No. 129054

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

A jury found Jessica Logan guilty of first-degree murder and she was sentenced to 33 years in prison. The appellate court affirmed Jessica's conviction and sentence. This is a direct appeal from that judgment. No issue is raised challenging the charging instrument.

ISSUES PRESENTED

1) Whether the interrogation of Jessica Logan was "custodial," requiring admonishments under *Miranda v. Arizona*, 384 U.S. 436 (1966), where a DCFS agent told Jessica she was *required* to perform a video-recorded "re-enactment" of her child's death for the police, no one told her she was *not* required to participate, and the police barred her family from the room before the re-enactment and interrogation.

2) Whether trial counsel was ineffective for failing to argue Jessica's statement was obtained not only in violation of *Miranda*, but also her constitutional rights, requiring suppression of any fruits of that statement, which here included testimony relaying an expert's opinions of what he saw in the re-enactment video, opinions the State described as its most important evidence.

3) Whether counsel was ineffective for failing to object to irrelevant, highly prejudicial evidence in both the re-enactment video and recorded phone calls presented by the State.

STATEMENT OF FACTS

After Jessica Logan's 19-month old son, J.C., died by suffocation on October 7, 2019, in her apartment in Decatur, the State charged her with first-degree murder. (C20; R302; E13)

Motion to Suppress Evidence

Jessica filed a motion to suppress evidence the State obtained during a video-recorded "re-enactment" and interrogation on October 17, 2019, arguing this constituted a custodial statement without admonishments as to her rights, in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). (C48-50, 57-59) Counsel limited the requested relief to suppression of the re-enactment video and Jessica's statements during the re-enactment. (C50, 59; R89)

Hope Taylor testified that she is the paternal grandmother of Jessica's two sons and that she is Jessica's "mother figure." (R52, 55) Jessica was in high school when her mother died. (R66) After J.C.'s death, Jessica moved out of her apartment and lived with Taylor. (R53)

Detective Matthews testified that Dr. Denton performed J.C.'s autopsy on October 7, 2019, but did not determine the cause of death at that time, agreeing Denton "was uncertain regarding some of his initial findings." (R72, 87) Denton asked Matthews for "additional information and further investigation," including a "reenactment." (R72) Matthews decided to try to have Jessica perform a re-enactment of J.C.'s death and considered her a "suspect." (R81, 86-87)

Leandra Tate, a Department of Children and Family Services (DCFS) investigator, testified that she met with Jessica several times after J.C.'s

death, including one meeting with both Taylor and Jessica. (R47-48) During that conversation, Tate told Jessica "we need to do a reenactment" of the incident that will be "videotaped" by a "detective." (R48) Tate said the re-enactment was "just a process for DCFS and for criminal investigation that both parties would need the reenactment, ... so it was best to get this done so we can move forward" on both investigations. (R51)

Tate testified that Jessica was "very upset" and "worried about having to go back into the apartment" where J.C. died. (R48-49) According to Tate, Jessica "didn't really want to do" the re-enactment, but "there was no saying no." (R49) Taylor recalled Tate telling Jessica she "would have to do" the re-enactment, which is "normal procedure in a child's death," and that Detective Matthews would contact her. (R55) Jessica testified that she "didn't feel like [she] had a choice" about doing the re-enactment. (R66)

Matthews called Jessica to arrange to meet at her apartment on October 17, 2019. (R69-73, 90) Matthews told her "about the request from Dr. Denton to have a reenactment," then asked "if she would be willing to participate," and she agreed. (R73-74) Matthews denied telling Jessica she was "required" to participate and denied asking Tate to tell Jessica she was required to participate. (R74) Matthews denied the police "do these reenactments in all child death cases." (R87) Jessica testified that Matthews told her the re-enactment was "standard procedure." (R69)

On October 17, 2019, Detective Matthews, Detective Appenzeller, and Sergeant Carroll each drove separate police cars to Jessica's apartment. (R74-75) Tate and another DCFS investigator also arrived separately. (R75) Jessica drove to her former apartment with her four-year-old son and Taylor,

who saw multiple police cars. (R55, 59, 76) The DCFS investigators and police officers, wearing badges, were waiting at the door. (R56, 76) Matthews ushered everyone inside except Taylor, who said Matthews "put his hand out" and suggested she stay outside with her grandson. (R57-61) Matthews testified that he asked Taylor to stay outside to avoid "distractions" during the re-enactment, and she agreed. (R76)

Jessica unlocked the apartment door and entered with all five State agents. (R50, 67, 76) Matthews testified that no one told Jessica she "had to participate" in the re-enactment and Jessica never refused to participate. (R77-78) Jessica entered J.C.'s bedroom with Matthews, Appenzeller, and Tate, where Appenzeller recorded the re-enactment while Carroll and the other investigator moved around the apartment. (R77-78) For about 30 minutes, Matthews asked Jessica to re-enact the incident with a mannequin and questioned her about the circumstances of J.C.'s death. (R77; P.E.E1-E2) Matthews testified that some of his questions were "[f]or the benefit of ... Dr. Denton to hear [Jessica's] version" of events. (R84) Afterwards, Jessica consented to a search of her apartment and cellphone. (R67, 79) She then left with her son and Taylor. (R68, 79-80)

Matthews denied making threats or promises to Jessica. (R80) Matthews chose "not give [Jessica] any Miranda warnings" that day "because she was not in custody or under arrest" and was free to leave. (R78-80)

The judge was "a little bit troubled by the process," asking Matthews, "[D]id anybody ever say to Jessica ... that your responses here could potentially be used against you in a DCFS and/or a murder investigation?" (R87) Matthews did not make "those statements" to Jessica because "in [his]

mind she was not in custody." (R87)

The judge repeated that he was "troubled by this process." (R96) Noting Matthews "obviously" thought Jessica was a suspect, the court found someone "at some point" should have informed Jessica of her rights and told her she did not have to perform the re-enactment. (R97) But the judge said the question was not whether he was "troubled," it was whether "this was a custodial interrogation." (R97) The judge described the "very high" standard found in "all the cases" for what it means to be "in custody":

> You have to be in a room surrounded by police officers handcuffed with guns pointed at your head, with police officers pounding on the desk demanding answers to their questions before it amounts to a custodial interrogation ...

(R97)

In denying the motion, the court found the evidence did not meet this standard because the re-enactment occurred at Jessica's "residence," Taylor was "right outside," Jessica "voluntarily agreed to the interview and voluntarily traveled there," Jessica was not in "emotional distress," there were no physical restraints or shows of force, "the interview was not accusatory," and Jessica "was allowed to leave." (R96-99)

Jury Trial

Officer Sawyer testified that he and Officer Closen were called to Jessica's apartment on the morning of October 7, 2019. (R223) Sawyer saw Jessica and Taylor sitting on the couch, "upset" and "crying," with Taylor holding J.C.'s lifeless body. (R224-25) Jessica told Sawyer she put J.C. in bed around 8 p.m. and had planned to get up at both 12 and 2 a.m. to give him his "breathing treatment," Albuterol with a nebulizer. (R226) Jessica said

J.C. "had pneumonia a couple times" and needed Albuterol "when it gets cold outside." (R227) Sawyer saw a nebulizer in J.C.'s bedroom. (R227) When he asked for the Albuterol, Jessica gave him an empty box from the hall closet, saying she gave J.C. Albuterol twice per night the previous four nights. (R227-28) Officer Closen found no evidence Albuterol had recently been used, including in the full kitchen trash can. (R246-47; E394) Jessica also said she had tried to resuscitate J.C. (R235)

The State introduced a recording and transcript of Jessica's 911 call. (R228-29, 235; P.E.D) Jessica can be heard crying during the six-minute call. (P.E.D) Jessica said, "I came in my son room to try to give him a breathing treatment because he needs breathing treatments because he got breathing problems, and he's not breathing. He's all hard." (P.E.D Tr.1) Jessica also said she tried CPR and she called Taylor before calling 911. (P.E.D Tr.2-3)

The prosecutor asked Officer Sawyer if he had "any other observations" about Jessica's "demeanor." (R236) Sawyer believed Jessica's emotions were "forced" and she was "mimick[ing] ... the sound of crying" because he did not see tears on her face. (R236-37) Sawyer did not include this opinion in his initial report, but added it to his report after Detective Matthews told him "about what may not have happened." (R239-42) Matthews acknowledged he asked Sawyer to add this to his report. (R328-29)

Matthews agreed with Jessica's counsel that he "didn't believe Jessica was being sincere on the 911 call" and considered her "a suspect" after hearing it. (R320-21, 327) Jessica's counsel asked Matthews what "indicators of guilt" were present in the recording. (R327) Matthews told the jury he "attended a multi day training on 911 phone call analysis." (R327) Matthews

noted "several" indicators of guilt in Jessica's call, including that "she never once asked for help" and waited "almost a minute" to say "what she needed," adding that "there were other indicators as well." (R327) Counsel confirmed with Matthews that "at that point [he became] suspicious that Jessica may have had something to do with [J.C.'s] death." (R328)

Forensic Pathologist Scott Denton performed J.C.'s autopsy on October 7, 2019. (R287-88) Dr. Denton testified that J.C. died by "asphyxia due to smothering and compression of the neck." (R302) Evidence of asphyxiation included "edema foam" from J.C.'s lungs and "petechial hemorrhages" on his face that were not caused by "strangulation." (R290-94) Instead, the hemorrhages and "pressure blanching" on J.C.'s face indicated "something was pushing on his nose and ... chin." (R295) Denton concluded J.C. was either face-down with pressure to the back of his head or face-up with something pressed on his face. (R302-03) Denton testified that a four-year-old child "would not have the strength to do this" to J.C. (R305-06) Denton found no evidence J.C. had any condition that would cause difficulty breathing. (R298-99)

Denton did not make a finding as to cause of death immediately after the autopsy because he "didn't have all the information" he needed. (R300) Denton asked the police to perform further investigation, including a "doll reenactment," which is "standard practice" after "all child ... deaths." (R300)

After Detective Matthews testified that Jessica "agreed" to perform the re-enactment at her apartment on October 17, 2019, the State played the recording. (R321-24) The video shows Jessica in J.C.'s bedroom with Matthews, Appenzeller, and Tate, with Matthews asking questions.

(P.E.E1-E2) Matthews asked Jessica to use a mannequin to demonstrate how J.C. looked when he went to bed. (P.E.E1 9:14:54) Jessica made the bed, then placed the mannequin near one corner and covered it with a blanket, saying she put J.C. to bed around 8:30 p.m. (P.E.E1 9:15:10, 9:19:10) Jessica returned at about 3 a.m. to give J.C. his "breathing treatment," but saw him "face down" with the fitted sheet wrapped around his head, demonstrating with the mannequin. (P.E.E1 9:15:47, 9:18:40) Jessica picked J.C. up, but "he was already hard and stiff." (P.E.E1 9:16:30) Matthews asked if the sheet was "draped over his neck" or wrapped around his head, and Jessica said she could not recall, but knew the sheet was over his head. (P.E.E1 9:17:59) Jessica said she immediately called 911, but later said she called Taylor first because she knew J.C. was dead. (P.E.E1 9:38:25-9:40:20)

Matthews asked if she gave J.C. medicine before 3 a.m., and Jessica said she intended to do so around midnight but slept through her alarm. (P.E.E1 9:21:44) Jessica explained she set two alarms, one for midnight and one for 3 a.m., but she only woke up for the later alarm. (P.E.E1 9:22:00)

Jessica said J.C. had been hospitalized with pneumonia several times, and was prescribed Albuterol "as needed." (P.E.E1 9:23:05-9:24:00) Jessica had refilled the prescription several times after taking J.C. to see Angie King. (P.E.E1 9:27:08) J.C. had been congested for about three days prior to his death, and Jessica gave him two treatments each of those nights, at 12 and 3 a.m. (P.E.E1 9:22:30-9:23:43) Jessica kept the Albuterol in the hall closet, but it was "all gone now." (P.E.E1 9:31:10) She called King's office the previous Friday afternoon to refill the prescription when she only had a few doses left. (P.E.E1 9:31:30)

Jessica also described taking J.C. to the hospital with a bump on his head when he was two months old. (P.E.E1 9:25:58) Jessica said "DCFS got called" and created a "safety plan," but later "dropped" the case. (P.E.E1 9:25:58) Jessica's counsel later confirmed with Matthews that she discussed prior "DCFS involvement" during the re-enactment. (R329)

When the prosecutor asked Dr. Denton if the re-enactment video provided "any information [he] could use in coming to any conclusions," he said "the most important thing" was the "possibl[e] entanglement in bed sheets." (R301) Denton had "never heard of" a 19-month-old "getting entangled and then dying in bed sheets," and concluded that "[t]hey could not have killed him in that position that was shown on the video." (R301-02) Denton acknowledged his post-autopsy "investigation" consisted of watching the re-enactment video, which was "more evidence ... this is an asphyxial event in the bed." (R315-17)

Jessica consented to a search of her apartment after the re-enactment. (P.E.E1 9:43:54) Matthews found no evidence of Albuterol use. (R325) Jessica also consented to a search of her cellphone. (R323) Data extracted from the phone indicated a Google search for "how do you suffocate" was done at 8:04 a.m. on October 6, 2019. (R259-60; E739)

Pediatric Nurse Angela King testified that J.C. was prescribed Albuterol in 2018 after being diagnosed with "bronchiolitis" and "viral infections." (R340-41) King last treated J.C. for a breathing problem in December 2018 and last refilled J.C.'s prescription in January 2019. (R340-41) Other records indicated J.C. was again diagnosed with bronchiolitis on March 21, 2019, after arriving at the hospital with a "fever,

cough, shortness of breath, and chills." (R345) King last saw J.C. for an examination on September 9, 2019, when he had a sore throat and a cough, but "clear" lungs and "no runny or stuffy nose." (R343) King did not know whether Jessica called her office on the Friday prior to October 6, 2019, but said there was no record of such a call. (R341-42)

The parties stipulated that Rachel Niemerg of The Cash Store would testify that Jessica got a loan of $1,075 on August 2, 2019. (C142; R355-56) Jessica was to make bi-weekly payments of $202.57, but only made one payment of $100 between August 16 and October 16, 2019, and did not keep appointments or respond to voicemails. (C142)

Without objection, the State played a disk with 13 voicemails from Jessica's phone. (R265-66, 356-57; P.E.P) Four of the first six were from The Cash Store, while the other two concerned "repayment options" for student loans. (P.E.P1-6) When the State played the seventh voicemail, from "Better Child Care," counsel objected, saying his stipulation only concerned The Cash Store. (P.E.P7; R358) The prosecutor agreed, but noted all 13 voicemails had been admitted without objection. (R358) In front of the jury, Jessica's counsel replied, "I guess, it's my fault for not checking the DVD before it was admitted into evidence, but [I] thought ... they were voicemails from The Cash Store." (R359) The court limited the State to voicemails from The Cash Store and instructed the jury to disregard the others. (R359)

In one message, a Cash Store employee said, "[Y]ou are now two returns in and you have another one coming on 9-13. You're gonna hit debt status and ... they'll start calling your employer, they'll start calling your references, it's gonna ruin your credit, ... it's gonna be bad, you have a daily

interest of $11.90, you are now up to $1527.25. ... [W]e're gonna start calling your job. ... [Call back] because once you go debt I can't help you." (P.E.P5) In another message, the caller said, "You missed your promise to pay for 8-15. ... [Y]our 8-15 PTP is now ... $262.08, ... [and] another payment of $202.57 [is] coming 8-30, ... [with] $11.90 daily interest. ... You don't want it to get out of control so it's hard for you to get out from under." (P.E.P9; R361)

The State also played 12 clips from nine recorded phone calls between Jessica and J.C.'s incarcerated father made between May and October 2019, largely consisting of Jessica describing her financial problems and J.C.'s father asking for money. (R266, 361-64; P.E.Q1) On June 14, 2019, Jessica said she was "getting bad news" every day because no one would hire her and Social Security would stop sending checks in August. (P.E.Q1#200 2:50-3:40) After Jessica said she had hundreds of dollars of bills she could not pay, J.C.'s father asked her to "overdraft" her account so she could send him $30. (P.E.Q1#200 3:40-5:10) On August 1, 2019, Jessica said her account was "overdrawn" and she was trying to get a loan. (P.E.Q1#368 0:02-1:56) J.C.'s father repeatedly requested money, saying "all I need is like 200, ... I need my 200." (P.E.Q1#368 3:50-4:15) On August 26, 2019, J.C.'s father told Jessica "to overdraft ... tonight" because he "need[ed]" $60. (P.E.Q1#433 Clip 1 0:17, Clip 2 0:01-1:20)

On September 3, 2019, Jessica noted she had a $35 bill for J.C.'s "life insurance." (P.E.Q1#467 Clip 1 0:19-2:00) J.C.'s father offered to send $40, saying "that's the main thing that need to get paid." (P.E.Q1#467 Clip 1 2:40-3:10) Jessica told him not to send money. (P.E.Q1#467 Clip 1 2:45)

In several clips, Jessica is heard telling J.C.'s brother to "stop" or "shut

up," at one point yelling at him to "close that fucking window, you pissin' me off!" (P.E.Q1#200 2:25, 6:00, #20 1:15) In another call, she said to J.C., "You gonna fuck yourself up," then a child is heard crying. (P.E.Q1#368 0:32) Later in that call, she described J.C. as "a beast, he don't care, he's gonna try any goddamn thing in the book." (P.EQ1#368 4:02)

In the last call played for the jury, from October 2, 2019, Jessica said that because J.C.'s brother broke her television, she "dragged all his toys to the dumpster." (P.E.Q1#606 Clip 1 0:02) While a child can be heard crying, J.C.'s father said, "Good." (P.E.Q1#606 Clip 1 0:15) Jessica said, "If I don't have no TV to watch, you're not gonna have no damn toys to play with," and said she told J.C.'s brother he would only get cake for his birthday. (P.E.Q1#606 Clip 1 0:22-0:40) Jessica later yelled at her children twice while saying she had not paid any bills that month. (P.E.Q1#606 Clip 2 0:30) J.C.'s father told Jessica he "need[ed] at least $100" from her so he can buy an "MP3 player" because watching the "same shit every day" on television was "boring." (P.E.Q1#606 Clip 2 1:20) Jessica said she would send money, then screamed at J.C.'s brother and said, "Damn, annoying as fuck." (PEQ1#606 2:00)

Patrick Delatte from American Family Insurance testified that on December 14, 2018, he issued Jessica a $25,000 life-insurance policy for J.C. (R366-67) Jessica was to pay $35 per month for 10 years, and kept her account in good standing. (R367) On October 7, 2019, Jessica called Delatte to report J.C. died and to submit a "life insurance claim." (R368) Jessica's counsel elicited from Delatte that the "full 25,000" would be "paid out" if J.C. died from "natural causes." (R369)

Defense counsel called four witnesses, including Taylor and Jessica. (R377-94, 420) Jessica testified that she had two children with Taylor's son, one born in 2015 and J.C., born March 1, 2018. (R429-31) Soon after J.C.'s older brother was born, Taylor purchased life insurance for both Jessica and her son and made those payments. (R435-36) After J.C. was born, Taylor offered to pay for his life insurance, too, but Jessica declined and purchased that herself. (R437-38) Between 2015 and 2019, Jessica was occasionally employed, but her main source of income was Social Security and babysitting. (R432-34) Taylor testified that Jessica often "went without" because she prioritized her bills and her sons' needs. (R398)

On October 6, 2019, Jessica put her sons in bed at 8:30 p.m. and put her last vial of Albuterol in the nebulizer. (R440-41, 484) She had given J.C. Albuterol twice each night for the previous three or four nights because he was "congested," had a "runny nose," and had "breathing problems." (R442, 472) Jessica threw the empty vials of Albuterol small, clear plastic tubes in her kitchen trash, and had emptied that trash can "the evening before." (R470-71, 487)

Jessica set the alarm on her phone to go off at 12 and 3 a.m., as she had the previous nights, but did not wake up at midnight. (R442-43, 484-89) At 3 a.m., she went to J.C.'s room and found him "cold" and not breathing. (R444-46)

Jessica called Taylor before 911 because she knew J.C. was dead. (R446) Jessica did not perform CPR. (R478) Taylor testified that Jessica called her after 3 a.m. and was "upset." (R400) After Jessica told Taylor she got up to give J.C. his "breathing treatment," but saw that "he wasn't

breathing," Taylor told her to hang up and call 911. (R400)

Taylor drove to Jessica's apartment, where she saw Jessica holding J.C. while on the phone. (R401) Taylor and Jessica cried and held J.C. until the coroner arrived and took his body. (R401-04, 449-55)

Taylor drove Jessica to her house, where they talked with other family members about how J.C. might have died. (R408-09, 456-57) Jessica heard Taylor's daughter mention the word "[s]uffocation." (R458, 488) At about 8 a.m., Jessica "Googled how do you suffocate," but did not "click on" any of the search results. (R458, 467-68) Jessica denied doing this search one day earlier, on October 6, 2019. (R467-68)

The family was concerned about paying for the funeral. (R459) Taylor told Jessica to call J.C.'s insurance company because "we had a funeral to pay for" and she thought that was what they were supposed to do. (R406) Jessica called Delatte that morning and asked about using the policy to pay for J.C.'s funeral. (R406, 460, 480) Delatte said he would send her a packet in the mail. (R480) Jessica later went to the funeral home where her cousin worked and learned they would not charge her for J.C.'s funeral. (R461)

Taylor received the packet from Delatte and gave it to Jessica, who was staying with Taylor after J.C.'s death. (R406-07) Jessica never opened it, explaining she no longer needed the money because the "funeral was already paid for" and she "didn't want" the money because it would not bring J.C. back. (R407, 463) Jessica never received any money from the insurance company. (R408, 463)

Jessica agreed to perform the re-enactment, and to the searches of her phone and apartment, because she did not believe she was "in trouble."

(R464-67)

At the beginning of his closing argument, the prosecutor told the jury Dr. Denton's testimony "does everything that needs to be done" to prove first-degree murder beyond a reasonable doubt. (R502-03) He later said what Detective Matthews "gives you, more than anything else, is ... the reenactment video." (R515-16) The prosecutor argued the re-enactment demonstrated Jessica's guilt because "she didn't wrap him in the blankets. She just put a blanket over his head." (R516)

The jury found Jessica guilty. (C157; R571)

Post-Trial Proceedings

In his post-trial motion, which was denied, counsel did not argue the court erred in denying Jessica's motion to suppress evidence. (C161; R581) The court sentenced Jessica to 33 years in prison. (C163; R602)

Appeal

On appeal, Jessica argued she was denied a fair trial by the judge's erroneous denial of her suppression motion, and by counsel's ineffectiveness on several grounds, including a failure to argue the re-enactment video was obtained in violation of her constitutional rights, and his failure to object to irrelevant, overly prejudicial evidence. *People v. Logan*, 2022 IL App (4th) 210492 ("Op."), ¶¶67-69, 93, 100, 110. The court affirmed Jessica's conviction. Op.¶2.

ARGUMENT

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

After performing J.C.'s autopsy, the forensic pathologist could not reach a conclusion as to cause of death and asked Detective Matthews to have Jessica Logan perform a re-enactment of the incident. Before Matthews talked to Jessica, a DCFS investigator told her she was required to perform a video-recorded re-enactment of her child's death in the presence of the police. When Matthews asked Jessica to perform the re-enactment in J.C.'s bedroom, he never told her she was not required to participate. Jessica agreed because she believed she had no choice.

On the day of the re-enactment, Jessica drove to her former apartment with J.C.'s paternal grandmother, Hope Taylor, where three detectives and two DCFS investigators were waiting. After Detective Matthews barred Taylor from the apartment, Jessica entered alone with all five agents. Jessica then answered Matthews's questions and re-enacted the incident with a mannequin on camera. At no point did anyone tell Jessica she was not required to participate, that anything she said or did could be used against her, or that she had the rights to silence and to counsel.

The appellate court found the DCFS agent's statement to Jessica "obvious[ly]" coercive, and found both the "distressing" venue and Jessica's "isolat[ion]" from her "mother figure" also favored finding *Miranda* warnings were required. *People v. Logan*, 2022 IL App (4th) 210492 ("Op."), ¶¶76-85,

97. The court even implied law enforcement "intentional[ly] circumvent[ed] ... *Miranda*." Op.¶97. Yet the court found no *Miranda* violation, essentially because the police did not employ strong-arm tactics at the time of the interrogation. The court omitted the DCFS agent's statement from its analysis, only discussing this *after* finding no *Miranda* violation. Op.¶83. Indeed, the court appeared to believe this coercive statement played *no role* in its analysis because this Court did not include such statements by law enforcement in its list of seven factors "relevant" to "*Miranda* custody." Op.¶74 (citing *People v. Slater*, 228 Ill. 2d 137, 150-53 (2008)).

But this is a totality-of-the-circumstances test and this Court has never limited *Miranda* custody analysis to the seven *Slater* factors. 228 Ill. 2d at 150. When a State agent not only fails to inform a defendant of her rights, but tells her she is *required* to talk to the police, the opposite of what our constitutions guarantee, that fact should play an important role in a *Miranda* custody analysis. Here, the DCFS agent's statement colored everything that happened afterwards, making it possible for law enforcement to obtain Jessica's participation without strong-arm tactics. The DCFS agent's statement, in combination with the police choosing the most distressing possible venue, then barring family from the room, would have led a reasonable person in Jessica's shoes to believe she was not at liberty to refuse to participate. Because Jessica was in *Miranda* custody, the State should have been barred from using her un-Mirandized statements and actions as evidence of guilt. And because that evidence was crucial to the State's case, this serious error denied Jessica a fair trial.

A. Test for "*Miranda* Custody"

While this Court generally defers to a judge's factual findings on a motion to suppress evidence, it "remains free to undertake its own assessment of the facts ... and may draw its own conclusions when deciding what relief should be granted." *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). This Court reviews *de novo* the legal question of whether the evidence should have been suppressed. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003).

Every criminal defendant has a right not to be compelled to provide evidence against herself. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, §§2, 10. This not only permits a defendant to refuse to testify against herself, but also "privileges [her] not to answer official questions ... in any other proceeding, ... formal or informal, where the answers might incriminate [her] in future criminal proceedings." *Minnesota v. Murphy*, 465 U.S. 422, 426 (1984) (quotation omitted).

To safeguard this privilege, a person subjected to custodial interrogation must be warned she has a right to remain silent, that any statement she makes may be used against her, and that she has a right to have counsel present. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). These warnings not only ensure the defendant is aware of her rights, but also provide her the opportunity to exercise those rights. *People v. Winsett*, 153 Ill. 2d 335, 348 (1992). Where no such admonishments and opportunity were given, the prosecution may not use statements made by the defendant during the custodial interrogation as evidence of guilt. *Miranda*, 384 U.S. at 444.

These safeguards are only required when the defendant is subjected to "custodial interrogation." *Slater*, 228 Ill. 2d at 149. Here, it is undisputed

Jessica was interrogated. Op.¶97. The question, instead, is whether that interrogation was "custodial" as defined by *Miranda*: "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of [her] freedom of action in any significant way." *Miranda*, 384 U.S. at 444.

When determining whether a defendant was in "*Miranda* custody," this Court looks to "the circumstances surrounding the interrogation," then determines whether "a reasonable person, innocent of any crime" and in "the defendant's shoes," would have felt she was not free to refuse to answer questions. *Braggs*, 209 Ill. 2d at 505-06; *People v. Fort*, 2014 IL App (1st) 120037, ¶¶13-15. Relevant factors include "the location, time, length, mood, and mode of the questioning," the number of law-enforcement officials present, the presence or absence of any family or friends of the defendant, any indicia of "formal arrest," such as the show of weapons or force or other restraints, "the manner by which the individual arrived at the place of questioning," and "the age, intelligence, and mental makeup" of the defendant. *Slater*, 228 Ill. 2d at 150.

While these largely concern circumstances immediately surrounding the interrogation, a court need not limit its analysis to those immediate circumstances. Instead, courts look to "the totality of the circumstances when determining ... custody for *Miranda* purposes," including relevant events prior to the interrogation. *People v. Brown*, 136 Ill. 2d 116, 126 (1990); *see People v. Wyma*, 2020 IL App (1st) 170786, ¶60 (considering events weeks prior to interrogation). Particularly important are statements or actions by law enforcement conveying to the defendant she is the focus of a criminal

investigation. *Slater*, 228 Ill. 2d at 153; *Stansbury v. California*, 511 U.S. 318, 325 (1994); *see also United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990) (because "the available means of coercion are as vast as the circumstances in which it may arise," enumerated indicia of *Miranda* custody are "non-exhaustive," and "a particularly strong showing with respect to one factor" may outweigh others).

B. Application of "*Miranda* Custody" Test

The totality of the circumstances here demonstrates Jessica was in "custody" when she was interrogated, such that law enforcement's failure to admonish her pursuant to *Miranda* required suppression of her statement. This is true, first, because events leading up to the re-enactment would have led a reasonable person to believe she had no choice but to participate.

After performing J.C.'s autopsy, Dr. Denton told Detective Matthews he was "uncertain" as to cause of death, and asked Matthews to have Jessica perform a "re-enactment" of the incident. (R72, 87) Matthews considered Jessica a "suspect" before speaking with her. (R81)

Later, after she had already spoken with Jessica "several times," DCFS investigator Leandra Tate met with Jessica and Taylor, and told Jessica "we need to do a reenactment" that would be video-recorded by a detective as part of a "criminal investigation." (R47-48, 51) Corroborating this, Taylor testified that Tate told Jessica "she would have to do" the re-enactment. (R55) According to Tate, Jessica did not want to participate, but did not refuse. (R49) This conversation led Jessica to believe she had no choice but to participate. (R66)

Matthews then called Jessica to schedule the re-enactment at her

former apartment. (R69, 72-73, 90) Matthews said the doctor who performed the autopsy requested the re-enactment, then asked "if she would be willing to participate," and she agreed. (R73-74) Matthews denied telling Jessica she was "required" to participate, but neither did he tell her she was *not* required to participate, much less tell her she had a right to have counsel present. (R74, 87)

Indeed, at no point prior to the re-enactment did anyone in law enforcement tell Jessica she was not required to participate. This omission weighs heavily in favor of finding *Miranda* custody. *Brown*, 136 Ill. 2d at 126; *see also State v. Barry*, 2021 VT 83, ¶14 (whether officers told defendant she was "free to leave" is the "most important factor" in determining *Miranda* custody because "a reasonable person's belief ... is necessarily influenced by the communication from police about the extent of the person's freedom") (quotation omitted); 3 LaFave, Search & Seizure §5.1(a), 7-8 (2004) (factor "most frequently cited" by courts not finding custody was that police told suspect she was "not under arrest" or was "free to leave," while courts finding custody "often note that such explanation was lacking").

But this is not a case where law enforcement merely failed to inform a suspect she was free to leave. Here, rather, Jessica was *affirmatively misinformed* by a State agent, DCFS investigator Tate, that she *had* to participate in the re-enactment. *See Griffin*, 922 F.2d at 1350 (failure to inform defendant she may decline to answer questions is even more significant where defendant felt "compelled to attend" interrogation) (quoting *Minnick v. Mississippi*, 498 U.S. 146, 156 (1990)). This led Jessica to believe she had no choice but to participate. (R66)

That was not unreasonable. As the appellate court found, Jessica knew Tate spoke with the authority of someone who could remove her four-year-old son from her home. Op.¶84; *see* 89 Ill. Adm. Code 300.120 (DCFS may take child into protective custody). And as the court also found, a reasonable person would have believed DCFS was working with the police after Tate told Jessica she had to do the re-enactment for a combined DCFS and criminal investigation. Op.¶84 (citing *In re C.J.*, 166 Ill. 2d 264, 270 (1995); *People v. Kerner*, 183 Ill. App. 3d 99, 104 (5th Dist. 1989)).

In sum, Jessica was told by a State agent she had to perform the re-enactment, she was never told she was *not* required to participate, and she knew she was the focus of a criminal investigation. This combination of factors is strongly indicative of *Miranda* custody. *See United States v. Fred*, 322 Fed. Appx. 602, 603-07 (10th Cir. 2009) (finding *Miranda* custody where "social services" agent told defendant he "would need to speak with the FBI" about "criminal accusations" and FBI never said he was free to refuse). If this Court agrees, its analysis could end here because regardless of other considerations, a reasonable person would not have felt free to decline to participate in the re-enactment under these circumstances.

The appellate court correctly found the "coercive nature" of these facts "obvious." Op.¶97. Yet these facts played no role in its *Miranda* custody analysis, despite that the court appeared to believe law enforcement enlisted Dr. Denton and DCFS in an "intentional circumventing of *Miranda*." Op.¶¶83, 97. Instead, the court found these facts only concerned law enforcement's "subjective intent," which it believed to be irrelevant under *Slater*. Op.¶84.

The "reasonable person" test understandably excludes a detective's subjective view on the defendant's guilt when that view is not expressed. *Slater*, 228 Ill. 2d at 153. As the appellate court noted, however, there is a difference between an unrelayed "subjective view" of guilt and an underlying "subjective *intent* ... to circumvent *Miranda*." Op.¶84 (emphasis in original). But contrary to that court's reasoning, courts are not required to ignore law enforcement's intentional circumvention of *Miranda* in a custody analysis. *See Missouri v. Seibert*, 542 U.S. 600, 613 (2004) ("police strategy adapted to undermine the *Miranda* warnings" violates *Miranda* because its "manifest purpose" is to obtain a statement defendant "would not make if [she] understood [her] rights at the outset"); *People v. Lopez*, 229 Ill. 2d 322, 363-64 (2008) (*Miranda* violation where record revealed "deliberate [law-enforcement] decision to circumvent *Miranda*"). This is akin to the rule that "police overreaching" can render a defendant's statement constitutionally involuntary. *People v. Easley*, 148 Ill. 2d 281, 312 (1992). If this Court agrees law enforcement deliberately tried to circumvent *Miranda*, that only makes it more certain Jessica was in *Miranda* custody.

In any event, the appellate court was wrong to find these facts only spoke to law enforcement's subjective intent. By doing so, the court omitted from its analysis the fact that law enforcement *told Jessica* she was required to do the re-enactment as part of a criminal investigation, and never told her otherwise. Not only should these facts be *considered* in the *Miranda* custody analysis, this Court should find them dispositive.

But even if this Court's analysis does not end here, the traditional *Slater* factors also weigh in favor of finding *Miranda* custody. Two facts are

particularly important. First, Jessica brought Hope Taylor to the re-enactment, who tried to enter the apartment with her. (R56-61) As both lower courts found, however, Matthews "ke[pt]" Taylor outside, and thus "isolated [Jessica] from the support of her 'mother figure.'" (R98); Op.¶¶78, 97. The appellate court was correct that this "certainly supports a finding of custody." Op.¶78 (citing *Griffin*, 922 F.2d at 1352-55); *see also Fred*, 322 Fed. Appx. at 604-07 (finding "custody," in part, because agents barred defendant's wife from interrogation room).

The chosen venue also weighs in favor of finding custody. Jessica moved out of her apartment after J.C. died. (R53) Tate told Jessica she would not only have to do a re-enactment, but that it would take place in J.C.'s bedroom, which, according to Tate, made Jessica "very upset" and "worried." (R48-49) Matthews later asked Jessica to do the re-enactment in J.C.'s bedroom. (R69-74)

An interrogation may be custodial even if it occurs in the defendant's home. *Orozco v. Texas*, 394 U.S. 324, 327 (1969). Far more important than the specific location is whether it was chosen by the police, and whether a reasonable person would have believed she was "expressly or impliedly bound to remain in the presence of" the police, even inside her own home. *People v. V.S.*, 244 Ill. App. 3d 478, 484 (2d Dist. 1993); *see also Sprosty v. Buchler*, 79 F.3d 635, 641-42 (7th Cir. 1996) ("[m]ore important than the familiarity of the surroundings" is whether "police are in full control of the questioning environment") (quotation omitted). Here, DCFS told Jessica she was bound to remain in the presence of the detectives during the re-enactment and nothing about the detectives' actions indicated otherwise. *See Griffin*, 922 F.2d at

1354 (even where defendant was interrogated at home, finding "custody" where defendant did not "initiate or arrange for the questioning" and police never said he could refuse to talk).

The police-chosen venue was thus already indicative of custody, but that is doubly true here, where it was affirmatively *more* coercive than even a police station would have been. As the appellate court found, Jessica "made it clear she did not wish to return" to her apartment, but only did so because Tate told her she had to do the re-enactment. Op.¶97. The court agreed J.C.'s bedroom was an "emotionally upsetting environment" and "a more distressing atmosphere" for Jessica than, presumably, any other venue. Op.¶¶76, 96. Yet the court gave this no weight in its analysis, finding it had no "means of gauging the psychological impact of the location" on Jessica. Op.¶76. But the record itself gave the court the means not only to find Jessica made it clear she did not want to return to her apartment, but that the venue was *objectively* distressing. Op.¶¶96-97. This Court does not need expert testimony to consider how a reasonable person would feel about being told she has to perform a re-enactment of her child's death in the same room where it happened.

A State agent told Jessica she had to do the re-enactment in J.C.'s bedroom as part of a criminal investigation, no one ever told her otherwise, then law enforcement barred her mother figure from the room and had Jessica perform the re-enactment in the most distressing venue imaginable, all as a possible deliberate end-run around *Miranda*. This Court should find that under these circumstances, law enforcement was required to inform Jessica of her rights.

That is because this combination of factors far outweighs the other *Slater* factors the courts below cited in finding *Miranda* warnings were not required here. Any analysis of those factors must be done in the context of *this* case, where a State agent told Jessica she had to perform the re-enactment. That fact colored everything that happened afterwards, yet the courts below considered them separately.

The trial court appeared to find the facts met *its* definition of *Miranda* custody, but ruled otherwise under a belief that "custody" requires exaggerated strong-arm police tactics. (R97-99) The appellate court likewise relied heavily upon the absence of such tactics. Op.¶¶76-79. While such tactics would certainly be indicative of custody, the absence of such conduct does not, by definition, render an interrogation non-custodial. On the contrary, courts often find other circumstances rendered an interrogation "custodial," even where the police never drew their guns, used handcuffs, raised their voices, or accused the defendant. *See, e.g., People v. Washington*, 363 Ill. App. 3d 13, 24 (1st Dist. 2006); *see also Griffin*, 922 F.2d at 1354 ("we do not expect to find [strong-arm police] tactics employed in every case, particularly when ... they should not be employed in any case"; such tactics are merely "one indicum of custody, ... not a pre-requisite"). Where circumstances would lead a reasonable person to believe she has no choice but to answer police questions, there is no need for strong-arm tactics. *Id.*

The appellate court found the 30-minute interrogation was not "excessive." Op.¶76. But Jessica performed the re-enactment, answered every question, and the interrogation only ended when the *detective* was done. If a reasonable person would not have felt free to refuse to talk *before questioning*

started, the length of the interrogation is immaterial. The fact that Matthews only had 30 minutes of questions says nothing about *Miranda* custody. *See Griffin*, 922 F.2d at 1348-49 (length of interrogation is "undeterminative" and less important than whether circumstances indicate "questioning will continue until [defendant] provides ... interrogators the answers they seek") (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)); *State v. Werner*, 9 S.W.3d 590, 597-98 (Mo. 2000) (although interrogation was "short" and police used no "'strong arm' tactics," finding *Miranda* custody where police initiated contact, isolated defendant from his sister, and never said he was free to leave).

The appellate court similarly found the number of detectives was not "excessive," particularly where only one asked questions. Op.¶77. The court omitted the two DCFS agents here, despite elsewhere noting "DCFS appeared to be working effectively as an agent of the police." Op.¶84. Regardless, this Court has found the presence of "at least two officers" favors finding custody. *Brown*, 136 Ill. 2d at 126. Jessica was alone with five law-enforcement agents *after* DCFS told her she had to be there and *after* police barred Taylor from the apartment. Combined with these facts, the number of law-enforcement agents actually *favors* finding custody.

And the court found Jessica's behavior weighed against finding custody, where she "agreed" to perform the re-enactment, drove there "of her own volition," and never said "she believed herself to be in custody." Op.¶¶80-82. This conflicts with the court's findings that Jessica "made it clear she did not wish to return" to the apartment, and did so only "reluctantly" because DCFS told her she "'need[ed]'" to do the re-enactment. Op.¶¶80, 84, 97. The

court found all of this was outweighed by the fact that Jessica "did not decline to participate." Op.¶80.

But in every *Miranda* custody case, the defendant "agreed" to talk to police. *See, e.g., Brown*, 136 Ill. 2d at 127. The question is whether a reasonable person would have felt free to *refuse*. The court cited no authority for the proposition that a defendant's "agreement" to talk outweighed the fact that a law-enforcement agent told her she *had* to talk. If a reasonable person would not have felt free to refuse police questioning before the interrogation, her acquiescence to questioning says nothing about *Miranda* custody. *See Werner*, 9 S.W.3d at 597 ("Mere acquiescence to an official's request to answer questions does not indicate that an individual voluntarily is talking with police and not in custody."); *Fred*, 322 Fed. Appx. at 603-07 (despite that defendant drove himself to the FBI office and agreed to talk, and despite absence of strong-arm interrogation tactics, finding *Miranda* custody because a State agent "told [defendant] to go to the FBI office" to discuss criminal accusations and agents barred his wife from the room).

A DCFS investigator told Jessica Logan she was the subject of a criminal investigation and was required to participate in a video-recorded re-enactment with the police. A detective initiated contact with Jessica by calling her to make an appointment for the re-enactment at the venue of his choosing, Jessica's former apartment. At no point did the detective tell Jessica she was free to refuse. Then on the day of the re-enactment, the police barred Jessica's "mother figure" from the apartment and Jessica entered J.C.'s bedroom alone with five State agents. While one detective recorded Jessica, another detective asked her detailed questions about the

circumstances of J.C.'s death and asked her to physically demonstrate her actions and what she saw. The detectives controlled the scene, never told her she was free to leave, and ended the interrogation at the time of their choosing. Because a reasonable person would not have felt free to decline to participate in the re-enactment under these circumstances, this Court should find law enforcement's failure to inform Jessica of her rights violated *Miranda*, and that any evidence of Jessica's statements and actions during the re-enactment and interrogation should have been suppressed.

C. Prejudice

Counsel failed to raise this claim in his post-trial motion, which would normally result in forfeiture. (C161); *see People v. Cregan*, 2014 IL 113600, ¶¶16-20 (citing *People v. Enoch*, 122 Ill. 2d 176, 190 (1988) (failure to preserve claim in post-trial motion limits review to sufficiency of evidence, "constitutional issues" raised in trial court, and "plain error")). This Court, however, may review the merits on either of two grounds.

First, at the time of trial in 2021, a claim of a *Miranda* violation was arguably "constitutional," or at least "constitutionally based," such that counsel's pre-trial motion was sufficient to preserve the claim. *See, e.g., People v. Norris*, 2018 IL App (3d) 170436, ¶41 (*Miranda* violation is of "constitutional magnitude") (citing *Dickerson v. United States*, 530 U.S. 428, 438-42 (2000)); *see also Vega v. Tekoh*, 142 S.Ct. 2095, 2100-06 (2022) (clarifying in 2022 that *Miranda* violations are not constitutional violations). Given this history, counsel reasonably could have believed the *Miranda* violation was preserved by his pre-trial motion. This Court should thus decline to find forfeiture and review this claim as fully preserved. *See, e.g.,*

People v. Blue, 189 Ill. 2d 99, 127 (2000) (because "forfeiture is a limitation on the parties and not the court," reviewing merits of forfeited claims to "protect defendant's interest in receiving a fair trial"). And if this Court agrees there was a *Miranda* violation, it should require the State to prove that error was harmless beyond a reasonable doubt. *See, e.g., People v. Wright*, 2016 IL App (5th) 120310, ¶33; *Fort*, 2014 IL App (1st) 120037, ¶¶19-22 (both finding State failed to prove improperly admitted un-Mirandized statements harmless beyond a reasonable doubt). This is the standard, moreover, even if the *Miranda* violation is non-constitutional in nature, so long as this Court finds the claim sufficiently preserved. *People v. King*, 2020 IL 123926, ¶40.

Alternatively, this Court may review the merits of this claim under the plain-error doctrine. *See People v. Kadow*, 2021 IL App (4th) 190103, ¶17 (reviewing unpreserved *Miranda* violation for plain error). That doctrine allows review of an unpreserved claim when "clear or obvious error occurred" and either 1) the evidence was closely balanced, such that the error, regardless of its seriousness, threatened to tip the scales of justice against the defendant, or 2) regardless of the closeness of the evidence, the error was so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Sebby*, 2017 IL 119445, ¶48 (citing S. Ct. Rule 615(a)). If this Court finds the *Miranda* violation is a mere "evidentiary error," the test for prejudice is essentially the same as the test for first-prong plain error: whether there is a reasonable probability of a different result at a trial where the re-enactment video would be suppressed. *People v. Pinkett*, 2023 IL 127223, ¶39; *Kadow*, 2021 IL App (4th) 190103, ¶15.

Under any of these standards, the *Miranda* violation denied Jessica a

fair trial. This Court asks up to three questions when determining whether error was harmless: 1) whether the error "contributed to" the conviction, 2) whether the State's other evidence was overwhelming, and 3) whether the improperly admitted evidence was "duplicative or cumulative." *King*, 2020 IL 123926, ¶40. Here, the answer to all three questions shows the error was not harmless.

As to the first and third factors, the erroneously admitted statement was not duplicative of any other evidence and contributed to Jessica's conviction. This is true, first, because of the nature of the evidence. A defendant's inculpatory statement "is the most powerful piece of evidence the State can offer, ... its effect on a jury is incalculable," and erroneous admission of such a statement is "rarely harmless." *People v. R.C.*, 108 Ill. 2d 349, 356 (1985); *People v. St. Pierre*, 122 Ill. 2d 95, 114 (1988). This rule applies equally to statements, like Jessica's, that were not directly inculpatory, but were cited by the State as indicative of guilt. *People v. Dennis*, 373 Ill. App. 3d 30, 51 (2d Dist. 2007); *Wright*, 2016 IL App (5th) 120310, ¶¶33-34.

An improperly admitted statement by the defendant is less likely to be harmless where, as here, it was not duplicative of any other statement. *Cf., People v. Salamon*, 2022 IL 125722, ¶¶123-27 (improperly admitted statement harmless where defendant made separate, admissible confession).

And such error is even less likely to be harmless where the statement "was the foundation of the State's case," as Jessica's was. *R.C.*, 108 Ill. 2d at 356. In its opening statement, the prosecutor told jurors they would see the "very interesting" re-enactment video, and that Dr. Denton watched the video

and would testify about it. (R218) Denton testified that the autopsy alone only allowed him to conclude "this was an asphyxial death," meaning a death caused by lack of oxygen. (R291, 300) Denton left the specific cause of death "open" because he "didn't have all the information" and needed "further investigation." (R300, 314) That consisted only of watching the re-enactment video, which led Denton to testify that the bed coverings "could not have killed" J.C. as Jessica depicted it. (R300-02, 315) Only after watching the re-enactment did Denton reach the more inculpatory conclusion that the "cause of death [was] asphyxia due to smothering and compression of the neck." (R302) The State then played the entirety of the re-enactment video. (R324; P.E.E1-E2) In its closing argument, the State told the jury Denton's conclusions were its most important evidence of guilt and the re-enactment video supported those conclusions. (R 502-03, 516) The State's emphasis on the video and Denton's opinions based solely on that video made its improper admission more prejudicial. *Dennis*, 373 Ill. App. 3d at 51; *Wright*, 2016 IL App (5th) 120310, ¶¶33-34.

As to the second factor, the State's other evidence was not overwhelming. Without the re-enactment video, the trial would have looked much different because the jury would never have seen the video and the State could not have pointed to it in support of Dr. Denton's testimony. Counsel did not move to suppress Denton's opinions that were based solely on the re-enactment. *See infra* Arg. II. But had the re-enactment itself been suppressed, counsel could have asked the court to bar or to limit Denton's testimony about the re-enactment. *See People v. Luna*, 2013 IL App (1st) 072253, ¶72 ("expert testimony may be excluded or limited under traditional

evidentiary rules"). For example, while an expert may offer opinions based on inadmissible facts, those underlying facts must be "of a type reasonably relied upon by experts in the particular field in forming opinions." Ill. R. Evid. 703. As the appellate court's opinion shows, a reasonable judge could have found either that doll re-enactments in general, or this particular doll re-enactment, did not meet that standard. Op.¶83; *see City of Chicago v. Anthony*, 136 Ill. 2d 169, 186 (1990) (determination of whether facts or data underlying opinion are the kind experts reasonably rely upon is within judge's discretion). A reasonable judge under these circumstances also may have limited Denton's opinion testimony for lack of foundation or due to unfair prejudice. *People v. McKown*, 236 Ill. 2d 278, 305, 311 (2010); *see also State v. Gonzalez*, 249 N.J. 612, 634 (2022) (expert may not testify to opinions based on defendant's inadmissible statement, thus finding plain error where physician testified that child's injuries were consistent with defendant's inadmissible confession).

At a fair trial without the re-enactment video, it would thus be reasonably likely that Dr. Denton's opinion testimony, the State's most important evidence, would be more limited. *See St. Pierre*, 122 Ill. 2d at 114 (prejudice analysis requires court to weigh effect of unlawfully admitted evidence on other evidence). And the remainder of Denton's testimony about cause of death was less inculpatory and more equivocal, given that he listed several possible causes of death and left the question "open" after the autopsy. (R300)

Even in combination with Denton's admissible testimony, the State's other evidence was not overwhelming. No physical evidence linked Jessica to

J.C.'s death. As in *King*, "the State's evidence in this case included no confession, no eyewitnesses, and no forensic evidence connecting [Jessica] to the crime." 2020 IL 123926, ¶40. Instead, the State had other circumstantial evidence, such as the Google search for "how do you suffocate," the absence of empty Albuterol vials from the apartment, and the evidence of financial motive. Op.¶¶113-18. But Jessica offered the jury explanations on all of these points, denying she committed the offense, denying she did the Google search prior to J.C.'s death, and testifying that she had emptied her garbage cans the day before J.C. died. (R458, 467-71, 487-88) And Taylor testified that it was *her* idea for Jessica to call the insurance company to see if the family could use that money to pay for the funeral. (R406)

The jury should have been tasked with weighing the State's circumstantial evidence and Denton's credibility possibly in more limited, equivocal testimony against the evidence of J.C.'s history of lung illness and the credibility of both Jessica and Taylor. *See People v. Cline*, 2022 IL 126383, ¶33 (jury must assess credibility of expert like any other witness). The question is not whether a reasonable jury could find Jessica guilty at such a trial, it is whether the State would have such an overwhelming case that there is no reasonable probability of a different outcome in the absence of the unlawfully obtained re-enactment video, which, combined with Denton's opinion testimony, was the State's most important evidence. *See Blue*, 189 Ill. 2d at 138 (error harmless only if it had "*de minim[i]s* impact" on outcome); *People v. Lucious*, 2016 IL App (1st) 141127, ¶45; *Stanley v. Bartley*, 465 F.3d 810, 814 (7th Cir. 2006) (both holding "reasonable probability" of different outcome need not be "50 percent" or greater to show

prejudice); *see also People v. Moore*, 2020 IL App (1st) 182535, ¶¶27-29 (evidence of constructive possession "closely balanced" despite strong circumstantial evidence of guilt, including that drugs found alongside letter to defendant were packaged similarly to drugs in defendant's actual possession, where defendant offered contradictory evidence); *State v. Fakes*, 51 S.W.3d 24, 35-36 (Mo. Ct. App. 2001) (*Miranda* violation not harmless despite "abundance of evidence to support conviction," where the error interfered with the jury's ability to fairly weigh defendant's credibility against proper evidence); *United States v. McLeod*, 755 Fed. Appx. 670, 676 (9th Cir. 2019) (Molloy, J., dissenting) (noting defendant presented evidence that extracted cellphone data can have "significant errors").

Finally, under the second prong of the plain-error doctrine, the error here was so serious that it denied Jessica a fair trial, regardless of the strength of the State's evidence. As the appellate court found, the record supports many troubling inferences about law enforcement's actions in obtaining the re-enactment video. The court questioned Denton's testimony as to whether the re-enactment was "medically necessary or simply a way to assist a criminal investigation." Op.¶83. The court likewise found "DCFS appeared to be working effectively as an agent of the police," and "wonder[ed] whether this was by coincidence or design." Op.¶84. The court thus inferred "the real purpose was to obtain incriminating information, by word or act," through a "coordinated effort" to "intentional[ly] circumvent[] ... *Miranda*." Op.¶¶84-85, 97.

If this Court agrees with that assessment, even if it also agrees the evidence was "overwhelming," these improper law-enforcement tactics are

precisely the kind calling for "corrective action" under the second prong of the plain-error doctrine to "preserve the integrity of the judicial process." *Blue*, 189 Ill. 2d at 138-39; *see, e.g., People v. Sandridge*, 2020 IL App (1st) 173158, ¶¶25-27 (finding second-prong plain error where it was "not far-fetched to draw a negative inference" that an officer intentionally destroyed notes to circumvent a subpoena); *United States v. Stewart*, 388 F.3d 1079, 1090-91 (7th Cir. 2004) (where statement obtained through "deliberate circumvention of *Miranda*," the "conviction cannot stand" because error "affected [defendant's] substantial rights" and thus constituted plain error).

This Court should reverse the judgment of the appellate court and remand for a new trial.

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

The courts below were correct that law enforcement should have informed Jessica of her rights before the re-enactment. That failure, however, should have resulted in the suppression of any statements Jessica made during the re-enactment. That alone is reason to remand for a new trial.

But the re-enactment video was not the only thing that should have been suppressed. Dr. Denton acknowledged he reached a conclusion as to cause of death only after watching the video. And he offered opinion testimony based solely upon what he saw in the video. The State then argued Denton's testimony was its most important evidence of guilt, even telling the jury Denton's testimony alone proved Jessica's guilt.

Crucial portions of Denton's testimony were the direct fruits of the re-enactment video. Counsel could have, and should have, argued for the suppression of both the video and these portions of Denton's testimony as fruits of the re-enactment's poisonous tree, under either the Fourth or Fifth Amendments. If this Court agrees the re-enactment was the product not only of a *Miranda* violation, but also a constitutional violation, this Court should, as a matter of ineffective assistance of counsel, remand for a new trial with instructions to suppress the re-enactment video, Jessica's statements during the re-enactment, and any of Dr. Denton's opinions that were based upon his viewing of the illegally obtained video.

A defendant has the right to effective assistance of counsel at trial. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §8; *Strickland v.*

Washington, 466 U.S. 668, 685-86 (1984). Counsel is constitutionally ineffective when his performance is unreasonable and there is a "reasonable probability" the outcome would have been different absent his error. *Id.* at 687-88. Where the question is whether counsel was ineffective for failing to file a motion to suppress evidence, this test is met when 1) the unargued motion would have been meritorious, and 2) there was a reasonable probability of a different outcome had the evidence been suppressed. *People v. Henderson*, 2013 IL 114040, ¶15. This Court reviews *de novo* whether counsel was ineffective. *People v. Hale*, 2013 IL 113140, ¶15.

A. Constitutionally "Involuntary" Statement

Had counsel argued not only the *Miranda* violation, but that Jessica's statements and actions during the re-enactment were constitutionally involuntary, that claim would have been meritorious.

The State may not compel a defendant to offer evidence against herself. U.S. Const. amends. V, XIV; Ill. Const. 1970, art. I, §§2, 10. This Court generally reads the Illinois constitution consistently with the federal constitution. *People v. Caballes*, 221 Ill. 2d 282, 309-10 (2006). However, this Court will interpret a provision of our constitution as more protective of individual rights than its federal counterpart if that reading aligns with the drafters' intent. *Id.* at 314. For example, this Court has found that Illinois's due process clause offers greater protections than the federal provision. *People v. McCauley*, 163 Ill. 2d 414, 440-41 (1994). Here, therefore, if this Court finds no violation of the federal constitution, but finds this case implicates the guarantee of "fundamental fairness" at the heart of the Illinois constitution, it should find our constitution prohibits the law-enforcement

conduct at issue. *Id.* at 441.

The State may not use a defendant's involuntary statement for any purpose. *Mincey v. Arizona*, 437 U.S. 385, 398 (1978). When the defendant requests suppression of her statement as involuntary, the State has the burden to prove voluntariness by the preponderance of the evidence. 725 ILCS 5/114-11(d) (2020); *People v. Braggs*, 209 Ill. 2d 492, 505 (2003).

This Court looks to the totality of the circumstances to determine whether the defendant made the statement voluntarily, "without compulsion or inducement of any sort." *People v. Gilliam*, 172 Ill. 2d 484, 500 (1996). Courts consider both the defendant's personal characteristics and the conduct of law enforcement, such as the legality and duration of the interrogation, the use of physical or mental abuse, and whether the defendant was admonished pursuant to *Miranda*. *People v. Willis*, 215 Ill. 2d 517, 536 (2005).

Mirroring its *Miranda* custody analysis, the appellate court found that in light of Jessica's personal characteristics and the absence of strong-arm police tactics, it was "required to find [Jessica's] statements and actions voluntary." *People v. Logan*, 2022 IL App (4th) 210492 ("Op."), ¶¶95-97. At the same time, the court again separately "pause[d] to note [its] concern over ... the facts of this case." Op.¶97. The court condemned law enforcement's actions in even stronger terms, finding it "obvious" that DCFS telling Jessica she had to do the re-enactment was "coercive," particularly where Jessica "made it clear she did not wish to return" to her former apartment. Op.¶97. Adding to the coercive nature of the interrogation was the fact that Matthews "isolated [Jessica] from the support of her 'mother figure.'" Op.¶97. Finally, the court found the record allowed an inference that law enforcement's

conduct constituted "an intentional circumventing of *Miranda*." Op.¶97. The court found this "'push[ed] the envelope' of what may be legal," and wondered whether "the subjective intent" of law enforcement may someday be considered "in a voluntary statement analysis." Op.¶97.

The appellate court was wrong to exclude these factors from its analysis because they were just as relevant as the factors the court found dispositive. As this Court recently reiterated, the Fifth Amendment not only proscribes physical abuse, but also "more subtle forms of police coercion, including psychological pressure." *People v. Salamon*, 2022 IL 125722, ¶83 (citing *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991); *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963) (threatening suspect with loss of custody of children was coercive)).

Police conduct can be "coercive" even when it is not abusive. *People v. Easley*, 148 Ill. 2d 281, 312 (1992). The question is whether improper law-enforcement conduct was "causally related" to the defendant's statement. *Id.* Coercive conduct may thus include "deception," such as when the State has an undercover informant interrogate the defendant. *Id.* at 317. And it may include affirmative misstatements by State agents to the defendant about her rights and legal position. *See, e.g., United States v. Giddins*, 858 F.3d 870, 881-83 (4th Cir. 2017) (tactics "unduly coercive" where detective told defendant he could not get his car back from police unless he answered questions related to criminal investigation) (citing *Garrity v. New Jersey*, 385 U.S. 493, 497-500 (1967) (statement involuntary where officials' words would have led a reasonable person to believe her choice was to discuss incident or lose her job)); *see also Johnson v. State*, 268 So. 3d 806, 809-10 (Fla. 4th DCA

2019) (statement involuntary where it resulted from defendant's "delusions as to [her] true position" after being misinformed by police, emphasizing that "misrepresentations of law" are "much more likely to render a suspect's confession involuntary" than factual misrepresentations); *United States v. Lall*, 607 F.3d 1277, 1285-86 (11th Cir. 2010) (same, noting agent's misstatment of law may be the most significant factor in assessing voluntariness). In short, a statement is involuntary when it results from "police overreaching." *Easley*, 148 Ill. 2d at 312.

Jessica's statements and actions during the re-enactment were constitutionally "involuntary" for many of the same reasons she was in "*Miranda* custody," including that she was isolated from her family. Two factors, however, are particularly indicative of police overreach. First, as both courts below found, law enforcement should have informed Jessica of her rights prior to the re-enactment. (R87, 96-97); Op.¶97. That was never done, however not when the DCFS investigator relayed the detective's request for a re-enactment, not when the detective called Jessica to arrange for the re-enactment, and not when Jessica was alone in her apartment with five State agents who intended to record her interrogation. The absence of *Miranda* warnings weighs heavily in favor of finding Jessica's statements involuntary. *See, e.g., People v. Dennis*, 373 Ill. App. 3d 30, 46 (2d Dist. 2007) (even where interrogation lasted only 10 minutes, statement involuntary, in part, due to *Miranda* violation); *cf., People v. Richardson*, 234 Ill. 2d 233, 241-42, 263-65 (2009) (statement voluntary where defendant Mirandized and mother present); *see also Lall*, 607 F.3d at 1285 (*Miranda* violation creates presumption that statement was not voluntary).

And perhaps most importantly, Jessica's "agreement" to perform the re-enactment was no agreement at all because she was affirmatively misinformed beforehand by a State agent as to her rights and legal position. While Dr. Denton asked Detective Matthews for a video-recorded re-enactment, Matthews himself was not the first person to ask Jessica to do this. Instead, that was DCFS investigator Tate. Defense counsel failed to establish whether Matthews asked Tate to talk to Jessica about the re-enactment, but Matthews denied asking Tate to tell Jessica she was required to perform the re-enactment, (R74), indicating he did discuss it with Tate. But regardless of what Matthews told Tate, it is undisputed Tate told Jessica that both DCFS and the police "need[ed]" her to do a video-recorded re-enactment and it was "best to get this done" so the investigations could "move forward." (R48-51) Jessica did not want to participate, but believed she had no choice. (R49, 55, 66); *see Com. v. Novo*, 442 Mass. 262, 268-69 (2004) (statement involuntary after law enforcement gave defendant "plainly untrue ... misrepresentation" of his rights).

Matthews then spoke with Jessica on the phone before the re-enactment and in person on the day of the re-enactment, but did nothing to dispel the notion Jessica was required to participate. (R69-74) While he asked Jessica if she was "willing to participate," he also told her the re-enactment was being done at Dr. Denton's request, not as part of a criminal investigation. (R73-74) This aligned with Jessica's testimony that, according to Matthews, the re-enactment was mere "standard procedure." (R69); *see Easley*, 148 Ill. 2d at 318 (statement involuntary, in part, where it was induced by informant who told defendant his answers would be relayed to a

defense attorney); *Giddins*, 858 F.3d at 883 (statement involuntary, in part, where defendant asked if it was "normal procedure" to answer detective's questions before getting his car back, and detective said it was); *see also Salamon*, 2022 IL 125722, ¶107 ("The employment of a subtly coercive tactic under the guise of a routine procedure allows police to trespass on the rights shielded by *Miranda* and [the Fifth Amendment]. We cannot condone such tactics, which are antithetical to our system of justice.").

Law enforcement, in other words, affirmatively misinformed Jessica as to her rights and legal position, improperly inducing her to perform the re-enactment and answer questions. Those statements and actions were not voluntary under our constitutions, and thus should have been suppressed had counsel requested such relief.

B. Illegal "Seizure" under Fourth Amendment

Even if the re-enactment did not violate Jessica's right against self-incrimination, an alternative argument that it was the product of an illegal seizure would have been meritorious.

Our constitutions protect individuals against unreasonable seizures by law enforcement. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. I, §6. Officers may seize a person without her consent when they have probable cause to believe she has committed a crime. *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). Likewise, the police may perform "a temporary investigative seizure," or "*Terry* stop," when they have reasonable suspicion of criminal activity. *Id.* at 177.

Here, however, the police did not have probable cause to believe Jessica had committed a crime when they asked her to perform the re-

enactment. On the contrary, it was precisely because the police lacked probable cause to arrest Jessica, based on Dr. Denton's inability to draw an inculpatory conclusion after the autopsy, that they sought to have Jessica perform the re-enactment. Similarly, even if Detective Matthews was aware of facts supporting a reasonable suspicion that Jessica had committed a crime, the highly formal interrogation during the video-recorded re-enactment cannot reasonably be described as "a *Terry* stop." *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (reasonable suspicion only allows officer to "briefly" detain person and ask a "moderate number of questions"). Instead, the Fourth Amendment question here is whether the re-enactment was a "consensual" encounter or an unreasonable "seizure." *People v. Kveton*, 362 Ill. App. 3d 822, 831 (2d Dist. 2005).

A person is "seized" by law enforcement when her freedom of movement is constrained by force or show of authority, such that a reasonable person would have believed she was not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980). This Court looks to the totality of the circumstances to determine whether a person was seized by the police. *Id.* As with "*Miranda* custody," relevant factors include "the understanding of the defendant," the length of the interrogation, the number of officers involved, how the defendant arrived at the interrogation, the venue and method of the interrogation, whether the police told the defendant she was free to decline to answer questions and free to leave, and, relatedly, whether *Miranda* warnings were given. *People v. Lopez*, 229 Ill. 2d 322, 346 (2008); *Florida v. Bostick*, 501 U.S. 429, 439 (1991). These last two factors are particularly important because even where the police never told the

defendant she was under arrest and never touched her or used typical "arrest procedures," she still may have been illegally detained if the officers never told her she was free to leave. *People v. Washington*, 363 Ill. App. 3d 13, 24 (1st Dist. 2006).

The same factors indicating *Miranda* custody and constitutional involuntariness also indicate Jessica was unreasonably seized during the re-enactment. Again, this is particularly true where law enforcement not only failed to inform Jessica she was free to refuse to participate, free to refuse questioning, or free to leave, but an agent of the State, speaking with the authority of DCFS, told her she had no choice but to participate. Where all of this is true, and Jessica herself testified that she believed she had no right to refuse the request, these factors far outweigh the factors cited by the appellate court: that the re-enactment occurred in Jessica's former apartment, that she drove herself there, and that the police did not use strong-arm tactics against her. Op.¶¶106-07.

Because a reasonable person in Jessica's shoes would not have felt free to decline law enforcement's request that she participate in a video-recorded re-enactment and interrogation, she was illegally seized in violation of the Fourth Amendment. *See Kveton*, 362 Ill. App. 3d at 834-36 (citing *Gherna*, 203 Ill. 2d at 180) (both finding police conduct would have led reasonable person to believe she was not free to decline officer's requests, even where police did not physically restrict defendants' movements); *State v. Werner*, 9 S.W.3d 590, 600 (Mo. 2000) (finding illegal seizure on same grounds as *Miranda* custody). Had counsel made such a motion, it would have been meritorious.

C. Fruit of the Poisonous Tree

If this Court agrees the re-enactment was the product of a constitutional violation, not just a *Miranda* violation, this would have required the suppression of not only the re-enactment video, but also the fruits of that illegally obtained evidence that is, Dr. Denton's opinions that were entirely based on his viewing of the video.

Under the "fruit of the poisonous tree doctrine," when the State obtains a statement from a defendant in violation of her Fourth or Fifth Amendment rights, it is not only the resulting statement that must be suppressed, but "any evidence ... obtain[ed] by exploitation of that constitutional violation," including "physical or testimonial evidence derived from" the statement. *People v. Winsett*, 153 Ill. 2d 335, 351-55 (1992). As opposed to a mere *Miranda* violation, which only bars the State from using the statement in its case-in-chief, where the police procure a statement through an illegal seizure, coercive tactics, or other "methods offensive to due process," the statement and the fruits of that statement must be barred from the trial. *Id.* at 359.

Here, much of Denton's testimony was solely derived from the re-enactment video the State obtained in violation of Jessica's constitutional rights. Denton testified that J.C.'s autopsy alone did not allow him to come to a definitive conclusion as to cause of death, saying he "didn't have all the information" he needed. Instead, while listing several possible causes of death, he "left it open" and asked Detective Matthews to have Jessica perform a re-enactment. (R300) It was only after watching the re-enactment video that Denton reached the inculpatory conclusion that J.C. died by "asphyxiation due to smothering." (R302, 315-16) Denton also testified to his

specific opinions about what he saw in the video, saying J.C. could not have died in the position Jessica put the doll. (R302) Then, in his closing argument, the prosecutor declared Denton's testimony *alone* proved guilt beyond a reasonable doubt, pointing the jury to portions of the re-enactment video Denton relied upon to form his opinions. (R502-03, 515-16)

There can be no question this crucial evidence was the fruit of the re-enactment video. If this Court agrees the police procedures in this case violated either the Fourth or Fifth Amendment, this is precisely the kind of case where the exclusionary rule should apply. *Easley*, 148 Ill. 2d at 318. Matthews knew Denton was unable to reach a conclusion as to cause of death after the autopsy, and that he could not reach an inculpatory conclusion without seeing a video-recorded re-enactment. Instead of asking Jessica to perform the re-enactment with proper *Miranda* warnings, Matthews instead had a DCFS investigator make this request. Whether or not Matthews told the investigator to tell Jessica she was required to perform the re-enactment, that is precisely what happened. Then Matthews did nothing to disabuse Jessica of her belief that her participation was required. The failure of law enforcement in this case to take the simple step of admonishing Jessica under *Miranda*, and instead affirmatively misinforming her that she was required to talk, is precisely the kind of improper police procedures offensive to due process the exclusionary rule was created to deter.

D. Prejudice

If this Court agrees the re-enactment video was the product not only of a *Miranda* violation, but also a constitutional violation, it should remand for a new trial because there is a reasonable probability the outcome of the trial

would have been different had the State been barred from utilizing both the re-enactment video and Denton's conclusions based on that video. *Henderson*, 2013 IL 114040, ¶15.

The appellate court did not address whether counsel's failure to raise a constitutional claim in his suppression motion was prejudicial, but elsewhere found the State's evidence of guilt "overwhelming." Op.¶¶98, 108, 113-19. Contrary to the court, the evidence of guilt was not overwhelming, such that the *Miranda* violation alone was prejudicial. But the evidence would have been even more closely balanced, of course, had Jessica's counsel successfully suppressed both the re-enactment video and Denton's opinions based on that video. While the re-enactment video was crucial to the State's case, the prosecutor's closing argument shows Denton's testimony was even more crucial. Indeed, the prosecutor said Denton's testimony was the most important evidence, and it alone proved guilt. (R502-03) Importantly, the prosecutor was referring here to Denton's conclusions that he did not reach until after watching the illegally obtained re-enactment video. *See Giddins*, 858 F.3d at 886-87 (as to prejudice, considering not just improperly admitted statement, but evidence obtained as a result of that statement and prosecutor's argument emphasizing that evidence).

This case would have looked far different had the State been forced to rely upon its circumstantial evidence and Denton's more limited testimony as to his tentative post-autopsy conclusions. (R300); *see, e.g., People v. Moore*, 2020 IL App (1st) 182535, ¶¶27-29 (evidence closely balanced where State presented strong circumstantial evidence but defendant presented contradictory evidence). And it would have looked even more different had

counsel not made other errors allowing the jury to hear overly prejudicial evidence. *See infra* Arg. III. Because there would be a reasonable probability of a different outcome at a fair trial where both the re-enactment video and the fruits of that illegally obtained evidence were suppressed, this Court should remand for a new trial with instructions to suppress that evidence. *See People v. Lucious*, 2016 IL App (1st) 141127, ¶45; *Stanley v. Bartley*, 465 F.3d 810, 814 (7th Cir. 2006) (both holding *Strickland* prejudice only requires showing a "reasonable chance" of a different result, not necessarily a "50 percent" or greater chance).

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

Even after the court denied the motion to suppress the re-enactment video, counsel still had a duty to ensure that video contained no irrelevant, overly prejudicial evidence. Counsel failed to do this when he allowed the jury to hear Jessica tell Detective Matthews during the re-enactment about her prior contacts with DCFS. Similarly, even if the State was properly allowed to play the recorded phone calls between Jessica and J.C.'s father, counsel failed to request the calls be redacted to remove overly prejudicial statements by Jessica.

If this Court finds no error in admitting the re-enactment video and Dr. Denton's opinions based on that video, it should still remand for a new trial because there is a reasonable probability the jury would have reached a different result had counsel not failed to ensure the exhibits were properly redacted. But if this Court agrees the re-enactment video or Denton's related opinions, or both, should have been suppressed, the denial of Jessica's right to a fair trial is only more clear in light of the cumulative effect of these errors.

A defendant is entitled to effective assistance of trial counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8. Counsel is ineffective where his representation was unreasonable and there is a reasonable probability the result would have been different, but for counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 685-87 (1984). As to prejudice, a defendant need not prove she would have been acquitted, only that a different outcome was reasonably likely. *Id.* at 693-94; *see also People v.*

Lucious, 2016 IL App (1st) 141127, ¶45; *Stanley v. Bartley*, 465 F.3d 810, 814 (7th Cir. 2006) (both holding *Strickland* prejudice does not require defendant to prove a different outcome would be more likely than conviction). This Court reviews *de novo* whether counsel was ineffective. *People v. Hale*, 2013 IL 113140, ¶15.

A jury's verdict should rest only upon relevant evidence. *People v. Gregory*, 22 Ill. 2d 601, 602-03 (1961). Evidence is relevant when it tends to make the existence of any material fact "more probable or less probable than it would be without the evidence." Ill. R. Evid. 401. Evidence of prior bad acts, for example, may be admitted when it is relevant to a material fact, such as "intent, identity, motive or absence of mistake." *People v. Robinson*, 167 Ill. 2d 53, 63 (1995). However, such evidence is inadmissible when it only serves to inflame the jury by showing the defendant's bad character. *People v. Illgen*, 145 Ill. 2d 353, 365 (1991); Ill. R. Evid. 404(b). This reflects the principle that "the law distrusts the inference that, because a person committed other crimes or bad conduct, [she] is more likely to have committed the crime charged." *People v. Brown*, 319 Ill. App. 3d 89, 99 (4th Dist. 2001). A court, therefore, must exclude such evidence when "its probative value is substantially outweighed by the danger of unfair prejudice." Ill. R. Evid. 403. And when the evidence of prior bad acts is contained in an otherwise admissible statement, the portions at issue must be removed unless doing so "would seriously impair its evidentiary value." *People v. Lampkin*, 98 Ill. 2d 418, 430 (1983).

While Jessica's counsel filed a motion to suppress the re-enactment video, his duty to limit the effects of that video did not end when the motion

was denied. Rather, counsel had a duty to inspect the video and the State's other exhibits, and to request redaction of any portions that were substantially more prejudicial than probative. *People v. Fillyaw*, 409 Ill. App. 3d 302, 315 (2d Dist. 2011). Here, however, just as counsel failed to listen to the voicemails from Jessica's phone before the State played them, allowing the jury to hear irrelevant, prejudicial statements, (R358-59), counsel also failed to vet the State's other exhibits.

The result was that the jury heard several highly prejudicial statements by Jessica that had little probative value. First, during the re-enactment, Matthews questioned Jessica about J.C.'s medical history. (P.E.E1 9:21:44-9:25:58) Jessica volunteered that she took J.C. to the hospital with a bump on his head when he was two months old, at which point "DCFS got called" and created a "safety plan." (P.E.E1 9:25:58-9:26:45) While Jessica said DCFS "dropped" that case, this reference to prior DCFS involvement had no bearing on the charged offense, and instead only could have served the improper purpose of allowing the jury to infer Jessica had a propensity to abuse or neglect her children. *See In re Estate of Jackson*, 334 Ill. App. 3d 835, 845 (1st Dist. 2002) (evidence of "prior contacts with DCFS" allows trier of fact to infer pattern of child neglect). And counsel not only failed to have this portion of the video redacted, he affirmatively had Matthews repeat for the jury that Jessica discussed her prior "DCFS involvement" during the re-enactment. (R329)

Counsel likewise failed to ensure the recorded phone calls between Jessica and J.C.'s father only contained evidence relevant to some proper purpose. In several calls, Jessica is heard yelling and cursing at J.C.'s

brother, including when she yelled at him to "close that fucking window, you pissin' me off!" (P.E.Q1#200 2:25, 6:00, #20 1:15) In another call, she told J.C. "[y]ou gonna fuck yourself up" as a child cries in the background, then later said J.C. is "a beast, he don't care, he's gonna try any goddamn thing in the book." (P.E.Q1#368 0:32, 4:02) Most prejudicially, in the last call played for the jury, Jessica said J.C.'s brother broke her television and, as punishment, she "dragged all his toys to the dumpster." (P.E.Q1#606 Clip 1 0:02-0:15) While a child cried in the background, she added that if "I don't have no TV to watch, you're not gonna have no damn toys to play with." (P.E.Q1#606 Clip 1 0:22-0:40) Jessica later yelled at her children and described J.C.'s brother as "annoying as fuck." (P.E.Q1#606 0:30, 2:00) None of these comments had any probative value as to the charged offense, and removing them would have done nothing to affect the evidentiary value of the exhibits. *Lampkin*, 98 Ill. 2d at 430.

Instead, these easily-redacted portions of the exhibits could only have served as improper character and propensity evidence. Counsel's failure to request the exhibits be redacted to remove this overly prejudicial material was unreasonable. *See, e.g., People v. Davila*, 2022 IL App (1st) 190882, ¶76 (defendant's video-recorded interrogation should have been redacted to exclude references to "sex offender" acquaintance); *People v. Moore*, 2012 IL App (1st) 100857, ¶¶49-51 (counsel unreasonable for failing to seek redaction of interrogation video to remove references to defendant's prior act of domestic violence).

The appellate court assumed counsel's performance was unreasonable, but found this did not deny Jessica a fair trial because the State had

"overwhelming" evidence of guilt. *People v. Logan*, 2022 IL App (4th) 210492 ("Op."), ¶¶112-19, 125-27. The court was incorrect for two reasons.

First, it ignored the longstanding rule that this *type* of inadmissible evidence is particularly prejudicial. Ill. R. Evid. 403; *People v. Moore*, 2020 IL 124538, ¶45 (citing *People v. Walker*, 211 Ill. 2d 317, 338 (2004); *Old Chief v. United States*, 519 U.S. 172, 180-81 (1997)). As this Court recently noted, such evidence may "lure" the jury into convicting the defendant by "overpersuading" them the defendant is a "bad person" who likely committed the charged offense, or, "worse," would likely commit future offenses if acquitted. *Moore*, 2020 IL 124538, ¶45 (quoting *Old Chief*, 519 U.S. at 180-81). As in *Moore*, counsel's failure to prevent the jury from hearing Jessica's irrelevant exclamations and, especially, her references to prior DCFS contacts was "highly prejudicial." *Id.* ¶46.

And it denied Jessica a fair trial because the State's evidence of guilt was not overwhelming. The State had no physical evidence and no confession. Instead, its case depended upon circumstantial evidence and the credibility of Dr. Denton, whose testimony was described by the State as its most important evidence. (R502-03); *see People v. Cline*, 2022 IL 126383, ¶33 (trier of fact must weigh credibility of expert like any other witness). Jessica's defense likewise rested upon her own credibility. Indeed, this trial presented a credibility contest, in that the jury had to weigh Jessica's explanation for J.C.'s death against Denton's opinion that Jessica's explanation was impossible. *See, e.g., Davila*, 2022 IL App (1st) 190882, ¶68 (evidence not overwhelming where State had no physical evidence and no direct confession, and jury tasked with weighing credibility of identification witness who knew

defendant against defendant's denials of guilt). As this Court has repeatedly held, errors are actually prejudicial, especially serious errors like this, where the verdict depended upon the jury's credibility assessments. *Moore*, 2020 IL 124538, ¶52; *People v. Sebby*, 2017 IL 119445, ¶¶48-51.

This Court should find the judge's denial of Jessica's motion to suppress the re-enactment video alone requires a new trial. The prejudice is only more clear if Dr. Denton's conclusions based upon the re-enactment video also should have been suppressed. But counsel's errors at trial were prejudicial independent of the suppression issues, and only add to the prejudice if this Court agrees with one or both of Jessica's suppression arguments. *See People v. Rogers*, 172 Ill. App. 3d 471, 478 (2d Dist. 1988) (cumulative effect of "counsel's repeated failures" was prejudicial). While a reasonable jury could have found the State met its burden, the quality and quantity of the errors in this case make it reasonably likely the jury would have come to a different conclusion, but for those errors. *See, e.g., Moore*, 2012 IL App (1st) 100857, ¶¶22-33, 56 (reasonable probability of different outcome but for counsel's failure to redact exhibit, despite strong circumstantial evidence of guilt, including that defendant recently had sex with decedent, defendant received the last call from decedent's phone the night she died, and defendant lied to police about all of this). This Court should remand for a new trial, with instructions to the trial court to redact any irrelevant, overly prejudicial statements from the exhibits that remain admissible. *Davila*, 2022 IL App (1st) 190882, ¶76.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 15,000 words.

/s/Gilbert C. Lenz
GILBERT C. LENZ
Assistant Appellate Defender

APPENDIX TO THE BRIEF

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-21-0492
	)	Circuit Court No: 2019CF1648
	)	Trial Judge: Thomas Griffith
v	)	
	)	
	)	
LOGAN, JESSICA A	)	
Defendant/Respondent	)	

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PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-21-0492
	)	Circuit Court No: 2019CF1648
	)	Trial Judge: Thomas Griffith
v	)	
	)	
	)	
LOGAN, JESSICA A	)	
Defendant/Respondent	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

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Plaintiff/Petitioner	)	Reviewing Court No: 4-21-0492
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	)	
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Defendant/Respondent	)	

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Transaction ID: 4-21-0492
File Date: 11/4/2021 11:11 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-21-0492
	)	Circuit Court No: 2019CF1648
	)	Trial Judge: Thomas Griffith
v	)	
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LOGAN, JESSICA A	)	
Defendant/Respondent	)	

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	Jessica Logan (Defendant)	R 420	R 467	R 487	
July 21, 2021					
Sentencing Hearing					
Witness in Mitigtion					
	Hope Taylor	R 586			

Exhibits (List Attached)

E-FILED
Transaction ID: 4-21-0492
File Date: 11/4/2021 11:11 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-21-0492
	)	Circuit Court No: 2019CF1648
	)	Trial Judge: Thomas Griffith
v	)	
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	)	
LOGAN, JESSICA A	)	
Defendant/Respondent	)	

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Defendant	3	DEFENDANT'S EXHIBIT 3	E 9 - E 9
Defendant	4	DEFENDANT'S EXHBIT 4	E 10 - E 10
Defendant	5	DEFENDANT'S EXHIBIT 5	E 11 - E 11
Defendant	6	DEFENDANT'S EXHIBIT 6	E 12 - E 12
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People	A	PEOPLE'S EXHIBIT A	E 385 - E 385
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People	G	CELL PHONE - RETAINED BY CIRCUIT CLERK	E 400 - E 400
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IN THE CIRCUIT COURT OF MACON COUNTY, ILLINOIS
SIXTH JUDICIAL CIRCUIT

FILED
JUL 21 2021
SHERRY A. DOTY
CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS)
) Case No. 19 CF 1648
Vs.)
)
JESSICA A. LOGAN,)
Defendant

Date of Sentence July 21, 2021
Date of Birth: May 29, 1994
(Defendant)

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
I	First Degree Murder	October 6, 2019	720 5/9-1(a)(1)	M	33 Yrs. -0- Mos.	3 Yrs.
To be served at 100% pursuant to 730 ILCS 5/3-6-3						
___	_____	_____	_____	____	___Yrs. --Mos.	___Yrs.
To run concurrently with/consecutively to Count _____ and to be served at _____% pursuant to 730 ILCS 5/3-6-3						
___	_____	_____	_____	____	___Yrs. --Mos.	___Yrs.
To run concurrently with/consecutively to Count and to be served at % pursuant to 730 ILCS 5/3-6-3						

This Court finds that the defendant is:

_____ Convicted of a class _____ offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-4.5-95(b).

___X___The Court further finds that the defendant is entitled to receive credit for time actually served in custody from October 23, 2019 through July 20, 2021. The Defendant is entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

_____The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).

_____The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a)).

___The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse and mental health program. (730 ILCS 5/5-4-1(a)).

_____The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ____Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4). THEREFORE IT IS ORDERED that the defendant shall be awarded additional sentence credit as follows: total number of days in identified program(s)_____x 1.50 (1.25 for program participation before August 11, 1993) = _____days, if not previously awarded.

_____The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

_____IT IS FURTHER ORDERED the sentence imposed on Count ____ shall run consecutively/concurrently with/to the sentence imposed in case number _____ in the Circuit Court of ___ County.

_____ IT IS FURTHER ORDERED _____.

The Clerk of the Court shall deliver a certified copy of this order to the Sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is (___X_____effective immediately (_____stayed until_____).

DATE: July 21, 2021

ENTER: _____

Thomas E. Griffith, Circuit Judge

C 163

STATE OF ILLINOIS)
) SS.
COUNTY OF MACON)

The undersigned Clerk of the Circuit Court does hereby certify the above to be a true and complete copy of the Sentencing Judgment entered of record in said Court in the above entitled cause.

Signed and Sealed before me

Clerk of the Circuit Court

SHERIFF'S CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF MACON)

I certify that I have delivered the person named in the within Sentencing Judgment to

_____ on _____.

Dated _____.

By: _____
Sheriff

By: _____
Deputy

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
201 W. MONROE STREET
SPRINGFIELD, IL 62704

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
(217) 782-3528

FILED
September 20, 2021
APPELLATE
COURT CLERK

4-21-0492

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JESSICA A. LOGAN, Defendant-Appellant.	Macon County Case No.: 19CF1648

ORDER

This cause coming to be heard with proper notice having been served, and the Court being fully advised in the premises:

IT IS ORDERED that appellant's Motion for Leave to File Late Notice of Appeal is allowed. The Circuit Clerk is directed to file stamp the attached Late Notice of Appeal and efile it to the Fourth District Appellate Clerk.

Order entered by the court.

C 179

E-FILED
Transaction ID: 4-21-049?
File Date: 9/20/2021 9:36 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT
FILED
SEP 21 2021
SHERRY A. DOTY
CIRCUIT CLERK

No. 4-21-0492

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

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

LATE NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Ms. Jessica A. Logan
Appellant's Address:	Logan Correctional Center R.R. 3, P.O. Box 1000 Lincoln, IL 62656
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303, Springfield, IL 62704
Offense of which convicted:	First Degree Murder
Date of Judgment or Order:	July 21, 2021
Sentence:	33 years in prison
Nature of Order Appealed:	Conviction and Sentence

/s/ Catherine K. Hart
CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

C 180

2022 IL App (4th) 210492

NO. 4-21-0492

FILED
September 30, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
JESSICA A. LOGAN,	)	No. 19CF1648
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith Jr.,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Presiding Justice Knecht concurred in the judgment and opinion.
Justice Doherty specially concurred, with opinion.

OPINION

¶ 1 Following a June 2021 jury trial, defendant, Jessica A. Logan, was convicted of one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)). Prior to trial, defendant filed a motion to suppress any evidence obtained by the State during a video-recorded reenactment of the incident, claiming she was subject to a custodial interrogation without the benefit of the prescribed warnings pursuant to ***Miranda v. Arizona***, 384 U.S. 436 (1966). The trial court subsequently denied the motion.

¶ 2 Defendant appeals, arguing (1) the trial court erred in denying her motion to suppress evidence where "no detective ever admonished [her] as to her Fifth Amendment rights prior to the re-enactment" and (2) she was denied the effective assistance of counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2019, the State charged defendant by information with three counts of first degree murder (counts I-III) (720 ILCS 5/9-1(a)(1), (2) (West 2018)). Count I alleged defendant, without lawful justification and with the intent to kill or do great bodily harm, knowingly asphyxiated her 19-month-old son, J.C., causing his death.

¶ 5 A. Motion to Suppress

¶ 6 In July 2020, defendant filed a motion to suppress video-recorded statements she made to police. Defendant argued she was subject to custodial interrogation without first being informed of her ***Miranda*** rights during a "reenactment/interview" of the events that transpired on the night of J.C.'s death. Defendant asserted the reenactment "lasted five or six minutes" and "the remaining time was dedicated to asking [her] interrogatory questions unrelated to the reenactment." Thus, defendant argued, her statements should be suppressed. The State responded, conceding the police did not inform defendant of her ***Miranda*** rights, but asserted the "reenactment and conversation that ensued at defendant's residence was not a custodial interrogation, and therefore, there was no requirement for ***Miranda*** rights."

¶ 7 In October 2020, the matter proceeded to an evidentiary hearing on defendant's motion to suppress. Leandra Tate, an investigator with the Illinois Department of Children and Family Services (DCFS), testified she "was assigned to the investigation when it came in" and met with defendant at the Anna Waters Head Start Preschool to "have a conversation about the reenactment." Although Tate could not recall "word for word," she testified she "basically told [defendant] *** we need to do a reenactment. We do that in all of our own child death cases. It will be a detective, at least myself and her, where it will be videotaped." Tate further testified she told defendant they "need[ed] to do the reenactment so [they could] move forward on the

investigation." Tate acknowledged defendant "didn't really want to do it, but *** there was no saying no. She didn't refuse to do it, if that's what you're asking." Defendant "was worried about having to go back into the apartment, and emotionally she was not looking forward to that at all." She did not "want to have to go back in the apartment. Her son passed away there. She was very upset." According to Tate, Decatur police officer Eric Matthews arranged the time and place of the reenactment.

¶ 8 On cross-examination, Tate testified she told defendant the reenactment was

> "just a process for DCFS and for criminal investigation that both parties would need the reenactment *** to better understand what happened in her home that night *** so it was best to get this done so we can move forward in the investigation for both DCFS and for criminal."

¶ 9 Hope Taylor, J.C.'s paternal grandmother, testified she was employed as a certified nursing assistant and acted as "a mother figure to [defendant]." Taylor was familiar with defendant's educational upbringing and stated defendant had been enrolled in an "Individualized Education Plan" (IEP) while in high school. Taylor explained defendant had to have her tests read to her, "[s]he would have unlimited test time, and her tests [were] broken down to where they're more explanatory for her *** where she [could] understand them." Defendant's IEP also included special education classes. Taylor recalled meeting with Tate sometime after J.C.'s death and recalled Tate telling defendant "she would have to do [the reenactment], and that is normal procedure in a child's death." Tate also informed Taylor and defendant the reenactment would be "set up" by Matthews.

¶ 10 Taylor testified the reenactment occurred at defendant's residence on October 17, 2019. Taylor, defendant, and defendant's four-year-old son arrived together. Upon their arrival,

Taylor saw "two or three detective cars" and observed Tate, another DCFS caseworker, as well as "Detective Matthews and two other detectives on the porch." Prior to that day, defendant had only returned to pack her belongings "because she didn't want to go back to the house, so she had made arrangements to move out to Bristol Gardens." When Matthews invited everyone inside, Taylor testified he "put his hand out and said, 'I think it's best to stay out.' " Taylor "sat on the porch with [defendant's] son for probably the first 15, 20 minutes" before walking to the park. The pair stayed at the park for "about another 15 minutes" and "walked back up to the house and just stood out waiting for them to come out."

¶ 11 Defendant testified she had been enrolled in an IEP since elementary school due to her difficulties with reading and comprehension. At some point after J.C.'s death, defendant spoke with Matthews over the telephone to set up a time for the reenactment. Matthews explained the reenactment "was standard procedure." Although defendant did not decline to participate in the reenactment, she "didn't feel like [she] had a choice" after her conversation with Tate. On the day of the reenactment, defendant testified she was upset because she "didn't want to replay the moment back in [her] head." However, she acknowledged she made no attempt to terminate the encounter early. She further acknowledged giving the detectives consent to search her cell phone and residence. Upon conclusion of the reenactment, defendant was allowed to leave the residence with Taylor and her other son.

¶ 12 Eric Matthews, a juvenile detective with the Decatur Police Department, testified he was the lead detective in the investigation related to J.C.'s death. Matthews testified the pathologist informed him that no cause of death had been identified following J.C.'s autopsy on October 7, 2019, and the pathologist "requested additional information and further investigation into the incident, including wanting a reenactment done of the incident." Matthews then

"scheduled a reenactment with [defendant]," which occurred 10 days later due to Matthews having "difficulty locating a toddler-sized mannequin to be used in the reenactment." During his telephone conversation with defendant, Matthews "explained to her about the request from Dr. Denton to have a reenactment" and "asked her if she would be willing to participate in that and she said that she would." Matthews denied telling defendant she was required to participate in the reenactment.

¶ 13 Shortly before the reenactment took place, Matthews testified he "spoke to [defendant] briefly on the *** front porch." He "asked Hope if she would mind staying outside with the child so that [they] wouldn't have any distractions while *** doing the reenactment inside." Defendant then "opened the locked front door *** and escorted [them] to the bedroom where the death took place." Matthews further testified he "asked Detective Appenzeller to come in order to video record the reenactment ***, and Sergeant Carroll came because it was a death investigation and he's overseeing the investigation." Although the officers carried their badges, they were not uniformed and were instead "wearing just dress shirts and dress pants and shoes." Defendant interacted exclusively with Matthews throughout the reenactment while Appenzeller operated the videotape. "Sergeant Carroll was in and out of the room for the majority of the time *** and Leandra Tate was in the room for most of the time, kind of standing back by the doorway." According to Matthews, none of the officers blocked any entryway or restricted defendant's freedom of movement inside the residence. Matthews could not recall "the other DCFS investigator *** being in the room much at all." Matthews acknowledged he did not advise defendant of her ***Miranda*** rights at any point before, during, or after the reenactment "[b]ecause she wasn't in custody or under arrest."

¶ 14 On cross-examination, Matthews testified he asked defendant several questions during the reenactment related to who treated J.C. for his breathing problems, who refilled J.C.'s breathing treatment prescription, what defendant was told regarding J.C.'s diagnosis, and when the last time J.C. saw his treating physician. However, Matthews acknowledged asking J.C.'s primary healthcare provider the same questions on October 15, 2019. Matthews claimed he repeated the questions to defendant "[f]or the benefit of the reenactment for Dr. Denton to hear her version of the account," but admitted he "had suspicions" after listening to defendant's 911 call and was attempting to compare answers.

¶ 15 Upon examination by the trial court, Matthews reiterated he conducted the reenactment based on his conversation with Denton and the uncertainty surrounding Denton's initial autopsy findings. Although not conducted in every case involving child deaths, Matthews told the court he had performed "[s]everal" reenactments in the past where there were similar uncertainties as to what occurred.

¶ 16 Following arguments, the trial court denied the motion to suppress. In doing so, the court stated:

> "I am troubled by this process. If you have a child death, and DCFS and the police officers want a reenactment based on comments from a pathologist, boy, there's some issues here. The defendant may well be a suspect.
>
> It seems to me, and that's obviously what Detective Matthews thought, *** somebody should tell the defendant at some point, understand the statements you make during the course of this reenactment may be used against you during the course of a murder investigation or a DCFS investigation. You may want to consult with a lawyer. Understand you don't have to participate in this

> reenactment, etc. None of that was ever done. And, again, it's troubling, but the question before the Court is not whether I'm troubled, but whether or not I believe this was a custodial interrogation."

¶ 17 In explaining its ruling, the trial court considered the fact defendant "voluntarily agreed to the interview and voluntarily traveled there." She "did not appear to be in any type of emotional distress during the course of the interview" and "appeared to be of average intelligence." The court noted defendant was "25, held a job, graduated from high school and took care of two children by herself in her own home. She spoke well during the course of the interview." Although the court "believe[d] she may have some type of reading disability," it did not find "any type of intelligence disability." The court further noted the reenactment "occurred at the defendant's residence with her mother figure really right outside the residence," and the "interview itself was about 31 minutes." The court did not have "any problem with the police officer keeping the mom figure outside of the residence because the other child was there." The court also found the mood of the reenactment was "not accusatory" and "low key." Despite the presence of three police officers, "[t]here was no showing of force during the course of the interview, no guns displayed, no badges displayed. *** There [were] no physical restraints, no handcuffs, no being told you can't leave the room or residence or anything of that nature." The court stated, "it was only *** Matthews that was conducting the questioning," and he was "very low key and polite as he tends to be." He "asked straightforward, albeit not forced questions."

¶ 18 Finally, the court noted defendant "was allowed to leave the house at the conclusion of the interview, was not arrested until *** six days later, and *** she also voluntarily agreed to a consent search of her phone and the residence."

¶ 19 B. Jury Trial

¶ 20 1. ***Joseph Sawyer***

¶ 21 In June 2021, the trial court conducted defendant's jury trial. Decatur police officer Joseph Sawyer testified he was dispatched to defendant's residence in the early morning on October 7, 2019, after a 911 call came in related to "a young child there that was no longer breathing." When Sawyer arrived, he observed defendant and Taylor seated on a sofa holding J.C. The minor was "unresponsive. He was cold to the touch. *** And he had *** foam coming out of one of his nostrils." Defendant and Taylor "appeared as if they were upset," and defendant was crying. When asked whether he had any other observations at that point, Sawyer stated, "when I was on scene, [defendant] appeared upset," but "it seemed that it was forced." Sawyer further stated, "she mimicked, in my opinion, the sound of crying ***. It was clear with Hope, when she was holding the child, that she [was] upset and crying and I saw tears, with [defendant] that wasn't the case."

¶ 22 After checking "for any signs of forced entry, foul play, anything like that," Sawyer "took [defendant] into another room and began [his] initial interview with her." Defendant told Sawyer she "put [J.C.] in bed at about 8 p.m. that evening. *** [S]he explained that she was going to be getting up or she had planned on getting up at midnight and at 2 a.m. to give him a breathing treatment *** which was a nebulizer Albuterol." Defendant explained, when J.C. was "first born[,] he had *** pneumonia a couple times. And when it gets cold outside he require[d] a breathing treatment in the evening." Defendant stated she had been giving J.C. treatments twice, each night, for the past four days "at midnight and two in the morning." She also told Sawyer she attempted "[c]hest compressions and mouth to mouth resuscitation" on J.C. that morning. Sawyer asked defendant where she kept the albuterol, and she told him "it was

kept in *** the closet hallway in between their bedrooms in the apartment." When Sawyer asked defendant if he could see the albuterol, "she found a box, but it was empty."

¶ 23 2. ***Justin Closen***

¶ 24 Decatur police officer Justin Closen testified he was Sawyer's backup officer on October 7, 2019. Closen testified he searched defendant's bathroom trash can that morning because he was "looking for evidence of a breathing treatment um—pieces to a nebulizer, *** small vials of Albuterol that would [be] administered via a nebulizer if a breathing treatment was administered at some point *** over the course of the evening." Closen also inspected defendant's kitchen garbage can, which was nearly full, for "anything associated with the administration of a breathing treatment." However, Closen found no empty vials of albuterol or any pieces of evidence that would have been associated with a nebulizer. Closen further testified he performed a protective sweep of defendant's residence, checking "specific areas, closets, things of that nature, where normally a *** nebulizer, things of that nature would have been kept," and was unable to locate any vials of albuterol.

¶ 25 3. ***James Calloway***

¶ 26 Decatur police officer James Calloway testified he extracted the contents of defendant's iPhone using "GrayKey and Cellebrite" software. Calloway explained he then "used [the] Cellebrite physical analyzer software to analyze that data" and compared the contents of the extraction with "the actual phone to see that data on it was correct." Calloway also identified People's Exhibit L as "the Google returns for the search warrant [he] did for the email account of [defendant]." Based on those results, a search of the phrase, "how do you suffocate," was conducted at 8:04 a.m. on October 6, 2019. Although Calloway could not determine whether any

hyperlinks were followed, he verified the results were accurate by locating the same search within the contents of defendant's phone extraction.

¶ 27 4. ***Scott Denton***

¶ 28 Dr. Scott Denton, a forensic pathologist with the McLean County Coroner's office, testified as an expert in forensic pathology. He identified People's Exhibit C as the autopsy and X-ray photographs taken over the course of his examination of J.C. When Denton received J.C.'s body, he "noted [J.C.] was wearing a diaper that was fairly clean *** so, it had been recently placed on his body." Denton also noticed J.C. was "relatively large" for a 19-month-old, "appeared very healthy, well developed, [and] well nourished. He had no dehydration, no evidence of disease. And then [Denton] noticed he had evidence of trauma on his body."

¶ 29 At the outset of his examination of J.C., Denton "started from head to toe." Denton observed "edema foam" coming out of J.C.'s nose and "more edema foam *** coming out his mouth." Denton testified, "when [***sic***] see this, you know, you're looking at some kind of asphyxial death." Denton explained asphyxia "encompasses a large number of conditions. Anything that will block the nose or mouth to prevent you from breathing oxygen, something that will obstruct the airway, such as food or an injury to the neck, or anything like that." However, there were "lots of things [Denton] ruled out," such as manual strangulation, as there were "no finger marks or bruising on [J.C.'s] neck." Denton "excluded pinching of the nose and pushing of the mouth together." He also "excluded blunt trauma" and looked for signs of drowning but "did not see any evidence of that."

¶ 30 The "most notable external injuries" Denton observed were "petechial hemorrhages or petechiae," which Denton identified as the "fine red dots on the skin where

capillaries have burst on [J.C.'s] face, his eyelids, *** and his neck." Denton explained petechiae are "a pressure phenomenon" where "the veins are compressed, but the arteries still pump. So the blood can't get back to the heart." Denton further explained, "if you compress the veins ***," they "start bursting and it's usually in the skin and certain conditions." Denton testified "the petechiae were very prominent in [J.C.'s] eyelids ****. They're prominent on both sides of the face and *** very prominent on the neck." Denton also observed "pressure blanching" on J.C.'s nose, which "indicate[d] that something was pushing on his nose and also on his chin." Given the "localized pressure" and absence of petechiae on J.C.'s chest and abdomen, Denton determined a child the same age as J.C.'s four-year-old sibling "would not have the strength to do this."

¶ 31 With respect to his internal examination of J.C., Denton observed "evidence of compression or impaired blood return to his heart." Denton noted J.C. "had petechiae in his heart and his thymus gland up in the chest area," a "very prominent" amount of edema foam in his lungs, and "swelling of his brain," which Denton testified were "very indicative of asphyxia and some kind of compression to his face."

¶ 32 After being informed of J.C.'s reported breathing problems, Denton "tested for influenza A and B," which came back negative. Denton stated, "I looked at the airways myself grossly with my eye. They were open. They were—there was nothing blocking [J.C.'s] airways. I did microscopic biopsies of all his organs including the airways, the lungs. I looked for microscopic asthma, microscopic virus infection *** and I saw none." Denton found "no evidence of allergic reaction." Denton also "submitted blood for toxicology analysis for drugs and poisons," which returned negative results. Finally, Denton "did a bacteria culture to make sure there was no bacteria in [J.C.'s] lungs or bacterial infection." Denton testified he "sent that to the microbiology lab and that was negative," and the following colloquy ensued:

> "And then *** I told everybody that I was doing more or further studies. And I told everybody it was gonna [*sic*] be pending further studies and investigation, but it looked he was—this was an asphyxia death possible suffocation, smothering, um—I left it open. Possibly strangulation. I didn't have all the information.
>
> And then I asked that they perform something called a child death investigation, which is standard in child deaths. That—that investigators whether it's the coroner, or a medical examiner, or police will go talk to the person at the home or person's at the home and *** try to find out what happened and correlate the autopsy findings."

When asked by the prosecutor if he "believe[d] that should be done in all child death cases," Denton responded,

> "That is standard practice, yes. In all child or infant deaths there is something called a doll reenactment, which is *** very emotional. But you actually take a doll and you ask the person to place the infant or child in the position they were found. First, they were placed and then how they were found. And you do that in the environment. And you try to do it as soon as you can after *** the death."

¶ 33 After reviewing defendant's video-recorded reenactment, Denton testified, "the doll was placed face down on a bed. There was a comforter and there was a fitted bedsheet. And it looked like *** the corner of the fitted bedsheet was over the head and then the comforter was over [the] body and [J.C.] was face down ***." According to Denton, the "most important" piece of information given was the possibility J.C. became entangled in his bedsheets. However, Denton concluded it "did not account for [J.C.'s] death. They could not have killed him in that

position that was shown on the video," because Denton had "never heard of a 19 month old getting entangled and then dying in bed sheets, especially a large 19 month [old], who's at 75th percentile." Despite being unable to determine the manner in which J.C. suffocated, "based on everything [he] put together," Denton opined J.C.'s cause of death was "asphyxia due to smothering and compression of the neck."

¶ 34 5. ***Eric Matthews***

¶ 35 After being assigned to defendant's case, Matthews testified he "read through the initial police reports and then the preliminary autopsy report." He also "obtained the copy of [defendant's] 911 call recording from [the] dispatch center," spoke with Sawyer regarding his observations, and "spoke with [J.C.'s] primary care physician, Angie King, about his medical history." Thereafter, Matthews "obtained a toddler size mannequin for use in the reenactment with [defendant]." He then "contacted her by phone and asked her to perform the reenactment at her apartment and she agreed." Following the reenactment, Matthews conducted a search of the home looking for albuterol. Matthews "looked in the closet where [he] was told that [defendant] normally keeps them. [He] looked in the garbage cans. Looked in all of the cabinets, the rooms, drawers." However, he "wasn't able to find it anywhere in the apartment."

¶ 36 On cross-examination, Matthews acknowledged having suspicions after listening to defendant's 911 call. Defense counsel then inquired:

> "Q. Okay. Where were indicators of guilt that you listed when you listened to 911? Why did you not think she was being sincere in the 911 call?
>
> A. I had attended a multi day training on 911 phone call analysis. And in this training um—the instructors, who had reviewed thousands of 911 calls in

different cases across county, they had analyzed different statements, and things that are said on 911 calls, that would be indicators of guilt.

In this particular call I noted that there were several. Um—for instance, she never once asked for help to the 911 dispatchers. It was almost a minute before she even told the dispatchers what she needed and what was going on."

¶ 37 6. ***Recorded Phone Calls***

¶ 38 During defendant's trial, the State played several clips from defendant's recorded phone calls with J.C.'s incarcerated father, Shawneen Comage, largely consisting of defendant describing her financial problems and Comage requesting money. On a phone call in June 2019, defendant said she was "trying to come up with something" but was unable to find employment due her lack of work experience. Defendant's supplemental security income (SSI) was going to be "cut *** off" starting in August. Defendant then listed "all kinds of bills" totaling several hundred dollars she did not know how she was going to pay before shouting at J.C.'s older sibling to "close that f*** window, you p*** me off."

¶ 39 On August 1, 2019, defendant stated her bank account was "overdrawn" because "Rent-A-Center was due." During the phone call, defendant told J.C., "you going to f*** yourself up" as a child cried in the background. Defendant was attempting to get approved for a loan to cover her monthly bills and expenses because "this s*** ain't going to cut it." Comage repeatedly requested defendant send him $200.

¶ 40 In a subsequent phone call on August 9, 2019, defendant told Comage she was "stressing out" and was going to quit her job because her shifts were too short and her paychecks were too small. Defendant complained her bills were "starting to get higher than usual," and she would be losing LINK benefits in September. Defendant was uncertain how she was going to

repay her $1000 loan, of which she sent Comage a $400 portion. Defendant still owed $1200 for her furniture and, despite getting "caught up" on most of her bills, defendant was unable to pay her bills for power and AT&T. Later, on August 26, 2019, Comage stated, "you know what I need," and defendant confirmed he was asking for money. Comage then told defendant to send him $60 and overdraft her account "as soon as [she got] to the house."

¶ 41 During a September 3, 2019 phone call, defendant again stated she had been "stressing" about how she was going to pay for her bills. Defendant listed bills totaling several hundred dollars which remained unpaid, including J.C.'s life insurance premium. Comage stated he could send funds to cover the insurance premium because "that's the main thing that needs to be paid." Defendant said she would "figure something out." Later, on September 12, 2019, defendant told Comage she "literally broke down" due to her unpaid bills. Defendant stated she was one month behind and was unable pay rent without being employed.

¶ 42 Finally, on October 2, 2019, while a child cried in the background, defendant said she threw one of her children's toys away because "we haven't had TV in over 4 days." Comage responded, "good." Defendant added that she told the child, "I don't got no TV to watch, you ain't going to have no toys to play with," and he was not going to get anything other than cake for his birthday. Comage asked when defendant was going to get her next "big check." Comage requested "$100 now and $100 later" so he could buy an "MP3 player" because he got bored watching the same programs on television whenever the prison locked down. Defendant's employer had recently "switched [her] to fulltime," but she had not paid any bills for October before exclaiming that one of her children was "being annoying as f***."

¶ 43 7. ***Angela King***

¶ 44 Angela King, a pediatric nurse practitioner at Crossings Healthcare, testified she had been J.C.'s primary healthcare provider since September 2018. King testified J.C. "had RSV bronchiolitis *** in 2018. And subsequently had some viral infections that caused a little bronchiolitis as well during that year." King testified J.C. was last treated for anything breathing-related in December 2018, and he received no further refills of his albuterol prescription after January 2019. In March 2019, J.C. was admitted to Decatur Memorial Hospital after being diagnosed with bronchiolitis. On September 9, 2019, King examined J.C. to address "some atopic dermatitis so, a rash. And *** a sore throat with a negative rapid strep test." Defendant also "complained that [J.C.] had a *** little bit of a cough, but no runny or stuffy nose." However, King listened to J.C.'s lungs and they were "clear." King also "did not see any record of a phone call" from defendant on October 4, 2019.

¶ 45 8. ***Patrick Delatte***

¶ 46 Patrick Delatte, an American Family Insurance agent, testified he issued defendant a $25,000 "whole life insurance policy" for J.C. in December 2018. Delatte identified People's Exhibit V as "the life insurance [policy] on [J.C.]," which included the policy's specifications and disclosures. The policy disclosed the total amount of coverage was $25,000, and defendant was obligated to pay $34.54 each month for 10 years. In order to claim the death benefit, the policy provided the death benefit would be paid to the insured's beneficiary after receiving "all claim requirements legally necessary in order to pay the claim," which included, "[p]roof of death of the insured." The policy defined satisfactory proof of death as "a final certified death certificate or other lawful evidence providing equivalent information that is acceptable to [American Family Insurance]." Additionally, the policy calculated the death benefit as the amount of insurance, plus the cash value of any existing dividend accumulation or

face value of any paid-up additions, minus any outstanding loan balances and past due premiums. No loans could be drawn against the policy until 2021, and Delatte testified there were no lapses in J.C.'s coverage. Delatte testified defendant submitted a "life insurance claim" related to J.C.'s death on October 7, 2019. During cross-examination, Delatte testified, "If the insured on the policy were to pass away, prior to the ten years, it would be paid out. The full 25,000." However, Delatte stated there is a two-year "contestability clause" in all life insurance policies. Delatte explained, "if a death claimed [***sic***] is turned in, in the first two years, the company *** could look in and figure out why *** the insured passed away to make sure that it was natural causes."

¶ 47 9. ***Leandra Tate***

¶ 48 Leandra Tate, a child welfare specialist with DCFS, testified she met with defendant, Taylor, and defendant's four-year-old son shortly after J.C.'s death and "put a safety plan in place." Tate stated her responsibilities as a child welfare specialist were to "go out, meet with the parents, interview the children separately," and work with the family "to try to make sure that the children are safe." However, Tate explained, "If I find out they're not [safe], then sometimes we put in safety plans or if in extreme cases or cases that have been going like on for a while *** then I remove children from the home."

¶ 49 10. ***Defendant***

¶ 50 Defendant testified on her own behalf and stated she was 27 years old and currently residing in Decatur, Illinois. Defendant was diagnosed with attention-deficit/hyperactivity disorder when she was five years old and attended special education classes "through college," due to her having difficulties with reading and comprehension. Defendant

stated, "I had to go into a separate room to get my test read to me ***. Because I couldn't concentrate around a lot of people."

¶ 51 Defendant stated she bought socks for J.C. and his sibling at Walmart on October 6, 2019. After returning home, defendant fed the children dinner and then "gave them a bath." Defendant "let them play and watch TV for a little bit. And about 8:30 [she] laid them down for bed." Defendant set alarms "to give *** [J.C.] a breathing treatment at twelve o'clock a.m. and three o'clock a.m." She also "put the albuterol medicine in the machine to get it prepared for *** the twelve o'clock *** breathing treatment." J.C.'s albuterol had been prescribed "[a]s needed," and defendant testified she had been administering albuterol treatments twice each night for the last three or four nights because J.C. was "congested" and had a "runny nose." According to defendant, she discarded the empty vials of albuterol in her kitchen trash can, which she claimed she emptied "the evening before."

¶ 52 Defendant missed her 12 a.m. alarm on October 7, 2019, because she "overslept." She eventually woke up at 3 a.m. and "went in [J.C.'s] room to give him a breathing treatment." Defendant "saw him laying in the bed," face down, with his left hand pointed up and his right arm pointed down, which was how J.C. ordinarily slept. When defendant picked J.C. up, she noticed he "had foam coming from his nose." Defendant testified she did not immediately call 911 because J.C. was "really stiff" and she "knew [J.C.] was already gone." Defendant also did not attempt CPR as J.C. was "cold and hard." Instead, defendant called Taylor at approximately 3:17 a.m., "told her that [J.C.] wasn't breathing and *** hung up the phone and immediately called 911" at Taylor's suggestion. When asked what she did during the 17 minutes between the time she woke up and called Taylor, defendant responded, "Nothing."

¶ 53 After the Macon County coroner retrieved J.C.'s body, defendant went with Taylor back to her house and spoke with other family members about how J.C. "could have passed." One of the possibilities discussed was suffocation, so defendant "Googled how do you suffocate." However, defendant claimed she learned "[n]othing" because she "didn't click on the link." Defendant denied making the search the day before J.C.'s death on October 6, 2019.

¶ 54 Defendant was also concerned about paying for J.C.'s funeral. Shortly after J.C.s death, defendant called Delatte and asked about using J.C.'s life insurance policy to pay for his funeral. Delatte told her "he was going to send a packet in the mail." Dellate did not tell defendant she needed J.C.'s death certificate to file a claim and defendant testified she "didn't know [she] needed one." Defendant then went to the funeral home where her "distant cousin" worked to make arrangements for J.C.'s funeral and "learned that anybody under the age of 15 *** is free." After receiving the insurance packet from Dellate, defendant "put it on [her] dresser" and never opened it as J.C.'s funeral "was already paid for."

¶ 55 Approximately 10 days after J.C.'s death, defendant "got a call from Detective Matthews." Defendant testified Matthews "asked [her] to *** meet him and Leandra Tate at [her] house to do the reenactment." Defendant agreed but "didn't really feel up to it" at the time of the reenactment. Following the reenactment, defendant gave Matthews permission to search her residence and cell phone because she "didn't have nothing to hide."

¶ 56 On cross-examination, defendant testified she prioritized paying J.C.'s life insurance premium over other bills because it was "an important bill" and "due to [her] child." She also acknowledged having only one remaining vial of albuterol the night before J.C.'s death, which she preloaded in the nebulizer for J.C.'s 12 a.m. treatment. When asked by the prosecutor why it was necessary to set a second alarm at 3 a.m. if she would have run out of medicine,

defendant responded, "I mean, I just set it—just—that—it was already set on my phone *** from the previous days."

¶ 57 11. ***Closing Arguments***

¶ 58 During its closing argument, the State discussed how the evidence satisfied the elements of each offense. The State also highlighted Denton's testimony, stating, "Was another expert called to refute his expert opinion? *** No. He is [the] sole unrefuted opinion *** given there." The State asserted Denton excluded allergic reactions, the possibility J.C. got something caught in his throat, and "the idea of breathing problems." The State remarked, "The evidence doesn't support that. This is a child whose lungs were clear." The State also pointed out the inconsistencies in defendant's version of events, noting that, in her testimony, she did not attempt to resuscitate J.C., despite telling Sawyer she had done so. The State also highlighted Calloway's extraction of the contents of defendant's phone and argued, "Google tells us that October 6th, 2019, 8:05 a.m. [defendant's] phone, searched, in [defendant's] account *** for how do you suffocate." Further, the prosecutor suggested defendant was "desperate" due to her financial difficulties and argued J.C.'s life insurance "answers the problems, solves it. $25,000. Gets the bill collectors off. It's more money than is necessary to pay the funeral on top of it." The State continued:

> "After you have month after month, after month put that as priority number one and you're not gonna [***sic***] collect? Why didn't she fill the paperwork out? She needed a death certificate and didn't get on[e] *** with the murder investigation going on. That's why she doesn't open the package ***.
>
> She can't fill the package out 'cause [***sic***] she doesn't have all the documentation. She can't make the claim."

Ultimately, the State requested the jury "just do what the evidence tells you to do," and if the State had proven defendant guilty beyond a reasonable doubt, "sign the verdict of guilty."

¶ 59 In his closing argument, defense counsel vigorously attacked the State's case as circumstantial and asserted he was not "disputing what Dr. Denton said. At no time throughout the course of this trial did we try to introduce any sort of evidence that indicated that [J.C.] did not die from asphyxiation. Absolutely he died from asphyxiation. He suffocated to death. We're not denying that." Counsel stated, "People suffocate. Kids suffocate. Kids hang themselves on blinds. They suffocate on their mattresses. *** But just because it happens doesn't mean we need to point the finger at somebody." Counsel also asserted J.C.'s funeral was paid for and there was "no indication whatsoever that [defendant] had any reason to murder her son. *** It's not about finances."

¶ 60 Further, counsel suggested authorities perceived defendant as "public enemy number one," and Matthews "considered [defendant] to be a person of interest" as soon as he listened to the 911 call because "she wasn't being emotional enough." Counsel argued, "from that day forward it was [defendant] that did it," and he asked the jury, "How is that an investigation? *** How is that anything more than Detective Matthews' opinion, his theory, his hypothesis, about what occurred?" In rebuffing Matthews's suspicions regarding "why it took a minute" before defendant got "anything out to the dispatcher," counsel argued, "she couldn't gather herself." Counsel also attacked Matthews's conclusion "a guilty indicator was that [defendant] didn't ask for help," by suggesting defendant "knew that [J.C.] was deceased. *** There's no reason for her to ask for help." Further, counsel challenged Matthews's characterization of the reenactment as "just standard procedure," asserting,

> "if this is just something you're trying to figure out, if [defendant is] not a suspect, then why do you bring these consents with you? *** The consent to search her home, the consent to search her phone, is that something that everyone carries around with them, detectives? *** I doubt it."

¶ 61 Ultimately, defense counsel urged the jury to "[u]se the evidence that you have to determine whether or not [defendant] is guilty of first degree murder. Don't take anyone's word for it." Counsel remarked, "You cannot convict an individual for first degree murder because of Detective Mathews['s] gut instinct," and he further argued, "We have a theory of Detective Matthews," but "[t]heories do not lead to convictions. Show the evidence. There is none."

¶ 62 Following evidence and argument, and prior to deliberations, the trial court provided instructions to the jury which included instructions on judging the credibility of the evidence presented. The court also informed the jury closing arguments were not to be considered evidence. Ultimately, the jury found defendant guilty of first degree murder, as alleged in count I.

¶ 63 C. Posttrial Motion and Sentencing

¶ 64 In July 2021, defendant filed a motion for new trial or, alternatively, for a judgment notwithstanding the verdict. Defendant alleged, "the State failed to prove [her] guilty beyond a reasonable doubt at trial," and the trial court "erred in not allowing Leandra Tate *** to testify about any opinions that she may have or had relevant to this case." The court ultimately denied defendant's motion. Thereafter, the court sentenced defendant to 33 years' imprisonment.

¶ 65 This appeal followed.

¶ 66 II. ANALYSIS

¶ 67 On appeal, defendant argues (1) the trial court erred in denying her motion to suppress evidence where "no detective ever admonished [her] as to her Fifth Amendment rights prior to the re-enactment" and (2) she was denied the effective assistance of counsel. We address each of defendant's arguments in turn.

¶ 68 A. Custody for *Miranda* Purposes

¶ 69 Defendant first argues the trial court erred in denying her motion to suppress evidence because "a reasonable person in [defendant]'s position would not have felt free to decline to participate in the re-enactment, and she was thus in 'custody' under the Fifth Amendment." Despite defendant's failure to raise this issue in her posttrial motion, she contends her procedural default should be excused and her claim considered under the plain-error doctrine.

¶ 70 Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The doctrine, however, serves as a narrow and limited exception to the general rule of procedural default. *People v. Ahlers*, 402 Ill. App. 3d 726, 733, 931 N.E.2d 1249, 1255 (2010). This court may review unpreserved issues under the plain error doctrine, which we have explained as follows:

> "The plain-error doctrine allows a court to disregard a defendant's forfeiture and consider unpreserved error in two instances:
> '(1) where a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error and (2) where a clear or obvious error occurred and that error

> is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process.' " ***People v. Matthews***, 2017 IL App (4th) 150911, ¶ 16, 93 N.E.3d 597 (quoting ***People v. Belknap***, 2014 IL 117094, ¶ 48, 23 N.E.3d 325).

¶ 71 Defendant asserts her contention is cognizable under the first prong. "Under the first prong of plain-error analysis, '[w]hat makes an error prejudicial is the fact that it occurred in a close case where its impact on the result was potentially dispositive.' " ***People v. Stevens***, 2018 IL App (4th) 160138, ¶ 71, 115 N.E.3d 1207 (quoting ***People v. Sebby***, 2017 IL 119445, ¶ 68, 89 N.E.3d 675). "Thus, for purposes of the first prong, the claimed error—substantial or not—has to be ***of such a nature*** that it might have tipped the scales against the defendant." (Emphasis in original.) ***People v. Ely***, 2018 IL App (4th) 150906, ¶ 18, 99 N.E.3d 566. "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." ***Sebby***, 2017 IL 119445, ¶ 53.

¶ 72 "Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. [Citation.] As the first step in the analysis, we must determine whether any error occurred at all." ***Matthews***, 2017 IL App (4th) 150911, ¶ 17. "If error did occur, we then consider whether either prong of the plain-error doctrine has been satisfied." ***People v. Sykes***, 2012 IL App (4th) 111110, ¶ 31, 972 N.E.2d 1272.

¶ 73 The fifth amendment to the United States constitution states no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. In ***Miranda***, 384 U.S. at 444, the United States Supreme Court held, to ensure the fifth amendment

right against self-incrimination is protected, an accused subject to a custodial interrogation must be informed by the police that he has the right to remain silent, any statement he makes may be used as evidence against him, and he has the right to an attorney, either retained or appointed. Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." ***Miranda***, 384 U.S. at 444. Accordingly, "[t]he finding of custody is essential because the pre[-]interrogation warnings required by ***Miranda*** are intended to assure that any inculpatory statement made by a defendant is not simply the product of the compulsion inherent in custodial surroundings." (Internal quotation marks omitted.) ***People v. Wyma***, 2020 IL App (1st) 170786, ¶ 56, 167 N.E.3d 196.

¶ 74 To determine whether a person is in custody, thus requiring ***Miranda*** warnings prior to questioning, courts engage in a two-part inquiry. First, courts consider the circumstances surrounding the interrogation. ***People v. Coleman***, 2015 IL App (4th) 140730, ¶ 27, 37 N.E.3d 360. Second, a court should determine whether, given those circumstances, a reasonable person, innocent of any crime, would have felt he or she could not terminate the interrogation and leave. ***Coleman***, 2015 IL App (4th) 140730, ¶ 27.

> "[Our supreme] court has identified several factors relevant to the first inquiry: '(1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a 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; and (6) the age, intelligence, and mental makeup of the accused.' " ***In re D.L.H.***, 2015 IL 117341, ¶ 51, 32 N.E.3d 1075 (quoting ***People v. Slater***, 228 Ill. 2d 137, 150, 886 N.E.2d 986, 994 (2008)).

In addition to those factors, in some situations, an officer's beliefs as to the defendant's guilt may be considered. ***Slater***, 228 Ill. 2d at 153. This is so, however, only if those beliefs are conveyed, by word or deed, to the person being questioned. ***Slater***, 228 Ill. 2d at 153. In turn, such disclosed beliefs would be relevant only to the extent they would affect how a reasonable person in the position of the suspect would assess the extent of his freedom of action. ***Slater***, 228 Ill. 2d at 153. Even if such circumstance exists, it is to be considered only as one of many factors that bear on the question of whether the individual was in custody, and not the sole determinant of that issue. ***Slater***, 228 Ill. 2d at 153.

¶ 75 When a defendant moves to suppress evidence claiming a violation of ***Miranda*** rights, we apply a two-part test. ***People v. Kadow***, 2021 IL App (4th) 190103, ¶ 22, 182 N.E.3d 814. We review the trial court's factual findings under the deferential manifest-weight-of-the-evidence standard, rejecting them only if they are unreasonable, arbitrary, or contrary to the evidence. ***People v. Woods***, 2013 IL App (4th) 120372, ¶ 20, 995 N.E.2d 539. "However, a court of review is permitted to undertake its own assessment of the facts and draw its own conclusions when deciding what relief, if any, should be granted." ***Kadow***, 2021 IL App (4th) 190103, ¶ 22. Although we give substantial deference to the factual findings of the trial court, "[w]e remain free *** to decide the legal effect of those facts, and we review ***de novo*** the trial court's ultimate ruling on the motion." ***People v. Lindsey***, 2020 IL 124289, ¶ 14, 181 N.E.3d 1.

¶ 76 Defendant contends the totality of the circumstances "demonstrates that [she] was in Fifth Amendment 'custody' when she was subjected to interrogation during the video-recorded re-enactment." As to the first factor, the mood and mode of the questioning was predominately cordial, relaxed, and nonconfrontational. The length of the questioning does not strike us as excessive, as the reenactment lasted for a relatively short duration—approximately 31 minutes. See ***In re Tyler G.***, 407 Ill. App. 3d 1089, 1093, 947 N.E.2d 772, 775 (2010) (factors supporting a finding the defendant was not in custody included the defendant's interrogation over a "limited duration" of 30 minutes). It is noteworthy the reenactment itself lasted only about five minutes, with the remainder constituting a criminal interrogation. However, that fact alone does not transform the nature of the interaction. Although we note the reenactment occurred in the same room wherein J.C. died, which likely would have presented a more distressing atmosphere, there was no evidence the officers blocked any entryway or restricted defendant's freedom of movement inside the residence. Defendant also did not appear to be in any type of emotional distress over the course of the reenactment, and under the current state of the law, without some means of gauging the psychological impact of the location on the defendant, we are not in a position to speculate. See ***Oregon v. Mathiason***, 429 U.S. 492, 495 (1977) (stating, "a noncustodial situation is not converted to one in which ***Miranda*** applies simply because a reviewing court concludes *** the questioning took place in a 'coercive environment' ").

¶ 77 As for the number of officers, there were three detectives in the room. However, there is no evidence they converged on defendant as a group. More importantly, defendant interacted exclusively with Matthews during this short session, and there was no evidence the investigators harassed her or raised their voices. One was operating the video equipment, and one was in and out of the room. That is not an excessive number for such an encounter and does not

indicate defendant was in custody. See ***People v. Beltran***, 2011 IL App (2d) 090856, ¶ 42, 956 N.E.2d 1021 (one factor in finding of no custody was, although four officers were present during questioning, only two asked questions and one of these asked the majority).

¶ 78 Defendant was alone with the investigators during the reenactment and, even though the reenactment "occurred *** with her mother figure really right outside the residence," that certainly supports a finding of custody. Matthews may well have had justifiable reasons for wanting defendant to participate in the reenactment alone when he "asked Hope if she would mind staying outside with the child so that [they] wouldn't have any distractions while *** doing the reenactment inside." However, the fact defendant was alone with the investigators is evidence of custody. See ***People v. Vasquez***, 393 Ill. App. 3d 185, 190, 913 N.E.2d 60 (2009) (police asking the defendant's parents to leave the room so they could question the defendant was a factor suggesting the defendant was in custody); see also ***United States v. Griffin***, 922 F.2d 1343, 1352 (8th Cir.1990) ("Officers diminish the public character of, and assert their dominion over, an interrogation site by removing a suspect from the presence of third persons who could lend moral support.").

¶ 79 Next, there was no indicia of formal arrest procedures. There was no evidence of any show of weapons or force, any physical restraint, or any booking or fingerprinting. See ***Slater***, 228 Ill. 2d at 156 (no indicia of formal arrest existed where, during the questioning of the defendant, there was no evidence of "a show of force or weapons, physical restraint, booking, or fingerprinting"). The investigators wore civilian clothes. Despite carrying holstered sidearms, the fact the detectives were merely armed does not bear on the question of custody. See ***Slater***, 228 Ill. 2d at 156-57 (finding no show of force or any indicia of formal arrest procedures where the officers were dressed in plain clothes, despite carrying holstered weapons).

¶ 80 As for the manner in which defendant arrived at the reenactment, she did so of her own volition—albeit reluctantly—as she drove to her residence with Taylor. See ***Slater***, 228 Ill. 2d at 154 ("Defendant's voluntary arrival at the [place of questioning] by means of her own transportation is distinguishable from a situation in which a defendant is transported to and from the place of [questioning] by law enforcement officers and has no other means of egress from that location."). Defendant claimed she "didn't feel like [she] had a choice" subsequent to her conversation with Tate—who, while speaking with the authority of DCFS and power to remove defendant's other son from her home, informed defendant she "need[ed] to do the reenactment so [they could] move forward on the investigation." Thus, defendant did not decline to participate. Further, defendant agreed over the phone to meet with Matthews at her residence. Matthews denied telling defendant she was required to participate in the reenactment, and we must presume the trial court credited his testimony when it found this factor favored a finding that defendant was not in custody. See ***People v. Winters***, 97 Ill. 2d 151, 158, 454 N.E.2d 299, 303 (1983). We must defer to that finding. See ***Woods***, 2013 IL App (4th) 120372, ¶ 20 (trial court's findings of fact on the issue of custody will not be disturbed unless against the manifest weight of the evidence).

¶ 81 Defendant's age, intelligence, and mental makeup do not show she was in custody. Defendant was 27 years old, was a high school graduate, and attended some college. Despite having an IEP and attending special education classes while in school, defendant appeared to have no difficulty communicating with anyone during the reenactment. There was little outward indication she is developmentally delayed. The defendant's deficits appear to be related more to reading comprehension, although we have no way to assess that from a video and cold trial transcript. The evidence also showed defendant has two prior felony convictions and

has dealt with DCFS in the past. Defendant spoke coherently with Matthews, engaged him in conversation, and had no apparent communication difficulties. She demonstrated a reasonable degree of intellect during her testimony and appeared to have all of her faculties. There was nothing about her age, intelligence, or mental makeup that would support a finding of custody.

¶ 82 That brings us to the last inquiry as to custody, whether the detectives conveyed to defendant they believed she was guilty. There is no evidence detectives may have related their belief of defendant's potential culpability to her. Further, even if the detectives expressed some belief she was guilty, that is only one of many factors we are to consider. When weighed against the number of factors indicating a lack of custodial circumstances, it is not sufficient to warrant a conclusion defendant was in custody during the reenactment. Even defendant did not contend she believed herself to be in custody, which would also be relevant to any ***Miranda*** custody analysis. See ***People v. Urban***, 196 Ill. App. 3d 310, 314, 143, 553 N.E.2d 740, 742 (1990) (finding the State's contention the defendant was free to leave at any time unrebutted by defendant).

¶ 83 Having examined and weighed the various factors, we objectively determine, under the facts of this case, a reasonable person innocent of any crime would have believed she could terminate the encounter and leave. See ***Slater***, 228 Ill. 2d at 150. Thus, the trial court correctly ruled defendant was not in custody and the investigators were not required to have given her ***Miranda*** warnings. Having so found, we are troubled—as was the trial court—by a number of facts surrounding the conduct of this supposed "need" for a reenactment. First, there was no clear explanation ever given, or tested, through cross-examination for why a forensic pathologist, who is rarely able to rely on a "reenactment" before determining a cause of death, would need one if it happens to be a child death. More importantly, it appeared from the testimony of Dr. Denton that he had, in fact, made a cause of death determination but merely had

not concluded by what instrumentality or actor it had occurred. Neither of those things are relevant to the medical question before him and instead fall within the scope of a criminal investigation. A skeptic might question whether the reenactment was medically necessary or simply a way to assist a criminal investigation.

¶ 84 Next, given that child deaths have both criminal and social welfare implications, "DCFS and the State's Attorney may naturally share some involvement in a particular case." ***In re C.J.***, 166 Ill. 2d 264, 270, 652 N.E.2d 315, 318 (1995). The fact DCFS first told defendant she had to participate in the reenactment as part of the DCFS investigation as well as the criminal investigation is equally troubling since defendant, already familiar with the workings of DCFS, knew they had the power to remove her other child from her custody if she failed to cooperate—a fact which, in itself, seems somewhat coercive. See ***People v. Kerner***, 183 Ill. App. 3d 99, 104, 538 N.E.2d 1123, 1125 (1989) (finding DCFS was acting as a " 'conduit for information elicited from [the] defendant and used by the authorities in the prosecution of [the] defendant' " when the investigator questioned the defendant about allegations of sexual abuse, so that ***Miranda*** warnings were required (quoting ***People v. Baugh***, 19 Ill. App. 3d 448, 451, 311 N.E.2d 607, 609 (1974))). Further, by doing so, DCFS appeared to be working effectively as an agent of the police, and one wonders whether this was by coincidence or design. See ***C.J.***, 166 Ill. 2d at 270 (stating, "where DCFS acts at the behest of and in tandem with the State's Attorney, with the intent and purpose of assisting in the prosecutorial effort, DCFS functions as an agent of the prosecution"). Combining the "need" of the medical examiner with the "need" of DCFS for this reenactment as part of a criminal investigation, one could surmise the real purpose was to obtain incriminating information, by word or act, from defendant under circumstances which permitted them to skirt the requirements of ***Miranda*** in the process. However, ***Miranda*** "custody," as it

currently stands, does not include an analysis of the subjective intentions of police investigators to avoid providing ***Miranda*** warnings as long as other factors evincing "custody" are not present. See ***Stansbury v. California***, 511 U.S. 318, 319 (1994) (finding, "an officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to the assessment whether the person is in custody"); ***Slater***, 228 Ill. 2d at 153 (stating, " 'a police officer's subjective view that the individual under questioning is a suspect, if undisclosed, does not bear upon the question whether the individual is in custody for purposes of ***Miranda***' " (quoting ***Stansbury***, 511 U.S. at 324)); ***Coleman***, 2015 IL App (4th) 140730, ¶ 59 (stating, "the initial determination of custody depends on 'the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned' " (quoting ***Stansbury***, 511 U.S. at 323)). Although we see a distinction between the subjective view of police regarding a suspect's status and the subjective ***intent*** of those same officers to circumvent ***Miranda*** in the process, this has not been addressed by either our or the United States Supreme Court.

¶ 85 It would be a simple matter to avoid these concerns by making it clear to the suspect—who is also the subject of a DCFS investigation—that she did not have to participate in the reenactment, just as an individual who is asked to accompany police to the station for questioning may be told he is not required to do so. The trial court found this troubling, as do we. The risk police take by proceeding in this manner is in finding a trial court unwilling to allow this amount of coordinated effort to create the appearance of a "need" to cooperate, resulting in the granting of a motion to suppress, as the trial court appeared close to doing here. Trial courts are given substantial discretion when weighing the various factors at play in assessing "custody" under ***Miranda***—discretion to which we should most frequently defer. See ***Woods***, 2013 IL App

(4th) 120372, ¶ 20. The process may be "legal," but when police interrogative procedures are taken to their legal extreme, some courts may weigh the coercive or custodial factors differently, resulting in dramatically different results.

¶ 86 However, in this instance, because the factors for ***Miranda*** custody were not present, defendant was not in custody, ***Miranda*** warnings were not necessary, and the trial court did not err when it denied defendant's motion to suppress. See ***Slater***, 228 Ill. 2d at 149. Accordingly, having found no error, our plain error analysis need go no further. See ***People v. Hood***, 2016 IL 118581, ¶ 18, 67 N.E.3d 213 (absent error, there can be no plain error).

¶ 87 B. Ineffective Assistance of Counsel

¶ 88 The sixth amendment guarantees a defendant the right to effective assistance of counsel at all critical stages of a criminal proceeding. U.S. Const., amend. VI; ***People v. Hughes***, 2012 IL 112817, ¶ 44, 983 N.E.2d 439. A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in ***Strickland v. Washington***, 466 U.S. 668 (1984). ***People v. Veach***, 2017 IL 120649, ¶ 29, 89 N.E.3d 366. To prevail, "a defendant must show that counsel's performance was (1) deficient and (2) prejudicial." ***People v. Westfall***, 2018 IL App (4th) 150997, ¶ 61, 115 N.E.3d 1148. "Failure to satisfy either prong negates a claim of ineffective assistance of counsel." ***People v. Hibbler***, 2019 IL App (4th) 160897, ¶ 88, 129 N.E.3d 755. If there is no prejudice, we need not decide whether counsel's performance was deficient. ***People v. Evans***, 186 Ill. 2d 83, 94, 708 N.E.2d 1158, 1164 (1999).

¶ 89 To establish deficient performance, the defendant must show "counsel's performance 'fell below an objective standard of reasonableness.' " ***People v. Valdez***, 2016 IL 119860, ¶ 14, 67 N.E.3d 233 (quoting ***Strickland***, 466 U.S. at 688). A defendant is only entitled to competent, not perfect representation. ***People v. Bradford***, 2019 IL App (4th) 170148, ¶ 14,

123 N.E.3d 1285. " '[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. [Citation.]' " (Internal quotation marks omitted.) ***People v. Manning***, 241 Ill. 2d 319, 334, 948 N.E.2d 542, 551 (2011) (quoting ***Strickland***, 466 U.S. at 689).

¶ 90 Prejudice is established when a reasonable probability exists, but for counsel's unprofessional errors, the result of the proceeding would have been different. ***People v. Evans***, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004) (citing ***Strickland***, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding." (Internal quotation marks omitted.) ***People v. Moore***, 2020 IL 124538, ¶ 29, 161 N.E.3d 125. "[T]here is a strong presumption of outcome reliability, so to prevail [on an ineffective assistance claim], a defendant must show that counsel's conduct 'so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " ***People v. Pineda***, 373 Ill. App. 3d 113, 117, 867 N.E.2d 1267, 1272 (2007) (quoting ***Strickland***, 466 U.S. at 686). "Satisfying the prejudice prong necessitates a showing of actual prejudice, not simply speculation that defendant may have been prejudiced." ***People v. Patterson***, 2014 IL 115102, ¶ 81, 25 N.E.3d 526.

¶ 91 "We review a defendant's claim of ineffective assistance of counsel in a bifurcated fashion, deferring to the trial court's findings of fact unless they are contrary to the manifest weight of the evidence, but assessing ***de novo*** the ultimate legal question of whether counsel was ineffective." ***People v. Manoharan***, 394 Ill. App. 3d 762, 769, 916 N.E.2d 134, 141 (2009). In resolving issues related to counsel's performance, reviewing courts must consider the

totality of counsel's conduct, not just an isolated incident. ***People v. Hamilton***, 361 Ill. App. 3d 836, 847, 838 N.E.2d 160, 170 (2005).

¶ 92 1. ***Involuntary Statement***

¶ 93 Defendant alleges trial counsel rendered ineffective assistance by failing to raise any argument "that [her] statements and actions during the re-enactment were constitutionally involuntary" in the motion to suppress evidence. Defendant contends, "Had trial counsel argued *** that [her] statements and actions during the re-enactment were constitutionally involuntary, that claim would have been meritorious."

¶ 94 The fifth amendment prohibits the use of compelled or involuntary statements. ***People v. Winsett***, 153 Ill. 2d 335, 357, 606 N.E.2d 1186, 1198 (1992). "Compelled or involuntary statements are excluded under the fifth amendment *** because such statements are regarded as inherently untrustworthy and, thus, not probative." ***Winsett***, 153 Ill. 2d at 352. "The test for voluntariness is 'whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed.' " ***Slater***, 228 Ill. 2d at 160 (quoting ***People v. Gilliam***, 172 Ill. 2d 484, 500, 670 N.E.2d 606 (1996)). In making this determination, "a court must consider the totality of the circumstances of the particular case," and "no single factor is dispositive." ***People v. Richardson***, 234 Ill. 2d 233, 253, 917 N.E.3d 501 (2009). Our supreme court specified:

> "Factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of ***Miranda*** warnings; the duration of the questioning; and any physical or mental abuse by police,

including the existence of threats or promises." ***Richardson***, 234 Ill. 2d at 253-54.

¶ 95 As stated (***supra*** ¶ 94), in considering defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of the reenactment, the record reflects defendant's intellectual limitations were not outwardly apparent to the investigators and did not appear to interfere with her ability to communicate with them. Defendant spoke clearly during the reenactment. She engaged Matthews conversationally, freely offered details, and was open and cooperative. Based on our review of defendant's recorded statements, we have no way to assess the level of any disability.

¶ 96 Regarding the legality and duration of the detention and questioning, defendant arrived at her residence to participate in the reenactment of her own accord and not by police transport. The reenactment was of relatively short duration—approximately 31 minutes—and she was questioned by Matthews exclusively. Further, defendant was not the subject of any physical or mental abuse by the detectives. Admittedly, she was placed in an emotionally upsetting environment, indicating to Tate she did not want to return to the house. However, we are unable to assess the level of the coercive impact of doing so based on the record before us. Nothing in the record suggests any overt threats or promises of adverse consequences were made if defendant declined to participate in the reenactment. Although defendant was not told she could leave, she never indicated a desire to terminate the reenactment and leave the premises.

¶ 97 Here too, we pause to note our concern over the circumstances presented by the facts of this case. We are required to find defendant's statements and actions voluntary for the reasons stated above. The coercive nature of being told by DCFS that a reenactment was "needed" and that it was necessary for the DCFS and criminal investigations to go forward

would seem obvious. Further, defendant made it clear she did not wish to return to the house but did so because of the "need" for a reenactment. Once there, she was isolated from the support of her "mother figure" and instead of conducting just a reenactment, which took about five minutes, she was then subjected to an additional 25 minutes of questioning related less to the reenactment than to a criminal interrogation of the one and only suspect in the case. Couple this with what one could surmise was an intentional circumventing of ***Miranda***, and we question at what point the subjective intent of police and their agents will be subject to consideration in a voluntary statement analysis. This again is the risk of "pushing the envelope" of what may be legal. When the coercive nature of the facts become close, outcomes can differ, and the Illinois Supreme Court may be called in to address the issue—sometimes with a less-preferred solution based on the bad facts of the case before it. Having defendant acknowledge on the record she agreed to participate, or that no one was forcing her to participate, would have gone far to allay the concerns of the trial court and would have been clear evidence of the voluntary nature of her participation. Advising her on the record that she did not have to participate would have been equally curative of the court's concerns.

¶ 98 However, having examined the particular circumstances of this case, as well as defendant's relevant personal characteristics, we find defendant's recorded statements were voluntary and not the product of police coercion. See ***Richardson***, 234 Ill. 2d at 253-54. As a result, defendant's trial counsel could not have rendered ineffective assistance for failing to raise this issue in his motion to suppress evidence. See ***People v. Boyd***, 2021 IL App (1st) 182584, ¶ 64 ("Refraining from *** a futile act is not ineffective assistance of counsel.").

¶ 99 2. ***Reasonableness Under the Fourth Amendment***

¶ 100 Next, defendant alleges the reenactment was the product of an illegal seizure under the fourth amendment, and trial counsel rendered ineffective assistance by failing to raise this argument in his motion to suppress evidence.

¶ 101 The United States Constitution and the Illinois Constitution protect individuals from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. "[T]he touchstone of the fourth amendment is reasonableness, which is measured objectively by examining the totality of the circumstances surrounding a police officer's encounter with a citizen." ***People v. Lake***, 2015 IL App (4th) 130072, ¶ 28, 28 N.E.3d 1036.

¶ 102 "It is well settled that not every encounter between the police and a private citizen results in a seizure." ***People v. Luedemann***, 222 Ill. 2d 530, 544, 857 N.E.2d 187, 196 (2006). Police-citizen encounters are divided into three categories: "(1) arrests, which must be supported by probable cause; (2) brief investigative detentions, commonly referred to as '***Terry*** stops,' which must be supported by reasonable, articulable suspicion of criminal activity; and (3) consensual encounters, which involve no coercion or detention and thus do not implicate the fourth amendment." ***Lake***, 2015 IL App (4th) 130072, ¶ 35.

¶ 103 When determining whether a challenged encounter was consensual, the United States Supreme Court has found "a person is seized within the meaning of the fourth amendment 'only when, by means of physical force or a show of authority, his freedom of movement is restrained.' " ***People v. Almond***, 2015 IL 113817, ¶ 57, 32 N.E.3d 535 (quoting ***United States v. Mendenhall***, 446 U.S. 544, 553 (1980)). If, given the totality of the circumstances, a reasonable person would not feel free to leave, a seizure has occurred. ***Almond***, 2015 IL 113817, ¶ 57.

> "Generally, the following ***Mendenhall*** factors indicate a seizure without the person attempting to leave: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests." ***Almond***, 2015 IL 113817, ¶ 57 (citing ***People v. Oliver***, 236 Ill. 2d 448, 456, 925 N.E.2d 1107, 1112 (2010), citing ***Mendenhall***, 446 U.S. at 554).

These factors are not exhaustive, but the absence of any ***Mendenhall*** factors "is highly instructive" in determining whether a seizure occurred. ***Luedemann***, 222 Ill. 2d at 554.

¶ 104 Citing ***People v. Lopez***, 229 Ill. 2d 322, 892 N.E.2d 1047 (2008), defendant contends the circumstances were such a reasonable person would not have felt free to refuse to participate in the reenactment or answer Matthews's questions. In ***Lopez***, two detectives came to the 15-year-old defendant's home and requested he accompany them to the police station. ***Lopez***, 229 Ill. 2d at 347. The defendant's decision to accompany the detectives to the police station was found to be "voluntary and not the result of coercion." ***Lopez***, 229 Ill. 2d at 352. Whether his voluntary cooperation dissipated at the police station became the critical issue in that case, and our supreme court considered "whether a reasonable juvenile, in defendant's situation, *** would not have felt free to leave once there." ***Lopez***, 229 Ill. 2d at 346-47.

¶ 105 Ultimately, under the totality of the circumstances, our supreme court found the "[d]efendant's voluntary presence at the police station escalated into an involuntary seizure in violation of defendant's fourth amendment rights." ***Lopez***, 229 Ill. 2d at 353. In so finding, the supreme court noted the juvenile defendant was placed in an interview room with the door closed, immediately interviewed, and told he was implicated in a murder. ***Lopez***, 229 Ill. 2d at

353. He was told to wait in the room and was not allowed to go anywhere in the station without an escort. ***Lopez***, 229 Ill. 2d at 353. The juvenile defendant also testified he believed he was locked in the interview room, even though the detectives said the door, while closed, was unlocked. ***Lopez***, 229 Ill. 2d at 353. The juvenile defendant "remained in the interview room for four hours without contact with his family or any other person interested in his well-being" before signing a confession. ***Lopez***, 229 Ill. 2d at 353.

¶ 106 The circumstances present in ***Lopez*** are distinguishable from those presented here. Unlike the defendant in ***Lopez***, defendant is not a juvenile inexperienced with the criminal justice system. Defendant also arranged for her own transportation to and from the place of questioning, the entire encounter lasted approximately 31 minutes—as opposed to several hours—and nothing in the record suggests defendant was locked in the room during the reenactment or that her freedom of movement was restrained. See ***Almond***, 2015 IL 113817, ¶ 57; see also ***Lake***, 2015 IL App (4th) 130072, ¶ 28 (stating, "whether an encounter has become a seizure depends on the officer's objective behavior, not any subjective suspicion of criminal activity" (internal quotation marks omitted)).

¶ 107 More importantly, the record does not support defendant's contention she was seized within the meaning of the fourth amendment. Although the presence of three officers may have been ***subjectively*** threatening to defendant, there is no evidence suggesting the officers approached defendant in an ***objectively*** threatening manner. Despite carrying their badges, the officers wore plain clothes, entered defendant's residence peacefully and consensually, and never brandished a weapon of any kind. Defendant interacted exclusively with Matthews throughout the reenactment, and it is undisputed defendant was not physically touched or subjected "to any typical 'arrest procedures.' " Finally, Matthews's tone of voice when speaking with defendant

was conversational and unaccusatory, and there was no evidence he issued any orders or used language or tone of voice which would indicate defendant's compliance was compelled. In fact, defendant concedes in her appellant's brief that the officers "did not use exaggerated strong-arm tactics against her."

¶ 108 Accordingly, we reject defendant's fourth amendment argument and conclude the officers involved in the underlying encounter did not make a show of authority which would cause a reasonable person not to feel free to leave. See ***Almond***, 2015 IL 113817, ¶ 57. In addition, because we find the reenactment was consensual at the outset and did not implicate the fourth amendment, it cannot be said defendant's trial counsel rendered ineffective assistance for failing to raise this argument in his motion to suppress evidence. See ***Boyd***, 2021 IL App (1st) 182584, ¶ 64.

¶ 109 3. ***Redaction of Reenactment Video and DOC Calls***

¶ 110 Defendant next contends her attorney provided ineffective assistance when he failed to seek redaction of "several highly prejudicial statements" made by defendant during her recorded phone conversations with J.C.'s incarcerated father and of the videotaped reenactment before being published to the jury. Specifically, defendant complains counsel should have sought redaction of defendant's statement "that she took J.C. to the hospital when he was about two months old because he had a bump on his head, at which point, 'DCFS got called' and they created a 'safety plan,' " despite later dropping the case. Defendant further contends counsel "failed to ensure the recorded phone calls between [herself] and J.C.'s father only contained evidence relevant to motive or some other proper purpose." Defendant asserts counsel's failure to seek redaction of her comments directed toward J.C. and his sibling during those phone calls

was objectively unreasonable because they lacked "any probative value on the question of whether [she] committed the charged offense."

¶ 111 To be admissible, evidence must be relevant. See Ill. R. Evid. 402 (eff. Jan. 1, 2011). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Even if relevant, however, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 112 Assuming, ***arguendo***, trial counsel's performance fell below an objective standard of reasonableness, we are confident none of defendant's suggested piecemeal redactions would have changed the outcome of defendant's trial. Notably, the jury listened to the unredacted recordings of defendant's reenactment and phone calls only once, without the benefit of a transcript, and the State did not utilize the contested portions to craft an argument.

¶ 113 The evidence of defendant's guilt was overwhelming. Based on her recorded phone calls with Comage, it is clear defendant was experiencing significant financial hardship between June and October 2019. Defendant's SSI was "cut *** off" in August 2019, she failed to maintain stable employment, and she was ineligible for LINK benefits beginning in September 2019. In several calls, defendant complained of "all kinds of bills" totaling hundreds of dollars. At one point, defendant told Comage she was attempting to get approved for a loan to cover her monthly bills and expenses. Despite this, Comage unrelentingly pestered defendant for money and routinely exhorted her to overdraft her bank account.

¶ 114 During a September 3, 2019, phone call, defendant listed several bills which remained unpaid, including J.C.'s life insurance premium. J.C.'s life insurance policy provided $25,000 of coverage. Comage offered to send funds to cover the insurance premium because "that's the main thing that needs to be paid." Defendant said she would "figure something out." Later, on October 2, 2019, defendant told Comage she had recently been "switched *** to fulltime," but she had not yet paid any of her bills that month.

¶ 115 Officer Calloway testified he located a search of the phrase, "how do you suffocate," within the contents of defendant's phone extraction. The search was conducted at 8:04 a.m. on October 6, 2019, one day prior to J.C.'s death. That evening, defendant allowed J.C. and his sibling to "play and watch TV for a little bit. And about 8:30 [she] laid them down for bed." Defendant set alarms "to give *** [J.C.] a breathing treatment at twelve o'clock a.m. and three o'clock a.m.," although she later acknowledged having only one remaining vial of albuterol the night before J.C.'s death. Defendant testified she had administered albuterol treatments twice a night for the last three or four nights because J.C. was "congested" and had a "runny nose." Defendant stated she discarded the empty vials of albuterol in her kitchen trash, which she claimed she emptied "the evening before." Yet Officer Closen found no empty vials of albuterol or any pieces of evidence associated with a nebulizer in defendant's kitchen garbage bin, which was nearly full. What is more, during his examination of J.C., Denton found "no dehydration, no evidence of disease," and no blockage of the minor's airways. Denton also "looked for microscopic asthma, microscopic virus infection," and found none. Although defendant testified J.C.'s albuterol had been prescribed "[a]s needed," J.C.'s primary healthcare provider, Angela King, testified J.C. was last treated for anything breathing-related in December 2018 and he received no further refills of his albuterol prescription after January 2019.

¶ 116 When defendant eventually woke up at 3 a.m. to give J.C. his breathing treatment, she noticed he "had foam coming from his nose." Defendant did not immediately call 911 because J.C. was "really stiff" and she "knew [J.C.] was already gone." Instead, defendant called Taylor at approximately 3:17 a.m., "told her that [J.C.] wasn't breathing[,] and *** hung up the phone and immediately called 911" at Taylor's suggestion. Defendant stated she did "[n]othing" during the 17 minutes between when she woke up and called Taylor and did not attempt CPR. However, Officer Sawyer, who responded to defendant's residence in the early morning of October 7, 2019, testified defendant told him she attempted "[c]hest compressions and mouth to mouth resuscitation" on J.C.

¶ 117 Finally, Denton testified J.C. was "relatively large" for a 19-month-old and "appeared very healthy, well developed, [and] well nourished." Denton also testified he had "never heard of a 19 month old getting entangled and then dying in bed sheets, especially a large 19 month [old], who's at 75th percentile." Further, over the course of J.C.'s autopsy, there were "lots of things [Denton] ruled out," such as manual strangulation, as there were "no finger marks or bruising on [J.C.'s] neck." Denton "excluded pinching of the nose and pushing of the mouth together." He also "excluded blunt trauma" and looked for signs of drowning but "did not see any evidence of that." Denton "tested for influenza A and B," which came back negative. "[T]here was nothing blocking [J.C.'s] airways." Denton found "no evidence of allergic reaction." Denton also "submitted blood for toxicology analysis for drugs and poisons," which returned negative results. Finally, Denton "did a bacteria culture to make sure there was no bacteria in [J.C.'s] lungs or bacterial infection." Denton testified he "sent that to the microbiology lab and that was negative."

¶ 118 J.C.'s "most notable external injuries" were "petechial hemorrhages or petechiae," which Denton explained were "a pressure phenomenon" where "the veins are compressed, but the arteries still pump. So the blood can't get back to the heart." Denton testified the petechiae were very prominent in J.C.'s eyelids, both sides of his face, and on his neck. Denton also observed "pressure blanching" on J.C.'s nose, which "indicate[d] that something was pushing on his nose and also on his chin." Given the "localized pressure" and absence of petechiae on J.C.'s chest and abdomen, Denton determined J.C.'s four-year-old sibling "would not have the strength to do this." With respect to his internal examination of J.C., Denton observed "evidence of compression or impaired blood return to his heart." Denton noted J.C. "had petechiae in his heart and his thymus gland up in the chest area," a "very prominent" amount of edema foam in his lungs, and "swelling of his brain," which Denton testified were "very indicative of asphyxia and some kind of compression to his face."

¶ 119 Accordingly, given the overwhelming evidence against defendant, we conclude defendant has failed to demonstrate, absent counsel's alleged errors, a reasonable probability exists the outcome of the trial would have been different. See ***Moore***, 2020 IL 124538, ¶ 29.

¶ 120 4. ***Sawyer's Testimony***

¶ 121 Defendant argues trial counsel was ineffective for failing to object to Officer Sawyer's testimony as an improper lay opinion. The State responds trial counsel was not ineffective because Sawyer, during his testimony, "was attempting to describe what he saw, and to the extent he offered an opinion, it was only done in an effort to explain what he observed."

¶ 122 Illinois Rule of Evidence 701 (eff. Jan. 1, 2011) provides that lay witness testimony "is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or

the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge." Initially, we note defendant challenges, in part, testimony from Sawyer which, defendant alleges, impermissibly "veered into his opinion on [her] sincerity." However, our supreme court "drew a line between past and present opinions, concluding statements of past opinions were not improper lay opinions and were admissible." ***People v. Martin***, 2017 IL App (4th) 150021, ¶ 30, 80 N.E.3d 94 (citing ***People v. Hanson***, 238 Ill. 2d 74, 101, 939 N.E.2d 238, 254 (2010) (finding that testimony regarding a past opinion was not improper opinion testimony)).

¶ 123 In ***Martin***, the defendant was involved in a car accident, and a jury subsequently convicted him of driving under the influence. ***Martin***, 2017 IL App (4th) 150021, ¶¶ 4, 9. During the defendant's trial, the State asked the responding police officer who he believed had been driving the vehicle at the time of the incident, and the answer reflected the officer's previous belief formed at the scene. ***Martin***, 2017 IL App (4th) 150021, ¶ 5. In examining whether testimony was a present or past opinion, this court looked to the tense of the testimony and determined questions and testimony phrased in the past tense supported the conclusion a witness's testimony was a past, not present, lay opinion. ***Martin***, 2017 IL App (4th) 150021, ¶ 32. Ultimately, this court found the police officer's testimony that the defendant was driving the car was not an improper lay opinion because "it was not offered as a present opinion on the defendant's credibility but, rather, was a statement of past belief offered to explain the course of investigation, ***i.e.***, why defendant was ultimately arrested." ***Martin***, 2017 IL App (4th) 150021, ¶ 32.

¶ 124 Here, Sawyer's opinion was rationally based upon his perceptions of the scene and his conversations with defendant and Taylor. His answers were phrased in the past tense, and

the record reflects he was testifying about his prior beliefs. Furthermore, Sawyer's testimony was offered to explain the course of his investigation and why the investigation ultimately focused on defendant. Sawyer testified, "***when I was on scene***, [defendant] appeared upset" (emphasis added)," but "it seemed *** forced." Sawyer further stated, "she mimicked, in my opinion, the sound of crying ***." Sawyer's testimony in this specific instance was not an improper lay opinion on defendant's credibility but, rather, reflected his assertion of a belief he held ***when he was on scene*** at defendant's residence in the early morning of October 7, 2019. Thus, it constitutes testimony regarding a past, rather than present, opinion and was not improper lay opinion testimony. See ***Martin***, 2017 IL App (4th) 150021, ¶ 32.

¶ 125 Even if, for argument's sake, defense counsel's failure to object constituted deficient performance, defendant cannot show she was prejudiced by the admission of Sawyer's allegedly impermissible testimony. Taking into account the totality of the evidence the State presented to the jury, the complained-of errors are not sufficient to undermine confidence in the outcome. See ***People v. Donegan***, 2012 IL App (1st) 102325, ¶ 47, 974 N.E.2d 352 (stating, "instead of viewing the improper evidence in isolation, the court must look to the ramifications the improper evidence might have had on the factfinder's overall picture of events"). As stated above, the evidence against defendant was overwhelming. Defendant's financial situation between June and October 2019 was dire, and J.C.'s life insurance policy provided $25,000 of coverage.

¶ 126 Officer Calloway located a search of the phrase, "how do you suffocate," within the contents of defendant's phone extraction. The search was conducted at 8:04 a.m. on October 6, 2019, one day prior to J.C.'s death. Following J.C.'s autopsy, Denton determined the minor's cause of death was "asphyxia due to smothering and compression of the neck." During his

examination of J.C., Denton observed "pressure blanching" on J.C.'s nose, which "indicate[d] that something was pushing on his nose and also on his chin." Denton also noted J.C. "had petechiae in his heart and his thymus gland up in the chest area," a "very prominent" amount of edema foam in his lungs, and "swelling of his brain," which Denton testified were "very indicative of asphyxia and some kind of compression to his face." Given the "localized pressure" and absence of petechiae on J.C.'s chest and abdomen, Denton determined J.C.'s four-year-old sibling "would not have the strength to do this."

¶ 127 According to defendant, at approximately 8:30 p.m. on October 6, 2019, she laid J.C. down for bed. Defendant admitted having only one remaining vial of albuterol that evening but testified she set alarms to administer two breathing treatments "at twelve o'clock a.m. and three o'clock a.m." because J.C. was "congested" and had a "runny nose." However, Denton "looked for microscopic asthma, microscopic virus infection" and found none. He found "no dehydration, no evidence of disease," no blockage of J.C.'s airways, "no evidence of allergic reaction," and no bacterial infection. Defendant further impeached her own credibility when she told Sawyer she attempted "[c]hest compressions and mouth to mouth resuscitation" on J.C. but testified she did "[n]othing" during the 17 minutes between when she woke up and called Taylor and did not attempt CPR. She also claimed she discarded the empty vials of albuterol in her kitchen trash from the previous nights. Yet, when Closen searched defendant's kitchen trash can, which was nearly full, he found no empty vials of albuterol or any pieces of evidence associated with a nebulizer.

¶ 128 Accordingly, "[c]ounsel cannot be considered ineffective for failing to make or pursue what would have been a meritless objection." ***People v. Edwards***, 195 Ill. 2d 142, 165, 745 N.E.2d 1212, 1225 (2001). Because we conclude Sawyer's testimony was not barred by

Rule 701, defense counsel cannot have been ineffective for failing to object on Rule 701 grounds, and defendant has failed to demonstrate, absent counsel's alleged errors, a reasonable probability exists the outcome of the trial would have been different. See ***Moore***, 2020 IL 124538, ¶ 29.

¶ 129 5. ***Closing Arguments***

¶ 130 Defendant asserts her trial counsel was ineffective for failing to object to the State's allegedly improper comments made during its closing argument. Specifically, defendant argues the State improperly shifted its burden of proof during its argument and constructed arguments unsupported by the evidence presented.

¶ 131 We consider whether a prosecutor's comments during closing argument are sufficiently egregious to require a new trial as a legal issue subject to ***de novo*** review. ***People v. Anderson***, 2018 IL App (4th) 160037, ¶ 47, 102 N.E.3d 260. Prosecutors are afforded wide latitude during closing arguments and may properly comment on the evidence presented and reasonable inferences drawn therefrom, "even if the suggested inference reflects negatively on the defendant." ***People v. Jackson***, 2020 IL 124112, ¶ 82, 162 N.E.3d 223. Reversal and retrial are not warranted unless the improper remarks "constituted a material factor in a defendant's conviction." ***People v. Wheeler***, 226 Ill. 2d 92, 123, 871 N.E.2d 728, 745 (2007).

¶ 132 Closing arguments are to be viewed in their entirety and remarks claimed to be improper must be considered " 'within the context in which they were conveyed.' " ***Anderson***, 2018 IL App (4th) 160037, ¶ 48 (quoting ***People v. Lewis***, 2017 IL App (4th) 150124, ¶ 67, 78 N.E.3d 527). "Just as the jury is entitled to draw inferences from the evidence that are reasonable [citation], the attorneys—including the prosecutor—may argue those inferences." ***People v. Dunlap***, 2011 IL App (4th) 100595, ¶ 29, 963 N.E.2d 394. Stated differently, "if a jury could

reasonably draw certain inferences from the evidence before it, then no attorney—including the prosecutor—commits error by urging the jury to draw those inferences." (Internal quotation marks omitted.) ***People v. Custer***, 2020 IL App (4th) 180128, ¶ 35, 156 N.E.3d 1173.

¶ 133 Although a prosecutor must not state that a defendant has an obligation to come forward with evidence which would create a reasonable doubt as to her guilt, a prosecutor may comment on the "defendant's failure to submit any evidence that would tend to refute the case against [her]." (Internal quotation marks omitted.) ***People v. Luna***, 2013 IL App (1st) 072253, ¶ 129, 989 N.E.2d 655; see also ***People v. Herrett***, 137 Ill. 2d 195, 211, 561 N.E.2d 1, 8 (1990) (stating a prosecutor may describe the State's evidence as uncontroverted). Thus, a prosecutor may argue its expert witness was not contradicted at trial. See ***Luna***, 2013 IL App (1st) 072253, ¶ 129; see also ***People v. Peter***, 55 Ill. 2d 443, 460-61, 303 N.E.2d 398, 408-09 (1973) (holding the prosecutor's comments "concerning the lack of evidence contradicting the evidence the State had offered on the subject of fingerprints" did not shift the burden of proof to the defendant).

¶ 134 Here, defendant complains the State improperly shifted the burden of proof during its closing argument when the prosecutor asked, "Was another expert called to refute his expert opinion? *** No. He is [the] sole unrefuted opinion *** given there." However, even assuming the State's comments rose to the level of burden-shifting, the comments were brief and isolated. See ***People v. Runge***, 234 Ill. 2d 68, 142, 917 N.E.2d 940, 982 (2009) (stating, a significant factor in determining the impact of an improper comment on a jury verdict is whether "the comments were brief and isolated in the context of lengthy closing arguments"). The transcript of the State's entire closing argument was over 30 pages long, and the complained-of comments were the only allegedly improper comments. Moreover, the State was commenting on a non-issue in the case. Neither Denton's credibility nor his findings were at issue in this case. In fact,

defense counsel specifically told the jury he was not "disputing what Dr. Denton said." Counsel further stated, "At no time throughout the course of this trial did we try to introduce any sort of evidence that indicated that [J.C.] did not die from asphyxiation. Absolutely he died from asphyxiation. He suffocated to death. We're not denying that."

¶ 135 We also note the trial court instructed the jury, both at the beginning of the trial and again after closing arguments, that both opening statements and closing arguments were not evidence and to disregard any statement or argument made by counsel that did not comport with their recollection of the evidence. See ***People v. Kallal***, 2019 IL App (4th) 180099, ¶ 35, 129 N.E.3d 621 (stating erroneous statements may be cured by telling the jury arguments are not evidence and should be disregarded if unsupported or by sustaining an objection). The State's comments, when viewed in the context of its entire closing, did not overcome the court's instructions, and nothing in the record suggests the jury ignored the law pursuant to those instructions. Accordingly, we cannot say a reasonable probability exists the verdict would have been different had the prosecutor not made the remarks. See ***Moore***, 2020 IL 124538, ¶ 29.

¶ 136 Next, defendant alleges the prosecutor "misstated the evidence supporting the State's motive theory" when he inferred defendant "did not file a claim because she did not have 'all the documentation': 'She needed a death certificate and didn't get on[e] *** with the murder investigation going on.' " Defendant argues her trial counsel's failure to object to these allegedly improper comments fell below an objective standard of reasonableness because the prosecutor "never elicited testimony from the insurance agent that a death certificate was required to submit a claim."

¶ 137 Here, the State's allegedly improper comments regarding the necessity of a "death certificate" to receive the death benefit payout pursuant to J.C.'s whole life insurance policy,

which defendant alleges were improper, was a reasonable inference to be drawn from the evidence. Defendant's assertion that "the only evidence about a death certificate was [defendant's] testimony that the agent never told her she needed a certificate to submit a claim" is flatly belied by the record. J.C.'s life insurance policy was submitted into evidence without objection. The policy clearly provided the payout of the death benefit to the beneficiary of the insured would only occur upon receipt of "all claim requirements legally necessary in order to pay the claim," which included, "[p]roof of death of the insured." Although defendant testified she "didn't know [she] needed one," the provisions of J.C.'s life insurance policy defined satisfactory proof of death as "a final certified death certificate or other lawful evidence providing equivalent information that is acceptable to [American Family Insurance]."

¶ 138 Because we conclude defendant's claims related to the prosecutor's remarks during closing arguments are meritless, we reject any notion trial counsel rendered ineffective assistance by failing to object to the State's complained-of comments. See ***Bradford***, 2019 IL App (4th) 170148, ¶ 14, 123 N.E.3d 1285 (stating defense counsel cannot be deemed ineffective for failing to make a futile objection).

¶ 139 6. ***Eliciting Harmful Testimony***

¶ 140 Finally, defendant argues her trial counsel's elicitation of allegedly harmful testimony from (1) Matthews "about his 'multi day training on 911 phone call analysis,' where he learned to identify 'indicators of guilt,' " and (2) Delatte that, "If the insured on the policy were to pass away, prior to the ten years, it would be paid out. The full 25,000" was objectively unreasonable.

¶ 141 Here, defendant fails to overcome the presumption trial counsel's decision to solicit Matthews's testimony "about his 'multi day training on 911 phone call analysis," where

he learned to identify 'indicators of guilt,' " was part of a reasonable trial strategy. It is well established "whether and how to cross-examine the State's witnesses is generally a matter of trial strategy." ***People v. Sturgeon***, 2019 IL App (4th) 170035, ¶ 91, 126 N.E.3d 703. "Counsel's strategic choices are virtually unchallengeable on appeal" (***Sturgeon***, 2019 IL App (4th) 170035, ¶ 83, 126 N.E.3d 703), and this court will not use hindsight "to second-guess trial counsel's strategy or the ways in which he implemented that strategy." ***People v. Mabry***, 398 Ill. App. 3d 745, 753, 926 N.E.2d 732, 739 (2010). We do not have to necessarily agree that it was the best or most persuasive trial strategy as long as we can find it to be "reasonable trial strategy." See ***People v. Bell***, 2021 IL App (1st) 190366, ¶ 63, 189 N.E.3d 531 (" 'A defendant is entitled to competent, not perfect, representation, and mistakes in trial strategy or judgment will not, of themselves, render the representation ineffective.' " (quoting ***People v. Tucker***, 2017 IL App (5th) 130576, ¶ 26, 79 N.E.3d 782)).

¶ 142 Based on the record before us, it appears counsel's strategy at trial was to attempt to show Matthews rushed to judgment regarding defendant's guilt, which, in turn, biased his investigation into J.C.'s death. Counsel built on this theory throughout his cross-examination of Matthews. At one point, Matthews acknowledged having suspicions after listening to defendant's 911 call, based on her failure to ask for help from the dispatcher and because "[i]t was almost a minute before she even told the dispatchers what she needed and what was going on." In closing, counsel argued defendant was perceived as "public enemy number one" and Matthews "considered [defendant] to be a person of interest" as soon as he listened to the 911 call because "she wasn't being emotional enough." Counsel asserted, "from that day forward it was [defendant] that did it," and he asked the jury, "How is that an investigation? *** How is that anything more than Detective Matthews'[s] opinion, his theory, his hypothesis, about what

occurred?" Counsel argued, "You cannot convict an individual for first degree murder because of Detective Matthews['s] gut instinct," and he further remarked, "We have a theory of Detective Matthews," but "[t]heories do not lead to convictions." In rebuffing Matthews's suspicions regarding "why it took a minute" before defendant got "anything out to the dispatcher," counsel asserted, "she couldn't gather herself." Counsel also attacked Matthews's conclusion that "a guilty indicator was that [defendant] didn't ask for help" by suggesting defendant "knew that [J.C.] was deceased. *** There's no reason for her to ask for help." Further, counsel challenged Matthews's characterization of the reenactment as "just standard procedure," asserting, "if this is just something you're trying to figure out, if [defendant is] not a suspect, then why do you bring these consents with you? *** The consent to search her home, the consent to search her phone, is that something that everyone carries around with them, detectives? *** I doubt it."

¶ 143 Accordingly, we find nothing unreasonable or irrational with defense counsel's chosen trial strategy, even though it proved unsuccessful. See ***People v. Stevens***, 2018 IL App (4th) 150871, ¶ 23, 112 N.E.3d 609 ("Mistakes in trial strategy or tactics do not necessarily render counsel's representation defective."). Considering the circumstantial nature of the State's case against defendant, counsel's decision to elicit testimony from Matthews regarding the "indicators of guilt" he heard and the suspicions he had after listening to defendant's 911 call—in an effort to convince the jury it was likely Matthews allowed this to cloud his judgment—was reasonable trial strategy. Therefore, we conclude counsel's performance was not objectively unreasonable under prevailing professional norms. ***Valdez***, 2016 IL 119860, ¶ 14.

¶ 144 Furthermore, defendant has not shown she suffered any prejudice resulting from counsel's decision to question Delatte as to what amount a beneficiary may receive in the event an insured died before a life insurance policy was paid off. It is difficult to imagine how the

result of the proceeding would have been different even without the evidence solicited by counsel. Delatte testified he issued defendant a $25,000 "whole life insurance policy" for J.C. in December 2018. Delatte also identified People's Exhibit V as "the life insurance [policy] on [J.C.]," which included the policy's specifications and disclosures. The total amount of insurance provided by J.C.'s policy was $25,000. Although defendant makes much of Delatte's testimony that, "If the insured on the policy were to pass away, prior to the ten years, it would be paid out," it was merely duplicative. The jury was already aware defendant was eligible to receive at least the "full $25,000" upon J.C.'s death; thus, defendant cannot show she suffered any prejudice from counsel's questioning of Delatte about the insurance policy. See ***Moore***, 2020 IL 124538, ¶ 29.

¶ 145 III. CONCLUSION

¶ 146 For the foregoing reasons, we affirm the trial court's judgment.

¶ 147 Affirmed.

¶ 148 JUSTICE DOHERTY, specially concurring:

¶ 149 I join in most of the careful analysis laid out by my distinguished colleagues in the majority, and I also concur in the result reached. There is only one aspect of the majority opinion I decline to join, and I write separately to explain my reasons.

¶ 150 I agree that ***Miranda*** "does not include an analysis of the subjective intentions of police investigators." Given this conclusion, I feel it is unnecessary to "surmise the real purpose" of the reenactment "was to obtain incriminating information, by word or act, from defendant under circumstances which permitted them to skirt the requirements of ***Miranda*** in the process." Such speculation is not only unnecessary to the analysis, but it also does not appear to be supported by the record. The genesis of the reenactment was a suggestion from the coroner's

physician, Dr. Scott Denton, who called it "standard practice" in cases of this nature. There is nothing in the record to contradict Dr. Denton on this point.

¶ 151 If we were not to accept Dr. Denton's characterization of the reenactment as "standard procedure," we would have to look beyond the record to scrutinize it. We are permitted to take judicial notice of material on government websites. See ***People v. Johnson***, 2021 IL 125738, ¶ 54. Investigation of this topic in such a manner leads to information on the Centers for Disease Control and Prevention website about the benefits and manner of conducting a doll reenactment. See Kathleen Diebold, Centers for Disease Control and Prevention Sudden Unexplained Infant Death Investigation Manual, ch. 7, at 171-85, available at https://www.cdc.gov/sids/pdf/suidmanual/chapter7_tag508.pdf (last visited Sept. 29, 2022) [https://perma.cc/9PU2-WX4U]. While in this case the reenactment led to incrimination of defendant, it is not difficult to imagine how a reenactment might lead to exoneration in a different case.

¶ 152 Whether based on the record here or matters beyond, I see no basis to conclude that the doll reenactment conducted in this case was a contrivance devised by law enforcement to circumvent defendant's rights, and I would not characterize such reenactments as "interrogative procedures" taken to their "legal extreme." I do, however, agree with the wisdom of the suggestions made by the majority on how to prevent issues arising out of such reenactments in the future. Involvement of child welfare personnel may be appropriate in such reenactments, but it also means that law enforcement cannot be entirely sure what others have represented to a potential criminal defendant about the voluntariness of his or her participation. I agree with the majority that it behooves law enforcement to ensure that it addresses that topic directly with the individual involved before commencing the reenactment.

No. 129054

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 12, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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