

2026 IL App (2d) 240607-U
No. 2-24-0607
Order filed September 24, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

Allen A. Taft, Defendant-Appellant.

Appeal from the Circuit Court of Kendall County.
Honorable Jody P. Gleason, Judge, Presiding.
No. 23-CF-22

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying defendant's motion to suppress. Defendant failed to establish that trial counsel was ineffective for failing to seek removal of a juror where his argument is based on mere suspicion of bias and defendant did not establish prejudice.

¶ 2 Following a jury trial, defendant, Allen Taft, was convicted of three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2022)) and one count of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)). On appeal, defendant first challenges the trial court's order denying his motion to suppress statements where the trial court found that defendant was not in custody and therefore not entitled to *Miranda* warnings before he confessed. Second, defendant argues that trial counsel provided ineffective assistance when he

failed to seek removal of a potentially biased juror who revealed that she was the victim of sexual abuse by a family member. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 In April of 2022, the victim in this case, A.B., went to the Oswego Police Department to make a report that, when she was between the ages of 6 and 13 years old, she was repeatedly sexually abused by defendant, who is her stepmother's father (and her step-grandfather). The abuse took place in the basement of defendant's Oswego home. The abuse ended when A.B. was 13.

¶ 5

A. The Interrogation

¶ 6 On the morning of December 8, 2022, Detective David Mumm of the Oswego Police Department called defendant and asked him if he would come to the station to discuss a report in which his name came up. Defendant agreed and Mumm met defendant in the lobby before escorting defendant to a report writing room. Mumm told defendant that the interview would be recorded. The following is a summary of the interview.

¶ 7 Mumm and defendant entered the room at 9:58am. Mumm had a manila file folder containing the report of A.B.'s April interview. Mumm moved the chairs and thanked defendant for "coming in." Mumm hung a "room in use" sign on the door. Defendant sat down on a chair on the long side of a rectangle table, facing the camera and Mumm, who sat at the short end of the table facing back to defendant. On top of the table there were various items including a landline telephone.

¶ 8 Defendant was wearing a coat and hat which he kept on throughout the interview.

¶ 9 Defendant began the conversation by saying, "I have no idea..." Mumm said, "Yeah, most people don't." Mumm told defendant that "a report was made back in April of this year about something happening at [defendant's] residence," and he wanted to talk to defendant "about that."

Mumm confirmed that the address listed in the report was where defendant lived and confirmed defendant's birth date. Defendant showed Mumm his driver's license "to make sure." While producing his driver's license, defendant asked, "Back in April, huh?" and Mum replied, "Yeah." Defendant placed his keys on the table.

¶ 10 Mumm told defendant that "a lot of memory on stuff [would] be involved in [the] conversation." At 10:00am (according to the camera's digital clock), Det. Mumm told defendant, "By the way, you're free to leave at any time. You're not under arrest, we're just going to have a conversation about the report that was made, okay?" Defendant responded, "Okay." Mumm told defendant that he would not have any questions by the time he left. Defendant confirmed that, between 2007 through 2015, he had other relatives living with him. Defendant mumbled, "Oh, I think I know." Defendant explained that his daughter was living with him for "a little while" in the front part of his house, which is a duplex, and that his son lived in the front part of the duplex. Mumm asked whether there were other family members living with him. Defendant said his daughter's husband T.B. was living with him. Mumm then asked, "Who else?" and defendant answered, "Well, they had a couple of daughters," A.B. and N.B. Defendant said they only resided together for "a short time," but did not remember dates.

¶ 11 Det. Mumm asked defendant if, during that time, any reports were made or "any allegations made of anything?" Defendant replied in the affirmative and Mumm asked, "Can we talk about that?" Defendant responded, "Yeah, I'd like to talk about it. What happened, my son-in-law went a little goofy." For the next several minutes, defendant explained how a "totally false report" was made to the Department of Children and Family Services (DCFS) and the Oswego Police Department alleging that he had paraded around naked in front of A.B. and N.B. Defendant blamed his son-in-law, T.B., for making the report.

¶ 12 Defendant said that, after he was cleared by DCFS and the police, he told T.B. and his daughters that they had to move out. Defendant talked at length about a bitter feud between T.B. and defendant's daughter-in-law, who lived in the front of the duplex with his son, Aaron. Defendant said that T.B. told him that, if he "didn't get rid of his daughter-in-law in a week [he was] going to do something bad" and "he did something bad all right."

¶ 13 Det. Mumm told defendant that he knew the topic was "uncomfortable to talk about" but that he spoke to A.B. and N.B. and "they [said] that it did happen." Defendant responded that T.B. and his daughter have "influence" over A.B. and N.B. and "whatever he says, they'll say." Defendant told Mumm that his daughter was saying "the same thing," but mentioned he and his daughter have since "made up" and he was hoping to see her that day to maybe "go out to dinner." Mumm told defendant that he did not speak to T.B. or his daughter. Mumm told defendant that N.B. said defendant would stand naked while "watching T.V. and stuff like that, nothing like, touching any of them."

¶ 14 Mumm told defendant, "We have to talk about this." Mumm said A.B. and N.B. reported that defendant would walk around naked in front of them. Defendant said he knew "what they were saying" but that "they[were] going along with [his] son-in-law." Mumm explained that "they[were] adults now" and as a result "there's no more influence of their parents over them." Defendant said that T.B. has a very strong personality and "whatever he says, that's the law." Defendant blamed T.B.'s strong personality for the feud with his daughter-in-law.

¶ 15 Det. Mumm asked defendant, "Would you agree if three people are saying it did happen and you're the only one saying it didn't, there's got to be some kind, other than making it up, there's got to be some kind of middle ground?" Mumm suggested that maybe something similar happened and T.B. "made it into a bigger deal." Defendant said, "Maybe, I don't know." Mumm

replied, “Okay,” and told defendant he wanted to avoid having a situation in which “three people [were] making these accusations, and being consistent about it, [while defendant was denying] all of it, saying none of this happened and leaving.” He added, “Well, the problem is, if we can’t find a middle ground of why they’re saying this or why we think they might be saying it, other than just making it up, that’s not going to look good for you.”

¶ 16 Mumm then told defendant, “Something did happen, I think,” and “We just have to figure it out.” He assured defendant that whatever happened was “probably not as extreme” as what A.B. and N.B. had reported. Mumm asked defendant if he understood what he was saying and defendant responded, “I don’t know.” Defendant continued, “This happened quite a while ago,” and recalled that his wife was “still alive” at the time. He explained that when these events had earlier occurred, he and his wife went to the Oswego police station to be interviewed. Mumm asked if he could try to jog defendant’s memory with what the girls said in the report about defendant watching T.V. “nude.” Defendant responded, “No,” adding that he did not have the kind of body that he “wanted anyone to see,” and laughed as he spoke. Defendant again blamed T.B. and said when he did not kick his daughter-in-law out, T.B. made the false report.

¶ 17 Defendant confirmed that there was a T.V. in his basement. He denied being nude in front of the girls, telling Det. Mumm, “I told you why.” Defendant again went into detail about T.B. before Det. Mumm told defendant that it was A.B., and N.B., who made the April report, and that he did not talk to T.B. Mumm told defendant, “I think something did happen, maybe not to the extreme that they’re saying, but there’s got to be some kind of middle ground, especially if they are saying... this.” Mumm reiterated, “They’re adults now.” Defendant asked, “And this was last April?” before adding, “I don’t understand.”

¶ 18 Mumm told defendant that N.B. had not said he had touched them. He asked defendant if the girls may have seen him coming out of the shower to “brainstorm” “why they would be coming up with this.” Mumm told defendant he did not believe defendant was “raping them every day,” but thought “something did happen.” He told defendant that A.B. was saying there was “some inappropriate touching involved and nudity.” While reading from the report, Mumm told defendant that, “after dinner, in the basement” as well as “in the pool,” defendant would force A.B. to “grind” on him. Defendant acknowledged that they did have a pool for a while.

¶ 19 Det. Mumm asked why A.B. and N.B. would make these allegations at the present, as adults. He informed defendant that A.B.’s credibility was bolstered because she had previously made a credible report that someone else had molested her in an unrelated episode, leading to an arrest. Mumm told defendant that A.B. was “telling the truth.” He said, “Let me help you” and suggested that “there[had] to be some middle ground.” He told defendant that something must have happened to cause A.B. to recall these events as an adult. Defendant shook his head and said, “I don’t know why she’d even have to, or why she would want to.” Mumm responded, “The professionals are going to say it was for self-healing, because it did happen. That’s why she’s doing it.” Defendant replied, “What can I say. Like you say, I can’t deny it. I don’t know, and I told you why some of this is because [*sic*]of my son-in-law.” Defendant said, “Right now I don’t know,” and that he was “surprised” and “shocked actually.”

¶ 20 Defendant repeated that T.B. had said “he was going to make trouble for [him] and he did.” Mumm asked defendant if he was denying “all of it” and “saying [he was] never nude in front of them.” Smiling, defendant responded that no one would like to look at him. He explained that his privates were “shriveled” from “radiation treatments” and that, as a result, he could no longer “perform sexually” or “get an erection.” Defendant said his radiation treatments occurred before

A.B. and N.B. lived with him. Mumm relayed that A.B. had actually reported defendant's "sexual dysfunction" before asking defendant how she would be aware of it. Defendant shook his head and said, "I don't know." Defendant said the treatments "saved [his] life." He then told Mumm about his prostate cancer diagnosis and the treatment regimen he went through.

¶ 21 Det. Mumm told defendant, "You can leave right now and this is going to be done, but the problem is, if we can't come to a middle ground like I keep saying, three people are accusing you." He reminded defendant that A.B. had been "talking about erectile dysfunction" and that "some of the stuff" and her sister said was "consistent about it." Mumm reiterated, "I think something did happen," and he suggested that maybe defendant "drank too much" leading to "a one-time thing." Defendant responded, "Maybe it did." He said he did not remember, but that it was "possible [he] guess[ed]" and that, if he drank too much, he "probably wouldn't remember." Defendant said he does not drink much because he has diabetes, however, and because he's a "cheapskate." Det. Mumm then said,

"I really want you to think about something. I really want you to think... You're not getting arrested; you can leave any time you want. I really want you to think of something that we can justify why they're, you know what I mean, extreme about it. I want you to think of at least one incident, where here's why they're saying this."

¶ 22 Defendant said that the girls did "stay with [he and his wife] for a while." He said the girls took long showers and "would run naked to the bedroom and that sort of thing." Defendant admitted that he and his wife would sometimes open the bathroom door to tell the girls to "cut it out." Mumm asked if it was possible that "something happened in the shower" and defendant responded, "It's possible." Defendant recalled that the girls would walk around the house in their underwear.

¶ 23 Mumm continued to ask questions concerning “something with the shower.” Defendant guessed that something had happened but said he did not remember much from that time. He spoke about his and his wife’s relief when “family services told them [A.B. and N.B.] had to leave.” He described his various grievances from when T.B. and his family lived with him.

¶ 24 At 10:35am, Det. Mumm told defendant he had to check on something and suggested they would be finished soon. Mumm asked defendant if he wanted anything to drink and defendant declined. After Mumm exited the room defendant told himself, “Could be worse.”

¶ 25 Det. Mumm reentered the room at 10:40am. He said, “All right, sir, I know you don’t want to be here all day. Do you go by Allen or Taft?” Defendant said he preferred the latter. Mumm asked, “So, what happened with A.B.?” Defendant responded, “I don’t know.” Mumm told him, “We have to talk about it. Something happened. She reported before, she told the truth. She has [the] consistency of telling the truth.” Mumm added that he was “not saying everything [A.B.] reported [was] true,” as “she reported a lot,” but asked again about “what happened with her.”

¶ 26 Defendant said all he knew was “she spent time with us.” He asked, “What am I supposed to say? He acknowledged A.B. and N.B. would take showers before running to their bedroom. Mumm reiterated his belief that A.B.’s entire account was not necessarily true but maintained his belief that “some of it [was] true.” Mumm told defendant, “I think we both know that.” Defendant nodded his head and said, “Okay.” Mumm said, “We need to figure out what is true and what isn’t.” He explained that there was a big difference between an allegation of having sex with her every day and one stating that “one time [he] touched her butt,” which involved “two different things.”

¶ 27 Mumm told defendant, “You leave today, you deny everything, even though I think some of it is true, and they’re being consistent, that’s not good for you. Especially if there are things that

[sic] isn't true." Mumm asked again, "So, what happened?" Defendant answered, "Maybe I pinched her butt once, or something, I don't know." Defendant shook his head and said, "I told you my side." Mumm asked defendant to "listen" and "hear [him] out." He explained that they were "both men" and that, when "worked up," they could say or do uncharacteristic things. He told defendant, "I get it. It's embarrassing to talk about," and "We both know something happened." Mumm added:

"If it's their version of extreme versus something that may not even be that big of a deal at all, that's not good. We need to figure this out. And I don't want you to leave today with their story being true and yours just denying."

Mumm repeated that they "both know something bad happened" and suggested they "get to it." He asked once more, "What happened?" Mumm paused and asked defendant whether it was "a one-time thing," "every night," or "once a month." Defendant responded, "Well, it's hard to say. It's years ago, I guess." He added, "This is my point. Yeah, they were there. They took showers and maybe I pinched her butt or patted her on the back [as she ran to her bedroom.]" Defendant denied asking A.B. to dance in front of him when "she was older," however.

¶ 28 Mumm explained, "So here we have a spectrum, having sex with her every night versus maybe asking her to dance for you or something. We're talking two different things. Okay. Be real about this, okay. What happened with A.B.?" Mumm encouraged defendant to tell the truth, telling him, "Truthfully, just say it. Just whatever happened. It's your version of what happened. Not hers, but yours. Something clearly did happen. We both know that, okay. There's too much information for this to be completely made up." Mumm said he was not suggesting defendant had sex with A.B. every day, but he believed something inappropriate did happen and told defendant, "We've got to come to some kind of understanding." He asked, "How extreme was it?" Mumm told him:

“You’re an elderly gentleman, no one is looking to put you in prison for the rest of your life for Christ’s sake, you know what I mean, but we can’t just ignore this. We got to at least address it, and come to the fruition of okay, I didn’t have sex with her every day, but I did do this. Was it wrong? Yes. Would I do it all over again? Of course not. I got caught up in the moment at night, maybe I drank too much one night, it was stupid. It was nothing, so much time has passed, obviously, it is not a big deal anymore, but we got to get there. So where are we at?”

¶ 29 Defendant began, “Well, I guess, one time, we’re down in the basement, in the family room,” and then mumbled something to himself. He continued, “It was years ago,” and “Sometimes you get friendly with a young girl, and you put your arm around her, maybe pinched her butt or something, you know, in an innocent way.” Defendant repeated that the girls lived with him for a while and that “they were big girls” when they would visit. Mumm asked, “Did you try to have sex with her?” Defendant shook his head. Mumm asked again, “You never once tried to have sex with her?” Defendant grinned and said, “It might have crossed my mind.” Mumm responded, “This was when she was older, obviously?” Defendant answered, “Well, yeah.” Defendant said that A.B. was a big girl and that she was 5’8” when she was 13 years old. Defendant recalled he had not seen A.B. in a long time.

¶ 30 Det. Mumm began asking specific questions. He asked if, rather than having sex with A.B., defendant asked her to help “maybe relieve [him] or something like that.” Defendant nodded his head and said, “I guess it’s possible.” Mumm asked whether this was “every night,” and defendant responded, “No.” Defendant said, “They stayed with us, off and on, for a weekend.” He continued, “I don’t know. Maybe I got a little friendly with A.B. I don’t know.” He said it is possible that, when A.B. was naked, he touched “one of her boobs.” Defendant said, “I guess it’s possible.

Sometimes you do things without even thinking.” He went on, “You can have... You can get sort of intimate when there’s closeness.” Mumm told defendant that he did not believe that defendant had sex with A.B. but he did believe defendant “did rub her vagina once.” Defendant responded, “Okay.” Mumm told him, “That’s what she’s reporting and I think that’s true.” Defendant responded, “I just wonder why she would do that.” Mumm asked, “You agree that did happen once, right?” Defendant responded, “I don’t have no choice.” Mumm told him, “No. I want you to be truthful.” Defendant said, “Okay.” Mumm then suggested that, if A.B. was “saying [defendant] had sex every night,” maybe defendant only “got worked up” and “rubbed her vagina once, big deal.” Mumm told defendant he “wasn’t putting words in [his] mouth.” He stressed, “I want the truth” and asked, “What if she says you did it every night—is that true? Before she would go to bed you had to rub her vagina or finger her every night. Is that true?” Defendant shook his head. Mumm then asked whether it happened “a hundred” or “a thousand” times. Defendant shook his head, saying “no” and “that’s a lot.” Defendant eventually told Mumm, “I don’t know. A couple times, maybe.” Defendant again said, “I don’t know” and “Just say something, I don’t know.”

¶ 31 Mumm told defendant, “No. If it’s not true, it’s not true.” He continued, “You’ve got to be consistent with some of the stuff she’s saying, otherwise it doesn’t make sense, you know what I mean?” Mumm then asked “how many times” defendant fondled A.B.’s vagina and defendant answered, “A couple. I don’t know.” Defendant said, “If it did happen, it was not often.” Mumm told defendant he believed him when he said that he did not want to have sex with A.B.

¶ 32 Mumm asked defendant whether A.B. ever “rubbed [defendant’s] penis.” Defendant mumbled, “I don’t think so.” Mumm asked whether defendant had them rub each other to satisfy his urges, so that he “wouldn’t [otherwise] have sex with her.” Defendant argued that Mumm was putting him “on the spot.” Mumm interrupted defendant and told him he was trying to find out

how often the events occurred because the number of times goes to the “severity.” Defendant responded, “If I have to come up with something, maybe once or twice.” Mumm stressed that he wanted the truth. Defendant said it was “not every night,” but only “a couple times.” Mumm told defendant, “This is not comfortable for me either. There’s no judgment here” and added, “We’ve got to get to the truth.” Defendant responded, “Okay, yeah. Maybe a couple times.” He then repeated, “If it did happen, only a couple times.”

¶ 33 Mumm asked again if defendant tried to have sex with A.B. Defendant said that, if anything did happen, “it was a long time ago, when she was younger.” Defendant said he could not remember if it was before or after his radiation treatments or “maybe the same time.” Mumm asked defendant, “Work with me. Tell me about it. What happened?” Defendant again said, “Well, if anything happened, it was when she was little.” Defendant explained that A.B. “had been with [them] for a long time.” He said that she was “seven, eight maybe.” Mumm asked whether he wore a condom “if” he did have sex with A.B., and defendant responded, “No.” Defendant said he may have touched A.B.’s breasts “playfully” and that he rubbed the outside of her vagina.

¶ 34 Mumm asked defendant whether he fingered the inside of A.B.’s vagina and defendant repeated that, “if anything happened, it was maybe once or twice.” Mumm asked whether A.B. ever rubbed his penis while he rubbed her vagina and defendant initially said, “I don’t think so.” Mumm then said they had talked about it enough and they “[knew] it happened.” He told defendant, “I just don’t want you to be accused of something you didn’t do. I also don’t want you to say something that didn’t happen either.” Mumm stressed that he was asking defendant to tell the truth and he did not want defendant to be accused of doing this every night. Mumm told defendant that he did not believe he was an “abusive guy,” and he did not think “it happened all the time.” Defendant responded that “it certainly didn’t happen all the time.” Mumm told defendant

again that he did not want him to say things were not true. Mumm said that he “did not want to be [there] all day” and that he wanted to be “done with [the interview].” He said, “So, you have to tell me in your own words, not what she tells me, you tell me what happened.” Mumm asked, “Was it always in the basement?” Defendant hesitated and said, “If—” before cutting himself off and continuing, “No, it’d be in the basement.” Mum told defendant that was consistent and then asked him to describe how things would “start.” Defendant told him that “if it happened,” there was “always family around so it would have to be in the basement.” Defendant said this “maybe” happened a couple of times but that he “never forced her.”

¶ 35 Defendant said that A.B. would sometimes ask him to take her shirt off or she would offer to take her shirt off. Again, defendant qualified his response by beginning it with, “If it happened...” Mumm asked defendant if A.B. was “aggressive with [him]” and if she “would *** touch [his] penis on her own, or would [he] have to ask her.” Defendant said he “wouldn’t ask her, [as] she was the aggressor.” Mumm asked defendant if he told her to stop and he said, “I guess I just let it happen.”

¶ 36 Mumm asked defendant if A.B. would ask him to rub her vagina. Defendant said he did not remember “a lot of details” but that “she was a cute little girl.” Defendant said maybe he “went a little too far with her [a] couple times.” Mumm said, “So not a hundred,” and defendant said, “Oh, no.” Mumm again asked defendant to tell him what happened in his words. Defendant responded, “So, down the basement, couple times.” He repeated that he “never forced her,” and “if [anything] happened, it was only a couple times.” Defendant said he never wore a condom because he “never had intercourse with her.” Mumm asked, “So what did you do?” Defendant said he would “playfully touch her boobs” and he may have “touched her” and “pinched her or

something.” He repeated again that, “if [anything] happened, it was only a couple times” and that he “never forced her into anything.”

¶ 37 Defendant denied ever doing anything “with her butt” and was “sure” he never penetrated A.B.’s anus “with his finger.” He said he might have got close and “touched her” vagina. Defendant did not think A.B. ever had an orgasm. Mumm asked if, while he was rubbing A.B., would she “be rubbing [him] as well.” Defendant said he “didn’t think so.” Mumm told defendant A.B. was “saying she did.” Defendant said, “Okay, well it’s hard to deny it.” Mumm asked defendant why A.B. would make that up if there’s “sexual gratification” for her. Defendant said he was not saying it never happened and that “maybe [he] got a little intimate with her, couple of times, once or twice, way back.” He repeated that he never had intercourse with her and never forced her.

¶ 38 In response to Mumm’s specific questions, defendant said A.B. never asked him to perform oral sex on her and he never asked her. He said, “She never asked for anything.” Mumm asked, “So you just fingered her vagina, that’s it, not her butt, just her vagina?” Defendant said, “Okay.” Mumm told defendant, “If it’s not true, it’s not true.” Defendant said, “It’s hard for me. If I deny it, I can’t deny it, so I have to accept it. So okay, it’s true.” Mumm then said, “Because it happened.” Defendant replied, “Okay.” Mumm told defendant he was not against defendant, and he didn’t know why defendant seemed to believe otherwise. He told defendant that he was “trying to figure this out.” Defendant nodded his head and said, “Okay. Couple times, got a little friendly with her. No sex. No force.” Defendant then said, “I’ll tell you one thing though, she’s a friendly little girl. One time she kissed me.” Mumm asked, “On the mouth?” Defendant said, “Yeah,” and said he wondered how a young girl can be “kind of aggressive.” Defendant said A.B. was under eight at the time. He said she was “four or five” and “all of a sudden she’s” almost making out with him. Defendant smiled and said, “She gave me the best kiss I ever had in my life.” Mumm asked, “How

was she so experienced?” Defendant thought out loud that it was instinct, not experience. Defendant then said, “Maybe I shouldn’t say this, but I got a better kiss from her than I got from my wife.” Defendant said A.B. may have been six at the time. She wasn’t “exactly” making out with him, but “it turned out to be a nice kiss.” He said it was “a onetime thing” and “one heck of a kiss.” Defendant admitted that, as A.B. got older, they continued to kiss in the basement.

¶ 39 Mumm brought up the DCFS report about him being naked in the basement when A.B. “was seven or eight.” Mumm said, “You would be naked, that’s when you guys were touching each other, right?” Defendant said, “Yes.” Defendant denied any similar conduct with N.B. He said, “N.B. was off by herself.”

¶ 40 Det. Mumm told defendant, “Everything N.B. is saying seems to be true[and] most of what A.B. is saying seems to be true. Okay?” Defendant responded, “Okay.” Mumm explained that he wanted to verify what was true and asked how many times defendant had sex or tried to have sex with A.B. Defendant repeated that, “if anything happened[,] it was just a couple of times.” He denied even being “friendly with N.B.” Mumm said he wanted to avoid “exaggerations” and asked, “How many times did you have sex with her?” Defendant said, “I never really had sex with her. I mean, you know, intercourse.” Defendant also denied having or trying to have “sex with her butt.” Defendant said he may have “touched her a couple times.” Defendant said when A.B. got older he was “a perfect gentleman.”

¶ 41 Det. Mumm told defendant he had to be “graphic” and asked defendant “how many fingers would [he] use inside of her.” Defendant responded, “One finger,” “just [in] her vagina.” Defendant said he “would not initiate anything or force her, it was all up to her.” Defendant assured Mumm that A.B. was “exaggerating things,” and Mumm responded, “That’s what I’m trying to avoid.” Mumm told defendant he was “backpedaling.” Mumm told defendant it was a “problem”

if other people were being consistent while defendant was inconsistent. Defendant repeated that the abuse did not occur “a thousand times” and “if anything happened, it was a couple times.” Mumm asked again if it was more than one finger and defendant responded, “One finger.” Mumm told defendant, “If it’s not true don’t say it.” Mumm again said he wanted defendant’s version of events. Defendant said, “I’ll go with one finger.”

¶ 42 Next, Mumm asked defendant about A.B. touching him. Defendant said A.B. never performed oral sex on him. Mumm said, “She just rubbed your penis.” Defendant responded, “I don’t think she ever did that.” Mumm asked, “What if she said she did?” and “Why would she make that up?” Defendant responded that she never performed oral sex on him but “maybe a couple times in the basement got [sic] a little friendly *** and [he] didn’t force her or anything.” Defendant said he was surprised by “all that, especially now.” He mentioned that he hadn’t seen them, referring to A.B. and N.B., “in ages.”

¶ 43 Defendant explained that A.B. was “cute and friendly” while N.B. was “standoffish.” Mumm went through the timeline with defendant. Defendant confirmed that, at four or five, A.B. kissed him and nothing more happened until she had turned seven or eight. Defendant said she may have kissed him, but he could only “remember that one kiss.” Mumm asked, “Do you think that started the feelings towards her?” Defendant said he remembered that one kiss and wondered out loud “how can a little girl be so passionate?” According to defendant, “it was hard to forget.”

¶ 44 Det. Mumm said he wanted to “wrap [the interview] up.” He asked defendant a series of questions which defendant answered. A.B. never masturbated in front of him. Defendant never masturbated in front of A.B. Defendant used only one finger to penetrate A.B.’s vagina “a couple of times.” Defendant recalled when his relationship with A.B. began to end, telling Mumm, “[If] she didn’t come to me, I wasn’t going to come to her,” as he “wasn’t going to force [himself on]

her.” Defendant did not “remember the details” of how the genital contact began because “it was years ago.” Defendant did not feel that “a burden” was lifted off his chest by confessing. He insisted that the DCFS report made by T.B. was “unrelated to what happened in the basement.” Defendant did not know why A.B. would not have reported what was going on in the basement when DCFS investigated the complaint about him walking around naked in front of the girls. Defendant acknowledged that he did have a sexual relationship with A.B. prior to the creation of the DCFS report. Defendant believed his sexual relationship with A.B. occurred after his radiation treatments that had caused his erectile dysfunction. Defendant said he did not remember A.B. rubbing his penis, but moments later he instead claimed that A.B. never touched his penis.

¶ 45 Det. Mumm asked defendant if he had “anything else [he] want[ed] to share with [him].” Defendant discussed “the hard feelings between” his son-in-law and daughter-in-law that divided his family. Defendant talked about his grandchildren, the loss of his wife, and about how lonely he is. He said that, if he died in his sleep, it would be a “couple of days before anyone [found him].” Mumm asked defendant if he had “Life Alert.” Defendant showed Mumm an injury on his wrist from a fall on his stairs. Mumm suggested that defendant should have his son check on him every night. Defendant said he was 81 years old but was able to manage.

¶ 46 Mumm then asked, “Do you have any questions for me?” Defendant asked Mumm if he had a “card or something.” Mumm pulled out his wallet and said, “I’m going to put the report numbers on here.” Mumm looked in his wallet but could not find a card. He said he would retrieve a card and write the report number down “in case [defendant wanted] to talk.” Defendant said, “Yeah, that would be nice.” Mumm exited and defendant followed him. Moments later, at 11:54am, Mumm walked back into the room to retrieve defendant’s keys, saying, “Let me grab your keys real quick.” Mumm then told defendant, “Here’s your keys,” and defendant thanked him.

¶ 47

B. The Charges

¶ 48 On February 24, 2023, the State filed a nine-count information containing three counts of predatory criminal sexual assault of a child and six counts of aggravated criminal sexual abuse. On April 24, 2023, the Kendall County Grand Jury indicted defendant for committing those same offenses between July 11, 2008, and July 10, 2015. The indictment specified that the limitations period was extended by 720 ILCS 5/3-6(i)(i) (West 2022).

¶ 49

C. Motion to Suppress

¶ 50 Prior to trial, defendant filed a motion to suppress statements. Defendant alleged that, “[d]espite [him] being the only person of interest, despite the topic of conversation being allegations of sexual assault and abuse, and despite the possibility of [him] making incriminating statements, Detective Mumm failed to advise [him] of his *Miranda* warnings.”

¶ 51 The parties stipulated to the admission of the audio/visual recording of the December 8, 2022, interview for the trial court to review after live testimony.

¶ 52 Det. Mumm testified that he had been with the Oswego Police Department for 22 years, serving as a detective for the last three years. Mumm had called defendant on December 8, 2022, to ask him to come to the station to speak to him about “circumstances in which defendant’s name [were] brought up.” Defendant agreed to come. Mumm met him in the lobby of the station and escorted him to the “report-taking room.” Prior to entering the room, Mumm told defendant that the interview would be recorded. Defendant was not threatened, promised anything, restrained in any way, prevented from leaving, or told he was unable to leave at any point. Mumm told defendant when he arrived that defendant did not have to speak to him. Mumm was the only officer to speak to defendant. Mumm never displayed his weapon and never threatened to arrest defendant. On “at least two occasions,” Mumm told defendant he was “free to leave at any point.” There was a break

in the interview. Mumm offered defendant refreshments, including water. Mumm had no concerns about defendant's ability to understand his questions or to give appropriate answers.

¶ 53 Mumm had previously conducted investigations involving delayed sexual abuse reports where physical evidence was unavailable. Prior to meeting defendant, Mumm had not sought approval of formal charges, and he did not have an arrest warrant for defendant. Defendant was the only suspect in his investigation. He was neither booked nor fingerprinted. Mumm did not raise his voice during the interview. He was dressed in a "soft investigations uniform," which is comprised of a polo shirt with Oswego Police insignia and khaki pants.

¶ 54 On cross-examination, Det. Mumm testified that Officer Small took the initial abuse report in April 2022. Mumm read the report before meeting defendant. A.B. "gave detail on how the assaults would occur." Mumm was not aware of any prior contacts with the criminal justice system that defendant had. During the phone call in which he requested defendant to come to the station, Mumm told defendant that "his name was mentioned in a report" but did not tell him he was a suspect in any investigation. Mumm did not offer to come to defendant's home. Mumm had his firearm with him. He acknowledged that he knew it was possible that defendant would make incriminating statements, but he "had no idea what [defendant] was gonna [sic] say." Mumm acknowledged that he did not give defendant *Miranda* warnings. Defense counsel had Mumm acknowledge some of the questions he asked defendant, as depicted in the recording of the December 8, 2022, interview. For example, Mumm acknowledged that he told defendant that "[they] have to talk about [the report]," when, in fact, defendant did not "have to talk about [it]." Mumm acknowledged that, at times, defendant had difficulty remembering some details. Mumm stated that, after the interview, he reached out to A.B. to see if she still wanted to pursue charges.

¶ 55 On re-direct, Mumm stated that, even after defendant confessed, he did not immediately seek charges until reaching out to A.B. first.

¶ 56 On re-cross examination, Mumm said that before the interview he did not believe there was probable cause to arrest defendant, but after the interview there was probable cause.

¶ 57 The State rested, and the defense did not call any witnesses. The trial court took the case under advisement to review the interview recording and the parties' submitted cases.

¶ 58 When the hearing resumed, defense counsel argued that "the key fact in this case *** is that *** defendant was never told why he was coming in." Defense counsel argued that defendant was "blind[-]sided." Defense counsel further argued that, while defendant was told he was "not under arrest and *** [could] leave, those statements [were] undermined by other statements such as 'we have to address it.' " Defense counsel conceded that his "weakest argument would be [the lack of any] indication of formal arrest." He argued that defendant's age is a relevant factor, noting "consumer protection firms" assist senior citizens "from being taken advantage of." Counsel argued that the recording showed defendant had difficulty remembering things, and though the interview started out as "non-threatening," it began to dissipate once Mumm started "making statements."

¶ 59 The State argued that the defense wanted the court to "infer from the video regarding how [defendant] felt or didn't." The State then went through the relevant factors in determining whether defendant was in custody during the interview. The State emphasized that the mood or mode of questioning "did not turn the questioning into custodial interrogation." The State noted that defendant drove himself to the station, a single officer interviewed him, officers did not prevent him from bringing family or friends with him, nothing evidenced a formal arrest, restraint, or detention, and Mumm told defendant that he was free to leave at any time. The State argued that

defendant's subsequent arrest was not relevant to the question of custody as it existed during the interview. The State emphasized that there was no evidence that defendant had any cognitive impairment or "lower average intelligence."

¶ 60 The trial court made several factual findings, including the following: (1) when Det. Mumm contacted defendant by phone, he told defendant that defendant was mentioned in a report but did not tell defendant he was the sole suspect; (2) nothing indicated that defendant lacked mental capacity or intelligence; (3) Det. Mumm had no impression that defendant lacked any mental capacity at the time despite his age of 81; (4) there was no evidence that the lobby of the Oswego Police Department is not fully accessible to the general public; (5) Det. Mumm wore "soft investigative clothing" and his authorized sidearm, which was holstered throughout his interaction with defendant; (6) Det. Mumm testified that he had advised defendant that their interview would be recorded prior to entering the report-taking room, but the accompanying audio does not contain this interaction; (7) Det. Mumm told defendant he did not have to speak to him and he did not Mirandize defendant; (8) there were no charges pending at the time of the interview; (9) Det. Mumm was the only officer who interacted with defendant; (10) the door to the report-taking room was closed and there was no indication that the door was capable of being locked; (11) Det. Mumm never locked the door and, although he moved closer to it, he did not impede defendant's ability to exit the room; (12) Det. Mumm never threatened or made any promises to defendant; (13) Det. Mumm never restrained defendant or raised his voice to him; (14) Det. Mumm told defendant several times during the interview that he could leave at any time; (15) Det. Mumm took several breaks during the interview while offering defendant refreshments, which defendant had declined; (16) when Det. Mumm took breaks, he left the room for periods of time; (17) at one point, about 25 minutes into the interview, Det. Mumm told defendant:

“ [‘]I would love to tell you that you can leave right now, but the problem is, if we can’t come to a middle ground.[’] [sic] And then Detective Mumm says[, ‘A]nd I think something did happen.[’] Mr. Taft replies[, ‘I don’t remember anything.[’] Detective Mumm responds[, ‘I really want you to think of something, you’re not under arrest.[’] He gestured at the door[and said], [‘Y]ou can leave any time you want.[’] I want you to think why they’re saying this.

Detective Mumm takes a break telling Mr. Taft one second, [‘I’ll get you out of here.[’] Detective Mumm then returns and tells Mr. Taft[, ‘I don’t want you leaving just denying everything.[’] A few minutes later[, ‘W]e gotta come to some understanding.[’]

The interview continues. Detective Mumm continues to question Mr. Taft. Mr. Taft makes no attempt to leave the interview room.

Mr. Taft never tells Detective Mumm he no longer wants to speak with him. Mr.

Taft never tells Detective Mumm he wants a lawyer present or talk to a lawyer;”

and (17) at the conclusion of the interview, defendant left the Oswego Police Department on his own.

¶ 61 The trial court considered the following factors: location; time; place; mood and mode of the questioning; the number of officers present; presence or absence of family or friends; any indica of formal arrest; the manners in which defendant arrived at the place of questioning; and defendant’s age, intelligence, and mental makeup. The trial court reviewed the relevant cases and other relevant authority. After weighing the various factors and examining all the circumstances, the trial court stated, “I do believe that a reasonable person would have believed he could have terminated the encounter and left,” and it denied defendant’s motion to suppress statements.

¶ 62

D. Jury Selection

¶ 63 Prior to jury selection, the State elected to proceed only on counts one, two, three (predatory criminal sexual assault of a child) and seven (aggravated criminal sexual abuse). The trial court informed the prospective jurors of the charges. During the selection process, the trial court discussed the subject of bias and told the prospective jurors that “they must resist jumping to conclusions based on personal likes or dislikes[and that they] must not let bias, prejudice, or public opinion influence [their] decision.” It added, “[Y]our verdict must be based solely on the evidence presented.” The trial court asked all of the prospective jurors, “Is there anything about the nature of this case that would prevent you from being a fair and impartial juror?” All prospective jurors responded negatively.

¶ 64 During the trial court’s *voir dire* of her panel, juror No. 33 stated that she understood and accepted the *Zehr* principles. See S. Ct. Rule 431(b) (eff. July 1, 2012). The trial court then tendered the panel to defense counsel. After brief questioning, defense counsel exercised a peremptory challenge to excuse juror No. 8. After the trial court’s *voir dire* of the new juror, defense counsel accepted the panel “without further questioning.”

¶ 65 During questioning by the State, the following exchange took place:

“MS. CUSACK [(ASSISTANT STATE’S ATTORNEY)]: Juror Number 33, do you believe you can be a fair juror?

[JUROR No. 33]: Yes.

MS. CUSACK: And what does that mean to you?

[JUROR No. 33]: I believe that seeing both sides of the case and seeing any evidence that could be presented, if there’s any, and kind of going based off of that kind of what he said.

MS. CUSACK: Now, you mentioned evidence. Do you have any expectations today of the evidence that you expect to see?

[JUROR No. 33]: Not necessarily, no, because in cases like this it's a lot harder to have evidence for this sort of thing. So just, and also, obviously, the things that can happen in cases like this vary on what happens. So if there's any, it's good to see, if there's none, you know."

MS. CUSACK: Do you believe that common sense is a tool you can use today?

[JUROR No. 33]: Yes.

MS. CUSACK: Is there anything that you think that either side should know about you before you're possibly selected as a juror?

[JUROR No. 33]: I was a victim of sexual abuse when I was younger. I *** had to live with my abuser up until I was about 14. And I, and he wasn't, he served his time in jail and everything, but I do have a slight bias, but I do believe I can put that bias aside in order to be a fair juror.

MS. CUSACK: Now, that experience that you had, you agree that that was something separate and apart from what's going on today, right?

[JUROR No. 33]: Yes.

MS. CUSACK: And you agree to follow the law as Judge Gleason gives it to you today, regardless of whether or not you agree with it; would that be fair?

[JUROR No. 33]: Yes."

¶ 66

E. The Trial

¶ 67 A.B. testified that she was twenty-two years old. Defendant is her stepmother's father. When she was little, she called him Grandpa. A.B. was five years old during the summer of 2008.

She spent a lot of time at defendant's home in Oswego, usually the whole weekend. A.B. described the house as a duplex. She described defendant's finished basement and furnishings, which included a T.V. A.B. and her sister had their own bedroom in defendant's house.

¶ 68 A.B. described the first time she had uncomfortable contact "between defendant and her[self]." It happened in the basement, while A.B. was lying on the couch. Defendant was "touching" her "mid[-]area" and kissed her. She described the kiss as a "romantic push" on her lips, but she did not push back. A.B. testified that the kissing developed into "open-mouth kissing." Defendant asked her to sit on his lap facing him, and he began touching her waist. He pulled her toward him, kissed her, and "like opened [her] mouth and there was tongue." A.B. was between six and seven years old at the time. A.B. did not tell anyone about the kissing because she was scared.

¶ 69 A.B. and defendant were alone in the basement when the abuse took place. She described incidents when defendant would have her kneel in front of him. Defendant would unzip his pants, take out his penis, and ask A.B. to "grab it" with her hands. Defendant would tell her she was his "good girl and [tell her] not to tell[anyone], like it[was their] secret." Defendant's penis was soft. She would hold it for "probably five minutes." Defendant never ejaculated when she touched his penis. At the time, A.B. did not know the difference between an erect and non-erect penis.

¶ 70 A.B. described the first time defendant touched her vaginal area. She was on defendant's lap, facing him, and he was touching her back and kissing her. Defendant's hands went down her butt and then around her front. He was touching her vagina through her clothes. A.B. was between six and eight years old. The first time, defendant's fingers just touched the outside of her vagina. There were multiple times when defendant touched her vagina before inserting his fingers. This happened both while A.B. was clothed and unclothed. Defendant would help A.B. remove her

clothes. He would touch her breasts, her butt, and feel around “her waist and everywhere.” Defendant’s fingers would go inside her vagina both when she was wearing and not wearing clothes. A.B. testified that she was uncomfortable and upset when defendant performed these acts. Defendant would tell her “not to tell anyone” because it was “[their] secret.” When A.B. was roughly twelve or thirteen, she informed defendant that she “liked a boy” before adding, “[W]e can’t do this anymore.” The abuse stopped.

¶ 71 A.B. did not tell the police or anyone else about the abuse because she was scared and there were other things going on in her life. In 2022, after starting counseling, she went to the Oswego Police Department to see if she could do something about what had happened. She told the police about what defendant had done. Before that, she did not feel ready to tell law enforcement about the abuse. Besides her counselor and the Oswego Police, she did not tell anyone else about the abuse. She later told her sister, N.B., around 2015, but N.B. did nothing with the information.

¶ 72 A.B. said that she was nervous and “a little bit emotional” about testifying. “[I]n essence,” A.B. told the police everything she told the jury. All the abuse took place in defendant’s basement when no one else was around. At the time of trial, A.B. was living in another state. The State’s Attorney’s Office paid for her travel and lodging.

¶ 73 On cross-examination, A.B. agreed that, during her visits to defendant’s house, defendant’s wife, Sandra, would be there as well as N.B. T.B., her father, was not usually present. A.B. clarified, however, that, while she was living at defendant’s house, T.B. lived there as well. A.B. acknowledged that, during the seven years defendant abused her, “there wasn’t a single witness” to what she alleged. Defense counsel asked, “Isn’t it true that you also told law enforcement that things would happen in the basement or in the kitchen or a couple times in the pool?” A.B. responded, “He wouldn’t kiss me or like he would just brush his hands against my legs and like

that's all that would happen outside the basement. He wouldn't kiss me. He wouldn't touch my breasts or like outside the basement." A.B. acknowledged that she told law enforcement that she "would grind" on defendant. Defense counsel asked, "[A]t no point from 2008 to 2015 did you ever yell stop?" A.B. said she never yelled but she did tell him to stop. She acknowledged that she never said it loud enough for others to hear. A.B. was asked whether she ever told her parents she did not want to go to defendant's house anymore. She said, "I told them several times, I'm pretty sure." She acknowledged that she never told them why. A.B. agreed that her father does not like defendant. She also agreed that, for that reason, it would have been easy to tell her father about the abuse. A.B. acknowledged that defendant never gave her anything for her silence. She acknowledged that the first time she told anyone about the abuse was in 2015, when she told N.B. A.B. was not aware that defendant had cancer or that he was "unable to perform due to that radiation." A.B. did not recall if she told the police that defendant had her kneel down in front of him. A.B. acknowledged that she had not seen defendant from "2015 to 2022."

¶ 74 A.B. acknowledged that she told the police that she had to "work up the courage" to come forward and that, three days before going to the Oswego Police Department, she "wrote down a journal" of what she would say, meaning her statement "was somewhat planned out."

¶ 75 Michelle Hawley, mental health assistant director for the Kendall County Health Department, was qualified, without objection, as an expert on child sexual abuse accommodation syndrome. Hawley testified that there are different stages to this syndrome. The first part is secrecy, and the second part is helplessness. In the beginning, the victim is often alone with the perpetrator. The perpetrator can see if the child is "able to keep *** secret[s]." If so, the perpetrator "will proceed with abuse."

¶ 76 Next, helplessness could result from fear “instilled by the perpetrator” or “due to financial situations” involving the perpetrator. Hawley explained that most of the time, the offender is a family member or someone close to the family. According to Hawley, child victims “feel very helpless” and “[t]hey’re not exactly sure what to do [after being abused] because [reporting] could destroy whatever form of stability they may have at the moment.”

¶ 77 Hawley testified that the third part is accommodation, explaining “it’s entrapment and [then] accommodation.” At this point, “the victim has to find a way to accept what is going on *** just going through the motions.” Ideally, events proceed to “some [form of] disclosure” or “delayed disclosure.” The final part of the syndrome can “possibly be recantation.”

¶ 78 Hawley did not interview A.B. or watch the recording of defendant’s interview with Det. Mumm. She did not have access to A.B.’s “counseling records.” On cross-examination, Hawley acknowledged that she had never testified for the defense while working at the Child Advocacy Center. Hawley could not say whether defendant abused A.B. Defense counsel asked whether “[m]any individuals who have been abused come forward as children.” Hawley replied, “I would say research says that is not the case, no.” Counsel then asked, “Okay. A lot of them do?” Hawley explained that “a very small percentage that children come [*sic*] initially at a young age.” She acknowledged that enough child victims come forward to necessitate child advocacy centers. Hawley did not know A.B.’s particular reasons for delaying her report. Hawley also acknowledged that there are “false reports” in some cases.

¶ 79 Det. Matthew Mumm’s trial testimony largely mirrored his testimony at the hearing on defendant’s motion to suppress statements. Mumm had received “specialized training” for conducting interviews. He reviewed the two “audio and video clips” from the full interview of

defendant.¹ Mumm said the clips were “fair and accurate” representations of the interview. Mumm confirmed that defendant denied abusing A.B. for the first half hour of the interview but later opened up about what had occurred. The pertinent video clips were played for the jury.

¶ 80 On cross-examination, Mumm acknowledged that, when asking defendant to drive to the station, he did not give defendant *Miranda* warnings or tell defendant why he was mentioned in a report. Defendant came to the station “almost immediately.” Defense counsel went through the questions that Mumm had asked defendant during the interview. Counsel then asked, “Okay. So he never went into that interview room and said, ‘spill my guts to you?’ [sic]” Mumm replied, “That’s correct.” The State then rested.

¶ 81 The trial counsel denied defendant’s motion for a directed verdict. Defendant elected not to testify and defendant rested.

¶ 82 During closing arguments, the State argued that the evidence of defendant’s guilt was overwhelming. A.B.’s testimony together with defendant’s recorded statements, as well as Michelle Hawley’s testimony, proved defendant’s guilt of all charges.

¶ 83 Defense counsel argued that A.B.’s testimony was not consistent with what she initially reported to law enforcement. He argued that these events allegedly occurred every weekend in a duplex full of people and asked, “So how is it possible that nobody suspected anything?” Counsel also commented on N.B. not doing anything when A.B. disclosed to her or why she never said anything to her own father about the abuse. Counsel argued that A.B.’s “seven years of silence” made no sense. He argued that there was no proof of a “quid pro quo” for A.B.’s silence and that

¹Prior to trial, the State filed a motion *in limine* to preclude any evidence of prior sexual activity pursuant to 725 ILCS 5/115-7 (West 2022), which the trial court granted. All references to the other case where A.B. was the victim were edited out. The two clips played for the jury totaled 26 minutes.

defendant “wasn’t getting anything from this either” because “he’s impotent.” Regarding Hawley’s testimony, counsel argued it was “unremarkable” because “[s]he never met the complaining witness.”

¶ 84 Defense counsel reminded the jury that it was up to them to decide how much weight they should give to his “client’s statements.” Counsel argued that, “at the time of the interview, [his] client was 81 years old. Same age as Joe Biden.” He argued that defendant “spent the first half of the interview flat out denying everything.” Counsel commented that the State “didn’t play that part [of the interview] though, but we all agreed that was the case.” He argued that Det. Mumm was “a trained detective that is [sic] looking to prove a case.” Counsel argued that Det. Mumm did not sound like he was looking for the truth but for a specific result.” Next, counsel told the jury, “[Y]ou can’t pick and choose what it is you want to believe. It’s either completely incredible or it’s completely credible. And I submit to you that it’s completely incredible. He just wanted to get out of there.”

¶ 85 In rebuttal, the State argued that its case was “clear-cut” and “straight forward.” The State reminded the jury of defendant’s description of the kiss that A.B. gave him, which he said “was the best kiss of [his] life.” The State also reiterated how defendant had told Mumm that “[A.B.] kisse[d] better than [his] wife” and “was the aggressor.”

¶ 86 The jury found defendant guilty of all charges.

¶ 87 F. Post Trial Motion and Sentencing

¶ 88 Defendant filed a “Motion for Judgment Notwithstanding the Verdict or New Trial.” Defendant argued that: (1) Judge Pilmer erred in denying his motion to suppress statements because defendant was not given *Miranda* warnings; (2) he was denied his right to an impartial jury under the Sixth and Fourteenth Amendments to the United States Constitution because a juror

who had been the “victim of the same crime that defendant was charged with” was allowed to serve on the jury after withholding her background; and (3) the State failed to prove defendant guilty beyond a reasonable doubt.

¶ 89 The trial court ruled that Judge Pilmer correctly denied defendant’s motion to suppress. As to the jury selection issue, the trial court stated that it could not find its notes on the relevant juror because the defendant’s motion did not reference the juror’s number. The trial court then stated:

“However, I know that I’m very thorough and would have asked the juror or would have made sure that the attorneys asked the juror that [sic] she did disclose this information whether or not she can still be fair and impartial to both sides. And I would presume that she answered yes to that question.”

The trial court ruled that defendant had not shown that he was prejudiced and there was no indication that “defendant objected at the time or asked that the juror be excused for cause.” The trial court ruled that the evidence was sufficient to convict. Defendant was sentenced to six years on each count of predatory criminal sexual assault of a child and three years on the aggravated criminal sexual abuse, to be served consecutively for an aggregate of 21 years.

¶ 90

II. ANALYSIS

¶ 91

A. Custody Determination

¶ 92 Defendant first argues that the trial court erred in denying his motion to suppress statements because he was “subject to a custodial interrogation without ever being advised of his *Miranda* rights.” Defendant argues that any incriminating statements were a “direct result” of Det. Mumm’s interrogation strategy and technique, such as: advising him not to deny the allegations and telling defendant certain things such as, “something happened,” a “middle ground must be reached,” “no

one is looking to” put him “in prison for the rest of [his] life,” “it is not a big deal anymore,” and “I think you did rub her vagina once.”

¶ 93 The State argues that defendant concedes that many of the relevant factors that apply to a custody determination support a finding that defendant was not in custody when he confessed. Defendant never expressed a desire to leave. Defendant was told that he did not have to talk to Det. Mumm and he was told at the beginning and during the interview that he was not going to be arrested and that he could leave at any time. The State notes that Det. Mumm did not take “any action indicative of a formal arrest.”

¶ 94 In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that a person who has been “taken into custody or otherwise deprived of his freedom of action in any significant way” must “be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed” prior to the start of an interrogation. *Id.* at 444. “In determining whether the trial court erred in denying a motion to suppress, we accord great deference to its findings of fact and credibility determinations.” *People v. Logan*, 2024 IL 129054 (2024) (citing *People v. Slater*, 228 Ill. 2d 137, 149 (2008)). The trial court’s factual findings will be reversed only if they are against the manifest weight of the evidence. *Slater* at 886. The ultimate question “posed by the legal challenge to the court’s ruling on a suppression motion is reviewed *de novo*.” *Id.* We may consider the testimony at trial as well as the suppression hearing in making this determination. *Id.* The determination of whether a defendant was in custody when being interrogated and thus necessitating *Miranda* warnings involves “[t]wo discrete inquiries[. F]irst, what were the circumstances surrounding the interrogation; and second, given the circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and

leave.” *People v. Braggs*, 209 Ill. 2d 492, 505-06 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). The second inquiry is an objective one, involving “what a reasonable person, innocent of any crime, would have thought had he or she been in the defendant’s shoes.” *Id.* at 506.

¶ 95 In *Slater* and *Logan*, our supreme court has listed a number of nonexclusive factors that are relevant in determining whether an interrogation took place in a custodial setting:

“(1) the location, time, length, mood, and mode of the questioning; (2) the number of officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indica of formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; (6) the age, intelligence, and mental make up of the accused.” *Logan*, 2024 IL 129054, ¶ 60 (quoting *Slater*, 228 Ill. 2d at 150).

¶ 96 Whether a suspect was told he or she was free to leave is a relevant factor in determining whether he or she was in custody for purposes of *Miranda*. *People v. Melock*, 149 Ill. 2d 423, 437 (1992). A police officer’s belief in a suspect’s guilt is relevant only to the extent that “the officer’s views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave.” *Logan*, 2024 IL 129054, ¶ 60 (quoting *Stansbury v. California*, 511 U.S. 318, 325 (1994)).

¶ 97 Defendant concedes that “some” factors favor a finding that he was not in custody when Det. Mumm interviewed him. For example, defendant notes that the interview occurred mid-morning, defendant voluntarily traveled to the station and interrogation room, no one had leveled threats or force against him, only one officer was present for the interview, nothing indicated a formal arrest, Det. Mumm did not tell defendant that he was under arrest, and defendant was permitted to leave the station after the interview. Defendant neglects to mention that he was also

told both at the beginning and during the interview that he was not being arrested and that he could leave at any time. In *People v. Logan*, our supreme court stated that other factors relevant to the custody analysis include “whether and to what extent the person has been made fully aware that he is free to refrain from answering questions.” *Logan*, 2024 IL 129054, ¶ 60. It is uncontested that, when defendant first arrived, Det. Mumm told defendant that he did not have to speak to him.

¶ 98 After conceding that “some” factors favor a finding that defendant was not in custody, defendant argues that a “majority of the [relevant] factors favor a finding that [he] was in custody.” He cites the location and length of the interview, defendant’s age, the absence of family or friends, and “[m]ost significantly, there was a marked change in the mood and mode of the questioning*** before [defendant] incriminated himself.”

¶ 99 Defendant argues that, “[l]ike any reasonable person in his situation would, *** [defendant] believed he did not have the option to cooperate with Mumm or to refuse to answer his pointed questions.” There was no evidence presented to show that a reasonable person, innocent of any crime, would not understand Det. Mumm’s clear advice that defendant was “free to leave at any time.” “The State has the burden at a suppression hearing of proving, by a preponderance of evidence, that defendant voluntarily made the statements in question.” *People v. McCall*, 2021 IL App (1st) 172105, ¶ 95. “Once the State establishes its *prima facie* case, the burden shifts to defendant to show that the statements were made in violation of his *Miranda* rights.” *Id.* (citing *People v. Reid*, 136 Ill. 2d 27, 51 (1990)).

¶ 100 Defendant argues that

“Mumm admitted he never attempted to ensure that [defendant] understood or appreciated the potential consequences of his un-*Mirandized* statements or how Mumm and the State intended to use those statements against him later to frame the charges, support his arrest,

and secure his subsequent conviction. Mumm also admitted that the entire investigation was dependent on [defendant's] interview.”

¶ 101 Defendant's entire argument is based on the fact that Mumm conveyed to defendant his “knowledge or belief” about what had occurred between A.B. and him. Defendant cites *People v. Carroll*, 318 Ill. App. 3d 135 (2001) and *People v. Alfaro*, 386 Ill App 3d 271 (2008), to support his argument. These cases are readily distinguishable. In *Carroll*, the police were informed by one of the Carroll family members that the defendant had implicated himself in the murder of his brother more than 30 years prior. Two police officers drove to an elderly care facility where the defendant resided. The defendant agreed to travel with the officers to the Quincy Police Department. He was not handcuffed during the ride. The police told the defendant that “he was not under arrest, nor in custody, and that he was free to leave at any time.” Once at the station, the defendant was escorted through the “main personnel room, which has an automatic lock, and into an 8 by 12 interview room with no windows.” *Id.* at 137. The officers questioned the defendant about his brother's death without first advising him of his *Miranda* rights. During the questioning, the defendant gave four statements. The first three were “met with incredulity” by the officers. The defendant finally admitted “that he struck his brother [inside of a garage], started [a] car[,] and closed the garage door.” After the defendant's admissions, the officers asked him to provide a taped statement. The officers advised the defendant again that “he was not under arrest, nor in custody and was free to leave at any time.” *Id.* at 137. No *Miranda* warnings were given. The defendant gave a taped statement and was then photographed and driven back to his residence. Two physicians testified on defendant's behalf that he was “very susceptible to suggestion.” One doctor stated that he was “mildly to moderately retarded and he would question the reliability” of his confession. The defendant did not testify. The trial court found that all of the defendant's statements

were voluntary and that he was not in custody when he gave his four oral statements. The trial court also found, however, that the defendant should have been advised of his *Miranda* rights before the taped statement “because, upon admitting to the crime of murder, a reasonable person would believe that he was in custody.” The State appealed.

¶ 102 On appeal, the State relied on a series of three cases from the fourth district holding that the defendant “was required to produce affirmative evidence that he believed he was in custody in order to trigger the protections afforded by *Miranda*.” *People v. Gorman*, 207 Ill. App. 3d 461 (1991); *People v. Goyer*, 265 Ill. App. 3d 160 (1994); and *People v. Lewis*, 269 Ill. App. 3d 523 (1995). The third district rejected the subjective test proposed by those cases because they contradicted the vast majority of legal precedent “which states that the test for custody is strictly an objective one.” The third district held, as follows:

“Having determined that we must employ an objective analysis, we now turn to the particular factors listed above which we must consider in deciding whether the interrogation as hand was custodial in nature. It is apparent that [the] defendant voluntarily accompanied the two officers to the department and that he was informed, even after his fourth oral statement, that he was not under arrest and free to leave at any time. Additionally, at no time was [the] defendant physically restrained.

However, it is equally apparent that the investigation had become *focused exclusively* upon defendant at the time his taped confession was made. Moreover, [the] defendant knew that the officers suspected him of murder because he had just, moments earlier, inculpated himself in the crime. Considering these facts, the trial court’s finding that any reasonable person in defendant’s position would have believed himself to be in custody despite the officers’ assurances to the contrary was not manifestly erroneous. Thus,

Miranda warnings should have been issued and, because they were not, the subsequent taped confession was properly suppressed.” *Id.* at 139.

While the third district did not explain the difference between the defendant’s status when he admitted that he committed the acts that caused his brother’s death before his taped statement, the facts showed that at least two officers questioned the defendant, the defendant was driven to the station, and the defendant was photographed before being driven home. The third district appears to have relied on the fact that the police “focused exclusively on defendant” at the time he gave his taped statement. However, the Supreme Court expressly rejected the “focus test” in *Beckwith v. United States*, 425 U.S. 341, 345 (1976). It “stressed that *** the custodial nature of the interrogation [triggers] the necessity for adherence to the specific requirements of *** *Miranda*.” *Beckwith*, 422 U.S. at 346. The Supreme Court went on to state that

“noncustodial interrogation might possibly in some situations, by virtue of some special circumstance, be characterized as one where ‘the behavior of *** law enforcement officials was such as to overbear petitioner’s will to resist and bring about confessions not freely self-determined.’ ” *Id.* at 347 (quoting *Rogers v. Richmond*, 364 U.S. 534, 544 (1961)).

Defendant makes no claim that his confession was the product of coercion.

¶ 103 Defendant argues that *People v. Alfaro* supports his argument that “a change in mood of questioning,” from inquisitory to accusatory, including the mention of criminal liability to the defendant, “stood out” and “weighed heavily” in favor of a finding that the defendant was in custody. Defendant fails to mention that, in *Alfaro*, the mood factor was just one of several factors that favored a custody finding. There, the defendant was first interviewed on December 14, 2004, by two detectives after he was leaving his third-shift job in a conference room at his place of employment. The interview lasted several hours, with the defendant denying any involvement in

the victim's death. The next day, with a new lead, the detectives again approached the defendant as he was leaving work from the third shift. The detectives asked the defendant to come to the sheriff's office for a "videotaped informational interview." They told the defendant that, after the interview, they would drive him anywhere he "wished to be taken." *Id.* at 273. The defendant was not wearing a coat or jacket. He was not told he was under arrest. The defendant was interviewed for more than three hours in an interview room at the sheriff's office. He was interviewed by two detectives, but one at a time. After the first hour, the "interview took a decidedly different tone from the relatively friendly and nonconfrontational first hour." *Id.* at 292. After an hour and twenty-five-minute break, a detective confronted the defendant with "discrepancies;" the defendant was told to say what "actually happened" or "it [would all] come down on [him];" and he was told his story "did not add up." Twenty-five minutes later, a different detective showed the defendant a "picture of the electric chair" and told him that "he was facing [the chair] if some prosecutor wanted to make headlines." The detective also compared the defendant to Scott Peterson, who was convicted on "the basis that his lies to the police were exposed." At about the "2-hour-and-20-minute mark," the defendant "began to tell [officers] what had happened." *Id.* at 293. At "2 hours and 52" minutes, the defendant was told he had "criminal liability." The defendant asked "when he could leave." The detective told him that "it was beyond his control." Another officer "popped into the room and told [the] defendant he was not under arrest and asked him to stay just a bit longer." The defendant agreed but said he would "not stay beyond 10:30." *Id.* After a break, the defendant's "socks and shoes" were taken. Three hours and seven minutes into the interview, a detective and an Assistant State's Attorney entered the room. The detective told the defendant that, "just for formality" and because they "had not been done earlier," he would "go over *Miranda* warnings" with him.

¶ 104 On review, this court noted that the interview at the defendant's place of employment "contrast[ed] strongly" with the interview at the sheriff's office. We noted that the defendant was dependent on the police for transportation and from the sheriff's office after the interview. *Id.* at 294. We also stated that the time of the questions favored a finding of custody. The defendant was interviewed right after he finished his overnight shift and had not been given "time to rest or refresh" but was taken directly to the sheriff's office. We concluded that the "time factor" favored a finding of custody. We noted that the defendant "repeatedly complained about how long the interview was taking" and kept asking "when he could leave." We said that the questioning was "intense and nearly continuous," but concluded that the length of the interrogation was a neutral factor. *Id.* at 295.

¶ 105 This court concluded that, at the point when one of the detectives told the defendant to tell him what actually happened "or it [would all] come down on [him]," a "reasonable person" would have understood that he was the focus of the police investigation and, having been told " 'it [would] come down on [him], ' " might have begun to doubt that he could terminate the interview and leave. We held that, "when the tenor of the questioning changed from inquisitive to accusative during the second hour of the session, defendant was in custody for the purposes of *Miranda* notwithstanding the statement from Koestner that defendant was not under arrest."

¶ 106 Defendant's reliance on *Alfaro* is misplaced. As noted, while stressing the accusatory tone, there were restrictions on the defendant's freedom of movement because he was dependent on the police for transportation. His requests to leave and inquiries as to when he could leave were essentially ignored. We said, "Viewing the objective and subjective evidence in its totality supports an inference that the police engaged in a 'question first, warn later' interrogation strategy." Unlike in *Alfaro*, there was no restriction on defendant's freedom here. Defendant never asked to leave,

and Det. Mumm kept his promise that defendant was “free to leave at any time.” The Supreme Court has repeatedly rejected the view that *Miranda* warnings are required “simply because *** the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person’s freedom as to render him ‘in custody.’ ” *Stansbury v. California*, 511 U.S. 318, 324 (1994). The Supreme Court explained that

“[e]ven a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until police decide to make an arrest. The weight and pertinence of any communication regarding the officer’s degree of suspicion will depend upon the facts and circumstances of the particular case.” *Id.* at 325.

An officer’s views or beliefs about a defendant’s “potential culpability” is one of many factors to be considered in assessing whether a suspect was in custody during interrogation. *Id.*

¶ 107 When it announced the *Miranda* warning requirement, the Supreme Court fully recognized “the obligation of all citizens to aid in enforcing criminal laws,” and that confessions “play an important role in some convictions.” The Court emphasized that the limits “placed on the interrogation process” should not in any way preclude police from carrying out their traditional investigatory functions. *Miranda*, U.S. 436 at 481.

¶ 108 In *Oregon v. Mathiason*, 429 U.S. 492 (1977), the defendant was a suspect in a burglary of a home. The defendant was the only suspect according to “the lady of the house.” The police tried to contact the defendant several times, with no success. An officer left his card at the defendant’s apartment with a note asking him to call because “[he’d] like to discuss something with [him].” *Id.* at 493. The next day, the defendant called and agreed to meet at the state police patrol office. The officer met the defendant in the hallway, shook hands, and took him into an office where he

was told he was not under arrest. The officer also told the defendant that he wanted to discuss a burglary and that his “truthfulness would possibly be considered by the district attorney or judge.” The officer told the defendant that he believed he was involved in the burglary and falsely told him that his “fingerprints were found at the scene.” The officer then gave the defendant his *Miranda* rights and the defendant gave a typed confession. *Id.* at 493-94. At the end of the interview, the defendant was told that he was not being arrested and that the case would be referred to the district attorney for a charging decision. *Id.* The trial court denied the defendant’s motion to suppress and convict him after a bench trial. The appeals court affirmed. The Supreme Court of Oregon reversed, holding that the interrogation took place in a “coercive environment” at the office of the State Police, alone and behind closed doors, and the authorities told the defendant they “had evidence incriminating him” and he was a “parolee under supervision.” *State v. Mathiason*, 275 Or. 1, 5 (1976).

¶ 109 The Supreme Court of the United States reversed in a *per curiam* opinion, stating:

“In the present case, however, there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way. He came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a ½-hour interview respondent did in fact leave the police station without hindrance. It is clear from these facts that [the defendant] was not in custody ‘or otherwise deprived of his freedom of action in any significant way.’

Such a noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a ‘coercive environment.’ Any interview of one suspected of a crime by a police officer will have

coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." *Mathiason*, 429 U.S. at 495.

¶ 110 As in *Mathiason*, there is no evidence that defendant's freedom to depart was restricted in any significant way. The only substantive difference from this case was the half hour length of the interview which was the result of the false statement that Mathiason's prints were recovered from the scene.

¶ 111 We have carefully reviewed the trial court's findings of facts. We find one finding of fact that is against the manifest weight of evidence. The trial court found that Det. Mumm took "several breaks" during the interview. As we have stated, there was only one break during the interview. We also note that, while there was only one break in the interview, there were breaks in the "interrogation." In addition to answering questions related to the abuse, defendant discussed several other topics including: his drinking; family issues; his prostate cancer and radiation treatments; injuries he sustained from a fall; family fights that led to the police being called; and A.B.'s cooking. Examining and weighing the relevant factors to determining whether defendant was in custody, we find that "a reasonable person, innocent of any crime" would have believed he or she could terminate the interview and was free to leave. *Slater*, 228 Ill. 2d at 150.

¶ 112 The location of the interview is neutral factor. Defendant came voluntarily to the police station and agreed to being interviewed. The time of the interview, approximately 10:00am, is a convenient time for most people. The length of the interview was slightly under two hours, not an unreasonable period. The mood of the questioning was professional. Det. Mumm never raised his voice or badgered defendant. After the break, the mode or time of questioning changed to accusatory. Det. Mumm told defendant that he believed defendant abused A.B. and that they “both knew” something happened. Still, he again told defendant that he was free to leave at any time. Only one officer interviewed defendant. Defendant was not told to come alone or that he could not have family or friends with him. This is a neutral factor. There was no indica of a formal arrest, such as a booking, physical restraints, etc. Defendant drove himself to the station and possessed his car keys throughout the duration. Defendant was 81 years old at the time but exhibited no signs of cognitive impairment.

¶ 113 The only factor that would tend to support a custody finding was the accusatory “mood” or “tone” used by Det. Mumm. As we have explained, however, absent any indica of formal arrest or detention, an accusatory tone alone will not support a custody determination. As the Supreme Court explained again in *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004), “the ultimate inquiry is simply whether there is a formal arrest or restraint or freedom of movement of the degree associated with formal arrest.” (citing *California v. Beheler*, 463 U.S. 1121, 1125 (2004)).

¶ 114 Mumm told defendant he was free to leave and he kept his word. As the record shows, Mumm’s plan was to interview defendant to get his version of events, contact A.B. to see if she wanted to pursue charges, and then seek approval of charges from the State’s Attorney. We hold that defendant was not in custody at any point during Det. Mumm’s interview. Therefore, the trial court did not err in denying defendant’s motion to suppress statements.

¶ 116 Defendant next argues that

“trial counsel was ineffective when he failed to move to strike a biased juror (juror [No.] 33) allowing her to be impaneled, despite her admission that she was concerned about her ability to be impartial and that she had a ‘slight bias’ because she was a victim of the exact same offense charged in [defendant’s] case, had to live with her abuser for years, and sent her own abuser to jail.”

¶ 117 Contrary to defendant’s argument, during *voir dire*, juror No. 33 did not exhibit a disqualifying state of mind. The trial court questioned her as to the *Zehr* principles, and she responded affirmatively when asked whether she understood and accepted them. Juror No. 33 disclosed that she had been a victim in response to the State’s specific question, “Is there anything that you think that either side should know about you before you’re possibly selected as a juror?” In her response, juror No. 33 assured the parties and the trial court that she could put aside that bias “in order to be a fair juror.” Upon further questioning, she agreed that her experience was “separate and apart from what[was] going on” and she would “follow the law whether or not” she agreed with it. The trial court’s comments during the argument on defendant’s post trial motion suggest that, even had defense counsel moved to strike juror No. 33 for cause, that motion may not have been granted. The trial court stated that it “would have made sure that the attorneys asked the juror *** whether or not she can still be fair and impartial to both sides,” which is exactly what occurred. A prospective juror may be removed for cause “when that person’s views would prevent or substantially impair the performance of his duties as a juror.” An equivocal response does not require that a juror be excused for cause.” *People v. Buss*, 187 Ill. 2d 144, 187 (1999).

¶ 118 Defendant goes on to argue that trial counsel was also ineffective for “not requesting to reopen *voir dire* or to use one of his remaining peremptory challenges.” Where a claim of ineffective assistance of counsel was not raised in the trial court, our review is *de novo*. *People v. Johnson*, 2021 IL 126291, ¶ 52.

¶ 119 In order to obtain relief based on a claim of ineffective assistance of counsel,

“the defendant as a general rule bears the burden to meet two standards. First, the defendant must show deficient performance—that the attorney’s error was ‘so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.’ ”

Weaver v. Massachusetts, 582 U.S. 286, 299-300 (2017) (citing *Strickland*, 466 U.S. at 687).

Second, the defendant must show that the attorney’s error “prejudiced the defense.” *Id.* Prejudice in an ordinary “*Strickland* case” means “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 300 (quoting *Strickland*, 466 U.S. at 694). Because defendant bears the burden of showing both deficient performance and prejudice, we can proceed to *Strickland*’s prejudice prong. *People v. Johnson*, 2021 IL 126291, ¶ 53. The prejudice prong requires a showing of actual prejudice, not mere speculation that defendant might have been prejudiced. *People v. Bew*, 228 Ill. 2d 122, 135 (2008).

¶ 120 In his brief, defendant repeatedly cites to *United States v. Sampson*, 820 F. Supp 2d 151 (2011), a federal district court “Memorandum and Order on Jury Claims” involving a federal death penalty prosecution (two counts of carjacking resulting in the deaths of two people). There, the defendant pled guilty but elected to have a jury decide whether the death penalty should be imposed. That case involved a post-trial “discovery of jury dishonesty during the *voir dire* process.” *Sampson v. U.S.*, 724 F. 3d 150, 154 (2013). The district court judge determined that one

of the jurors had “repeatedly and intentionally provided dishonest responses to important *voir dire* questions,” which “would have resulted in [the juror’s] excusal for cause during *voir dire* because the court would have inferred bias.” *Id.* at 156.

¶ 121 The instant case does not involve a claim of juror dishonesty. We agree that “[d]ue process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.” *Smith v. Phillips*, 455 U.S. 209, 217 (1982). As to juror No. 33, her “state of mind must be ascertained from the statements made” during *voir dire*. In doing so, the entire *voir dire* should be examined, and certain statements should not be singled out. *People v. Peebles*, 155 Ill. 2d 422, 462-63 (1993).

¶ 122 A prospective juror may be removed for cause “when that person’s views would prevent or substantially impair the performance of his/her duties as a juror.” *People v. Buss*, 187 Ill. 2d 144, 187 (1999) (quoting *People v. Armstrong*, 183 Ill. 2d 130, 143 (1998)). Our review of the record fails to show that juror No. 33 exhibited a disqualifying state of mind. She stated that she could set aside any “slight-bias” and decide the case solely on the evidence. The mere fact that a juror has been the victim of a crime, even a crime of the same nature as the one charged, does not establish grounds to excuse a juror for cause. *People v. Bowman*, 325 Ill. App. 3d 411, 419 (2001); *People v. Metcalfe*, 202 Ill. 2d 544 (2002); see *People v. Caridine*, 2023 IL App (1st) 210393-U, ¶ 22. Because defendant cannot show that juror No. 33 was removable for cause, he cannot show that trial counsel was ineffective for failing to move to remove her for cause.

¶ 123 Recognizing that the evidence of defendant’s guilt is overwhelming, defendant attempts to avoid the requirement that he must prove prejudice by arguing that “courts recognize an alternative path to relief known as structural error, which does not require a showing that the outcome of the

proceeding would have been different.” (citing *People v. Moon*, 2022 IL 125959, ¶¶ 28-29). *Moon* does not help defendant in convincing us that we should dispense with requiring a showing of prejudice. In *Moon*, the circuit court failed to administer the constitutionally required oath to the jury. The defendant did not object at trial and first raised the issue in a post-trial motion. The supreme court noted “the structural errors identified by [the Court] include[d] a *complete denial of counsel*, denial of self-representation at trial, racial discrimination in the selection of a grand jury, and a defective reasonable doubt instruction.” *Moon*, 2022 IL 125959, ¶ 29 (citing *Washington v. Recuenco*, 548 U.S. 212, 218 (2006)). “These errors affect the framework within which the trial court proceeds, rather than mere errors in the trial process itself.” *Id.* at ¶ 29 (citing *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). Our supreme court determined that “the practice of swearing the jury with a trial oath was firmly entrenched in the common-law concept of a trial by jury when each Illinois Constitution was ratified.” *Id.* at ¶ 43. Unlike the error in *Moon*, the alleged error here occurred in the trial process. Defendant also cites *Weaver*, which involved the closure of the court room to the public during jury selection, including the defendant’s mother and his minister. Defense counsel failed to object to closure and the issue was not raised on direct review. The Supreme Court explained that “not every public-trial violation will in fact lead to a fundamentally unfair trial. Nor can it be said that the failure to object to a public-trial violation always deprives the defendant of a reasonable probability of a different outcome.” *Weaver*, 582 U.S. at 200. The Supreme Court concluded that, despite the label, “structural error,” for a public trial violation, when raised in the context of “ineffective assistance of counsel,” prejudice would not be presumed. The Court stated:

“Instead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or, as the Court has assumed for these purposes, to

show that the particular public-trial violation was so serious as to render his or her trial fundamentally unfair.” *Id.* at 301.

¶ 124 Defendant cites *People v. Little*, 2021 IL App (1st) 191108, where the first district stated that structural error occurred due to defense counsel’s ineffectiveness. In that case,

“counsel’s deficient performance resulted from his failure to raise a challenge under *Batson* when the State used a peremptory challenge to excuse an African American juror—a claim that disqualifies the entire jury and which courts have determined to be reversible ‘structural error.’ ” *People v. Maya*, 2024 IL App. 3d 230146-U, ¶ 68.

¶ 125 Defendant’s argument that prejudice should be presumed in the context of ineffective assistance during jury selection has twice been rejected by the Illinois Supreme Court. *Maya*, 2024 IL App. 3d 230146-U, ¶ 65. In *People v. Metcalfe*, 202 Ill. 2d 544, 560 (2002), trial counsel waived any objections to a juror who had been a crime victim when “he failed to challenge her for cause or to use one of his peremptory challenges to excuse her.” *Id.* at 551-52. The court found “no merit to defendant’s claim that prejudice must be presumed.” The court noted that, “[w]hen [it] spoke in *Cronic* of the possibility of presuming prejudice based on an attorney’s failure to test the prosecution’s case, [it] indicated that the attorney’s failure must be complete.” *Id.* at 560. As in *Metcalfe*, defendant “does not contend that his counsel failed to oppose the prosecution throughout the *voir dire* proceeding as a whole, but that his counsel failed to do so with regards to [juror No. 33].” As in *Metcalfe*, trial counsel participated in jury selection and used peremptory challenges.

¶ 126 In *People v. Manning*, the defendant argued that trial counsel rendered deficient performance in failing to exercise a peremptory challenge. On appeal, the defendant argued that the Supreme Court should overrule *Metcalfe*. The defendant argued that prejudice should be “presumed” under *Strickland*, citing nonbinding federal and state cases, as defendant does here,

“which he says found juror bias prejudiced under *Strickland*, and he [asked the] court to ‘refine the Metcalfe analysis’ or ‘go in a different direction’ in light of these cases.” 241 Ill. 2d 319, 330 (2011). Examining the doctrine of *stare decisis*, the Supreme Court commented that defendant’s preference for a different approach to claims of ineffective assistance of counsel during jury selection because “some federal court circuits and a handful of states have done so*** hardly constitutes a groundswell of opposition to the court’s reasoning in *Metcalfe*.” We reject defendant’s argument that prejudice must be presumed. Defendant has failed to establish either prong of *Strickland* after applying deference to counsel’s decision not to challenge juror No. 33 for cause or to use one of his peremptory challenges and, even if counsel’s performance was deficient, defendant has not shown that there was a reasonable probability of a different result.

¶ 127

III. CONCLUSION

¶ 128 For the reasons stated, we affirm defendant’s convictions.

¶ 129 Affirmed.