable person receiving such a request from a doctor would not have reason to believe this "reenactment" would really be a "criminal interrogation." Op.¶97. Jessica's "agreement" to Matthews's request does not help the State because of the ambiguous, incomplete, and even conflicting statements by both Tate and Matthews as to what Jessica was being asked to do, and why. *Fred*, 322 Fed. Appx. at 603-07; *see also People v. Brown*, 136 Ill. 2d 116, 128-29 (1990) ("confusing" statements by law enforcement favored finding *Miranda* custody).

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Because Matthews did nothing to dispel the impression left by Tate that Jessica had to perform the re-enactment, law enforcement's failure to tell Jessica she was free to decline is particularly significant. Contrary to the State, (StBr37), the absence of such admonitions is always important, regardless of whether the defendant was affirmatively *mis*informed. *Brown*, 136 Ill. 2d at 126-27; *State v. Barry*, 2021 VT 83, ¶14; *United States v. Griffin*, 922 F.2d 1343, 1354 (8th Cir. 1990). But if this Court agrees Tate's statements "might" have led Jessica to believe she was not free to decline, this is *precisely* the case the State describes where a detective's failure to provide such "reassurances" is "particularly relevant." (StBr38)

The State likewise urges this Court not to consider evidence indicating law enforcement's "intentional circumventing of *Miranda*," Op.¶97, because "just as an officer's undisclosed suspicion is irrelevant," so too are "an officer's undisclosed reasons for conducting an interview in a particular way." (StBr41) *Seibert* and *Lopez*, however, found law-enforcement tactics *violated Miranda* because the undisclosed reason officers conducted the interviews as they did was to *circumvent Miranda*. *Missouri v. Seibert*, 542 U.S. 600, 613 (2004); *People v. Lopez*, 229 Ill. 2d 322, 363-64 (2008).

The State alternatively argues the "question first, warn later" cases are distinguishable because Jessica's interrogation was not "custodial." (StBr42) But that is precisely the question. *Seibert* and *Lopez* demonstrate that – contrary to the appellate court's apparent belief, Op.¶84 – a court need not ignore evidence law enforcement intentionally circumvented *Miranda* when determining whether an interrogation was "custodial." "[L]ess

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aggressive" tactics, (StBr42), such as a DCFS agent telling someone she must talk to the police and a detective never telling her otherwise, may be as objectionable as strong-arm tactics.

Further, a deliberate circumvention of *Miranda* need not be identical to *Seibert* to be relevant. It is enough if law enforcement engaged "in *some form* of the 'question first, warn later' interrogation technique." *Lopez*, 229 Ill. 2d at 363-64 (emphasis added). If this Court finds Matthews was trying to circumvent *Miranda*, that is some form of the tactics rejected by *Seibert* and *Lopez*. If anything, the *Miranda* violation is more clear here because this case involves an *unwarned* statement resulting from "question first" tactics, whereas the suppression of the unwarned statements in *Seibert* and *Lopez* was a given, the only question being whether police tactics tainted the subsequent *fully Mirandized* confessions. 542 U.S. at 620-22 (Kennedy, J., concurring); 229 Ill. 2d at 365-66.

After talking to Matthews, Tate told Jessica she needed to perform a video-recorded re-enactment in J.C.'s bedroom as part of a DCFS and criminal investigation, and that this was standard procedure. Matthews called Jessica and said Dr. Denton needed the re-enactment, also implying this was standard procedure. Neither Matthews nor Tate told Jessica she was not required to participate. Neither explained that by "re-enactment" they meant a homicide "interrogation." And all of this was the result of law enforcement's deliberate circumvention of *Miranda*. Under these circumstances, a reasonable person in Jessica's position would not have felt free to refuse before the re-enactment. This Court's analysis could end here.

But the *Slater* factors only make it more clear *Miranda* warnings were

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required. One factor "certainly" weighs in favor of finding custody: Matthews isolating Jessica from Taylor. Op.¶78. The State asks this Court to reject the appellate court's finding, but misstates the legal standard and adopts an unreasonable reading of the record. First, the State argues that "excluding a family member" does not "uniformly" make an interrogation more custodial in nature. (StBr39) The "presence or absence of family and friends," however, is always relevant. *Slater*, 228 Ill. 2d at 150. While the *weight* this carries will vary, the exclusion of a family member from the interrogation favors finding custody. *See Howes*, 565 U.S. at 512-13 (emphasizing "coercive" impact of defendant's "isolation").

The State then argues Matthews's exclusion of Taylor carried "no coercive overtones," implying this distinguishes *Fred* because that defendant "want[ed] the family member" with him. (StBr39-40) But the only reasonable reading of the record is that Jessica wanted Taylor "to attend the reenactment." (StBr40) The State speculates Jessica may have "needed Taylor to drive ... or provide childcare," or "preferred that Taylor stay outside with her son." (StBr40) But Jessica never asked Taylor to stay outside and Taylor tried to enter with Jessica, remaining outside only because Matthews put his arm out and suggested she do so. (R57, 60-61, 76)

Even if Matthews's sole motive was to avoid "distractions," the *effect* of "keeping" Taylor outside was to isolate Jessica, a fact indicative of *Miranda* custody. (R76, 98); Op.¶78. It should be noted, however, that Matthews knew isolation made the environment more coercive. He could have avoided distractions or other concerns, while maintaining the consensual nature of the encounter to which he attested, by allowing Taylor to join Jessica and

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having another agent watch the child – perhaps the second DCFS investigator, who ostensibly was there to learn about re-enactments but was not "in the room much at all." (R50, 78)

The fact this occurred in J.C.'s bedroom, Matthews's chosen venue that happened to be the most distressing location possible, also favors finding custody. The State acknowledges the "upsetting location," but claims this is "unrelated" to police conduct. (StBr39) Jessica, however, "made it clear she did not wish to return" to the apartment *before* Matthews called her, yet Matthews proposed only one venue: J.C.'s bedroom. (R49, 69, 73-74); Op.¶97. Jessica is not arguing the interrogation was custodial "simply because of [her] emotional response to the location," (StBr41), only that the objectively distressing nature of the police-chosen venue was one of several indicia of custody.

The State claims J.C.'s bedroom was the "only" possible venue. (StBr41) But while Denton said a re-enactment "in the environment" is "standard practice," (R300-01), he never said re-enactments *must* occur at the site of the death. Indeed, what Denton gleaned from the re-enactment only concerned the placement of the mannequin and the sheets on the bed. (R301-02) There was no indication this re-enactment had to be performed in J.C.'s bedroom, as opposed to any room with a rectangular surface. Even if Denton preferred an on-site re-enactment, that cannot outweigh Jessica's right against self-incrimination.

And insofar as Matthews told Jessica Denton needed her to perform a re-enactment in J.C.'s bedroom, this further shows his message was that Jessica's participation was both required *and* standard procedure. The

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appellate court correctly found Jessica acquiesced to this request due to the purported "'need' for a reenactment." Op.¶97.

When considered alongside earlier events, Jessica's isolation in that distressing, police-chosen location shows *Miranda* warnings were required. No factors cited by the State or the lower courts outweigh the combined effect of these circumstances.

The State argues Jessica "left when she wished." (StBr32-33) On the contrary, Jessica made it clear she never wanted to participate, only did so because law enforcement told her she must, and only left when Matthews decided it was over. This is what distinguishes *Slater*, where two detectives told the defendant her daughter reported abuse by a man in their house. 228 Ill. 2d at 155. The detectives questioned the defendant about her daughter's safety and the man's conduct, not *her* conduct. *Id.* Then they "immediately" Mirandized her when she volunteered self-inculpatory statements. *Id.* at 142-43, 155-56. The *Slater* defendant was never told she had to participate in an encounter with law enforcement focused on her own conduct.

The State also emphasizes Jessica was questioned "by a single detective." (StBr32) But Jessica was alone with five State agents, at least three of whom were always in the room. This Court has found the "presence" of "at least two officers" favors finding custody, even if only one asked questions. *Brown*, 136 Ill. 2d at 126.

The State essentially argues the absence of strong-arm tactics bars finding *Miranda* custody because without such tactics the environment cannot be "equivalent to a station house interrogation." (StBr31-33) The State, like both lower courts, is wrong. Some circumstances can lead a

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reasonable person to believe she has no choice but to accede to a request from law enforcement, without a detective threatening, accusing, touching, or yelling at her. Because such circumstances were present here, *Miranda* warnings were required and Jessica's unwarned statement should have been suppressed.

C. Prejudice

The State's use of the improperly obtained statement denied Jessica a fair trial. This Court should remand for a new trial on any of three procedural grounds.

First, while counsel omitted this claim from his post-trial motion, any forfeiture should be excused due to the arguably "constitutional" nature of *Miranda* at the time of trial. *People v. Cregan*, 2014 IL 113600, ¶¶16-20; *Dickerson v. United States*, 530 U.S. 428, 438-42 (2000). While "even constitutional errors can be forfeited," *People v. Cosby*, 231 Ill. 2d 262, 272-73 (2008), *Cregan* clarified that omission of a constitutional claim from a post-trial motion does not forfeit an otherwise-preserved claim. *People v. Shafer*, 2020 IL App (4th) 180343, ¶¶58-60.

The State claims "a *Miranda* violation is not a constitutional violation." (StBr25) (citing *People v. Winsett*, 153 Ill. 2d 335, 353 (1992)). *Winsett*, however, pre-dated *Dickerson*. And while *Smith* found a *Miranda* claim not raised in a post-trial motion forfeited, it did not address *Dickerson*. *People v. Smith*, 2016 IL 119659, ¶38. Some courts, moreover, found *Miranda* "constitutional" despite *Winsett* and *Smith*. *See, e.g., People v. Norris*, 2018 IL App (3d) 170436, ¶41. It was not until after Jessica's trial that *Vega* clarified a *Miranda* violation is not "constitutional." *Vega v. Tekoh*, 142 S. Ct. 2095,

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2106 (2022). Because counsel may have reasonably believed this claim was preserved by his pre-trial motion alone, this Court should decline to find forfeiture and should require the State to prove the *Miranda* violation was harmless beyond a reasonable doubt. *People v. Wright*, 2016 IL App (5th) 120310, ¶33; *see People v. Herron*, 215 Ill. 2d 167, 176 (2005) ("forfeiture is a harsh sanction for a defendant whose attorney failed to raise an error").

The State cannot meet this burden because the re-enactment video was not duplicative of other evidence and because it contributed to the conviction, particularly given the State's emphasis of the video and Denton's opinions on the video in its closing arguments, points unaddressed by the State. (StBr42-46)

Instead, the State claims review is limited to first-prong plain error, where a forfeited error requires a new trial only if the evidence was closely balanced, then argues its evidence was overwhelming. (StBr25-26, 43-46) Under either a harmless-error or a plain-error test, however, Jessica's defense was prejudiced by the erroneous admission of her unwarned statement cited by the State as crucial evidence of guilt.

The State's evidence of guilt was not overwhelming. The State had no confession, no eyewitnesses, and no physical evidence implicating Jessica, and instead relied upon circumstantial evidence.

As at trial, the State relies upon Denton's testimony as "alone" establishing guilt. (StBr43-44; R502-03) But even accepting Denton's testimony purporting to eliminate all causes of death other than asphyxiation due to pressure on the face, there was still a question of fact as to the source of that pressure. While Jessica told Matthews she found J.C. entangled in his

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sheets, Denton told the jury he never heard of a 19-month-old dying that way and J.C. could not have died in the "position ... shown on the video." (R301-02) The State includes this in the "overwhelming" evidence, but omits that this crucial testimony consisted of Denton's opinions on *what he saw in the re-enactment video*.

This evidence did not overwhelmingly demonstrate guilt because the jury was tasked with weighing Jessica's and Denton's credibility. And the trial would have looked much different had the re-enactment video been suppressed. The jurors would not have seen the re-enactment or heard Jessica's statements to Matthews. They would not have heard Denton describe Jessica's explanation for J.C.'s death as impossible. The State offers no response on these points. (StBr43-46) In determining whether the evidence was overwhelming, this Court should consider that the very evidence the State describes as its most important never should have been presented. *See, e.g., People v. Kadow*, 2021 IL App (4th) 190103, ¶35 (finding closely balanced evidence after assessing evidence with suppression of un-Mirandized statement and impact of that on admissibility of *other* evidence).

At a fair trial, the State would be allowed to present Denton's opinions based on the autopsy alongside its "strong circumstantial evidence." (StBr43-46) The jury would then be tasked with weighing that evidence, possibly against the credibility of Jessica and other defense witnesses. Even assuming a conviction would be more likely than an acquittal at a fair trial, there is at least a reasonable probability of a different outcome with no evidence or arguments related to the re-enactment, such that the improper admission of Jessica's statement was actually prejudicial.

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Finally, if this Court agrees the record demonstrates an "intentional circumventi[on] of *Miranda*" by law enforcement, this Court should remand for a new trial regardless of whether the evidence was closely balanced because such conduct implicates the integrity of the judicial process. Op.¶97; *United States v. Stewart*, 388 F.3d 1079, 1090-91 (7th Cir. 2004); *see* 2 LaFave, Criminal Procedure §§6.2(c), 6.9(c) (4th ed.) (*Miranda* imposes "absolute prohibition upon any trickery which misleads the suspect as to the existence or dimensions of" her rights).

The State claims Jessica forfeited second-prong plain-error review by not raising it in earlier filings. (StBr26) (citing *People v. Williams*, 235 Ill. 2d 286, 298 (2009)). But *Williams* concerned a *merits* argument raised for the first time in a brief to this Court, not an argument about procedural default.

This Court should conduct second-prong plain-error review for three reasons. First, the doctrine is a mechanism for excusing forfeiture *when the State argues forfeiture*. Jessica had no burden to raise plain error in her PLA or even in her opening brief. *See People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (because State must raise forfeiture, defendant may argue plain error for first time in reply brief).

This Court should likewise excuse any forfeiture because this procedural issue is "'inextricably intertwined' with other matters properly" presented. *In re Rolandis G.*, 232 Ill. 2d 13, 37 (2008). One important question is whether law enforcement deliberately circumvented *Miranda*. If this Court finds the record supports that conclusion, this is indicative not only of a *Miranda* violation, but also serious error implicating the integrity of the judicial process. *Seibert*, 542 U.S. at 613; *Lopez*, 229 Ill. 2d at 363-64;

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Stewart, 388 F.3d at 1090-91.

And even if this Court is inclined to find forfeiture, it should conduct second-prong plain-error review as a matter of judicial economy. If this Court declines to grant relief solely due to appellate counsel's failure to raise second-prong plain error in prior filings, Jessica would have the basis for a meritorious claim of ineffective assistance of appellate counsel in a post-conviction petition. The same rationale behind *Cregan*'s "constitutional-issue exception" to forfeiture thus applies and this Court should consider the claim in this direct appeal. 2014 IL 113600, ¶18.

The State further argues no second-prong plain error occurred because the alleged error was not "structural," in that it did not "undermine the integrity of the judicial process." (StBr46) (citing *People v. Moon*, 2022 IL 125959, ¶¶28-29). The State mischaracterizes Jessica's claim. The State describes the alleged error as a "mere ... evidentiary error" involving a "violation of *Miranda*'s prophylactic rule," then misstates Jessica's argument as alleging *Denton's* request for further investigation was "somehow improper." (StBr47-48) Jessica's argument for second-prong plain-error review, however, is not based upon Denton's request of Matthews or upon a mere *Miranda* violation. Rather, such review is warranted because the record indicates *law enforcement*, not Dr. Denton, conducted a deliberate end-run around *Miranda*. Op.¶¶84, 97.

That is why the State's unsupported assertion that "the manner in which police obtained statements is irrelevant to whether a resulting *Miranda* violation constitutes structural error" is incorrect. (StBr49) *Miranda* violations, like prosecutorial misconduct, are *generally* subject to harmless-

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error review. But in the rare case where a *Miranda* violation or prosecutorial error is the result of intentional skirting of the law by State agents, such misconduct requires "corrective action" even when the State had strong evidence. *See People v. Blue*, 189 Ill. 2d 99, 138-39 (2000); *People v. Sandridge*, 2020 IL App (1st) 173158, ¶¶25-27, 32 (both finding second-prong plain error due to intentional circumvention of the law by prosecutors or police, despite strong evidence of guilt). If this Court agrees the record shows a deliberate circumvention of *Miranda* by law enforcement, this is precisely the kind of case requiring this Court's intervention to preserve "the fairness and the reputation of the [judicial] process." *Moon*, 2022 IL 125959, ¶27.

This Court should remand for a new trial.

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II. Trial counsel was ineffective for failing to raise a claim that the State obtained the re-enactment video not just in violation of *Miranda*, but also in violation of Jessica's constitutional rights.

A. Constitutionally "Involuntary" Statement

The State agrees that whether Jessica's participation in the re-enactment was constitutionally voluntary depends upon essentially the same factors as *Miranda* custody, (StBr50), with the important additional factor that no *Miranda* warnings were given.

The State primarily relies upon the absence of strong-arm police tactics. (StBr51) But just as a reasonable person may not believe she is free to decline to participate based on law-enforcement conduct that is not outwardly aggressive, that person's statement may be rendered involuntary by similar tactics. *People v. Salamon*, 2022 IL 125722, ¶83; *People v. Easley*, 148 Ill. 2d 281, 312 (1992).

The State also mischaracterizes Jessica's claim when it describes her as objecting to merely being "ask[ed] ... to participate in a reenactment." (StBr52) Law enforcement did much more than that, including by omission.

The State claims there was nothing "dishonest" about Matthews "asking" Jessica to perform a re-enactment. (StBr52-53) But even if Matthews never lied to Jessica, that does not mean his conduct cannot constitute the kind of deceptive, "subtly coercive" tactics implicating the Fifth Amendment. *Salamon*, 2022 IL 125722, ¶107.

Matthews's tactics were subtly coercive, in part, because his interactions with Jessica were preceded by a DCFS agent telling her she "had to participate in the reenactment." Op.¶84. While the record is scant as to

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what exactly Matthews and Tate said to each other, some things are clear. Dr. Denton "was uncertain" as to cause of death after the autopsy and asked Matthews to conduct a re-enactment. (R72) Matthews already considered Jessica a suspect and knew she would be the person performing the re-enactment, but did not contact Jessica himself. Instead, he talked to Tate, who first broached the subject of a re-enactment with Jessica. Tate told her she had to participate as part of a DCFS and criminal investigation, an affirmative misstatement of Jessica's legal position. In response, Jessica "made it clear" she did not want to participate, but acquiesced due to the purported "'need' for a reenactment." Op.¶97.

Matthews talked to Tate after that conversation, (R49), and his knowledge of the conversation between Tate and Jessica must be presumed. *See People v. Williams*, 2021 IL App (3d) 180282, ¶20 (details from officer's conversation with defendant imputed to other officers when pertinent to Fifth Amendment) (citing *People v. Blanchard*, 37 Ill. 2d 69, 73 (1967)). When Matthews called Jessica, he said Denton requested the re-enactment, implying it was mere standard medical procedure. Matthews never corrected the impression left by Tate that Jessica's participation was required, and failed to clarify that this "reenactment" would actually be a criminal interrogation. Op.¶97.

The record need not show Matthews lied for this Court to infer law enforcement misled Jessica as to her rights and legal position in an effort to obtain a statement while "skirt[ing] the requirements of *Miranda*." Op.¶84. That is why law enforcement's failure to admonish Jessica of her rights, or its deliberate withholding of those admonitions, should lead this Court to find

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the State obtained the re-enactment video in violation of the Fifth Amendment. *Easley*, 148 Ill. 2d at 317; *United States v. Lall*, 607 F.3d 1277, 1285-86 (11th Cir. 2010).

B. Illegal "Seizure" under Fourth Amendment

As to whether Jessica was unreasonably "seized," the State urges this Court to limit its analysis to the four *Mendenhall* factors, all of which concern aggressive police tactics. (StBr54) (citing *People v. Almond*, 2015 IL 113817, ¶57). But this Court has never limited its Fourth Amendment analysis to those four factors because the ultimate test, as with *Miranda* custody, is whether a reasonable person, under the totality of the circumstances, would not feel free to decline to talk to law enforcement. *See People v. Lopez*, 229 Ill. 2d 322, 346 (2008) (courts consider, *inter alia*, "the intent of the officer; the understanding of the defendant; whether the defendant was told he was" free to "refuse to accompany the police" or "free to leave," and "whether *Miranda* warnings were given").

This is one of the rare cases where the Fourth Amendment analysis cannot be limited to the narrow *Mendenhall* factors because other circumstances, unrelated to strong-arm tactics, indicated a reasonable person in Jessica's shoes would not have felt free to decline law enforcement's request.

C. Fruit of the Poisonous Tree

D. Prejudice

The State argues that even if it obtained Jessica's statement in violation of her rights, there was no prejudice because Denton's opinions were not "substantially based on the reenactment video." (StBr55-56) The State

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claims Denton concluded *before* watching the re-enactment that the "only possible cause of death was smothering at the hands of someone other than J.C.'s four-year-old brother," and thus he would have testified to that even if his video-based opinions had been suppressed. (StBr56)

This is rebutted by the record. After Denton performed the autopsy, he concluded the death was "asphyxial" in nature, meaning by lack of oxygen, due to a "large number of [possible] conditions," many non-homicidal. (R292, 300, 314) While he found evidence of "compression to [J.C.'s] face" and believed asphyxiation was "possibly" caused by "suffocation, smothering, [or] strangulation," Denton "left ... open" the cause of death because he "didn't have all the information." (R298-300) It was only *after* watching the re-enactment video that Denton "was able to conclude" the cause of death was "asphyxia due to smothering and compression of the neck," from someone "push[ing] down" on J.C.'s head or pushing something down on his face, as opposed to a non-homicidal cause. (R301-03, 315-16) Denton denied concluding this was a "homicide," but that was the only reasonable inference from his use of the words "smothering" and "push[ing]." (R301-03) And he only used those words after watching the re-enactment.

Contrary to the State, had Denton's opinions based on the re-enactment been suppressed, he could not have told the jury the "only possible cause of death was smothering" by someone other than J.C.'s brother. (StBr56) Instead, his testimony would have been limited to saying J.C. died due to lack of oxygen, "possibly" caused by human action.

And Denton could not have told the jury J.C. "could not have" died as portrayed in the video. (R302) The State does not dispute this point, but

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dismisses this as "minor" testimony. (StBr56) While it may have been brief, it was not minor, given this constituted the State's expert essentially telling the jury Jessica was lying.

Finally, the State claims none of this was prejudicial in light of its other evidence. (StBr56-57) But the State itself told the jury *Denton's opinions*, corroborated by the video, were its most important evidence. (R502-03, 515-16) Had these crucial portions of Denton's testimony been suppressed, the jury would only have heard his more equivocal opinion as to cause of death. The implications for the State's ability to meet its burden of proof are obvious. Because there is a reasonable probability of a different outcome if both the re-enactment video and Denton's opinions based on that video are suppressed, this Court should remand for a new trial.

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III. Trial counsel was ineffective for failing to request the redaction of exhibits to ensure the jury did not hear irrelevant, overly prejudicial statements by Jessica.

That Jessica was denied a fair trial is only more clear if this Court agrees counsel was unreasonable for failing to redact certain exhibits played for the jury.

Regarding Jessica's reference to DCFS during the re-enactment, the State claims counsel tried to present Jessica as a caring parent, and thus reasonably could have chosen to let the jury hear about Jessica taking J.C. to the hospital. (StBr57-58) But Jessica's argument is not that counsel failed to remove references to the hospital, it is that counsel failed to remove references to *DCFS*. Redacting those few words would not have impaired the evidentiary value of the video, but leaving them in was prejudicial because of the negative implications of prior DCFS involvement.

The State similarly argues counsel reasonably chose not to redact statements by Jessica to J.C.'s father because they were "trivial." (StBr59) But where Jessica was charged with murdering one of her children, these irrelevant statements about her children were highly prejudicial. No reasonable strategy could have included failing to seek their redaction.

And as to the most prejudicial remark, regarding J.C.'s brother and the television, the State argues counsel reasonably could have chosen not to object because this would have been "admissible on rebuttal anyway," in response to Taylor's testimony that Jessica "oftentimes ... went without." (StBr59-60; R398) Jessica's statement, however, did not rebut Taylor's testimony about what Taylor witnessed over the years. And no reasonable reading of the record allows an inference that counsel chose not to seek this

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redaction in anticipation of Taylor's volunteered testimony.

A more reasonable reading of the record is this: just as counsel failed to listen to the State's voicemail exhibit before it was played for the jury, (R359), so too did he fail either to listen to the other exhibits or to recognize the need for redactions, such that allowing the jury to hear these irrelevant, prejudicial statements constituted unreasonable performance. Because there is a reasonable probability of a different outcome without these errors, this Court should remand for a new trial.

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CONCLUSION

For the foregoing reasons, Jessica Logan, Defendant-Appellant, respectfully requests that this Court reverse the judgment of the appellate court and remand to the circuit court for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,996 words.

/s/Gilbert C. Lenz
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No. 129054

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JESSICA A. LOGAN, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 4-21-0492. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, No. 19-CF-1648. Honorable Thomas E. Griffith, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 December 5, 2023, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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