NOTICE
Decision filed 11/16/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 230944-U

NO. 5-23-0944

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Champaign County.
	)	
v.	)	No. 21-CF-649
	)	
AMARI M. ROBINSON,	)	Honorable
	)	Randall B. Rosenbaum,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Presiding Justice Cates and Justice Sholar concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's first degree murder conviction is reversed and the cause remanded for a new trial where trial counsel rendered ineffective assistance in three respects: failing to object to inadmissible hearsay, failing to ensure the jury received required instructions on the defendant's statements, and failing to request a required cautionary instruction on the officers' identifications, each of which, on this closely balanced record, independently and cumulatively undermined confidence in the verdict. The defendant's remaining ineffective-assistance and for-cause claims are rejected, the sufficiency of the evidence permits retrial without offending double jeopardy, and the sentencing challenges are moot.

¶ 2 Following a jury trial, the defendant, Amari M. Robinson, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)) and found to have personally discharged a firearm that proximately caused Martin Morrow's[1] death. The trial court sentenced her to 52 years'

[1]Although the victim's name is listed as "Matthew Morrow" in the charging documents, he is referred to as "Martin Morrow" throughout the trial.

imprisonment, followed by 3 years of mandatory supervised release (MSR). On appeal, the defendant argues that she is entitled to a new trial based on numerous instances of ineffective assistance of trial counsel, including claims concerning jury selection, the admission and treatment of certain evidence, jury instructions, alternate-suspect evidence, and closing argument. She also contends that the trial court committed plain error by failing to excuse a prospective juror for cause. Alternatively, the defendant argues that her sentence should be vacated because the trial court improperly considered aggravating and mitigating factors and because her 52-year sentence is unconstitutional in light of her age and rehabilitative potential. She asks us to review the unpreserved sentencing claims under the plain-error doctrine or, alternatively, as claims of ineffective assistance of sentencing counsel. For the following reasons, we reverse.

¶ 3 I. BACKGROUND

¶ 4 On the afternoon of October 7, 2020, a gathering was held to commemorate the defendant's brother, who had died several months earlier. Martin, sometimes referred to as "Dee," attended the gathering. The defendant, who was 16 years old at the time, also attended. According to the State's evidence, later that evening the defendant left the gathering with Martin, Prentiss Turner, and others to commit what was described as a "lick," meaning a robbery, theft, or home invasion. Martin was thereafter shot multiple times and died from his injuries.

¶ 5 The State's theory was that the defendant and Prentiss each shot Martin, with Prentiss firing a .45-caliber weapon and the defendant firing a 9-millimeter weapon. Cartridge casings of both calibers were recovered from the scene. The State sought to connect the defendant to the 9-millimeter firearm through social media videos in which she was depicted with a firearm. The State presented testimony and a body-camera recording concerning statements allegedly made by

the defendant after the shooting. The State also introduced evidence relating to a separate shooting in Joliet involving the same firearm.

¶ 6 The defense disputed that the State proved the defendant was one of the shooters. No witness testified that he or she saw the defendant shoot Martin, and the firearm attributed to the defendant was not recovered. The defense also challenged the State's effort to connect the firearm depicted in the social media videos to the firearm used in Martin's shooting and the reliability and significance of the statements attributed to the defendant.

¶ 7 A. Pretrial Hearing

¶ 8 Before trial, the State sought permission for Detective Stephen Vogel to identify the defendant in several videos obtained during the investigation. At a hearing on the motion, Detective Vogel testified that he had encountered the defendant in person on three occasions. His first interaction with her occurred on October 9, 2020, the day after Martin's death, when he spoke with her at her residence for more than an hour during daylight hours. Detective Vogel subsequently encountered the defendant briefly at her residence in February 2021 and again at the county jail in April 2022, when he stood close enough to obtain buccal swabs from her. Detective Vogel also testified that he had reviewed numerous photographs and videos of the defendant obtained from her Snapchat and Facebook accounts.

¶ 9 The trial court found that Detective Vogel's prior interactions with the defendant and his review of photographs and videos provided an adequate foundation for him to identify her in the videos. The trial court permitted the testimony but observed that it remained for the jury ultimately to determine whether the defendant was the person depicted.

¶ 10 B. Jury Selection

¶ 11 Before jury selection began, trial counsel advised the trial court that the defense did not intend to call any witnesses unless the defendant elected to testify. During *voir dire*, the trial court advised the prospective jurors of the principles set forth in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), including that the defendant was presumed innocent, that the State bore the burden of proving her guilty beyond a reasonable doubt, that the defendant was not required to offer evidence, and that her decision not to testify could not be considered against her. The prospective jurors relevant to this appeal each indicated that they understood and accepted those principles.

¶ 12 Trial counsel asked whether the prospective jurors felt that they needed to hear "both sides of the case or both sides of the story to make a fair decision." Jurors 30, 55, 96, 121, 95, and 49 were among those who indicated that they wanted testimony or information concerning the defense's side of the case. Juror 121 responded "Yes" when counsel asked whether she felt that she "would have to hear from the defendant to make a fair decision."

¶ 13 Juror 96 explained, "I wouldn't necessarily have to hear from her directly, but maybe just some explanation or, you know, some testimony towards what was being said." Trial counsel moved to excuse Juror 96 for cause, arguing that her response indicated that she expected to hear the defendant's side of the case. The trial court denied the challenge, noting that Juror 96 had indicated that she understood and accepted the Rule 431(b) principles and interpreted counsel's questioning as asking whether the jurors would *prefer* to hear both sides rather than whether they required defense evidence before they could reach a fair verdict. The trial court described trial counsel's questioning as "a little vague." Trial counsel did not exercise a peremptory challenge against Juror 96, and she was selected to serve. Jurors 30, 55, 121, 95, and 49 also served on the

jury. Trial counsel did not challenge those jurors for cause or exercise peremptory challenges against them.

¶ 14 C. Jury Trial

¶ 15 1. Joliet Shooting

¶ 16 The State presented evidence concerning a shots-fired incident in Joliet, Illinois, approximately one month before Martin's death, which it relied on as evidence connecting the defendant to the firearm it alleged she later used to shoot Martin. Officer Jesus Mendez of the Joliet Police Department testified that, at approximately 6:45 p.m. on September 6, 2020, he was dispatched to the 400 block of South Joliet Street following a report that shots had been fired from a moving vehicle. Officer Mendez and his partner received a description of the vehicle and subsequently located a matching vehicle parked approximately a four-minute drive from the reported shooting location. Officer Mendez testified that three people were associated with the vehicle: Adrian Laster, Anthony Holland, and the defendant. Holland was seated in the driver's seat, Laster was standing near the rear of the vehicle, and the defendant was standing outside near the front passenger side. During pat downs, Officer Mendez recovered a loaded Glock firearm from Holland and a Taurus 9-millimeter firearm from Laster. Both firearms were taken into evidence. Officer Mendez testified that no firearm was recovered from the defendant.

¶ 17 On cross-examination, Officer Mendez testified that approximately 20 minutes had elapsed between the shots-fired dispatch and his contact with the vehicle. During that interval, the vehicle was not continuously under police surveillance. He further confirmed that the defendant was outside the vehicle when officers arrived and that no firearm was found on her.

¶ 18 Patrol Sergeant Hollis Weller of the Joliet Police Department testified that he also responded to the shots-fired call. Sergeant Weller canvassed the area and recovered a spent

cartridge casing from the middle of the intersection of Water and Jasper Streets. He testified that there was no indication that anyone had been struck by the gunfire. Sergeant Weller collected the casing, which was admitted as People's Exhibit 61. Illinois State Police (ISP) forensic scientist Kathryn Doolin later compared People's Exhibit 61 with People's Exhibit 44, a cartridge casing recovered from the scene of Martin's shooting.

¶ 19 2. Martin's Shooting

¶ 20 At trial, the State sought to establish the circumstances surrounding Martin's shooting through (1) testimony concerning the events before and after the shooting, (2) the defendant's recorded interview with police, (3) social media evidence, (4) forensic and ballistic evidence, and (5) testimony and recordings concerning statements allegedly made by the defendant after the shooting.

¶ 21 a. Events Surrounding Martin's Shooting

¶ 22 On October 7, 2020, family and friends gathered at the Fair Oaks residence in Champaign for a balloon release in memory of J.T., the defendant's brother. Those present included Martin, the defendant, Prentiss Turner, Amario Turner, Patrick Jordan, and the residents, Alliyah Stevens and Tyija Walters. A Snapchat video later obtained from Prentiss's account shows Prentiss and the defendant at the residence at approximately 1:34 a.m. on October 8, shortly before the shooting.

¶ 23 At trial, Stevens was asked about a conversation that occurred shortly before people began leaving the gathering. She stated she did not recall a conversation about what those individuals intended to do, but the State confronted her with a statement she gave Detective Vogel on the morning of the shooting that, while they were "chilling" and conducting the balloon release, "they said we finna walk and do a lick." Stevens stated she did not recall making that statement, although

she recalled questioning how the group could "walk and do a lick." She stated that she understood "lick" to mean getting drunk because the group had been drinking.

¶ 24 Amario testified that he left the gathering alone and that everyone went their own way, but was confronted with a prior statement in which he said he left with "Patrick, Mari, Dee, and my brother." He said he did not recall the statement and did not identify "Mari" as the defendant.

¶ 25 Jordan testified that he was picked up and dropped off by his godbrother, Lavelle Drisdell, and that he had been "high" at the gathering. He initially stated that he left alone, but acknowledged telling Detective Vogel days after the shooting that he "left with all of them," meaning the defendant, Prentiss, and Amario, and that Martin also left with the group before they split up.

¶ 26 Later that night, Stevens left briefly to go to a gas station but was called back by Tyija, who asked whether she had heard gunshots. Stevens had not heard shots but saw Martin lying in the roadway upon her return and flagged down police.

¶ 27 Sergeant Justin Prosser testified that he responded to a shots-fired call at approximately 2:08 a.m. and found Martin lying in the roadway near 3003 West William Street. Consistent with that location, Sergeant Prosser testified that he observed the subject "laying in the road in front of 3003 West William." Prosser observed what appeared to be multiple gunshot wounds and began rendering medical aid but observed no signs of life. When shown a photograph of Martin at the scene, Prosser testified that he could not identify what was on Martin's hands but observed something black on his left hand and something lighter, possibly white, on his right. He testified that Martin's hands did not appear to be bare. The parties stipulated that Martin was transported by ambulance to the hospital, where he was pronounced dead.

¶ 28 Officer Matthew Silver arrived shortly thereafter and recovered two bullets from the scene, one from beneath Martin's right armpit and another near his right hand. Detective Corey Phenicie

testified that, while searching the area outside 903 Fair Oaks, he located several cigarillo tips and a partially smoked cigarillo. One of the tips was admitted as People's Exhibit 8. The parties later stipulated that DNA recovered from the cigarillo tip was a mixture of three individuals and that there was very strong support for the conclusion that both the defendant and Martin were contributors to that DNA.

¶ 29 David Frye, a digital forensics examiner with the Champaign Police Department, testified concerning Snapchat geolocation records associated with the defendant and Prentiss. Frye explained that the data reflected an area approximately 360 feet from the reported coordinates rather than an exact location and that Snapchat did not continuously collect location information. At approximately 1:49 a.m. and 1:56 a.m. on October 8, the locations reflected in the defendant's Snapchat data were near the area where Martin was shot.

¶ 30 Frye described approximately six or seven hundred hours of training in digital forensics, forensic video, and geolocation. He explained that the Snapchat return arrives as a spreadsheet with three columns, latitude, longitude, and a timestamp, and read a representative value, a latitude of approximately 41.554 "plus or minus 39.66 meters." He described latitude and longitude as the coordinate system used to describe a location on the earth's surface. As to precision, Frye testified that data carried to three decimal points places a point "within about 360 feet of the actual location," which he characterized as a rectangle or "box" rather than a pinpoint. As to continuity, he testified that Snapchat collects geolocation data through an algorithm he could not fully specify and that there can be "some time between each data point" rather than a reading every minute. He had geolocation data from both accounts around the time of the murder and plotted the data points on a map admitted as People's Exhibit 30.

¶ 31 On cross-examination, Frye acknowledged limits on the data. He agreed that Amario Turner's account showed no location data for the relevant time period. He agreed there were times when the two phones were separate, or when the Snapchat application "wasn't connecting and uploading." And he confirmed that the Snapchat returns do not retain geolocation data for where a specific image or video was taken or uploaded.

¶ 32 b. The Defendant's Recorded Interview

¶ 33 On October 9, 2020, Detectives Vogel and Phenicie interviewed the 16-year-old defendant outside her residence after her mother arrived. The interview was recorded on Detective Vogel's body-worn camera, and a redacted 43-minute version was admitted as People's Exhibit 9 and published to the jury. Vogel testified that nothing relating to the homicide was removed.

¶ 34 When the video was played, the jury heard the defendant state that she arrived at the gathering while it was still daylight and that Martin was already there. She said that she had smoked marijuana, consumed alcohol, taken two pills and became "messed up." She described herself, Martin, Prentiss, Amario, Jordan, and others as leaving to do a "lick," which she described as obtaining approximately $30,000 from a nearby house. She denied possessing a gun herself and said Prentiss and Amario were supposed to have weapons. Detective Vogel testified that, based on his training and experience, the term "lick" commonly referred to a theft, home invasion, or robbery.

¶ 35 In the recorded interview played for the jury, the defendant stated that she heard gunshots, saw what looked like a spark near her leg from behind, saw Martin fall, and ran. She said she then heard additional gunshots from farther away and believed someone might also have been trying to shoot her. She denied shooting Martin and denied possessing a firearm. Her descriptions of her position relative to Martin varied: she said she did not remember where she had been standing,

that she was next to him when shots came from behind, and that she had been "trying to lead the way" and was positioned in front of him.

¶ 36 The jury also heard Detective Vogel assert that he knew "for a fact" the defendant left with Martin and others to "go do a lick." He told her that Martin had been shot "at least 10 to 12 times, at close range" and said this meant someone close to the group had killed Martin. Detective Vogel also told her that she needed to be honest because lying would prevent him from "helping" her, whereas honesty would allow him to help. He told her that if she lied, "the State's Attorney's Office, the judge, is gonna look at this, and it's over."

¶ 37 Detective Vogel testified that the defendant gave him a white cell phone during the interview, stating that it was the phone she used the night of the shooting. He said the phone contained no social media accounts and no evidentiary content, which he found surprising because Snapchat and Facebook records obtained earlier showed significant activity. Detective Vogel testified that the black phone the defendant had been using when officers arrived was never turned over.

¶ 38 Detective Vogel testified that, during the investigation, the defendant, Prentiss, Amario, Jordan, and Drisdell were all considered potential suspects in Martin's death. On cross-examination, he acknowledged that Martin and Drisdell both had romantic involvement with Tyija and that the defendant expressed concern during the interview that Drisdell had been driving by Tyija's residence.

¶ 39 On redirect examination, Detective Vogel testified that Drisdell initially was considered a potential suspect in Martin's death but ultimately was ruled out. Detective Vogel testified that he spoke with witnesses who described Drisdell's relationship with Martin as "fine," reviewed Drisdell's Facebook records and found no communications relevant to the investigation, and

reviewed Drisdell's cell phone records and found no calls or text-message activity involving anyone connected to the case before the homicide.

¶ 40 c. Social Media Evidence

¶ 41 Detective Vogel testified that officers executed search warrants for Snapchat accounts associated with the defendant and Prentiss. Based on information provided during their interviews, he identified the defendant's account and identified Prentiss's account. Detective Vogel testified that he recognized the defendant and Prentiss in several videos obtained from those accounts, including a Snapchat video dated October 6, 2020, at approximately 8:28 p.m., depicting the two together in a vehicle.

¶ 42 Detective Vogel also obtained a search warrant for the defendant's Facebook account. He testified that a Facebook conversation dated October 7, 2020, at 12:19 p.m. showed messages between the defendant's account and an account associated with Darrion Wicks. The defendant's account stated: "I feel you on dat one i wake up nd gts in mines everyday but i got a plan so thats the only thang that make me feel ok." Wicks's account responded, "we done execute da plan fasho," and "ain't got no choice but we aint gone speak onnat."

¶ 43 Detective Vogel identified the defendant and Martin in a video from the defendant's Snapchat account that was timestamped at approximately 8:10 p.m. on October 7, 2020, the day before Martin was shot. One video recovered from Prentiss's account was timestamped approximately 1:34 a.m. on October 8, 2020, and depicted Prentiss and the defendant inside the Fair Oaks Drive residence. Detective Vogel identified the defendant as wearing an Atlanta Braves cap and a black-and-white sweater.

¶ 44 Detective Vogel identified Martin in another video obtained from the defendant's Snapchat account, containing an arrow pointing toward Martin. Vogel testified that he had not added the

arrow, and that, based on his experience, the arrow was user-generated rather than automatically generated by Snapchat. He testified that the video was timestamped at approximately 4:18 p.m. on October 8, 2020.

¶ 45 He testified about another Facebook conversation between the defendant's account and Wicks's account on October 8, 2020, at 4:46 p.m. The Wicks account asked whether the defendant had gone to the hospital. The defendant's account responded that she had not, stating, "I got grazed in my leg," and describing being dropped off at a bowling alley and walking home. Additional videos obtained from the defendant's Snapchat account depicted her with firearms before and after Martin's death, including one video timestamped September 5, 2020, the day before the Joliet incident

¶ 46 d. Forensic and Ballistic Evidence

¶ 47 Officer Nate Epling of the Champaign Police Department testified that he assisted in processing the scene of Martin's shooting. Officers recovered 12 spent 9-millimeter cartridge casings and 4 spent .45-caliber cartridge casings, along with several projectiles. Officer Epling testified that cartridge casings ejected from a semiautomatic handgun generally land several feet from the firearm, although he acknowledged that a casing may move after striking the ground.

¶ 48 During trial, the parties stipulated to evidence concerning a Smith & Wesson .45-caliber firearm. According to the stipulation, Deon Cavette Jr. stole the firearm from his father and gave it to Nehemiah Campbell, the brother of Amario and Prentiss. The stipulation also indicated Nehemiah would testify that Amario later took the firearm from him. A spent cartridge casing associated with the firearm was provided to law enforcement by Cavette's father.

¶ 49 ISP forensic scientist Doolin testified as the State's firearms-identification witness. She stated that she belongs to the Association of Firearm and Tool Mark Examiners (AFTE) and was

tendered and admitted as an expert in firearms identification without objection. She explained that firearms identification determines whether a fired bullet, cartridge case, or other ammunition component was fired by a particular firearm, "whether that firearm was submitted to the laboratory or not," and that an identification rests on the reproduction and agreement of both class and individual characteristics.

¶ 50 Doolin described class characteristics as measurable features designed before manufacture, which for firearms include the caliber, breech-face markings, firing-pin shape, and rifling. She defined caliber as, among other things, "the nominal diameter of a bullet." She described individual characteristics as the microscopic imperfections produced during manufacture or through use, abuse, and corrosion, which are "unique to that particular firearm." She explained her method: if the class characteristics match to the naked eye, she then compares the individual characteristics on a comparison microscope, "two compound microscopes that are connected by an optical bridge" permitting simultaneous viewing, to determine whether the items were fired by the same firearm.

¶ 51 Applying that method, Doolin compared People's Exhibit 44 (her Lab Item 8, the 9-millimeter casing from Martin's scene) with People's Exhibit 61 (her Lab Item 1) and concluded that they "were fired by the same firearm." She explained that Exhibit 61 bore a different laboratory case number and had been submitted for comparison at a police-department request, reflecting its origin in the separate Joliet matter. She also compared People's Exhibit 56 (Lab Item 13) with People's Exhibit 70 (Lab Item 1) and likewise concluded that they "were fired by the same firearm," the comparison associated with the stipulated .45-caliber weapon. Consistent with that testimony, Doolin compared a 9-millimeter casing recovered from Martin's shooting with a casing recovered from the Joliet shooting and concluded that the two had been fired from the same

firearm, and she compared a .45-caliber casing recovered from Martin's shooting with the comparison casing associated with the Smith & Wesson .45-caliber firearm described in the parties' stipulation and concluded that those casings likewise had been fired from the same firearm.

¶ 52 Dr. Shiping Bao, who conducted Martin's autopsy, testified that Martin sustained 14 gunshot entrance wounds, 8 exit wounds, and had 6 bullets remaining in his body. The entrance wounds included injuries to Martin's face, neck, shoulder, chest, arm, and thigh, as well as two wounds to his upper back and posterior shoulder. Dr. Bao identified three wounds that perforated both lungs as fatal and concluded that Martin died from the gunshot wounds. He stated that although 9-millimeter and .45-caliber cartridge casings were recovered from the scene, he could not determine from the autopsy which caliber caused any particular wound.

¶ 53 Detective Sergeant Bradley Krauel testified concerning the firearms depicted in the social media videos. Sergeant Krauel had approximately 20 years of law-enforcement experience and had served as a SWAT officer, sniper-team leader, firearms instructor, and department armorer. He was certified as a master firearms instructor and testified that his firearms training included courses involving SWAT tactics, police-sniper training, tactical precision rifles, pistol and carbine instruction, and close-quarter and low-light firearms training. As a firearms instructor, he had trained other officers concerning the use and operation of firearms and diagnosing firearm-related problems and malfunctions. Sergeant Krauel had served as a department armorer since approximately 2011 and held several armorer certifications. He testified that his duties included inspecting firearms for functionality, diagnosing malfunctions, replacing worn or damaged components, and disassembling and reassembling firearms. The State tendered Sergeant Krauel as an expert in firearms identification. Trial counsel did not object and, when the trial court asked whether she had any questions concerning his expertise, counsel responded that she did not.

¶ 54 After reviewing several videos and still photographs, Sergeant Krauel testified that the firearm depicted was consistent with a Taurus Millennium G2 and likely was a PT-111, which he testified was typically chambered for 9-millimeter ammunition. In reaching that opinion, he relied on characteristics including the contour of the muzzle and slide, the recoil spring, trigger guard, rail system, stippling, barrel color, and rear profile. He also compared one of the still images with a stock photograph of the Taurus Millennium G2. Sergeant Krauel further opined that the firearm depicted in several of the images was a real firearm rather than an Airsoft or pellet-gun replica. He testified that firearms shown in several of the videos appeared to be the same firearm or, at a minimum, the same model.

¶ 55 On cross-examination, Sergeant Krauel acknowledged that the PT-111 was a popular firearm and that more than one million Taurus Millennium G2 PT-111 firearms had been manufactured. He also acknowledged that 9-millimeter was a very common caliber. He further acknowledged that he could not determine from a video or photograph whether the depicted firearm had fired any particular casing or projectile recovered from a crime scene. When asked what the term "9-millimeter" measured, Sergeant Krauel initially described it as the "circumference" of the round, but then explained that it referred to the "width or diameter" of the projectile.

¶ 56 e. Statements Attributed to the Defendant

¶ 57 Konika Morrow, Martin's sister, testified that her children did not get along with the defendant and her brothers. She stated that she overheard a video call between her son, Bailey, and the defendant. According to Konika, she saw the defendant's face on Bailey's phone and heard the defendant describe Martin lying on the ground, begging for his life and asking, "Why me?" Konika testified that the defendant said she told Martin to "shut up" before shooting him, mimicked

gunshots, and stated that Martin had purchased the bullets she used on him. Konika also testified that the defendant later laughed during a phone call informing the family of Martin's death. She acknowledged animosity between the families and admitted she did not report the alleged laughter until nearly two years later. Konika testified that she stood to the side of Bailey's cell phone during the call and was "recording," explaining that she intentionally remained out of view because she did not want the defendant to know she was present. She could not recall the precise date of the call and acknowledged that there had been numerous communications between Bailey and the defendant.

¶ 58 Testifying in greater detail about the call, Konika stated that she overheard a video call between Bailey and the defendant and could see the defendant's face. She testified that the defendant said Martin "was laying on the ground, rolling around, begging for his life, asking the Lord, 'Why me?' And she told him, 'Bitch, shut up,' and shot him in his shit." Asked whether her own face appeared on the screen, she said it did not: "I was to the side of the phone, recording," which she agreed was "by design" because she did not want the defendant to know she was in the room. She testified that when her son told the defendant "she set our murder up," the defendant said, "I'm not a set-up bitch," then "said about her shooting people," described the shooting as "pow, pow, pow," and said "my brother purchased the bullets that she used *** on him."

¶ 59 Konika also testified that, on the morning after the shooting, while her family was traveling to Champaign, the defendant called and told them that Martin had died. When asked whether the defendant said anything during that call indicating that she had shot Martin, Konika testified, "She just was laughing, and I told my son to hang up." Konika further testified that the defendant later sent Facebook friend requests to members of the family and that Konika told her to stop because, in Konika's words, the defendant had "murdered my brother." Konika testified that she had contact

with law enforcement shortly after Martin's death and remained in contact with Detective Vogel during the investigation. However, she did not report the alleged phone call in which the defendant laughed about Martin's death until September 2022, nearly two years later. On cross-examination, Konika also acknowledged animosity between members of the two families. The parties further stipulated that Konika had a pending case in another county for resisting a peace officer. That case was pending in Will County, and Detective Vogel testified that no detective or officer had sought consideration for Konika and that the state's attorney's office had not been involved with her case.

¶ 60 Donta Bailey, Martin's nephew and the person participating in the video call described by Konika, testified that he communicated with the defendant after Martin's death. According to Bailey, the defendant initially told him that she and Martin had been walking when someone pulled alongside them and began shooting. Bailey testified that the defendant "kept changing her story," telling him that Martin had taken her to buy bullets the day before he died and that Martin was killed with those same bullets.

¶ 61 Bailey nevertheless denied at trial that the defendant ever admitted shooting Martin. When asked whether she told him that she was the person who shot Martin or that she "did it," Bailey answered, "No." He also denied hearing the defendant say that she shot Martin in the head while he was choking on his blood and testified that his mother had claimed to hear that statement. Bailey acknowledged that the defendant told him Martin had been shot in the leg and arm, but again testified that she did not identify herself as the shooter. Although Konika had testified she heard the defendant say that Martin's last words were "Why me?" Bailey denied personally hearing the defendant make that statement. Bailey further acknowledged that his communications with the defendant were hostile at times and that the two had animosity stemming, at least in part, from comments concerning the defendant's brother, J.T.

¶ 62 Bailey's trial testimony, recounted in greater detail, was as follows. Asked whether the defendant "ever tell you that she was the one who did the shooting," Bailey testified, "No, she ain't, she ain't. She threw hands out there, but she ain't never told me she did it." Asked whether she said anything about choking, he answered that his mother "said she heard her on the phone saying he was choking" but "I don't remember that." He agreed he had accused the defendant of being a "set-up bitch," and said he did not really remember her response, describing her as "laughing." Confronted with a prior statement to Detective Vogel that the defendant said, "When we got up on him I shot his bitch ass in the head, and he was choking on his blood," Bailey responded, "No, I ain't tell him that. *** [M]y mom told him that." He agreed the defendant told him Martin "was crying like a bitch" and that Martin had been shot "in his leg and in his arm," but added, "She didn't tell me she did it." As to the asserted knowledge of Martin's "last words" ("Why me?"), Bailey said his mother was next to him during the calls and that "I ain't heard her say it," explaining, "Sometimes I just set the phone down and walk away, and I don't remember ***." He did not recall telling Vogel that the defendant said Martin "got up hit with all types of shells."

¶ 63 The State presented Detective Vogel's testimony concerning a recorded telephone interview he conducted with Bailey approximately six weeks after Martin's death. Vogel recorded the interview on his body-worn camera, and the resulting video was admitted as People's Exhibit 77, along with a separately identified excerpt. Exhibit 77 was played for the jury without objection. In contrast to Bailey's trial testimony, Detective Vogel stated that, during this recorded interview, Bailey reported that when he accused the defendant of being a "set-up bitch," she responded that she was not a "set-up bitch," but rather "the one that did it," and that she "hit him in his shit nine times." Vogel testified that, on the recording, Bailey "basically calls her a set-up bitch several times, and Amari responds that she's not a set-up bitch, she's the one that did it, hit him in his shit

nine times." Bailey also provided additional vivid details in the recorded interview, including that Martin was "choking," "crying," and had been struck with "all types of shells," descriptions the State relied upon as portraying direct, firsthand knowledge of the shooting. Whether any recording of the Morrow/Bailey call actually existed was not resolved; trial counsel testified none was produced, and the State maintained it possessed none.

¶ 64 f. Motion for Directed Verdict

¶ 65 After the State rested, trial counsel moved for a directed verdict, arguing that the evidence was insufficient to permit a reasonable jury to find the defendant guilty beyond a reasonable doubt. The trial court denied the motion. Although the court characterized the State's case as "somewhat of a circumstantial case," it concluded that, viewing the evidence in the light most favorable to the State, sufficient evidence existed for the case to be submitted to the jury. Following a recess, the defendant advised the trial court that she had decided not to testify, and the defense presented no evidence. Trial counsel renewed the motion for a directed verdict at the close of all the evidence. The trial court again denied the motion, stating that, although the case was circumstantial, the jury could find the defendant guilty beyond a reasonable doubt based on the evidence as a whole.

¶ 66 g. Jury Instructions Conference and Jury Charge

¶ 67 Before the State completed its evidence, the trial court conducted a preliminary jury-instruction conference. The court reviewed the State's proposed instructions individually and asked trial counsel whether she objected to each. When the trial court reached the State's Instruction No. 14, it identified the instruction as Illinois Pattern Jury Instructions, Criminal, Nos. 3.06 and 3.07 (4th ed. 2000) (hereinafter IPI Criminal 4th), which instructed the jury to determine what weight should be given to statements made by the defendant. Trial counsel stated that she had no objection, and the trial court stated that the instruction would be given.

¶ 68 After the parties rested, the trial court returned to the instruction conference to address matters that remained unresolved. Because the defendant had elected not to testify, trial counsel requested IPI Criminal 4th No. 2.04, instructing the jury that the defendant's failure to testify could not be considered against her, and the trial court agreed to give the instruction. The parties also addressed a modified accountability instruction. Trial counsel did not request an instruction concerning the jury's evaluation of identification testimony. As previously noted, during the pretrial hearing concerning Detective Vogel's identification testimony, the trial court had observed that an appropriate identification instruction could be given at the defense's request.

¶ 69 After the jury returned to the courtroom, the State and defense formally rested. The trial court then read the substantive portion of the jury charge before closing arguments. Among other matters, the court instructed the jury concerning the presumption of innocence and burden of proof, the defendant's decision not to testify, circumstantial evidence, the limited purpose for which evidence of another offense had been admitted, accountability, and the propositions necessary to sustain the murder charge and firearm allegations.

¶ 70 Although the trial court had stated that IPI Criminal 4th Nos. 3.06 and 3.07 would be given, the instruction was not included when the court later read the instructions to the jury and was not included in the written instructions provided to the jury.

¶ 71 h. Closing Arguments

¶ 72 During closing argument, the State maintained that the defendant and Prentiss were the two people who shot Martin. Although the prosecutor explained that the defendant also could be found guilty under principles of accountability, she emphasized that the State's evidence established that the defendant personally fired the 9-millimeter firearm. The prosecutor argued that Prentiss was the other shooter and was associated with the .45-caliber firearm. According to the prosecutor, the

defendant could be convicted even if the jury could not determine whether one of her shots caused Martin's death, but the State's primary theory was that the defendant both shot Martin and fired a fatal shot.

¶ 73 Referring to a crime-scene photograph depicting the locations of the recovered cartridge casings, the prosecutor argued that the defendant had been "leading the pack," with Martin behind her and Prentiss farther behind. The prosecutor argued that the defendant "takes her gun out, turns around, and shoots Dee" and asserted that the 9-millimeter casings depicted in the photograph were "from her firearm." The prosecutor further argued that Prentiss was positioned behind Martin and was firing the .45-caliber firearm.

¶ 74 The State also relied heavily on the statements attributed to the defendant. After playing a portion of Bailey's recorded interview, the prosecutor repeated the statement that the defendant was not a "set-up bitch" but had "hit him in his shit with nine bullets" and argued that the defendant had "take[n] responsibility for the shooting" and was "bragging." The prosecutor further argued that the defendant's purported knowledge that Martin had been choking on blood demonstrated that she had been present, "standing over" Martin and shooting him. The State also relied on Konika's testimony that she overheard the defendant make statements about Martin's shooting and argued that Konika had no reason to falsely attribute those statements to the defendant.

¶ 75 Turning to the firearm evidence, the prosecutor argued that the videos established that the defendant possessed a 9-millimeter firearm and sought to connect that firearm to both the Joliet shooting and Martin's shooting. The prosecutor initially stated that the defendant had been recorded with "the firearm that was used" in the Joliet shooting. Trial counsel objected that the argument misstated the evidence because no witness had testified that the firearm depicted in the videos was the firearm used in Joliet. The trial court overruled the objection, stating that the

prosecutor's statement was argument. The prosecutor then argued that the defendant was depicted "with the same gun that is used to commit the Joliet shooting" and continued, "It's the same firearm that is used to kill the victim."

¶ 76 The prosecutor thereafter relied on Doolin's comparison of the cartridge casings, arguing that a casing recovered in connection with the Joliet shooting had been fired from the same firearm as a casing recovered from Martin's shooting. The prosecutor characterized the defendant and the 9-millimeter firearm as the "two common denominators," arguing that "the defendant's at both scenes and the same gun is used."

¶ 77 Referring to objects found on Martin's hands after the shooting, the prosecutor argued that they appeared to be nonmatching gloves or clothing that Martin had worn to avoid leaving fingerprints while committing the planned "lick." The prosecutor also argued that the defendant attempted to conceal evidence by providing Detective Vogel with a cell phone that did not contain her social media accounts while the black cell phone she had been using when detectives arrived was not turned over. The prosecutor characterized the cell phone that was produced as a "fake phone" and argued that, whether the defendant had provided a different cell phone or had deleted the social media accounts, "either way" she was attempting to hide evidence.

¶ 78 The prosecutor further argued that the defendant had fired the shot that killed Martin. Referring to the locations of Martin's entrance wounds and the greater number of 9-millimeter cartridge casings recovered at the scene, the prosecutor argued that the defendant had been positioned in front of Martin, turned, and fired. She told the jury, "We know that the nine millimeter has more casings, more entrance wounds. The shot to the lung, the kill shot."

¶ 79 Finally, the prosecutor returned to the Snapchat video depicting Martin with a user-added arrow pointing toward him. Although Detective Vogel had testified that the video was

timestamped at approximately 4:18 p.m. on October 8, 2020, the prosecutor told the jury that the video was "taken October 7th at 3:18 p.m." and described the arrow as pointing toward Martin "about 12 hours before the defendant kills Dee." The prosecutor argued that Martin was unaware that he was being recorded and that the arrow demonstrated that he was "the target." The prosecutor relied on that evidence in support of the State's theory that Martin's shooting had been planned, arguing that the defendant and others had "concocted this plan to get him out of the house to commit this lick, because they know they're going to kill him."

¶ 80 In response, trial counsel argued that the State's case depended on speculation rather than reasonable inferences and emphasized that no witness had testified that the defendant shot Martin. Counsel did not dispute that the defendant attended the gathering, left with the group intending to participate in a "lick," had consumed alcohol and drugs, or had possessed a firearm at some point. She argued, however, that those circumstances did not establish that the defendant murdered Martin. Counsel relied on the defendant's account that gunfire unexpectedly erupted while the group was walking and argued that her falling to the ground and sustaining road rash was inconsistent with the State's theory that she knowingly participated in a planned shooting.

¶ 81 Addressing the firearm evidence, trial counsel acknowledged Sergeant Krauel's identification of the firearm depicted in the videos, stating, "I will accept Detective Sergeant Krauel identifying that gun, because he showed us some pictures, it appeared to be correct." Counsel nevertheless emphasized that the firearm itself had never been recovered and that no witness had forensically connected the firearm depicted in the videos to the cartridge casings recovered from Martin's shooting. Counsel also relied on Krauel's testimony that more than one million firearms of the model he identified had been manufactured and argued that 9-millimeter firearms were exceedingly common.

¶ 82 Trial counsel similarly challenged the State's reliance on the Joliet evidence. She emphasized that, when police located the suspect vehicle approximately 20 minutes after the reported shooting, the defendant was standing outside the vehicle and officers recovered firearms from the two men present but not from the defendant. Counsel further argued that no testimony established that the casing recovered from the street necessarily had been fired during the reported shooting. Counsel also emphasized testimony that firearms are readily transferred from one person to another and argued that the defendant was not the only person associated with both Joliet and Champaign.

¶ 83 Trial counsel emphasized the hostility between Bailey and the defendant and argued that the defendant's allegedly incriminating statements, including her response to Bailey's accusation that she was a "set-up bitch" and the statements attributed to her about shooting Martin, were made more than a month after Martin's death, after the animosity between them had "flared back up." Counsel characterized the defendant's comments as "unkind, uncalled for, and inappropriate," but argued that they reflected a 16-year-old responding to insults. Counsel further argued that, because of the "hubris" inherent in being 16 years old, it did not occur to the defendant that anyone might take her comments seriously and believe that she had committed the shooting. Counsel also challenged Konika's credibility, emphasizing that she had been in contact with police from shortly after Martin's death through the pendency of the case but, according to counsel, did not report the alleged phone call in which the defendant laughed about Martin's death until September 2022.

¶ 84 Trial counsel returned to the circumstantial nature of the firearm evidence, arguing that the State could not establish that the firearm depicted in the videos was the firearm used to shoot Martin. Counsel told the jury that no firearm had been recovered and matched to the cartridge casings and argued that "any one" of the millions of 9-millimeter firearms could have fired the

shots. Counsel characterized the State's interpretation of the remaining evidence, including the communications and Snapchat evidence, as an effort to fill gaps in the proof with speculation. Counsel likewise rejected the State's interpretation of the arrow placed over Martin in the Snapchat video, arguing that the arrow could have innocent explanations and did not establish that Martin had been targeted for murder.

¶ 85 In rebuttal, the prosecutor again argued that it was not speculative that the same firearm had been used in the Joliet shooting and Martin's shooting, relying on Doolin's comparison of the cartridge casings. The prosecutor also characterized trial counsel as having attempted to suggest other possible suspects and specifically addressed Drisdell, noting that counsel had elicited evidence concerning him during Detective Vogel's testimony. The prosecutor reminded the jury that Detective Vogel testified that he had investigated Drisdell and ruled him out as a suspect. The prosecutor further argued that trial counsel had effectively conceded that the defendant made the statements attributed to her by Bailey. The prosecutor relied on trial counsel's closing argument characterizing the defendant's comments to Bailey as "unkind, uncalled for, and inappropriate" while arguing that they reflected a 16-year-old responding to insults rather than an admission to murder. The prosecutor also argued that the defendant's efforts to distance herself from Prentiss and others demonstrated consciousness of guilt.

¶ 86 Following rebuttal, the trial court read the remaining concluding instructions to the jury. The transcript does not reflect that the trial court read IPI Criminal 4th Nos. 3.06 and 3.07 concerning statements attributed to the defendant, notwithstanding its earlier ruling that the instruction would be given. The court did not give that instruction when it read the substantive instructions before closing arguments, and it again did not give the instruction when it read the

remaining concluding instructions after argument. The trial court, likewise, did not give an instruction specifically addressing the jury's evaluation of identification testimony.

¶ 87 i. Jury Deliberations, Verdict, and Polling

¶ 88 The jury began deliberating after closing arguments. At approximately 5:15 p.m., the jury sent the trial court a written question asking whether it could "hear" or "confirm" Detective Vogel's testimony concerning the "clearing of Amario Turner and Patrick Jordan." The trial court stated that it did not recall Detective Vogel testifying that he had cleared either man, although Detective Vogel had testified that he ruled out Drisdell as a suspect. Trial counsel agreed with the trial court's recollection, and both parties agreed that the jury should be instructed to rely on the evidence already presented. The trial court responded, "You have all the evidence and instructions of law. Please rely on your collective recollection of the evidence and continue your deliberations."

¶ 89 At approximately 8:42 p.m., the jury returned to the courtroom. Juror 30, the foreperson, announced that the jury had reached verdicts. The trial court read the verdicts finding the defendant guilty of first degree murder and further finding that she was armed with a firearm during the offense and personally discharged a firearm that proximately caused Martin's death.

¶ 90 At trial counsel's request, the trial court individually polled the jurors. Jurors 121, 55, 96, 30, 49, and 95, whose *voir dire* responses are relevant to the defendant's claims on appeal, each confirmed that the verdicts were and remained their verdicts. The remaining jurors likewise confirmed the verdicts. The trial court then entered judgment on the guilty verdict and the firearm findings.

¶ 91 D. Posttrial Proceedings

¶ 92 Following the jury's verdict, trial counsel filed a motion for judgment notwithstanding the verdict or, alternatively, for a new trial. The motion challenged the sufficiency of the evidence and

several evidentiary rulings, including the admission of other-crimes evidence, Detective Vogel's identification of the defendant in social media videos, a recorded phone call involving the defendant, and Vogel's testimony interpreting social media slang. The motion also challenged portions of the State's closing argument and asserted cumulative error. At the defendant's request, trial counsel additionally included allegations concerning purported *Brady* violations (*Brady v. Maryland*, 373 U.S. 83 (1963)) and false testimony but expressly stated that trial counsel did not adopt those allegations.

¶ 93 The defendant thereafter filed a *pro se* motion alleging ineffective assistance of trial counsel. Among other things, she alleged that trial counsel failed to use social media evidence to impeach Konika and Bailey, failed to investigate or clarify whether Amario and Patrick had been eliminated as suspects, failed adequately to provide or review discovery with her, and failed adequately to prepare her for trial. She also alleged that trial counsel's caseload prevented trial counsel from devoting sufficient attention to the case.

¶ 94 The trial court initially contemplated conducting an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), concerning the defendant's allegations. Before that inquiry occurred, however, the defendant retained private counsel (hereafter, posttrial counsel), who substituted for the public defender. The trial court therefore concluded that a separate *Krankel* inquiry was unnecessary because the defendant's newly retained counsel could review the record and pursue any claims concerning trial counsel's performance.

¶ 95 Posttrial counsel sought transcripts of the trial and other proceedings in order to evaluate both the previously filed posttrial motion and the defendant's ineffective-assistance claims. The trial court granted the request in substantial part, including transcripts from the preliminary hearing

and the evidentiary portion of the jury trial, but denied the request for transcripts of the pretrial motion arguments and, initially, jury selection and opening statements.

¶ 96 On June 30, 2023, posttrial counsel filed an amended motion for judgment notwithstanding the verdict or for a new trial that included claims of ineffective assistance of trial counsel. The amended motion itself is not contained in the common-law record, although the supporting memorandum, the subsequent evidentiary hearing, and the trial court's ruling reflect the substance of the ineffective-assistance claims pursued by posttrial counsel. The trial court thereafter conducted an evidentiary hearing on those claims.

¶ 97 1. Evidentiary Hearing on Ineffective-Assistance Claims

¶ 98 a. Trial Counsel's Testimony

¶ 99 At the evidentiary hearing, trial counsel Lindsey Lepp testified concerning her preparation for trial and the strategic decisions she made during the proceedings. Lepp testified that she represented the defendant from approximately June 2021 through late 2022 or early 2023. She had practiced as a public defender since 2009 and had served as the first assistant public defender since approximately 2018. The parties stipulated that the State disclosed 2,045 pages of written discovery, and Lepp testified that the case also involved hundreds of videos and a substantial amount of social media material. She testified that she reviewed all of the paper discovery, all body-camera and squad-car footage tendered to her, and the electronic material she considered relevant to the case.

¶ 100 Lepp testified that she discussed the discovery with the defendant both in person and by phone, sometimes reading reports verbatim and sometimes summarizing larger portions of the materials. Shortly before trial, Lepp and second-chair counsel discussed with the defendant whether she should testify and what her testimony potentially would include. According to Lepp,

the defense considered whether to present affirmative evidence or instead focus on weaknesses in the State's proof. Lepp ultimately believed the strongest defense was to emphasize that no witness could testify that he or she saw the defendant shoot Martin.

¶ 101 Lepp also testified concerning evidence that the defense elected not to present regarding other shootings involving firearms connected to the investigation. With respect to an April 2020 Joliet incident in which another person allegedly possessed the same firearm, Lepp explained that the incident occurred months before Martin's death and that she did not want the jury to hear evidence suggesting that members of the defendant's family had been involved in multiple shooting incidents. She believed such evidence could prejudice the jury against the defendant.

¶ 102 Posttrial counsel also questioned Lepp about an October 2, 2020, shooting in which Prentiss had been identified as a suspect and cartridge casings reportedly matched one of the firearms later used in Martin's shooting. Lepp testified that she did not present that evidence because she did not want to draw additional attention to Prentiss. She explained that she had received a recorded conversation in which Prentiss implicated the defendant as the other person who shot Martin.

¶ 103 Lepp testified that she had reviewed the investigations concerning Amario and Jordan and knew that police had investigated Drisdell in a parallel investigation and considered him ruled out. When asked whether she had considered presenting other individuals as alternate suspects, Lepp testified that she viewed the people who left the residence with Martin as potential alternate suspects and believed she had argued that theory to the jury.

¶ 104 Posttrial counsel next questioned Lepp concerning Sergeant Krauel's identification of the firearm depicted in the social media videos. Lepp testified that Sergeant Krauel's written report, disclosed shortly before trial, did not state that the depicted firearm was a 9-millimeter weapon.

She nevertheless understood before trial that a Taurus Millennium G2 was a 9-millimeter firearm based on conversations with the prosecutor, her general familiarity with firearms from criminal-defense practice, her prior experience with Sergeant Krauel's firearms testimony in other cases, and her own research. Lepp testified that she searched the firearm model online and compared photographs she found with the images disclosed in discovery. She believed she used a Google image search rather than the manufacturer's website. She acknowledged that she did not independently investigate whether a visually similar Taurus model could be chambered in another caliber because her purpose had been to determine whether Sergeant Krauel's proposed identification appeared accurate.

¶ 105 Posttrial counsel also questioned Lepp about Sergeant Krauel's trial testimony concerning the measurement represented by nine millimeters. Sergeant Krauel initially referred to the "circumference" of the round but then described the measurement as the "width or diameter" of the projectile, while forensic scientist Doolin had described caliber in terms of diameter. Lepp testified that she understood Sergeant Krauel's explanation to be accurate. When questioned about the distinction between circumference and diameter, Lepp acknowledged that mathematics was not her strength. During the hearing, the trial court observed that Sergeant Krauel had identified the firearm based on its visible characteristics rather than by measuring a projectile and stated that it did not view the terminology issue as particularly significant.

¶ 106 Posttrial counsel further examined Lepp concerning the statements attributed to the defendant by Bailey and Konika. Lepp testified that the defense deliberately limited the extent to which it emphasized animosity between the two families because she and second-chair counsel were concerned that extensive evidence of hostility could permit the jury to infer a motive for the defendant to harm Martin.

¶ 107 Lepp also was questioned concerning her closing argument addressing the statements Bailey and Konika attributed to the defendant. Before reviewing the transcript, Lepp testified that she suspected she had offered an explanation for why the defendant might have made the statements "if they believed that they were made." When posttrial counsel characterized that argument as a concession that the defendant had made the statements, Lepp initially responded, "If that's what the transcript shows, yes." After further questioning, however, Lepp expressly stated, "I don't believe that I conceded that she made them," and asked counsel to identify the specific portion of her closing argument on which he relied. Posttrial counsel then read the portion in which Lepp had argued that the defendant's comments to Bailey were "unkind, uncalled for, and inappropriate" but reflected a 16-year-old responding in kind to hurtful comments. Counsel again characterized that argument as an admission that the defendant had made the statements but did not expect anyone to take them seriously. Following an objection and discussion concerning the nature of the underlying evidence, posttrial counsel moved to another subject without Lepp agreeing with that characterization.

¶ 108 Posttrial counsel then questioned Lepp concerning Konika's testimony that she had been standing beside Bailey's phone "recording" the video call during which the defendant allegedly admitted shooting Martin. Lepp testified that she did not recall learning before trial that the conversation had been recorded and that the State had never provided her with a copy of any recording. When Konika testified that she had recorded the conversation, Lepp considered the assertion significant because no recording had been produced and believed it was something she potentially could use in closing argument. She did not request a recess or ask the State whether a recording existed.

¶ 109 Lepp explained that she did not believe a recording existed. She testified that this belief was based on her conversations with the State and that she believed Konika likely was attempting to bolster her own testimony by claiming that she had recorded the call. Lepp further testified that, had a recording actually existed, she did not want the State to play it for the jury; if no recording existed, she believed she already had sufficient information to challenge Konika's credibility. When asked why she did not simply inquire whether the State possessed a recording, Lepp stated that she did not know how the State would know whether Konika had made one without asking Konika because no recording had been provided to either side. She described Konika's assertion that she had recorded the call, coupled with the State's failure to play any recording, as "ripe potential pickings for a closing argument." Lepp did not recall whether she ultimately made that argument to the jury.

¶ 110 During this questioning, the State objected to the suggestion that it possessed a recording that had not been provided in discovery. The prosecutor argued that the questioning "assume[d] that there was a recording that we had that we didn't provide," and stated that such a premise made "absolutely no sense" because, "if we had a recording, we would have played it."

¶ 111 Posttrial counsel also questioned Lepp about Konika's testimony that the defendant called Martin's family after his death and laughed during the call. Lepp testified that she did not obtain the defendant's call history in an effort to disprove the call because multiple phones associated with the defendant's family were involved in the investigation and there had been considerable disagreement concerning which phone belonged to the defendant. Lepp noted that body-camera footage showed multiple phones being seized and testified that, even if records from one number showed no such call, that would establish only that the call had not been made from that particular number, not that no call had occurred. When posttrial counsel suggested that such evidence

nevertheless would have tended to disprove the call, Lepp disagreed. She further testified that she did not believe tracing the various telephone numbers was likely to be the means by which the defense would prevail at trial. Lepp was not questioned at the evidentiary hearing concerning her decisions during jury selection.

¶ 112 b. The Defendant's Testimony

¶ 113 At the continued evidentiary hearing, the defendant testified that Lepp met with her in person only a few times before and during trial, although the two also spoke by phone. The defendant testified that she did not receive paper copies of the discovery before trial and repeatedly asked Lepp for copies. According to the defendant, Lepp told her that the discovery consisted of too many pages to print and reviewed only portions of the material with her by phone. The defendant further testified that she was surprised by some of the State's evidence when it was presented at trial.

¶ 114 The defendant further testified that she wanted to testify at trial because she believed Bailey and Konika were lying about the statements they attributed to her. She denied ever admitting that she participated in Martin's death and characterized Bailey's and Konika's testimony as the most significant evidence against her. According to the defendant, she had provided Lepp with social media messages that she believed contradicted their testimony, but Lepp did not present that material to the jury.

¶ 115 The defendant testified that Lepp advised her against testifying because the State would be permitted to cross-examine her and because her recorded interview with Detective Vogel already presented her version of events. The defendant stated that she accepted Lepp's advice. On cross-examination, she acknowledged that the trial court advised her that the decision whether to testify

was hers alone, that no one could force her to testify or prevent her from doing so, and that she ultimately told the court, "I do not want to testify."

¶ 116 On redirect examination, the defendant testified that Lepp did not discuss with her how testifying might benefit the defense or how counsel might limit the scope of cross-examination. She also testified that she had not authorized Lepp to argue in closing that the statements attributed to her by Bailey and Konika were the product of a teenage argument. The defendant testified that she never agreed to a strategy that treated those statements as statements she actually had made. The defendant stated that she had denied making those statements and would not have agreed to a strategy that, in her view, effectively admitted that she made them.

¶ 117 c. Additional Evidence Presented at the Hearing

¶ 118 Posttrial counsel introduced an image from the company's website depicting a Taurus Millennium G2 P-140 firearm chambered in .40 caliber. Counsel argued that the P-140 appeared visually similar to the PT-111 that Sergeant Krauel had identified as the firearm depicted in the defendant's social media videos, except for a slight difference in barrel size. Counsel maintained that the comparison could have been used to challenge Krauel's conclusion that the firearm depicted in the videos was a 9-millimeter weapon.

¶ 119 Posttrial counsel also presented additional materials in support of the defendant's ineffective-assistance claims. Among them was a supplemental police report documenting Detective Vogel's interview of Antonio Sims. According to posttrial counsel's description of the report, Sims stated that he had known Martin since childhood and that, two days before Martin's death, Martin told him that Drisdell was angry about Martin's relationship with Tyija, had been driving past Martin's residence, and had threatened Martin by phone.

¶ 120 Posttrial counsel argued that this information could have been used either to present Drisdell as an alternate suspect or to impeach Detective Vogel's trial testimony that witnesses had described the relationship between Drisdell and Martin as "fine." The trial court declined to consider the police report substantively, noting that Sims did not testify at the posttrial hearing and that Detective Vogel had testified at trial concerning the investigative steps by which he ruled Drisdell out.

¶ 121 Posttrial counsel also offered Defense Exhibit 14, which consisted of police reports previously produced in discovery. According to posttrial counsel's description of one report, Detective Vogel interviewed Konika, reviewed the video recording she said she had made of the conversation, and rerecorded that video on his body-worn camera.[2] Posttrial counsel argued that the report demonstrated that trial counsel could have learned before trial that Konika claimed to possess a recording had trial counsel more thoroughly reviewed the written discovery. The record does not establish, however, that either Konika's original recording or Detective Vogel's body-camera rerecording was itself provided to trial counsel, and neither recording was introduced or played for the jury. The trial court admitted the police report for consideration.

¶ 122 Posttrial counsel also relied on police reports concerning the September 2020 Joliet shooting. According to posttrial counsel's description of those reports, Tonisha Wiley told police that the person firing from the suspect vehicle was a Black male who was hanging out of the passenger-side window. Posttrial counsel argued that trial counsel could have called Wiley to rebut the State's effort to connect the defendant to the Joliet shooting and, in turn, to the 9-millimeter

[2]The parties' representations concerning the recording are not entirely consistent. Although the police report was described as stating that Detective Vogel reviewed Konika's recording and rerecorded it on his body-worn camera, trial counsel testified that no recording had been provided to the defense, and the State later maintained that it did not possess an undisclosed recording. We address the significance of these circumstances in our analysis.

firearm later used in Martin's homicide. The trial court admitted the police report for consideration, while the State noted that, had Wiley testified, she theoretically could have identified the defendant as the shooter.

¶ 123 Posttrial counsel further presented reports and laboratory materials concerning other incidents involving the 9-millimeter firearm and evidence connecting Prentiss to 9-millimeter ammunition. Among other things, posttrial counsel relied on evidence that Prentiss had been identified as a suspect in another shooting involving matching cartridge casings, that an extended magazine containing 9-millimeter ammunition had been recovered from a residence where Prentiss had been staying, and that Prentiss's DNA was recovered from that magazine. Posttrial counsel argued that this evidence supported the defense theory that firearms were passed among individuals and could have been used to cast doubt on whether the defendant possessed the 9-millimeter firearm when Martin was killed. The trial court admitted the materials for consideration but repeatedly noted that Prentiss already was alleged to have participated in Martin's murder and questioned the extent to which the evidence affected the defendant's culpability.

¶ 124 d. Trial Court's Ruling on the Amended Posttrial Motion

¶ 125 In ruling on the amended posttrial motion, the trial court noted that the amended motion had stated the ineffective-assistance allegations in broad terms and that several issues developed during the evidentiary hearing had not been specifically identified in the motion. The trial court nevertheless addressed a number of those issues based on the testimony and argument presented at the hearing.

¶ 126 The trial court first addressed the credibility of the witnesses who testified at the evidentiary hearing. The trial court found Lepp credible, noting that she acknowledged when she did not remember particular matters rather than attempting to minimize shortcomings in her

recollection. In contrast, the court gave substantially less weight to the defendant's testimony, citing her demeanor, the breadth of several of her assertions, and inconsistencies between her testimony and other portions of the record.

¶ 127 The trial court rejected the defendant's claim that the timing and volume of discovery left Lepp inadequately prepared for trial. The trial court credited Lepp's testimony that she reviewed the discovery, that much of the later disclosed material was repetitive or did not alter the defense theory, and that she had sought continuances on earlier occasions when newly disclosed material required additional preparation. The trial court found that the defendant had established neither deficient performance nor prejudice from Lepp's decision to proceed to trial.

¶ 128 The trial court likewise rejected the claim that Lepp was ineffective for failing to provide the defendant with copies of the discovery. The trial court observed that Illinois Supreme Court Rule 415(c) (eff. Oct. 23, 2020) permitted counsel to seek authorization to provide discovery materials to a defendant but did not require counsel to do so. It credited Lepp's testimony that she reviewed the evidence with the defendant, sometimes summarizing the materials and sometimes reading portions verbatim, and again found neither deficient performance nor prejudice.

¶ 129 The trial court also rejected the defendant's claim concerning her decision not to testify. It noted that both Lepp and the defendant testified that they had discussed whether the defendant should testify. The trial court further relied on its admonishments during trial that the decision belonged to the defendant and that no one could prevent her from testifying if she wished to do so. After those admonishments, the defendant stated that she did not want to testify and denied that anyone had forced, threatened, or pressured her into that decision. The trial court therefore found no ineffective assistance on that ground.

¶ 130 The trial court next addressed several of Lepp's challenged evidentiary and strategic decisions. It credited Lepp's explanation for declining to introduce evidence concerning other shootings involving firearms connected to the investigation, including her concern that such evidence could associate the defendant and those close to her with additional firearm-related incidents. The trial court likewise accepted Lepp's explanation for declining to emphasize evidence connecting Prentiss to the 9-millimeter firearm because doing so risked introducing a recorded conversation in which Prentiss implicated the defendant in Martin's shooting.

¶ 131 With respect to alternate suspects, the trial court acknowledged that some of the materials presented posttrial suggested that other individuals may have had motives to harm Martin. The trial court nevertheless emphasized that the defense theory at trial already focused on the absence of an eyewitness who saw the defendant shoot Martin and on the involvement of others, particularly Prentiss. As to Drisdell, the trial court noted Detective Vogel's trial testimony that police investigated him and ultimately ruled him out as a suspect. The trial court concluded that Lepp's decision not to pursue the alternate-suspect theory further was a matter of trial strategy. The trial court also addressed posttrial counsel's challenge to Sergeant Krauel's identification of the firearm depicted in the videos. Although the trial court acknowledged that the photographs of the 9-millimeter and .40-caliber Taurus firearms appeared similar, it noted that Sergeant Krauel had qualified his identification and relied on visible characteristics of the firearm. The trial court treated trial counsel's handling of the firearm-identification evidence as part of her overall strategic approach.

¶ 132 The trial court addressed claims concerning the State's use of witnesses' prior statements and leading questions. Although the trial court stated that the procedure used to confront certain witnesses with prior statements may not have been "done perfectly procedurally," it noted that

several witnesses were hostile or claimed not to remember their earlier statements and concluded that the State appropriately confronted them with those statements. The trial court also found no prejudice arising from leading questions used on occasion to identify the defendant in court.

¶ 133 Ultimately, the trial court found that trial counsel had subjected the State's case to meaningful adversarial testing throughout the proceedings, including by filing pretrial motions, making objections, and extensively cross-examining the State's witnesses. The trial court concluded that trial counsel's challenged decisions generally reflected tactical or strategic choices and expressly found that, even when the alleged deficiencies were considered collectively, the defendant had failed to establish both deficient performance and prejudice. The trial court, therefore, denied the amended motion for judgment notwithstanding the verdict or, alternatively, for a new trial.

¶ 134 E. Sentencing Hearing

¶ 135 At a sentencing hearing, the State presented a victim-impact statement from Martin's sister, and the defense presented mitigation testimony from the defendant's aunts. After considering the presentence investigation, the trial and sentencing evidence, the parties' arguments, the defendant's allocution, and the applicable aggravating, mitigating, and youth-specific factors, the trial court imposed a sentence of 52 years' imprisonment, consisting of 27 years for first degree murder and a 25-year firearm enhancement, followed by 3 years' mandatory supervised release, and noted that the defendant would be eligible for parole after 20 years. The defendant did not file a motion to reconsider her sentence and filed a notice of appeal.

¶ 136 II. ANALYSIS

¶ 137 The defendant contends that she was denied the effective assistance of trial counsel in several respects and that the cumulative effect of counsel's errors requires a new trial. We examine each claim in turn, applying the governing standard set out below.

¶ 138 A claim of ineffective assistance of counsel is governed by the two-part test announced in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under *Strickland*, the defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Id.* Prejudice requires a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different, a probability sufficient to undermine confidence in the outcome. *Id.* at 694. Judicial scrutiny of counsel's performance is highly deferential, and the defendant must overcome a strong presumption that the challenged conduct was the product of sound trial strategy. *People v. Metcalfe*, 202 Ill. 2d 544, 561-62 (2002).

¶ 139 The standard of review is not uniform across these claims, because the defendant pursued them differently in the trial court. At the posttrial evidentiary hearing, trial counsel was examined regarding some of her challenged decisions but not others, and the trial court resolved some claims specifically while leaving others unaddressed. Where a claim was developed at the hearing and the trial court made findings on it, our review is bifurcated: we defer to the trial court's findings of fact, including its credibility determinations and its findings that counsel's decisions were matters of trial strategy, unless they are against the manifest weight of the evidence, and we assess *de novo* the ultimate legal question whether counsel's acts or omissions constituted ineffective assistance. *People v. Reinking*, 2024 IL App (4th) 230486, ¶ 111. Where the defendant did not raise a claim in the trial court, or raised it but the court made no finding on the particular theory now advanced, no factual or strategic determination exists to which deference can attach, and we review the claim

de novo, according manifest-weight deference only to any subsidiary finding the court did make. *People v. Wilson*, 392 Ill. App. 3d 189, 197 (2009). We identify the governing standard as we take up each claim.

¶ 140 A. Ineffective Assistance in Jury Selection

¶ 141 The defendant first contends that trial counsel was ineffective for allowing the selection of a partial jury. She argues that trial counsel asked the venire whether its members needed to "hear both sides" of the case, that six jurors (numbers 96, 30, 55, 121, 95, and 49) indicated they wanted the defense to present evidence, and that trial counsel then moved to excuse only Juror 96 for cause, used no peremptory challenge against any of the six, and accepted all of them, even though the defense had no plans to present evidence. She maintains that the deficiency prejudiced her because the State's case was closely balanced, and, in the alternative, that the trial court's refusal to excuse Juror 96 for cause was plain error.

¶ 142 The State responds that counsel's conduct during *voir dire*, including the decision whether to exercise a peremptory challenge, is a matter of trial strategy not subject to scrutiny under *Strickland*; that the for-cause claim as to Juror 96 is forfeited because it was not raised in a posttrial motion; and that the defendant cannot establish prejudice because the evidence was not closely balanced and because she identifies no juror who was in fact biased.

¶ 143 Two standards govern: plain error and *Strickland*. Because trial counsel was not questioned about her jury-selection decisions at the posttrial evidentiary hearing, and the trial court made no finding on this claim, no factual or strategic determination exists to which deference can attach; thus, we review the ineffective-assistance claim *de novo*. *Wilson*, 392 Ill. App. 3d at 197. The alternative contention that the trial court erred in refusing to excuse Juror 96 for cause was not raised in a posttrial motion and is therefore forfeited; we may review it only for plain error. *People*

v. Sebby, 2017 IL 119445, ¶ 48. Under either prong of the plain-error doctrine, the first step is to determine whether a clear or obvious error occurred. *Id.* ¶ 49.

¶ 144 The two-part *Strickland* standard set forth above governs this claim, and the defendant must overcome the strong presumption that counsel's challenged conduct was the product of sound trial strategy. *Metcalfe*, 202 Ill. 2d at 561-62. Several settled principles specific to jury selection frame the analysis. Our supreme court in *Metcalfe* addressed the same two theories the defendant advances. The *Metcalfe* court held there that defense counsel's conduct during jury *voir dire* involves matters of trial strategy that generally are not subject to scrutiny under *Strickland*, and that the decision whether to exercise an available peremptory challenge is itself strategic. *Id.* A defendant waives an objection to a juror by failing to challenge that juror for cause or peremptorily. *Id.* at 552. And a trial court has the discretion, but not the duty, to excuse a juror for cause on its own motion; it abuses its discretion only where its conduct thwarts the selection of an impartial jury. *Id.* at 556, 558-59. The ruling on a challenge for cause likewise lies within the trial court's sound discretion and will not be disturbed absent an abuse of that discretion, because the trial court considers the venireperson's responses as a whole and is in a superior position to ascertain the meaning the venireperson intends to convey. *People v. Taylor*, 166 Ill. 2d 414, 422 (1995). A juror must accept that the defendant is presumed innocent, is not required to offer evidence, must be proved guilty beyond a reasonable doubt, and that her failure to testify cannot be held against her; a juror prejudiced against those guarantees is not impartial. *People v. Zehr*, 103 Ill. 2d 472, 477-78 (1984). The defendant relies on *People v. Reinbold*, where the reviewing court reversed because a seated juror, considering her *voir dire* as a whole, expected the defendant to prove his innocence and would regard his silence as a sign that he had "something to hide." *People v. Reinbold*, 247

Ill. App. 3d 498, 504 (1993). The *Reinbold* defendant had run out of peremptory challenges, so that two jurors he unsuccessfully challenged for cause sat on the jury. *Id.* at 502.

¶ 145 Applying *Strickland*, the defendant has not overcome the strong presumption that counsel acted strategically. Counsel questioned the venire, moved to excuse Juror 96 for cause, and accepted the remaining jurors only after the trial court had admonished the venire on the *Zehr* principles and the jurors had indicated that they accepted them. The decision whether to expend a peremptory challenge on any of the six jurors was itself a strategic one that we do not second-guess. *Metcalfe*, 202 Ill. 2d at 561-62. The jurors' responses fall short of the disqualifying partiality found in *Reinbold*; here, the jurors accepted the principle that the defendant need not present evidence, and Juror 96 stated that she "wouldn't necessarily have to hear from" the defendant, a response unlike the juror in *Reinbold* who expected the defendant to prove his innocence. *Reinbold*, 247 Ill. App. 3d at 504. The defendant also fails to establish prejudice: she identifies no ruling or verdict showing that any seated juror was in fact partial, and a theory resting on the composition of the jury, without demonstrated bias, does not undermine confidence in the outcome. *Metcalfe*, 202 Ill. 2d at 562-63.

¶ 146 The alternative claim that the trial court erred in refusing to excuse Juror 96 for cause is forfeited, and it fails on plain-error review. The threshold question under either prong is whether a clear or obvious error occurred. *Sebby*, 2017 IL 119445, ¶ 49. There was none. Considering Juror 96's responses as a whole, the trial court did not abuse its discretion in declining to excuse her for cause, and that court was in a superior position to assess her candor and meaning. *Taylor*, 166 Ill. 2d at 422; *Metcalfe*, 202 Ill. 2d at 558-59. The second-prong theory independently fails: because the defendant's partiality theory rests on the *Zehr* principles and she identifies no evidence that any violation produced a biased jury, the claim is not cognizable as second-prong plain error.

Sebby, 2017 IL 119445, ¶ 52. As we find neither ineffective assistance of counsel nor plain error, this claim affords no basis for relief.

¶ 147 B. Failure to Object to People's Exhibit 77 as Hearsay

¶ 148 The defendant contends that trial counsel was ineffective for failing to object to People's Exhibit 77 as inadmissible hearsay. Exhibit 77 is a recording of Detective Vogel's out-of-court interview of Bailey, in which Bailey related that the defendant told him she was "the one that did it, hit him in his shit nine times." The State played the recording for the jury in its case-in-chief, and played it again during closing argument, where it urged the jury that the defendant "takes responsibility for the shooting." At trial, however, Bailey disavowed that account, denying that the defendant ever told him she committed the shooting. The facts surrounding this claim are undisputed and the trial court made no finding on this theory, so our review is *de novo*. *Wilson*, 392 Ill. App. 3d at 197. The claim is governed by *Strickland*, 466 U.S. at 687.

¶ 149 The defendant's argument proceeds in layers. Exhibit 77, she contends, contains two levels of out-of-court statement: the defendant's own statement that she committed the shooting, and Bailey's separate out-of-court statement, recorded by Detective Vogel, relating that the defendant had said so. The inner layer, the defendant's own statement, is admissible against her as the admission of a party opponent. *People v. McCree*, 366 Ill. App. 3d 290, 297 (2006). But the outer layer is a different matter. Because Bailey disavowed the account at trial, the State did not elicit the admission through his live testimony; it introduced his earlier recorded statement as substantive evidence. That recorded statement is a prior inconsistent statement, and it was admissible substantively only if it satisfied section 115-10.1 of the Code of Criminal Procedure of 1963, which requires, among other things, that the statement narrate an event of which the witness had personal knowledge. 725 ILCS 5/115-10.1(c)(2) (West 2020). Bailey, the defendant argues, had no personal

knowledge of the shooting, which he did not witness, so the statute did not authorize the jury's substantive use of his recounting; at most, the recording was available to impeach him. Counsel's failure to object, she contends, allowed the jury to hear the most damaging form of the disputed confession as substantive proof.

¶ 150 The State responds that counsel's decision not to object was sound trial strategy and that no objection would have succeeded, because the defendant's statements were admissible as the admissions of a party opponent. In the State's view, a party admission may be related by any witness who heard it, and the exception does not require that the witness have personal knowledge of the crime the admission describes, so any objection to Exhibit 77 would have been meritless.

¶ 151 Counsel is not deficient for failing to raise a meritless objection, so the claim turns on whether an objection would have succeeded. *People v. Rogers*, 2021 IL 126163, ¶ 32. It would have. The State's party-opponent argument answers only the inner layer. It is true that a defendant's own admission is not barred by the hearsay rule and may be proved through a witness who heard it. *McCree*, 366 Ill. App. 3d at 297. But that principle presupposes a witness who relates the admission through competent testimony. Here, Bailey did not relate the admission at trial; he denied it. The admission reached the jury only because the State introduced Bailey's earlier recorded statement in its place, and a recanting witness's prior out-of-court statement, offered for its truth, is admissible as substantive evidence only if it satisfies section 115-10.1. 725 ILCS 5/115-10.1(c)(2). That is the precise situation our supreme court addressed in *People v. Simpson*, 2015 IL 116512. There, a witness could not recall the defendant's admission at trial, and the State introduced the witness's recorded statement to police relating that the defendant had admitted beating the victim. *Id.* ¶ 41. The *Simpson* court held that a prior inconsistent statement is admissible under section 115-10.1 only if the witness actually perceived the events that are the subject of the

statement, not merely the defendant's statement of those events. *Id.* Because the witness had no personal knowledge of the beating he related, the statute did not make his recorded statement admissible, and a defense objection would have precluded it. *Id.* ¶ 34. The party-opponent exception did not save the statement in *Simpson*, and it does not save Exhibit 77 here.

¶ 152 *Simpson* governs this case directly. Bailey related a secondhand account of a shooting he did not witness, so section 115-10.1 did not authorize its substantive use, and the party-opponent exception reaches only the defendant's own words, not Bailey's disavowed recounting of them. *Id.* ¶ 41. An objection would therefore have been meritorious and, as in *Simpson*, there was no sound strategic reason to permit the jury to hear, as substantive proof, the most damaging form of the disputed confession, which is "the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable." (Internal quotation marks omitted.) *Id.* ¶ 36. The strategic rationale the State offers is drawn from counsel's posttrial testimony about whether any recording of the defendant's call existed, but that testimony was directed at Konika Morrow's credibility; it supplies no reason to admit Exhibit 77's layered hearsay. At most the recording was admissible to impeach Bailey, yet the State used it substantively, playing it in closing and arguing that the defendant "takes responsibility for the shooting," and counsel neither objected nor sought to limit its use. The prejudice follows. Exhibit 77 supplied the most damaging version of a confession that was itself contested: Bailey disavowed it at trial, and no recording of any admission was ever produced. See *People v. White*, 2011 IL 109689, ¶ 133. That Konika Morrow gave a parallel account of the same call, which, as we hold in addressing the claim directed at it, was independently admitted and not subject to exclusion, does not render the erroneous admission of Exhibit 77 harmless. The two sources were not of equal force. Exhibit 77 was a recording of Bailey, the participant to whom the defendant spoke, played in the State's case-in-chief and again in

closing, and it attributed to the defendant a specific admission that she was "the one that did it" and had "hit him in his shit nine times." Konika Morrow, by contrast, was an off-camera listener whose credibility was gravely contested: no recording of the call was ever produced, she waited nearly two years to report the statements though she remained in contact with the police, she acknowledged animosity between the families, and she had a criminal charge pending in another county. A jury that set Exhibit 77 aside could have credited Bailey's trial disavowal, disbelieved Konika Morrow, and found that the defendant never confessed. Exhibit 77 thus supplied the one thing the remaining confession evidence lacked: a recorded, firsthand, and specific admission, offered as substantive proof and pressed on the jury as the defendant taking "responsibility for the shooting." In *Simpson*, our supreme court found a reasonable probability of a different result even though an eyewitness had identified the defendant at the scene. Here, no witness identified the defendant as the shooter, confirming that the improperly admitted confession could have affected the verdict. *Simpson*, 2015 IL 116512, ¶ 39; *Strickland*, 466 U.S. at 694. On the record before us, counsel's failure to object to Exhibit 77 was both deficient and prejudicial, and it undermines confidence in the verdict. This error independently entitles the defendant to a new trial.

¶ 153 C. The Evidence Was Closely Balanced

¶ 154 We turn next to the closeness of the evidence, a question common to the defendant's remaining claims of ineffective assistance, each of which are governed by a single test for prejudice. Under *Strickland*, a deficiency requires reversal only if there is a reasonable probability that, but for the deficiency, the result of the trial would have been different. *Strickland*, 466 U.S. at 694. In a case like this one, that probability depends on the strength of the State's properly admitted proof. Where the evidence is closely balanced, an error that bears on the central disputed fact can tip the result; where the evidence is overwhelming, the same error cannot. *Sebby*, 2017 IL

119445, ¶ 51. Our supreme court has explained that closely-balanced plain-error prejudice and *Strickland* prejudice for an evidentiary error are measured in the same way, because each asks whether the error could have affected a verdict that the properly admitted evidence did not compel. *White*, 2011 IL 109689, ¶ 133. Because the defendant's hearsay claim challenged the admissibility of the most damaging confession evidence, and we have sustained that challenge above, we measure closeness on the evidence properly admitted, treating as excluded the evidence we have held should not have reached the jury. The closeness of that evidence is the question on which the defendant's two instructional claims turn, and it confirms the prejudice we have found on the hearsay claim; we address it as a matter common to those claims, evaluating the totality of the evidence through a qualitative, commonsense assessment of the record. *Sebby*, 2017 IL 119445, ¶ 53.

¶ 155 We measure closeness against the evidence properly before the jury on the element the State had to prove, that the defendant personally discharged the firearm that killed Martin. The State's case on that element rested on two pillars, each directly challenged by the defendant and examined in detail elsewhere in this order. The first was the confession attributed to her. Its most damaging form was People's Exhibit 77, the recording of Detective Vogel's interview of Bailey relating that the defendant admitted the shooting. As we held in addressing the hearsay claim, that evidence was inadmissible and should not have reached the jury, so it does not count toward the properly admitted proof against which closeness is measured. Setting Exhibit 77 aside, the confession evidence that remained was contested and weak. Bailey, the only participant on the call, denied at trial that the defendant ever admitted the shooting and attributed the most incriminating details to his mother. Konika Morrow gave a parallel account of overhearing the call, but it was open to serious question: the alleged recording of that call was never produced and

its existence was never resolved, she waited nearly two years to report the statements though remaining in contact with the police, she acknowledged animosity between the families, and she had a criminal charge pending in another county. A jury could have credited Bailey and disbelieved Konika Morrow, and on the properly admitted evidence it could have found that the defendant never confessed. The second pillar was the identification of the firearm in the social media videos as the murder weapon, and it was no stronger: the weapon was never recovered, the identifying officer acknowledged that more than a million of the model had been manufactured and that he could not say the depicted firearm had fired any casing recovered from the scene, and the defense produced a visually near-identical weapon of a different caliber.

¶ 156 Setting the two contested pillars to one side, what remains is evidence of presence and association. The defendant's own recorded statement placed her with the group that left to commit the planned "lick," the stipulated DNA evidence showed that she and Martin were contributors to material recovered near the scene, the Snapchat geolocation placed her in the vicinity, and the ballistic comparison matched a casing from the Joliet incident to a casing from the scene. That evidence establishes that the defendant was present and associated with those involved, but it does not establish that she, rather than someone else, fired the shots that killed Martin. The geolocation fixed only an area of roughly 360 feet and was gathered intermittently rather than continuously, and no witness testified to seeing the defendant shoot. The conviction, moreover, rests on the jury's finding that the defendant personally discharged the fatal shot, not on accountability, and the State's own theory placed a co-participant, Prentiss, at the scene firing a second weapon. Presence near a shooting, in the company of another person alleged to have fired, does not establish which of them fired the fatal rounds.

¶ 157 This footing is materially the same as in *People v. Piatkowski*, 225 Ill. 2d 551, 568 (2007). There, the case turned on contested proof, the State's evidence did not overwhelmingly favor it, and our supreme court held the evidence closely balanced and remanded for a new trial. *Id.* In reaching that conclusion, the court distinguished the cases in which the evidence had been held not closely balanced, explaining that those cases involved a confession, physical or corroborating evidence, or witnesses who already knew the defendant, and that the evidence is closely balanced where the case turns on contested proof without such corroboration. *Id.* at 570-71. The same is true here. Once the attributed confession is set to one side and the firearm identification is given its limited due, the State is left with evidence of presence and association, with no eyewitness to the shooting, no recovered weapon tied to the defendant's hand, and a co-participant equally positioned and alleged to have fired a gun. That is the kind of record our supreme court has found closely balanced, rather than overwhelming.

¶ 158 We conclude that the evidence was closely balanced. It follows that an error bearing on the contested question of who fired the fatal shots could have affected the verdict, and we assess the defendant's remaining claims of error against that background. We begin with the claims of instructional error, the first concerning the instruction that governs the statements attributed to the defendant.

¶ 159 D. Failure to Ensure the Jury Received IPI Criminal Nos. 3.06 and 3.07

¶ 160 The defendant contends that trial counsel was ineffective in connection with IPI Criminal 4th Nos. 3.06 and 3.07, the jury instructions governing a defendant's own statements. In its full form, that instruction directs the jury to decide two questions in sequence: first, whether the defendant made the statements attributed to her, and second, if she did, what weight to give them. The bracketed language submitting the first question is to be omitted only where the defendant

admits making the statements. The defendant argues that the full instruction was required here because whether she made the statements was the central disputed question: Bailey denied at trial that the defendant had admitted the shooting, and the State produced no recording of any such admission. She contends that counsel failed in two respects. First, when the State tendered a limited version of the instruction that addressed only the weight of the statements and omitted the question whether she made them, counsel did not object. Second, when the trial court ultimately gave the jury no version of the instruction at all, in either its oral or its written charge, counsel neither objected nor requested it. The result, she argues, is that the jury weighed the statements attributed to her, which were the most damaging evidence the State offered, without ever being told that it first had to decide whether she made them. The claim was not litigated at the posttrial hearing, and the trial court made no finding on it, so we review it *de novo*. *Wilson*, 392 Ill. App. 3d at 197. The State responds that counsel's handling of the instructions was a matter of trial strategy entitled to deference, and that any omission was not prejudicial because the evidence was not closely balanced.

¶ 161 Two settled principles frame the claim. First, fundamental fairness requires that the jury receive the basic instructions essential to a fair determination of the case, and the omission of such an instruction is serious error where it removes from the jury's consideration a disputed issue essential to the determination of guilt or innocence. *People v. Ogunsola*, 87 Ill. 2d 216, 222-23 (1981). Second, when it is defense counsel who fails to tender such an essential instruction, that failure constitutes ineffective assistance where the omission so prejudices the defense as to deny the defendant a fair trial. *People v. Pegram*, 124 Ill. 2d 166, 173-74 (1988). Our own district has applied that principle to reverse a conviction where counsel failed to tender a warranted instruction, holding the omission both deficient and a basis for a new trial. *People v. Campbell*, 275 Ill. App.

3d 993, 999 (1995). These principles apply with particular force to IPI Criminal 4th Nos. 3.06 and 3.07. In *People v. Richmond*, the court held that it is error to omit from that instruction the language directing the jury to determine whether the defendant made the statement, where the evidence supports an inference that the statement was fabricated. *People v. Richmond*, 341 Ill. App. 3d 39, 47-48 (2003). Because this claim is one of ineffective assistance, the defendant must also show *Strickland* prejudice, which in a case of this kind turns on the closeness of the evidence: where the evidence is closely balanced, there is a reasonable probability that an error bearing on the central disputed fact affected the verdict. *Strickland*, 466 U.S. at 694; see *White*, 2011 IL 109689, ¶ 133.

¶ 162 Counsel's omission was deficient. The defense theory was that the defendant never confessed; Bailey, who was the only participant on the call when the alleged admission was made, denied from the stand that the defendant ever told him she committed the shooting; and no recording of any admission was produced. An instruction requiring the jury to decide, as a threshold matter, whether the defendant made the statements attributed to her was therefore not a peripheral nicety but the one instruction that squarely framed the defense's central factual position. An instruction that could only have aided the defense, and could not have harmed it, is not the sort of omission the presumption of sound strategy protects. Counsel compounded the failure: she stood silent when the State tendered a version stripped of the whether-made language, and silent again when the trial court, having announced it would give the instruction, gave no version at all. The stakes of that silence were not small. A confession is "the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable." (Internal quotation marks omitted.) *Simpson*, 2015 IL 116512, ¶ 36. Allowing the jury to treat the attributed statements as a confession while withholding the instruction that would have required it first to decide whether the defendant

made them was not a strategic choice; it was an omission for which the record discloses no reasonable justification.

¶ 163 The omission was also prejudicial. As we have explained, the evidence was closely balanced, and the attributed confession was one of the two pillars on which the State's proof rested. The jury was left to weigh that confession with no guidance that it had first to decide whether the defendant made it, even though that was the very question the defense contested and the very question the full instruction exists to submit. The State's answer, that any omission was harmless because the evidence was not close, fails on its premise: we have already determined that the evidence was closely balanced, and it is precisely that closeness that supplies the reasonable probability of a different result. The contrast with the cases that have found a comparable omission harmless confirms the point. In *Richmond*, the identical omission was held harmless because, even without the defendant's confession, the State's proof was extremely strong. *Richmond*, 341 Ill. App. 3d at 52-53. That is the opposite of this record, where the evidence was closely balanced rather than overwhelming. *Campbell*, 275 Ill. App. 3d at 998. And the prejudice here is greater than in *Richmond* in a further respect: the jury in *Richmond* at least received the balance of IPI Criminal 4th Nos. 3.06 and 3.07, while here the jury received no version of the instruction at all, and no other instruction supplied the threshold determination the full instruction uniquely requires. On this record, counsel's failure to secure IPI Criminal 4th Nos. 3.06 and 3.07 was both deficient and prejudicial, and it undermines confidence in the verdict. This error independently entitles the defendant to a new trial.

¶ 164 E. Failure to Request IPI Criminal 4th No. 3.15B

¶ 165 The defendant contends that trial counsel was ineffective for failing to request IPI Criminal 4th No. 3.15B, the instruction that cautions the jury on a law-enforcement officer's lay-opinion

identification made from a recording. Her claim reaches three distinct identifications, each drawn from the same social media videos and each supplied by an officer rather than by the jury's own viewing. First, Sergeant Krauel identified the firearm depicted in the videos as a 9-millimeter, the caliber the State tied to the casings recovered at the scene. Second, Detective Vogel, the lead detective, identified the defendant as the person shown in those videos, so that the officer's identification of the person and the officer's identification of the gun combined to place an armed defendant on the screen. Third, Detective Vogel identified the murder victim, Martin, as the person depicted in a separate video bearing an added arrow, the video the State argued in closing was proof of a plan to kill him. The defendant argues that IPI Criminal 4th No. 3.15B was required for each identification, and that it was required to be given twice, once before the testimony and again in the final charge, so that the jury would understand it was the jury's task, not the officers', to decide who and what the videos depicted, and that no weight need be given to an identification merely because it came from a law-enforcement witness. No such instruction was given, in any form, at any point. The facts surrounding this claim are undisputed and the trial court made no finding on it, so our review is *de novo*. *Wilson*, 392 Ill. App. 3d at 197. The State responds that trial counsel's decision not to request the instruction was a matter of trial strategy, and that its absence was not prejudicial because the evidence was not closely balanced.

¶ 166 The governing law is settled. When the State introduces lay-opinion identification testimony from a law-enforcement officer, the trial court should instruct the jury, both before the testimony and in the final charge, that it need give no weight to the testimony and may draw no adverse inference from the witness's status as a law-enforcement officer. *People v. Thompson*, 2016 IL 118667, ¶ 59. Those directions are now embodied in IPI Criminal 4th No. 3.15B, and by their terms they apply whether the officer identifies a person or an object depicted in a recording.

People v. Bell, 2026 IL App (1st) 231344, ¶ 104. The failure to give the instruction is error in its own right. *Id.* ¶ 106. And where it is counsel who fails to secure an instruction essential to the jury's resolution of a contested issue, that failure is deficient performance and, on a sufficient showing of prejudice, ineffective assistance. *Pegram*, 124 Ill. 2d at 173-74; *Campbell*, 275 Ill. App. 3d at 998-99. Because this is a claim of ineffective assistance, the defendant must show prejudice, which in a case of this kind turns on the closeness of the evidence. *Strickland*, 466 U.S. at 694; see *White*, 2011 IL 109689, ¶ 133.

¶ 167 Counsel's failure to request the instruction was deficient. The officers identified a person, an object, and a second person from recordings, and by its terms IPI Criminal 4th No. 3.15B applied to each. *Bell*, 2026 IL App (1st) 231344, ¶ 104. The instruction, had it been given, could only have aided the defense, because it would have told the jury that the officers' identifications carried no special authority and that the ultimate questions, who and what the videos showed, were the jury's alone to answer. An omission that could only help the defendant and could not have harmed her is not the product of sound strategy, and the record reveals no tactical reason for it. The consequence was not marginal. Through these identifications the lead detective told the jury that the defendant was the person depicted holding a firearm, and that Martin was the person an added arrow marked out, supplying the identity of the armed person and the plan-to-kill inference the State pressed in closing. Allowing two officers, including the lead detective, to perform those identifications for the jury, with no instruction that the jury owed their conclusions no deference, left the officers to decide questions the jury was required to decide for itself.

¶ 168 The omission was also prejudicial. As we have explained, the evidence was closely balanced, and the decisive, contested question was whether the defendant personally fired the shots that killed Martin. The prejudice does not turn on the firearm's caliber. As we explain in addressing

the separate claim concerning Sergeant Krauel's identification, the caliber label alone could not tie the depicted weapon to the murder, because no witness could say the firearm shown in the videos had fired any casing recovered from the scene. The prejudice flows instead from the officers' uncautioned identifications of persons: Detective Vogel identified the defendant as the individual shown holding the firearm, moving the State's proof from the defendant's mere presence to her depiction as an armed participant, and identified Martin as the person the arrow marked as a target, supplying the plan-to-kill inference. Those were the contested identity questions at the heart of the State's theory, and the jury resolved them with no instruction that it owed the officers' conclusions no deference. An error of this kind is harmless only where the evidence is sufficiently strong or the jury received the proper cautionary instruction. *Bell*, 2026 IL App (1st) 231344, ¶ 106. Neither is true here: the evidence was not strong but closely balanced, and the jury received no cautionary instruction at all, in any form, at any time. That the supreme court found a comparable error harmless in *Thompson* does not aid the State, because the error there washed out on strong evidence that included the defendant's confession. *Thompson*, 2016 IL 118667, ¶ 67. Here there was no such confession; the statements attributed to the defendant were themselves disputed. And in *Piatkowski*, our supreme court ordered a new trial for an identification-instruction error on closely balanced evidence, distinguishing the no-prejudice cases because they involved a confession, physical evidence, or witnesses who knew the accused, features absent here as they were there. See *Piatkowski*, 225 Ill. 2d at 570-71. This case turns on exactly the kind of contested identification *Piatkowski* describes: the officers' interpretation of ambiguous video, with no cautionary instruction ever given. On this record, counsel's failure to request IPI Criminal 4th No. 3.15B was both deficient and prejudicial, and it undermines confidence in the verdict. This error independently entitles the defendant to a new trial.

¶ 169 F. Failure to Object to Konika Morrow's Testimony

¶ 170 The defendant contends that trial counsel was ineffective for failing to object to, or move to suppress, Konika Morrow's testimony that she overheard the video call between Bailey and the defendant and recorded it while standing out of the phone's view. The claim rests on two alternative theories. If no recording ever existed, the defendant argues, Konika Morrow's testimony that she made one was false, and counsel should have acted because the State may not knowingly use, or fail to correct, false testimony. *People v. Junior*, 349 Ill. App. 3d 286, 290 (2004). If a recording did exist, she argues, it was the product of eavesdropping, and both the recording and Konika Morrow's account of what she overheard should have been suppressed. This claim was raised in the posttrial motion and resolved after the evidentiary hearing, so our review is bifurcated: we defer to the trial court's findings of fact and credibility unless they are against the manifest weight of the evidence, and we review *de novo* the ultimate question whether counsel's conduct was ineffective. *Reinking*, 2024 IL App (4th) 230486, ¶ 111.

¶ 171 The State responds that no objection on either theory would have succeeded, and that counsel is not ineffective for declining to raise a meritless one. It observes that no recording was ever produced or admitted, so the eavesdropping statute's exclusionary remedy had nothing to operate on, and that overhearing a conversation does not itself violate the statute. The State further contends that trial counsel made a deliberate, record-supported strategic choice: believing no recording existed because none was produced in discovery, counsel used its absence in closing to argue that Konika Morrow was lying, and the trial court credited that strategy.

¶ 172 Counsel cannot be considered ineffective for failing to raise or pursue what would have been a meritless objection. *Rogers*, 2021 IL 126163, ¶ 32; *People v. Bradford*, 2019 IL App (4th) 170148, ¶ 14. The claim therefore turns on whether an objection on either theory would have

succeeded, and neither would have. The eavesdropping statute renders inadmissible only evidence obtained through the use of an eavesdropping device. 720 ILCS 5/14-5 (West 2020). An ordinary telephone is not such a device merely because another person listens in; a phone is not an eavesdropping device unless it has been altered so that it can no longer perform its customary functions of transmitting and receiving sound, and a phone used so that another person may listen in, or on an extension, is not transformed into one. *People v. Armbrust*, 2011 IL App (2d) 100955, ¶ 7. The party seeking to bar evidence under the statute bears the burden of establishing that the device was so altered. *Id.* ¶ 8. As to the false-testimony theory, the State's knowing use of perjured testimony, or its failure to correct testimony it knows to be false, violates due process only where there is a reasonable likelihood that the false testimony could have affected the jury's verdict. *Junior*, 349 Ill. App. 3d at 290.

¶ 173 Measured against those standards, an objection on either theory would have failed. The eavesdropping theory fails at the outset: no recording was ever produced or admitted into evidence, so the statute's exclusionary remedy had nothing to suppress. 720 ILCS 5/14-5. What the jury heard was Konika Morrow's testimony about what she overheard, and overhearing a conversation, even deliberately and from off-camera, is not the use of an eavesdropping device. *Armbrust*, 2011 IL App (2d) 100955, ¶ 7. Had counsel moved to suppress, the defendant would have borne the burden of proving a statutory violation, and on this record she could not have carried it. *Id.* ¶ 8. The false-testimony theory fails for a different reason. Whether any recording existed was never resolved, so the claimed falsity was never established, and in any event the assertion went only to the collateral question whether Konika Morrow recorded the call, not to the substance of her account that she overheard the defendant's admission. The defendant identified no basis to

conclude that the State knew the recording claim to be false, as the due-process rule requires. *Junior*, 349 Ill. App. 3d at 290. An objection on that theory would have been meritless as well.

¶ 174 The deficiency prong is dispositive, and it is not satisfied. Because neither objection would have succeeded, counsel's failure to raise one was not deficient. *Rogers*, 2021 IL 126163, ¶ 32. Beyond that, the trial court found that trial counsel made a reasoned strategic choice: she did not believe a recording existed, and she used its absence to attack Konika Morrow's credibility in closing, arguing that the lack of any electronic record of the call showed Konika Morrow was lying. That finding is not against the manifest weight of the evidence, and under the bifurcated standard we defer to it. *Reinking*, 2024 IL App (4th) 230486, ¶ 111. A strategic decision to turn the absence of a recording into an argument for the defense, rather than to invite a sideshow over its existence, is owed the strong presumption of reasonableness that attaches to matters of trial strategy. *Metcalfe*, 202 Ill. 2d at 562. Because the defendant has not shown deficient performance, we need not reach prejudice, and this claim affords no basis for relief.

¶ 175 G. Alleged Concession in Closing

¶ 176 The defendant contends that trial counsel was ineffective because, in closing argument, counsel conceded that the defendant made the incriminating statements attributed to her, even though whether she made them was disputed. The statements at issue are the admissions the State attributed to the defendant through Bailey's recorded interview, People's Exhibit 77, and through Konika Morrow's testimony: that, confronted with the accusation that she was a "set-up bitch," the defendant answered that she was "the one that did it" and had "hit him in his shit," that she told Martin to "shut up" before shooting him, and that Martin had purchased the bullets she used on him. In closing, the defendant argues, counsel treated those statements as the defendant's own words, describing them as the "unkind, uncalled for, and inappropriate" remarks of a 16-year-old

reacting to insults, and in doing so conceded the very point the defense otherwise disputed, that the defendant made the statements at all. The defendant contends that this concession relieved the State of its burden on the central disputed fact, whether she confessed, and that it was especially damaging because the attributed statements amounted to a confession. This claim challenges an affirmative argument counsel chose to make, not an omission. The defendant raised a version of the claim in her posttrial motion, and the trial court credited counsel's trial decisions as strategic after an evidentiary hearing. The trial court made no specific finding that counsel conceded the statements, however, and the meaning of the closing argument is fixed in the transcript; deference attaches only to the findings the court actually made. *Reinking*, 2024 IL App (4th) 230486, ¶ 111. Where, as here, the precise theory was not resolved below and the operative facts are undisputed, we read the closing ourselves and review the claim *de novo*. *Wilson*, 392 Ill. App. 3d at 197. The defendant must overcome a strong presumption that counsel's conduct was sound trial strategy. *Metcalfe*, 202 Ill. 2d at 561-62; *Strickland*, 466 U.S. at 687-89.

¶ 177 The defendant's position is that counsel abandoned her most basic function, to subject the State's case to meaningful adversarial testing, by conceding in closing that the defendant admitted the killing. *Strickland*, 466 U.S. at 687. She argues that the concession was devastating because a confession is the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable. *People v. R.C.*, 108 Ill. 2d 349, 356 (1985); *Simpson*, 2015 IL 116512, ¶ 36. Whether she confessed at all was disputed: Bailey, the only participant on the call, testified that she never told him she "did it," and she made no admission during her recorded 43-minute interview with Detective Vogel. The defendant contends that counsel's conduct was worse than the failure to object condemned in *Simpson*, because counsel did not merely let the inadmissible confession evidence, People's Exhibit 77 and Konika Morrow's account, reach the jury, but affirmatively

embraced it, telling the jury the defendant made the statements and then trying to explain them away. *Simpson*, 2015 IL 116512, ¶ 36. In her view, that concession relieved the State of its burden on the central disputed fact and compounded two related failures, the failure to object to the inadmissible statements and the failure to secure the full IPI Criminal 4th Nos. 3.06 and 3.07, leaving the jury to treat a contested, secondhand confession as established.

¶ 178 The State responds that the closing was sound trial strategy, not an abandonment of the defense. It argues first that the statements were admissible against the defendant as a party-opponent admission, so counsel's decision to confront them directly, rather than pretend the jury had not heard them, was a legitimate tactical choice. The State contends that counsel could not credibly deny that the defendant made the statements, because they reflected knowledge only a participant would have had, and that counsel reasonably acknowledged that the statements were made but recast them as the bravado of a 16-year-old trading insults, while reserving the defense's effort for the dispositive question whether the defendant fired the fatal shots. That approach, the State maintains, preserved the credibility of a defense theory that had to concede the defendant's hostility toward the victim's family and her presence at the scene, and a strategy that proves unsuccessful in hindsight is not for that reason deficient. *People v. Poole*, 2012 IL App (4th) 101017, ¶ 10.

¶ 179 We begin with the governing framework. A claim of ineffective assistance is ordinarily governed by the two-part *Strickland* test, which requires a showing of deficient performance and prejudice. *Metcalfe*, 202 Ill. 2d at 561-62. Our supreme court recognizes one narrow exception to that test, derived from *United States v. Cronic*, 466 U.S. 648, 659 (1984), under which prejudice is presumed without any case-specific showing, but only where counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing," so that the adversary process itself

becomes presumptively unreliable. *People v. Hattery*, 109 Ill. 2d 449, 461 (1985). That exception applies only when counsel's failure was complete, extending across the proceeding as a whole. Where counsel instead erred at discrete points, however serious those lapses, the claim remains an ordinary one governed by *Strickland*'s two-part test, which requires proof of both deficiency and prejudice, not by *Cronic*'s presumption. *Metcalfe*, 202 Ill. 2d at 561. Although the defendant frames her claim under *Strickland* and does not cite *Cronic*, her contention that counsel abandoned the basic function of subjecting the State's case to meaningful adversarial testing is, in substance, a *Cronic* argument, and we therefore explain why *Cronic* does not govern. Our supreme court has declined to treat even a concession as automatically ineffective. In *People v. Johnson*, 128 Ill. 2d 253, 269-70 (1989), the court narrowly construed *Hattery* and held that conceding a client's guilt is not *per se* ineffectiveness, particularly where counsel presents a strong defense to the contested charges; even an outright concession of guilt leaves the defendant a high burden before she may forsake the two-part *Strickland* test. And the choice of what theory to advance in closing is itself a matter of trial strategy that does not become ineffective merely because it did not succeed. *People v. Milton*, 354 Ill. App. 3d 283, 290 (2004). Because the defendant's contention is one of discrete error rather than a complete failure of representation, *Cronic*'s presumption does not apply, and we analyze her concession claim under *Strickland*.

¶ 180 Measured against that framework, this is not a case of abandonment. Trial counsel did not concede the defendant's guilt. She contested the dispositive issue, whether the defendant personally fired the shots that killed Martin, throughout the trial and in closing. She emphasized that no witness saw the defendant shoot, that the firearm was never recovered or forensically tied to the casings, that the 9-millimeter was a common weapon, and that the State's theory rested on speculation. At most, counsel acknowledged that the defendant made the statements attributed to

her and argued that they were the intemperate words of a 16-year-old trading insults, not an admission that she committed the murder. That is far removed from *Hattery*, where counsel told the jury the defendant would be found guilty, advanced no theory of defense, and made no attempt to hold the State to its burden. *Johnson*, 128 Ill. 2d at 270-71. Because counsel's representation was not a complete failure to test the State's case, the *Cronic* presumption does not apply, and we review the claim under *Strickland*. *Id.* at 266.

¶ 181 Under *Strickland*, the defendant must overcome the strong presumption that counsel's closing was sound strategy, and she has not. *Metcalfe*, 202 Ill. 2d at 562. By the time of closing, statements attributing the admission to the defendant were before the jury through Konika Morrow's testimony, which was independently admitted and which, as we hold in addressing the claim directed at it, was not subject to exclusion. Even if trial counsel had kept People's Exhibit 77 from the jury, as we hold in the hearsay section she should have, Konika Morrow's parallel account of the same admission would have remained in evidence. Counsel thus confronted damaging statements the jury had heard from a source independent of Exhibit 77, and she could reasonably choose to address and defuse them, by characterizing the statements as adolescent bravado, rather than to deny what the jury had heard and risk her credibility on the question that mattered, whether the defendant fired the fatal shots. Conceding a subsidiary point to preserve credibility on the decisive issue is a recognized and legitimate tactic, not a lapse in representation. *Johnson*, 128 Ill. 2d at 269. The defendant's contention that counsel's conduct was worse than the failure to object condemned in *Simpson*, because counsel embraced rather than merely failed to exclude the attributed confession, does not change the analysis of the closing. *Simpson*, 2015 IL 116512, ¶ 36. The remedy for counsel's failure to keep People's Exhibit 77 from the jury lies in that distinct claim, which we have addressed separately, and we do not count the same evidence

twice. The question here is only whether counsel's argument about evidence the jury had already heard, from a source independent of the improperly admitted exhibit, fell outside the wide range of reasonable professional assistance, and it did not. *Strickland*, 466 U.S. at 687-88; *Milton*, 354 Ill. App. 3d at 290.

¶ 182 Because the defendant has not shown that counsel's closing argument constituted deficient performance, and because a failure on either prong of *Strickland* defeats the claim, we need not reach prejudice. *Johnson*, 128 Ill. 2d at 271. We hold that trial counsel's closing argument did not deny the defendant the effective assistance of counsel, and this claim affords no basis for relief.

¶ 183 H. Failure to Contest Sergeant Krauel's Firearm Identification

¶ 184 The defendant contends that counsel was ineffective for conceding that the firearm depicted in the videos was a 9-millimeter weapon, rather than objecting to the foundation for Sergeant Krauel's identification or cross-examining him, where a near-identical .40-caliber model exists and counsel verified the identification only through an image search. This claim is directed at counsel's decision to accept the identification rather than contest it; it is distinct from the defendant's separate claim that counsel failed to request the cautionary instruction that governs an officer's identification from a recording, which we address, and sustain, in connection with IPI Criminal 4th No. 3.15B. The trial court specifically addressed this claim after the evidentiary hearing and credited trial counsel's decision as tactical, so our review is bifurcated: we defer to the trial court's findings of fact and credibility unless they are against the manifest weight of the evidence, and we review *de novo* the ultimate question whether counsel's conduct constituted ineffective assistance. *Reinking*, 2024 IL App (4th) 230486, ¶ 111.

¶ 185 The defendant contends that the firearm identification was central to the State's theory and that trial counsel surrendered it without a fight. The State's case tied the defendant to the shooting

through the 9-millimeter caliber: 12 9-millimeter cartridge casings were recovered at the scene, one of which was matched to a casing from the earlier Joliet incident, and the State argued that the defendant was the person depicted in the social media videos holding what Sergeant Krauel identified as a 9-millimeter firearm. The defendant argues that the model Sergeant Krauel identified, a Taurus Millennium G2 PT-111, is visually almost indistinguishable from a .40-caliber variant, the P-140, which differs only by a fraction of an inch at the barrel, so that the caliber was genuinely open to dispute. She maintains that trial counsel should have objected to the foundation for the caliber identification or cross-examined Sergeant Krauel on it, rather than accepting in closing that the depicted weapon was a 9-millimeter. She emphasizes that trial counsel verified the identification only through an online image search, did not investigate whether a visually similar model was manufactured in another caliber, and acknowledged at the evidentiary hearing that she did not understand the measurement that the term "9-millimeter" describes. In her view, conceding the caliber handed the State the link between the videos and the recovered casings that its theory required.

¶ 186 The State responds that adequate foundation supported the identification and that no objection would have succeeded. Sergeant Krauel was a master firearms instructor and department armorer with approximately 20 years of experience, and identifying a firearm's model from its visible features is a straightforward visual task that does not depend on specialized literature or a known error rate. The State characterizes Sergeant Krauel's exchange about whether "9-millimeter" measures a circumference or a diameter as a misstatement he immediately corrected, not a material inconsistency that cross-examination could have exploited. It argues that trial counsel's decision was sound strategy: rather than contest a well-supported identification, counsel accepted it and turned it to the defense's advantage, stressing that the model was extremely

common, readily passed from one person to another, and never forensically tied to the casings recovered from the scene. The State does not seriously dispute prejudice on this claim, resting on the absence of deficient performance.

¶ 187 We first address the contention that trial counsel should have objected to the foundation for Sergeant Krauel's caliber identification. That objection would have failed. Sergeant Krauel was tendered and admitted, without objection, as an expert in firearms identification, and he identified the model from its visible features. Under Illinois Rule of Evidence 705 (eff. Jan. 1, 2011), the basis of an expert's opinion goes to the weight of the testimony rather than its admissibility, and the burden rests on the defense to probe the underlying facts on cross-examination. *Bradford*, 2019 IL App (4th) 170148, ¶ 16. Illinois courts have applied that principle to reject the very claim the defendant makes here, holding that where a firearms expert explains her methodology and the foundation is sufficient, counsel has no basis to object and does not perform deficiently by declining to object. *Bradford*, 2019 IL App (4th) 170148, ¶ 17. The trial court, addressing this claim, found that Sergeant Krauel qualified his identification and relied on visible characteristics, even while acknowledging that the 9-millimeter and .40-caliber photographs appeared similar. Because a foundation objection would have been meritless, counsel's failure to raise it was not deficient. *Rogers*, 2021 IL 126163, ¶ 32; *Bradford*, 2019 IL App (4th) 170148, ¶ 14.

¶ 188 The related contentions, that trial counsel should have cross-examined Sergeant Krauel on the caliber or investigated the question further, fare no better, and they concern the kind of tactical judgment to which we owe deference. The exchange about whether "9-millimeter" describes a circumference or a diameter was a misstatement Sergeant Krauel corrected, and it concerned terminology rather than the visual basis for his identification; the trial court reasonably found it

insignificant because he identified the model by sight, not by measuring a projectile. The existence of a visually similar .40-caliber variant, the P-140, likewise went to the weight of the identification rather than its admissibility and was a subject for cross-examination, not exclusion. *Bradford*, 2019 IL App (4th) 170148, ¶ 16. Trial counsel made a considered choice not to wage that fight. She accepted the identification and turned it to the defense's advantage, arguing that the model was an extremely common, easily transferred weapon and, critically, that nothing tied the depicted firearm to the shooting, a point Sergeant Krauel's own concessions supported. The principle that a strategic decision loses its protection when it rests on an inadequate investigation does not convert that choice into deficiency. Strategic choices made after less than complete investigation are reasonable to the extent that reasonable professional judgments support the limits on the investigation. *Strickland*, 466 U.S. at 690-91. Trial counsel verified the identification against images of the model and reasonably judged that pursuing a caliber dispute, including through the .40-caliber look-alike, would not undermine Sergeant Krauel's qualified visual identification and would draw attention from the stronger point that the weapon was never linked to the casings recovered from the scene. The trial court credited that judgment as tactical, and that finding is not against the manifest weight of the evidence. *Reinking*, 2024 IL App (4th) 230486, ¶ 111. We owe such a strategic judgment a strong presumption of reasonableness (*Metcalfe*, 202 Ill. 2d at 562), and it is not rendered deficient because the defendant now questions it in hindsight (*Milton*, 354 Ill. App. 3d at 290).

¶ 189 In any event, the defendant cannot establish prejudice from counsel's decision to accept the caliber identification rather than contest it. We address here only that decision, whether a foundation objection, cross-examination, or further investigation directed at the caliber would have changed the result; we do not address the separate failure to request a cautionary instruction under IPI Criminal 4th No. 3.15B, which we address, and sustain, in that section. Confined to the caliber,

the identification mattered to the State only as one link in a chain, and that chain was incomplete regardless of caliber. Sergeant Krauel acknowledged that he could not determine from a video or photograph whether the depicted firearm had fired any casing or projectile recovered from the scene, so identifying the weapon as a 9-millimeter did not establish that it was the weapon used to kill Martin. That is the very limitation trial counsel pressed in closing. Whether the jury heard the weapon described as a 9-millimeter or learned that a visually similar model is made in another caliber, contesting the caliber could not have tied, or untied, the depicted firearm to the murder, and there is no reasonable probability that a foundation objection, further cross-examination, or additional investigation would have changed the result. *Strickland*, 466 U.S. at 694.

¶ 190 Because trial counsel's decision to accept, rather than contest, Sergeant Krauel's caliber identification was neither deficient nor prejudicial, counsel was not ineffective on this ground. This holding is limited to that decision and does not disturb our separate conclusion, in connection with IPI Criminal 4th No. 3.15B, that counsel's failure to request the cautionary instruction governing the officers' identifications was both deficient and prejudicial.

¶ 191 I. Failure to Object to Detective Vogel's Body-Camera Statements

¶ 192 The defendant contends that trial counsel was ineffective for failing to object to three statements Detective Vogel made during the recorded interview admitted as People's Exhibit 9 and published to the jury. The first is Detective Vogel's assertion that others, "several people," had placed the defendant with Martin when the group left to commit the planned "lick." The defendant argues that this was inadmissible hearsay: although an officer may describe the steps of an investigation, that exception does not permit the State to place before the jury the substance of what absent witnesses said, and because no limiting instruction was given, the statement reached the jury for its truth and suggested that other, unnamed witnesses had implicated her. The second

is Detective Vogel's statement that, if the defendant lied, "the State's Attorney's Office, the judge, is gonna look at this, and it's over." The defendant argues that this was an improper comment on her credibility that invoked the authority of the prosecutor and the court to tell the jury, in effect, that she was not to be believed. The third is Detective Vogel's statement that Martin had been shot "at least 10 to 12 times, at close range." The defendant argues that the range of fire was a forensic opinion that Detective Vogel, who was not qualified as an expert, was not competent to give, and that it reinforced the State's theory that the shooter stood over Martin and fired from close range. She contends that counsel's failure to object to any of the three allowed them to reach the jury, without limitation, as substantive evidence of her guilt. Because the facts surrounding this claim are undisputed and the trial court made no findings on this theory, our review is *de novo*. *Wilson*, 392 Ill. App. 3d at 197.

¶ 193 The State responds that none of the three statements was objectionable and that counsel is not ineffective for declining to raise a meritless objection. As to the first two statements, the State contends that they were not hearsay because they were offered not for their truth but to provide context for the interview and to show their effect on the defendant, prompting the responses she gave, which is a legitimate interrogation technique. It argues that an interviewing officer may confront a suspect with what others have reportedly said, and may urge the suspect to be truthful, without rendering the recorded exchange inadmissible. The State further contends that the warning that lying would end the matter was not improper vouching, because Detective Vogel did not assert his personal opinion that the defendant was lying but only encouraged her to tell the truth, unlike the prosecutorial credibility comments condemned in the cases the defendant cites. As to the third statement, the State contends that Detective Vogel's reference to Martin having been shot at close range conveyed information in the course of the interview, in response to the defendant's own

account, rather than an expert ballistics opinion. Finally, the State argues that counsel reasonably declined to object to statements contained on a recording that also presented the defendant's exculpatory account, and that the defendant cannot establish prejudice in light of the other evidence.

¶ 194 We begin with the governing principles. Statements made by a police officer when questioning a suspect, including the officer's opinions and observations about the suspect's guilt or credibility, are generally relevant and admissible to show their effect on the suspect, to provide context for the suspect's responses, or to explain the course of the interview, even where the statements would not be admissible as direct testimony. *People v. O'Daniell*, 2024 IL App (5th) 230084, ¶ 55. Such statements are not hearsay when offered not for their truth but to make the suspect's recorded answers intelligible. *People v. Whitfield*, 2018 IL App (4th) 150948, ¶ 49. Those principles have limits. An officer may testify to what he did and to the procedure of his investigation, but testimony relating the substance of an out-of-court conversation with a witness, offered for its truth, is objectionable hearsay. *People v. Gacho*, 122 Ill. 2d 221, 248-49 (1988). And interrogation statements that suggest additional, nontestifying witnesses have implicated the defendant, presented as conclusory assertions of fact rather than as context, may be more prejudicial than probative. *People v. Davila*, 2022 IL App (1st) 190882, ¶ 58. Against this background, counsel cannot be deemed ineffective for failing to raise an objection that would have been meritless. *Rogers*, 2021 IL 126163, ¶ 32; *Bradford*, 2019 IL App (4th) 170148, ¶ 14.

¶ 195 The second statement, Detective Vogel's warning that, if the defendant lied, "the State's Attorney's Office, the judge, is gonna look at this, and it's over," presented no meritorious objection. It was a statement the interrogating detective made to the defendant in the course of questioning her, and it was admissible to provide context for her recorded responses and to show

its effect on her, not for its truth. *O'Daniell*, 2024 IL App (5th) 230084, ¶ 55; *Whitfield*, 2018 IL App (4th) 150948, ¶ 49. An exhortation of that kind is a familiar interrogation technique urging the suspect to tell the truth; it is not a comment to the jury on the defendant's credibility, and the rule permitting such statements applies even to an officer's observations bearing on guilt or credibility. *O'Daniell*, 2024 IL App (5th) 230084, ¶ 55. Because an objection would not have succeeded, counsel's failure to raise one was not deficient. *Rogers*, 2021 IL 126163, ¶ 32.

¶ 196 The third statement, Detective Vogel's assertion that Martin had been shot "at least 10 to 12 times, at close range," fails for the same threshold reason and, in any event, for lack of prejudice. Like the second statement, it was made to the defendant during the interview and was admissible to provide context for her response rather than for its truth. *O'Daniell*, 2024 IL App (5th) 230084, ¶ 55. Even assuming the reference to the range of fire was an opinion Detective Vogel was not qualified to give and should have been excluded, the defendant cannot show prejudice. The number, location, and fatal character of Martin's wounds were established independently and properly through Dr. Bao's autopsy testimony, and the detective's characterization of the range of fire added nothing that bore on the disputed question in the case, whether the defendant, rather than Prentiss, fired the fatal shots. There is accordingly no reasonable probability that an objection to this statement would have changed the outcome. *Strickland*, 466 U.S. at 694.

¶ 197 The first statement stands on a different footing but yields the same result. Detective Vogel's assertion that "several people" had placed the defendant with Martin when the group left relayed, in substance, what absent witnesses had told him, and to that extent it is the kind of statement that, offered for its truth, would be objectionable hearsay (*Gacho*, 122 Ill. 2d at 248-49), and that risks suggesting to the jury that other, nontestifying witnesses had implicated the defendant (*Davila*, 2022 IL App (1st) 190882, ¶ 58). We may assume, therefore, that competent

counsel could have objected to this statement or sought its redaction. Even so, the defendant cannot establish prejudice. The statement conveyed only that the defendant was with the group when it set out, a fact she herself acknowledged in the same recorded interview and that the Snapchat geolocation evidence independently established, and it said nothing about the contested element of the offense, whether she personally fired the shots that killed Martin. On this record, there is no reasonable probability that excluding the statement would have produced a different result. *Strickland*, 466 U.S. at 694.

¶ 198 Because an objection to the second and third statements would have been meritless, and because the defendant cannot show prejudice from the first, trial counsel was not ineffective in failing to object to Detective Vogel's statements, and this claim affords no basis for relief.

¶ 199 J. Handling of Detective Vogel's Testimony Ruling Out Alternate Suspect

¶ 200 The defendant contends that trial counsel was ineffective in her handling of Detective Vogel's testimony that he had ruled out Lavelle Drisdell, also known as Scoot, as a suspect. On redirect examination, Detective Vogel testified that he eliminated Drisdell because witnesses described the relationship between Drisdell and Martin as "fine," because a review of Drisdell's Facebook account revealed no communications relevant to the investigation, and because Drisdell's cell-phone records showed no contact with anyone connected to the case before the homicide. The defendant argues that trial counsel should have impeached the "fine" characterization with Detective Vogel's own report, in which Antonio Sims stated that, two days before Martin's death, Martin told him that Drisdell was angry about Martin's relationship with Tyija, had been driving past Martin's residence, and had threatened Martin by telephone. She argues that this material would have undercut Detective Vogel's claim that he had properly ruled Drisdell out and would have supported presenting Drisdell as an alternate suspect. In the

alternative, she argues that trial counsel should have objected to Detective Vogel's account of what witnesses told him as inadmissible hearsay, because it placed before the jury the substance of out-of-court statements offered to prove that Drisdell had no motive and was properly excluded. The claim was raised in the posttrial motion and resolved after the evidentiary hearing, so our review is bifurcated and, as to this claim, split: we defer to the trial court's findings of fact and its determination that trial counsel's decision not to pursue Drisdell as an alternate suspect was a matter of trial strategy, unless those findings are against the manifest weight of the evidence, but we review *de novo* the ultimate question whether counsel was ineffective and the distinct hearsay-objection theory the trial court did not separately resolve. *Reinking*, 2024 IL App (4th) 230486, ¶ 111.

¶ 201 The State responds that trial counsel's handling of the Drisdell testimony was reasonable strategy and that no objection would have succeeded. It contends that pressing the Sims material carried real risks for the defense: it would have invited Detective Vogel to explain in greater detail the investigative steps by which he eliminated Drisdell, potentially reinforcing the exclusion with an alibi or more reliable accounts, and an effort to inject an unsupported alternate-suspect theory risked shifting the jury's attention to what the defense could prove rather than to the gaps in the State's case. The State further argues that Detective Vogel's reference to what witnesses had said about the relationship was not hearsay, because it was offered to show the steps of his investigation and why he ruled Drisdell out, not for the truth of the matter asserted. Finally, the State argues that the defendant failed to support the claim with an adequate record, because trial counsel was not questioned, and Detective Vogel was not called, at the posttrial hearing concerning the decision not to impeach him, so any doubts arising from the incompleteness of the record must be resolved against the defendant as the appellant.

¶ 202 We consider first the decision not to pursue Drisdell as an alternate suspect and not to impeach Detective Vogel with the Sims report, the strand on which the trial court made a finding. After hearing trial counsel at the evidentiary hearing, the trial court found that her decision not to pursue Drisdell further was a matter of trial strategy, and that finding is not against the manifest weight of the evidence. *Reinking*, 2024 IL App (4th) 230486, ¶ 111. The decision whether to advance a particular theory of defense, including whether to press an alternate-suspect theory or to impeach a witness on a collateral point, is a matter of trial strategy to which we are highly deferential. *Id.* ¶ 120; *Milton*, 354 Ill. App. 3d at 290. Counsel had sound reasons to proceed as she did. The Sims report was itself layered hearsay, consisting of Sims's account of what Martin had told him about Drisdell, Sims did not testify, and pressing the matter would have invited Detective Vogel to reinforce his exclusion of Drisdell with the witness accounts, Facebook records, and telephone records on which he had relied, while drawing the jury away from the defense's central theme that the State could not prove the defendant fired the fatal shots. The strong presumption that counsel's conduct reflected sound strategy is not overcome (*Metcalfe*, 202 Ill. 2d at 5620, and to the extent the record does not disclose counsel's reasoning on this precise point, that presumption controls. Counsel's handling of the alternate-suspect theory was not deficient.

¶ 203 We turn to the distinct theory, which the trial court did not separately resolve and which we therefore review *de novo*, that trial counsel should have objected as hearsay to Detective Vogel's testimony that witnesses described the relationship between Drisdell and Martin as "fine." An officer may testify to what he did and to the procedure of his investigation, but testimony relating the substance of what witnesses told him, offered for its truth, is objectionable hearsay. *Gacho*, 122 Ill. 2d at 248-49. To the extent the "fine" characterization conveyed the substance of those out-of-court statements rather than simply explaining why Detective Vogel ruled Drisdell

out, an objection would have had force. We need not decide whether an objection should have been sustained, because even assuming that competent counsel would have objected, the defendant cannot establish prejudice.

¶ 204 Prejudice is lacking on either strand. The Drisdell material bore only on an alternate-suspect theory, not on the contested element of the offense, whether the defendant personally fired the shots that killed Martin. The factual basis for suspecting Drisdell was already before the jury through defense cross-examination, which established that Drisdell and Martin were both romantically involved with Tyija and that the defendant had expressed concern that Drisdell was driving past Tyija's residence. Detective Vogel testified that he investigated Drisdell and ruled him out based on witness accounts, a review of Drisdell's Facebook records, and his telephone records, and the Sims report, even had it been used, could not have been admitted for its truth to prove that Drisdell was hostile toward Martin. On this record, there is no reasonable probability that impeaching the "fine" characterization, or excluding it, would have produced a different result. *Strickland*, 466 U.S. at 694.

¶ 205 Because trial counsel's handling of the alternate-suspect theory was not deficient, and because the defendant cannot show prejudice from the failure to object to Detective Vogel's testimony, counsel was not ineffective in her handling of the Drisdell testimony, and this claim affords no basis for relief.

¶ 206 K. Failure to Object to the State's Closing Argument

¶ 207 The defendant contends that trial counsel was ineffective for failing to object to several assertions in the State's closing argument that, in her view, misstated the evidence or argued facts not in the record, each bearing on the contested question whether she personally shot Martin. First, she challenges the prosecutor's argument that the firearm depicted in her social media videos was

"the same firearm" used to kill Martin, when no witness so testified and Sergeant Krauel acknowledged that he could not determine from a video or photograph whether the depicted firearm had fired any casing or projectile recovered from the scene. Second, she challenges the argument that she and Prentiss "concocted [a] plan" to lure Martin out of the house in order to kill him, which she contends rested on speculation rather than evidence. Third, she challenges the argument that Martin wore gloves to avoid leaving fingerprints, when Sergeant Prosser testified only that he observed something dark on one of Martin's hands and something lighter on the other and could not identify what it was. Fourth, she challenges the argument that she was "leading the pack" and then turned and fired. Fifth, she challenges the argument that she fired the "kill shot," when Dr. Bao testified that he could not determine which caliber of weapon caused any particular wound. She argues that these were assertions of fact unsupported by the evidence, that a prosecutor may not argue facts not in the record, and that counsel's failure to object allowed the State to supply by argument what its proof lacked on the decisive issue. Because the facts surrounding this claim are undisputed and the trial court made no findings on this theory, our review is *de novo*. *Wilson*, 392 Ill. App. 3d at 197.

¶ 208 The State responds that each challenged statement was a reasonable inference drawn from the evidence and therefore within the wide latitude afforded the prosecution in closing argument, so that no objection would have succeeded and counsel was not ineffective for declining to raise one. It contends that the argument connecting the firearm in the videos to the shooting was a permissible inference from the evidence that the defendant possessed a 9-millimeter firearm and from the ballistic comparison linking a casing from the Joliet incident to a casing recovered at the scene. It contends that the plan and positioning arguments were fair inferences from the evidence that the group left together to commit a "lick," from the Facebook messages exchanged before the

shooting, and from the locations of the recovered cartridge casings and Martin's wounds, and that the glove argument was a reasonable inference from Sergeant Prosser's description of the objects on Martin's hands. It contends that the "kill shot" argument was a fair inference from the greater number of 9-millimeter casings and entrance wounds, notwithstanding that Dr. Bao could not attribute a particular wound to a particular caliber. Finally, the State argues that, because the challenged comments were proper, any objection would have been meritless, and the defendant can establish neither deficient performance nor prejudice.

¶ 209 We begin with the governing framework. A prosecutor has wide latitude in closing argument and may comment on the evidence and on any fair and reasonable inferences the evidence yields, but may not argue assumptions or facts not contained in the record; the argument is viewed in its entirety, and a challenged remark is read in context rather than in isolation. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Because the claim is that trial counsel should have objected, it is governed by *Strickland*, and the defendant must overcome the strong presumption that counsel's handling of the State's argument was sound trial strategy. *Strickland*, 466 U.S. at 687-89; *Metcalfe*, 202 Ill. 2d at 561-62. Two principles follow and largely control this claim. First, counsel is not deficient for failing to raise an objection that would not have succeeded, so the claim turns on whether an objection to each challenged remark would have been meritorious. *Rogers*, 2021 IL 126163, ¶ 32. Second, how to respond to the State's closing, by objecting, by answering the argument on its merits, or both, is itself a matter of trial strategy that does not become ineffective merely because the defense did not prevail. *People v. Milton*, 354 Ill. App. 3d 283, 290 (2004).

¶ 210 Measured against that standard, none of the five challenged remarks was a statement of fact unmoored from the record; each was a comment on the evidence or a reasonable inference the

evidence permitted. *Glasper*, 234 Ill. 2d at 204. The argument that the firearm depicted in the videos was the same firearm used to kill Martin was an inference drawn from the evidence that the defendant was depicted with a 9-millimeter firearm, that a 9-millimeter casing recovered from the scene of Martin's shooting and a casing recovered from the Joliet incident were fired from the same firearm, and that the defendant was connected to both scenes. That Sergeant Krauel could not determine from a video or photograph whether the depicted firearm had fired any recovered casing did not foreclose the inference; it went to the weight of the connection the defense was free to argue, and did argue. The argument that the defendant and others concocted a plan to lure Martin out to kill him was an inference from the evidence that the group left to commit a "lick," from the Facebook messages exchanged beforehand, and from the video the State contended marked Martin as a target. The argument that the objects on Martin's hands were gloves worn to avoid leaving fingerprints was an inference from Sergeant Prosser's testimony that Martin's hands were not bare and bore a dark object on one hand and a lighter object on the other, read together with the evidence of the planned "lick." The argument that the defendant was "leading the pack," then turned and fired, was grounded in the defendant's own recorded statement that she had been trying to lead the way and was positioned in front of Martin, together with the locations of the recovered cartridge casings. And the argument that the fatal shot was a 9-millimeter "kill shot" was an inference from the greater number of 9-millimeter casings and entrance wounds and from the testimony that the wounds perforating both lungs were fatal. That Dr. Bao could not attribute any particular wound to a particular caliber did not make the inference improper; a prosecutor may urge a reasonable inference from the evidence as a whole even where an expert declined to draw the ultimate conclusion. Each of these remarks fell within the wide latitude afforded closing argument, and an objection to any of them would not have been meritorious. *Rogers*, 2021 IL 126163, ¶ 32.

¶ 211 The record confirms the point. When the prosecutor first argued that the firearm in the videos was the firearm used in the Joliet shooting, trial counsel objected that the argument misstated the evidence, and the trial court overruled the objection on the ground that the statement was argument. Having drawn that ruling, counsel was not required to lodge the same objection again as the prosecutor developed the related inference that the firearm was also the one used to kill Martin; counsel is not deficient for declining to repeat an objection the trial court had already rejected. *Rogers*, 2021 IL 126163, ¶ 32. Nor did counsel ignore the State's argument. In her own closing she met it on the merits, emphasizing that no witness saw the defendant shoot, that the firearm was never recovered or forensically matched to the casings, that the 9-millimeter was an exceedingly common caliber, and that the State's reading of the plan, positioning, and social media evidence filled gaps in the proof with speculation. Choosing to answer the State's inferences by argument rather than by a series of objections that the trial court had signaled it would overrule was a reasonable strategic allocation of the defense's closing, not a lapse in representation. *Milton*, 354 Ill. App. 3d at 290; *Metcalfe*, 202 Ill. 2d at 561-62.

¶ 212 Because the challenged remarks were permissible comment on the evidence and the inferences it allowed, an objection to each would not have succeeded, and the defendant has not shown that trial counsel's failure to object was deficient performance. *Glasper*, 234 Ill. 2d at 204; *Rogers*, 2021 IL 126163, ¶ 32. A failure on the deficiency prong defeats the claim, and we need not reach prejudice. *Strickland*, 466 U.S. at 687. We hold that counsel's failure to object to the State's closing argument did not deny the defendant the effective assistance of counsel, and this claim affords no basis for relief.

¶ 213 L. Cumulative Error

¶ 214 The defendant contends that, even if no single error requires reversal, the cumulative effect of trial counsel's errors denied her a fair trial. A cumulative-error analysis aggregates only established deficiencies, not merely alleged ones. We have sustained three: the failure to object to People's Exhibit 77 as inadmissible hearsay, the failure to ensure that the jury received IPI Criminal 4th Nos. 3.06 and 3.07, and the failure to request IPI Criminal 4th No. 3.15B. *Simpson*, 2015 IL 116512, ¶ 41; *Pegram*, 124 Ill. 2d at 173-74; *Thompson*, 2016 IL 118667, ¶ 59. We do not cumulate the remaining claims, because as to each we found either no deficient performance or no error, and conduct that was not deficient contributes nothing to a cumulative-prejudice analysis. We have already held that each of the three established deficiencies independently entitles the defendant to a new trial. We nonetheless address their combined effect because, considered together, they supply an additional and independent basis for reversal.

¶ 215 Taken together, the three deficiencies undermine confidence in the verdict. The contested question at trial was whether the defendant personally fired the shots that killed Martin, and the State's proof of that fact rested on two pillars: the statements attributed to the defendant, offered as a confession, and the officers' identifications tying her to the 9-millimeter firearm depicted in the videos. Counsel's deficiencies struck at both. The two confession-related deficiencies compounded one another. The failure to object to People's Exhibit 77 allowed the jury to hear, as substantive evidence, the most damaging and secondhand form of the purported confession, which the statute did not authorize. *Simpson*, 2015 IL 116512, ¶ 41. And the absence of IPI Criminal 4th Nos. 3.06 and 3.07 left the jury with no instruction directing it to decide whether the defendant made those statements at all, the precise safeguard the contested confession required. *Pegram*, 124 Ill. 2d at 173-74. The missing IPI Criminal 4th No. 3.15B then removed the safeguard on the

second pillar, leaving the jury to credit the officers' video identifications of the defendant, the firearm, and the victim without the caution that it owed those identifications no special weight and that the ultimate questions were its own to resolve. *Thompson*, 2016 IL 118667, ¶ 59. The confession was the most powerful evidence the State could offer, and its effect on a jury is incalculable. *Simpson*, 2015 IL 116512, ¶ 36.

¶ 216 As we have explained in addressing the closeness of the evidence, the properly admitted proof established the defendant's presence, association, and hostility, but not that she personally fired the fatal shots, and the evidence on that decisive question was closely balanced. *Sebby*, 2017 IL 119445, ¶ 51. On a record this close, the aggregate of counsel's deficiencies leaves a verdict that cannot be relied upon with confidence. *People v. Briones*, 352 Ill. App. 3d 913, 920-21 (2004); *Strickland*, 466 U.S. at 694; see *White*, 2011 IL 109689, ¶ 133. We hold that the cumulative effect of trial counsel's established deficiencies denied the defendant a fair trial, an additional and independent basis for reversal.

¶ 217 One matter remains. Because the defendant does not challenge the sufficiency of the evidence, and the evidence, though not overwhelming, was sufficient to permit a rational trier of fact to find the elements of the offense proved beyond a reasonable doubt, there is no double-jeopardy impediment to a new trial. *Briones*, 352 Ill. App. 3d at 921. That the evidence was legally sufficient does not conflict with our conclusion that it was closely balanced. The two inquiries are distinct: sufficiency asks whether, taking all of the evidence admitted at trial in the light most favorable to the State, a rational trier of fact could find the elements proved beyond a reasonable doubt, while closeness is a qualitative assessment of the properly admitted evidence for purposes of the prejudice analysis. Evidence may be sufficient to sustain the conviction, and to permit retrial, yet remain closely balanced. The defendant may be retried.

¶ 218 M. Sentencing Claims

¶ 219 In the alternative, the defendant challenges her sentence, arguing that the trial court improperly weighed the aggravating and mitigating factors and that her 52-year sentence is an unconstitutional *de facto* life sentence for an offense committed when she was 16 years old. Because we reverse the conviction and remand for a new trial, the sentence imposed on that conviction is vacated, and these challenges are moot. See *People v. Radcliff*, 2011 IL App (1st) 091400, ¶ 31 (reversal of the conviction rendered the defendant's challenges directed at the sentence moot). We therefore do not reach them.

¶ 220 III. CONCLUSION

¶ 221 For the foregoing reasons, we hold that trial counsel's failure to object to People's Exhibit 77 as inadmissible hearsay, failure to ensure that the jury received IPI Criminal 4th Nos. 3.06 and 3.07, and failure to request IPI Criminal 4th No. 3.15B each independently denied the defendant the effective assistance of counsel, and that, taken together, their cumulative effect denied her a fair trial. We reverse the defendant's conviction for first degree murder and remand the cause for a new trial. Because the evidence, though not overwhelming, was sufficient to sustain the conviction, there is no double-jeopardy bar to retrial. *Briones*, 352 Ill. App. 3d at 921.

¶ 222 We reject the defendant's remaining claims of ineffective assistance of trial counsel, including the claim arising from jury selection, the claim that counsel conceded in closing that the defendant made the statements attributed to her, the claim that counsel conceded Sergeant Krauel's firearm identification, the claims concerning counsel's handling of Detective Vogel's testimony about the defendant's statements and about the alternate suspect, and the claim that counsel failed to object to the State's closing argument. We have addressed the claims bearing on the conduct of the trial because those issues may recur on retrial; we need not address matters unlikely to recur.

People v. Jones, 105 Ill. 2d 342, 353 (1985). We also reject the defendant's contention that the trial court erred in declining to excuse a prospective juror for cause. We do not reach the defendant's sentencing claims, which our disposition renders moot.

¶ 223 Reversed and remanded.