2023 IL App (1st) 200702-U
No. 1-20-0702

FIRST DIVISION
September 25, 2023

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 CR 1785
	)	
QAWMANE WILSON,	)	
	)	The Honorable
Defendant-Appellant.	)	Stanley Sacks,
	)	Judge Presiding.

JUSTICE Pucinski delivered the judgment of the court.
Justices Coghlan and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's first degree murder, attempt first degree murder, and home invasion convictions affirmed where the circuit court properly denied defendant's pretrial motions to quash his arrest and suppress evidence and defendant's motion to suppress statements. His trial counsel was not ineffective for failing to file a motion to quash his arrest and suppress evidence on the grounds that Officer Burgess unlawfully extended the duration of the traffic stop. The trial court exercised appropriate discretion in allowing the prosecution to present videos recovered from defendant's cell phone after his arrest to show his motive in committing these offenses. Defendant was also not denied his right to a fair trial by the State's comments during closing and rebuttal arguments.

¶ 2 Defendant Qawmane Wilson was charged in a multi-court indictment along with his co-defendants, Eugene Spencer (Spencer) and Loriana Johnson (Johnson) in the murder of

defendant's mother, Yolanda Holmes, and the attempt murder of Curtis Wyatt and home invasion of Holmes' residence. Prior to trial, the State informed the trial court that it would be proceeding with three counts of first degree murder, one count of attempt first degree murder and one count of home invasion, and would be dismissing the other counts of the indictment. Count 1 of the indictment charged him with first degree murder in that he "intentionally or knowingly" shot and killed the victim "while armed with a firearm" in violation of 720 ILCS 5/9-1(a)(1). Count 2 charged him with first degree murder in that he shot and killed the victim "while armed with a firearm" knowing that such act created a strong probability of death or great bodily harm in violation of 720 ILCS 5/9-1(a)(2). Count 3 charged him with first degree murder in that he shot and killed the victim "while armed with a firearm" during the commission of a forcible felony, to wit: home invasion of the victim. 720 ILCS 5/9-1(a)(3). Count 110 charged defendant with the attempt first degree murder of Curtis Wyatt where he was shot "while armed with a firearm" which constituted a substantial step towards the commission of the offense of first degree murder, in violation of 720 ILCS 5/8-4(a), 720 ILCS 5/9-1(a)(1). Count 118 charged defendant with home invasion by knowingly entering the dwelling of Holmes and knew or had reason to know that one or more persons were present, while armed with a firearm, they used or threatened the imminent use of force, in violation of 720 ILCS 5/12-11(a)(3). The State proceeded to trial under the theory of accountability. For the offense of first degree murder, the jury was instructed that they could find defendant guilty as "Type A" under the theory of intentional murder or strong probability, and "Type B" under the theory of a forcible felony of home invasion.

¶ 3 Following a jury trial in which co-defendant Spencer was tried before a separate jury, defendant was convicted of first degree murder under both theories of "Type A" and "Type B." (720 ILCS 5/9-1(A)(1), (2), (3)). The jury also found defendant guilty of attempt first degree

murder (720 ILCS 5/8-4(a)(5)), and home invasion (720 ILCS 5/12-11(a)(3)). After the trial court merged defendant's first degree murder convictions, he was sentenced to consecutive terms of 45 years' imprisonment for first degree murder, 25 years' imprisonment for attempt first degree murder, and 29 years' imprisonment for home invasion. Defendant appeals his convictions, arguing he was denied his right to a fair trial when: (1) the trial court erred in denying his motion to quash arrest and suppress evidence; (2) the trial court erred denying his motion to suppress statements; (3) his trial counsel was ineffective for failing to file a motion to quash his arrest and suppress evidence on the grounds that Officer Burgess unlawfully extended the duration of the traffic stop; (4) the trial court abused its discretion in allowing the prosecution to present videos found on defendant's cell phone; and (5) the State made several improper comments during closing and rebuttal arguments. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 **Defendant's Motion to Quash Arrest and Suppress Evidence**

¶ 6 Defendant filed a pre-trial motion to quash arrest and suppress evidence on the basis that he was arrested without probable cause where the police told him that he had did not have a choice and that he had to go to the police station.

¶ 7 Defendant

¶ 8 At the hearing on the motion, defendant testified that he was a high school graduate, had "some college[,]" and worked in the entertainment field. On December 22, 2013, at 8:13 p.m., he was driving his own car to a performance on the west side of Chicago, around Lake and Central. Two members of his group, Travell Johnson and Stefan Gregory, who were riding in a different car, were pulled over by three uniformed police officers. There were two male officers and one female

officer. Defendant exited his own car, walked across the street, and asked the officers what was going on. The officers told him that they were "running" his name because the license plates of the friends' car belonged to defendant and did not match the car. Then, the officers told him that "the detectives wanted to speak with me." He asked them, "Do I have to go?" One of the officers called the detective and then told him that he "ha[d] to go." He was handcuffed and put in the back seat of the police car, seated next to the female officer. Defendant testified that when he was seated in the police car, he did not feel free to go.

¶ 9 The officers drove him to the police station at Belmont and Western. He had previously been to that police station for the investigation into his mother's murder and was interviewed in a large meeting room. The female officer led him to the female detective, and he was placed in a small interrogation room. The female detective took his cell phone and told him that he couldn't have it. The door to the room was closed, but he did not check to see if it was locked. Eventually, he was interviewed "for a number of hours…" and during this time he did not feel free to leave. He asked the detectives whether he was under arrest, but the detectives never answered this question.

¶ 10 During cross-examination, defendant testified that he was driving a Ford Mustang that evening and his friends were driving a Crown Victoria, and the license plates for the Crown Victoria belonged to him. The police were asking his friends about the fact that the license plates did not match the vehicle registration and did not speak to defendant until defendant approached the officers and told them that the license plates belonged to him. The police asked him his name and ran the plates. Defendant testified that the police called the detectives, but he could not hear that conversation. The officers told him that the detective wanted to speak to him, but they did not say it was related to his mother's murder. When he arrived at the police station, he met with a female detective and a male detective with whom he had previously spoken. Defendant admitted that he

told the detectives that he had been trying to contact them to talk to them about his mother's murder. He was not informed of his *Miranda* rights until he had been in the room for hours.

¶ 11 Chicago Police Officer Caroline Burgess

¶ 12 The State presented the testimony of Chicago Police Officer Caroline Burgess and Chicago Police Detective Michelle Wood. Officer Burgess testified that on December 21, 2013, at approximately 9:30 p.m.,[1] she was on routine patrol with her partners, Officers Bartel and Sherman. She saw a Crown Victoria parked on the street, one of the officers ran the license plates for that car and discovered that the license plates did not belong to that car. They pulled over, spoke with three people on the street who were standing by the car, one of them being defendant. The officers were shown a bill of sale and the car registration. She learned defendant's name, but she did not recall if he showed her a driver's license or told her verbally. She then ran defendant's name and learned that there was an investigative alert with no probable cause to arrest for defendant. She called Detective Michelle Wood, whose name was on the investigative alert, who told her that they were looking to interview him regarding his mother's murder. Officer Burgess exited her squad car, walked towards defendant and the two other people, informed defendant that there was an investigative alert with his name, and some detectives wished to speak to him about his mother's death. She asked defendant, "Would you like to come speak with them." When defendant became quiet, Officer Burgess thought that defendant may be quiet because the alert was related to his mother's death, and he might not want to speak about it in front of the other people. At that point, she and defendant walked over to her squad car and discussed whether he

[1] There is a discrepancy as to the date in which defendant initially spoke with the police. While defendant testified that he initially spoke with the police on December 22, 2013, Officer Burgess testified that she initially spoke with defendant on December 21, 2013. At the hearing, Detective Wood testified that she initially spoke with defendant on December 22, 2013, but at trial she testified that it occurred on December 21, 2013.

wanted to go to the station and talk to the detectives. She told him that it was his choice. He told Officer Burgess that he had been trying to get in contact with the detectives, but it had not happened. They discussed what his plans were for the evening, and she told him that if he wanted to meet with the detectives and then meet up with his friends, the officers could take him back to wherever he wanted to go. Defendant agreed to speak with the detectives. Officer Burgess testified that if defendant had said that he did not want to speak with the detective, he would have been free to leave.

¶ 13 During the ten-minute ride to the station, defendant was handcuffed for "[o]fficer safety." The officers were riding in a police car that did not have a cage separating the front and back seats and the officers routinely handcuffed persons in this type of situation. When he arrived at the station, the handcuffs were removed. They went to the second floor of the building where the detective's division was located. They left defendant alone in a small waiting room which is open to the public and used by victims and witnesses of crime, while the officers went to let the detectives know that defendant was at the station. Her involvement ended at that point.

¶ 14 Chicago Police Detective Michelle Wood

¶ 15 Detective Michelle Wood testified that she was assigned to investigate this case, and she initially spoke with defendant and his aunt a few days after the murder inside a conference room to see if he knew anything about his mother's murder. During this interview, defendant was not in custody, not given his *Miranda* rights, and not handcuffed. He left the interview on his own free will. During the investigation, in May of 2013, she sought to speak with defendant again and went to his residence on the west side of Chicago. She and her partner, Detective John Korolis, spoke with defendant. Defendant was not informed of his *Miranda* rights during this interview.

¶ 16 In October of 2013, Detective Wood wanted to ask him about phone calls that were made to Yolanda Holmes' phone and get updated address and phone number for defendant. She tried to locate defendant again at this same address, but the building appeared to be abandoned and defendant was not there. She then called defendant's phone number, but it was disconnected, and contacted other family members in October and November of 2013, trying to locate defendant. In November of 2013, she issued an investigative alert with no probable cause meaning that she wanted to speak to this person because he was a witness or might have information on the case.

¶ 17 On December 22, 2013, she received a phone call that another officer had encountered defendant because his acquaintance had been stopped for a traffic violation. The officer at the scene asked her if she still wanted to talk to him from the investigative alert with no probable cause. Detective Wood testified that the officer at the scene said, "Do you still want to talk to him because he wants to talk to you." Then, they discussed if Detective Wood would go to the scene or if defendant would be brought to the station. She met with him in the detective division offices of the Area North Police District. He was initially seated in the area right outside the detective division, and he was not handcuffed or being guarded by any officers. She briefly spoke with him at 10:42 p.m. in that area and then brought him into an interview room. She did not inform him of his *Miranda* rights because he was not under arrest. She did not tell him that he was free to leave. She did not turn on the electronic recorded interview (ERI) during this portion of the interview. During this time, she was also doing paperwork as part of their investigation and did not interview defendant the entire time.

¶ 18 She asked defendant questions about the murder of his mother, including the identity of Eugene Spencer because there were multiple phone calls made to and from defendant's cell phone to a cell phone listed to Spencer before and after the murder. At this point, Spencer was not a

suspect in the murder. She did not know if Spencer was the owner of the phone that was listed under his name. She also asked defendant about the last conversations that he had with his mother. She showed him a few photographs, including a booking photo for Spencer. Then, she spoke to defendant about what Spencer's role may have been in the murder. She showed him a still image of the person who entered Holmes' apartment building from the surveillance video from the building and asked him who it was. Defendant stated, "I already know you guys know that's Boo." Spencer's nickname is Boo. She asked him why he thought Spencer would have been in his mother's building. Defendant said, "it was supposed to be a robbery." She exited the room, activated the ERI, told defendant he was under arrest and informed him of his *Miranda* rights at 3:58 a.m.

¶ 19 During this time, she never asked defendant if he wanted to make a phone call. She denied that she took defendant's cell phone or asked him for his password to his phone during this initial interview. She never told him that he was free to leave, and defendant never asked her if he was under arrest. Defendant never said that he wanted to leave.

¶ 20 Rebuttal Case – Defendant

¶ 21 Defendant testified in rebuttal that the female police officer did not tell him that he was being arrested and never informed him of his *Miranda* rights. He was first handcuffed when he spoke with the officer inside the squad car. None of the officers explained to him that he would only be handcuffed during the time that he was being transported to the police station. He testified that he asked the officers if he could leave because he was about to start a show and denied that the officer offered to take him back to the party after he was done. He never told the officer that he wanted to leave because the officer told him that Detective Wood said that he had to come to the station. The police did not remove his handcuffs until he got to the second floor of the police station. The police

told him to sit down outside the interview room. He admitted that he was left alone at this point and there was nothing physically stopping him from going downstairs and leaving the station. He had his cell phone with him and was texting someone when Detective Wood approached him and told him that he could not have his cell phone in this area. She took the phone from him.

¶ 22 During this interview, defendant sat in the back of the interview room and did not feel free to go past the detectives who were closer to the door. The detectives asked him why he killed his mother and told him that if he worked with them and included himself in some way, they would make sure that he left the station because it was close to Christmas. He testified that he was advised of his *Miranda* rights after "I told them what they told me to tell them…I repeated what they told me to say." He admitted that he had previously spoken to Detective Wood earlier in the investigation in a conference room, along with his aunt.

¶ 23 Trial Court Ruling

¶ 24 The trial court denied defendant's motion. The trial court found that the police told defendant that there was an investigative alert, but that he was not under arrest, and asked him if he wanted to speak with Detective Wood and he responded yes. The trial court found that it was significant, "It seemed to be more important to your client at that point since he wanted to talk to the police before then and tried to contact them apparently and wasn't able to do that - - he would be more concerned about talking about his mother's murder than he would be about go making some kind of a party or some kind of a gig." The trial court found that talking to defendant inside the squad car was reasonable because he was talking in a low tone in the presence of two other people. The trial court further found that the fact that defendant was handcuffed, and only during the time that he was transported to the station, did not mean that he was under arrest and found that the officer testified credibly that this was done for officer protection. The trial court found that defendant

"went to the police station voluntarily…He wasn't under arrest. He wasn't in custody. The mere fact…that he might have believed that he wasn't free to leave, there is no evidence in this record at all that he ever asked to leave." The trial court did not find that the difference in the composition of the rooms used during his initial interview and this subsequent interview was "really insignificant…" The trial court found that the detectives wanted to talk to defendant about his mother's murder, which defendant wanted to talk about anyway before that day. When defendant began to inculpate himself in the murder, the detective did "what she should have done" and stopped questioning him and turned on the ERI.

¶ 25 **Defendant's Motion to Suppress Statements**

¶ 26 Defendant also filed a pre-trial motion to suppress his custodial statements to the police on the basis that his unrecorded statements were made when he was in custody and prior to being advised of his *Miranda* warnings. At the start of the hearing on the motion, the trial court agreed to take judicial notice of testimony he had already heard in the other motion to suppress and then, in lieu of testifying at the hearing, swore defendant to the contents of his written motion. In the written motion, defendant averred that during "numerous points of the interrogation, [he] specifically asked whether he was under arrest and was met with blank stares and non-answers from [Detectives] Wood and Korolis" and he was coerced when Detective Korolis told him "If you work with me, I will talk to the State's Attorney."

¶ 27 <u>Chicago Police Detective Arthur Taraszkiewicz</u>

¶ 28 The State presented the testimony of Chicago Police Detectives Arthur Taraszkiewicz and John Korolis. Detective Taraszkiewicz testified that on December 22, 2013, at 4:07 p.m., defendant was walked from the interview room to be fingerprinted in another area of the station. At 4:30 p.m., Detectives Korolis, Wood, and Taraszkiewicz walked him back to the interview room, which

took approximately two minutes. Detective Taraszkiewicz denied that told defendant "just go along with the detective - - just go along with what the detective says and he'll help you out." He also denied telling defendant "[y]ou have to knock on the door and ask to speak to us again" or "[y]ou let us know if you want to tell your side of the story…" He never heard any other detective make these remarks to defendant. He testified that he had general conversations with defendant as far as whether he wanted water or anything else.

¶ 29 Chicago Police Detective John Korolis

¶ 30 Detective John Korolis testified that he was involved in the investigation into the murder of Yolanda Holmes and had previously interviewed defendant prior to December of 2013. During his initial interaction with defendant on December 22, 2013, defendant was considered a potential witness, not a suspect, and this interview was not recorded. Detective Korolis explained that he was not required by law to record the initial interview because defendant was not a suspect at that time, but he had "sometimes" recorded witness statements. Detective Korolis denied that during the unrecorded portion of the interview, he told defendant "[I]f you work with me, I will talk to the State's Attorney." When defendant became a suspect upon making an incriminating statement, the ERI equipment was then activated at 3:43 a.m. on December 22, 2013, and defendant was advised of his *Miranda* rights. Defendant initially waived his *Miranda* rights and there was an initial recorded conversation. Defendant invoked his *Miranda* rights at 4:33 a.m. on December 22, 2013, including his right to an attorney. At that point, he and Detective Wood terminated the interview.

¶ 31 Subsequently, at approximately 4:07 p.m. on December 22, 2013, defendant was taken by Detectives Korolis, Wood, and Taraszkiewicz to the lockup area to be fingerprinted and photographed. At that time, defendant stated that he wanted to talk to them about the investigation.

The detectives reminded him that he had asked for an attorney and that they could no longer talk to him because he had asked for an attorney. At approximately 4:30 p.m. on December 22, 2013, defendant was returned to the interview room. At approximately 4:43 p.m. on December 22, 2013, defendant knocked on the door and asked to use the washroom. Detectives Korolis and Wood took him to the washroom. Outside the interview room, defendant stated that he wanted to clear up the phone records. They reminded him that they could not talk to him because he had asked for an attorney, they would need to provide him *Miranda* warnings, and he would have to waive those rights again if he wanted to speak to them again. At approximately 4:45 p.m. on December 22, 2013, defendant returned to the interview room and defendant told the detectives "I'm ready." The detectives did not have any additional conversations with defendant at that point.

¶ 32 Later that evening, defendant asked to go to the washroom, and Detectives Korolis and Wood escorted him to the washroom. Outside the interview room, defendant said that he wanted to talk about the investigation to clear up the phone calls. They returned to the interview room at 9:39 p.m. on December 22, 2013, and defendant started talking about the phone calls. Detective Korolis told him that he asked for an attorney, and they could not talk to him unless they provided him with his *Miranda* rights again, and that he waived those rights. The ERI was played, showing that at 9:43 p.m. on December 22, 2013, Detective Korolis said to defendant, "When we went to the bathroom, you said you wanted to talk about the phone, right?" Defendant responded, "Yes." Detective Korolis re-advised defendant of his *Miranda* rights and defendant waived his rights.

¶ 33 Trial Court Ruling

¶ 34 The trial court denied defendant's motion to suppress statements. The trial court found that the testimony of the two detectives was credible, and that defendant was not in custody when he made his initial statements, "so there's no need to advise him of his rights." Later, when defendant

made an inculpatory statement, the detectives advised him of his rights, and he waived them. Defendant subsequently told the detectives, "…'I want to talk to a lawyer.' Okay. We're done. They stop the conversation with [defendant]."

¶ 35 The trial court further found that the detectives did not continue to interrogate defendant after he invoked, "If there was any reinitiation done, it was done by [defendant], not by the police. They did their best to say, 'Shut up. We don't want to talk to you without a lawyer" or 'you want to talk to a lawyer first.' [Defendant] kept saying. 'I want to talk to you about this or that." The trial court also rejected defendant's claims of coercion and promises of leniency.

¶ 36 During the middle of defendant's jury trial, right before the State rested their case-in-chief, the defense filed a "Renewed Motion to Suppress Statements as Involuntary" in which he contended, for the first time, that Detectives Wood and Korolis made "a number of threats and promises" which "overbore [defendant's] will and rendered his statements involuntary." The trial court recognized that these allegations were untimely as they were not raised prior to trial, and, after viewing the relevant ERI videotapes, it found that the detectives did not make any improper threats or promises. The trial court denied defendant's renewed motion to suppress statements.

¶ 37 **State's Motion *in limine* to present photos and videos**

¶ 38 Prior to trial, the State filed a motion *in limine* seeking to present "'selfie' type videos recovered from defendant []'s cell phone extraction…[which] showed [defendant] flashing large amounts of money, shoes, and jewelry following the murder." The State contended that this evidence was relevant "to establish the defendant's motive to commit the murder was based on financial gain to both defendants." The State attached an exhibit listing one photograph and seven videos. Defendant objected to the admission of video clips, arguing that the "prejudicial effect

outweighs the probative value." The State initially sought to introduce a photograph and seven video clips recovered from defendant's cell phone.

¶ 39 At the hearing on the motion, defense counsel argued that this evidence was "overly prejudicial" because there was "no proof as to where that cash came from, if it's related to any sort of money that came from any account from Yolanda Holmes to something else…" The State responded that they intended to introduce bank records showing that defendant withdraw between $75,000 and $80,000 from Holmes' bank accounts ten days after the murder.[2]

¶ 40 As to the video showing defendant throwing money into the air, the trial court asked defense counsel the basis for his objection. He argued that "there are a few foundational elements I think that have to be proved up. This came from a YouTube video that was originally posted…some time after September 2, 2012…" Defense counsel also argued that this evidence was prejudicial because it was cumulative of a photograph, that the trial court allowed the prosecution to admit, showing defendant with a pile of money. The trial court found that this evidence was not overly prejudicial "because the fact they have one photograph or one thing on the video showing [defendant] throwing away money and the other counting money, apparently on the floor, and another one with the money…There's no basis to object to somebody saying well, there's too much evidence." The trial court also found that "After his mother was murdered, [defendant] took out a bank account that he shared with his mother apparently, joint, $75,000 to throw some of it away or give some of it away. I think it's extremely relevant and not prejudicial at all."

¶ 41 Defense counsel pointed out to the trial court that the State was not introducing these videos to establish that defendant was motivated by a financial profit because they had already proved

[2] There was also testimony at trial that this account was a joint account held by both Holmes and Wilson.

that, but to show that defendant was "not a nice person…" The trial court reiterated its position that defendant's argument that there was too much evidence does not provide a basis for objection. Defense counsel continued his argument, suggesting that this evidence showed "other bad acts" because it showed that defendant was a "callous, cold person, that he's flaunting his money that he got from his mother after she was murdered…" The trial court disagreed with defense counsel's argument and pointed out that one of the videos showed defendant giving away money. Defense counsel further argued that the videos "have an atmosphere of…hip-hop, gangster rap…[and] portray him as a rap star." The trial court found that there was nothing illegal with being a rap star. As far as the video showing that he was wearing a nice gold watch, the trial court found that "[i]t's not a crime to possess a nice gold watch…" The trial court ultimately allowed the State to introduce five of the seven videos.

¶ 42 The trial court also granted defense counsel's request for the jury to receive a limiting instruction regarding this evidence:

> "Evidence will be received that the defendant has been involved in conduct other than that charged in the indictment.
>
> Evidence will be received on the issues of intent and motive and my [sic] be considered by you only for that limited purpose.
>
> It is for you to determine whether the defendant was involved in that conduct, and if so, what weight should be given to this evidence on the issues of intent and motive."

¶ 43 **Jury Trial**

¶ 44 Loriana Johnson

¶ 45 Loriana Johnson[3] testified that she was dating defendant in September of 2012 for the past year and drove a red Ford Taurus. Approximately one week before September 2, 2012, she had a cell phone conversation with defendant during which he asked her if she could take his friend somewhere to "make a run." He promised to pay for her gas and said he would let her know when later. Then, at approximately 2:00 a.m. on September 2, 2012, defendant called her and asked her if she could bring a gun to his house. She described it as a "cowboy gun" and "the spinner." She had hidden the gun in her closet underneath her daughter's clothes. She testified that the gun did not belong to her, and she had not put the gun there. She hid the gun in a bookbag and drove to defendant's house in her car.

¶ 46 When she arrived at defendant's house, Eugene Spencer and defendant were standing outside. She handed the bookbag containing the gun to defendant who took it inside his house, followed by Johnson and Spencer. Defendant took the gun out of the bag and wiped it off with a cloth. Johnson heard defendant say to "take everything" which she understood to mean that this was a robbery, but she did not hear them use that word. She also heard defendant say, "[s]omething about a him" and the clothes that Spencer had with him. She saw Spencer leave the living room, but she did not see where he went. She and defendant talked and had sexual intercourse. Afterwards, she saw that Spencer had clothes with him and defendant asked her to take Spencer "up north."

¶ 47 She left defendant's house with Spencer in the back seat of her car. She followed defendant who was driving a silver Ford Mustang. The doors to that car opened like a regular car. She spoke with defendant over the phone, as she got lost several times, while he led her to the expressway and to an apartment building near Montrose and Broadway, Chicago. She parked the car, and

[3] Johnson was originally charged in the indictment with first degree murder and attempt first degree murder, but she pled guilty to an amended count of armed robbery and was sentenced to 14 years' imprisonment as part of a plea agreement with the State and in exchange for her truthful testimony.

Spencer exited the car holding clothes on hangers and walking towards the apartment building at that address. At some point, defendant told her that he was going to exit the car and wait. Ten minutes later, Spencer came back to her car and sat in the back seat, and she noticed that he was not wearing shoes, sweating and panicking, and smelled an odor, "like blood", on him. She did not see him with a gun, a knife, drugs, or any property from inside the apartment. As she drove away, she asked him what the smell was, and Spencer "snapped" and said, "I had to do it." He said that the gun jammed and then he grabbed a knife. In an alley on the south side of Chicago, Spencer took the clothes that he was holding and threw them into a dumpster. At that point, she looked in the back seat and saw blood on that part of the seat, which was not previously there. Two weeks after the murder, she saw defendant at her apartment. She asked him "why did he do it." He said, "An easy target." She asked defendant why he picked her, and he said, "Because [she] was easy." They also discussed "[w]hy he did it" and defendant told her that "it was for the money."

¶ 48 At trial, Johnson identified Spencer from still photos taken from surveillance video at Holmes' apartment building, inside a freight elevator and inside the fourth-floor hallway and testified that he is carrying the same clothing that she saw him with after they left defendant's house. She also identified a photo of defendant seated on his Ford Mustang. The doors on this car in the photo are going straight up into the air, but that is not how the doors operated in the night she followed him.

¶ 49 On December 23, 2013, Johnson was arrested and was interviewed by Chicago police detectives. She told the detectives that "he said the gun jammed and I had to grab the knife and I just started stabbing or whatever" and he said, "the dude grabbed him." She admitted that she initially lied to the detectives as to her involvement in and knowledge of the murder.

¶ 50 Curtis Wyatt

¶ 51 Curtis Wyatt testified that he and Yolanda Holmes had previously dated for five years before breaking up in 2012. He testified that Holmes owned a hair salon and drove a black Lexus SUV that she parked in the parking garage of her apartment building. He also testified that Holmes had one son, defendant, and that defendant drove a Ford Mustang that Holmes had purchased for him.

¶ 52 In the evening of September 1, 2012, Wyatt went to meet Holmes at her fourth-floor apartment on the north side of Chicago around 10:00 p.m. When he arrived, Holmes "buzzed" him into the building as he did not have a key fob to enter the building. No one else was at the apartment when he arrived, but Holmes shared the apartment with her niece, Kierra. After Wyatt and Holmes had sexual intercourse, they fell asleep together in her bedroom. He woke up when he heard Holmes speaking to someone on the phone. She told him that she was talking to defendant. Wyatt went back to sleep, so he did not know if Holmes got out of bed after the phone call.

¶ 53 He woke up a second time to the sound of a loud gunshot. Wyatt jumped out of the bed and saw a male on the other side of the bed, approximately six feet away. At trial, Wyatt identified Spencer as this person he saw inside the bedroom. Spencer fired two shots at Wyatt then hit him in the head with the gun eight to ten times. Wyatt tried to defend himself and their fight spilled out into the hallway. Spencer also tried to strangle him and grabbed his testicles, but then Wyatt clawed at him. Wyatt grabbed a knife from the kitchen, looked around the apartment and saw that Spencer had left. Wyatt checked on Holmes and saw her lying halfway off the bed with a gunshot wound. Wyatt called 911 twice and the audio from those calls were played at trial. He washed his hands in the bathroom sink as they were covered in blood. Wyatt took one of the passenger elevators to the lobby to let the police and paramedics into the building. A surveillance video from the lobby area showed Wyatt opening the door and having a large amount of blood on the back of his head.

¶ 54 After Wyatt was treated for his injuries at the hospital, he went to the police station and agreed to submit to a buccal swab for DNA analysis, a gunshot residue kit for his hands, and to have cellular material collected from underneath his fingernails. The police also recovered his clothing. He stayed in contact with the police for any updates. On December 23, 2013, Wyatt identified Spencer as the attacker in a physical lineup. He also identified Spencer as the attacker at trial.

¶ 55 At trial, Wyatt identified several photos of Holmes' apartment. The photos showed red stains in several areas of the apartment, including on the front entryway floor tile, a hole in the wall by the headboard of Holmes' bed, and a white mark on the headboard of that same bed. He also identified photos of a handgun and a white ear bud on the floor. He identified a photo of the kitchen where he removed a knife from a knife block on the counter and another photo showing the knife that he removed, and still intact, in the front doorway area of the apartment. He also identified a Taurus 9 mm semiautomatic handgun, found inside a cloth bag in the bedroom closet, as the gun that he had previously purchased and kept in a lockbox at Chase Bank. Both he and Holmes had keys to that lock box, but he did not know that the gun was inside her apartment. On September 12, 2012, he went to the lock box to remove that gun and learned that someone else had taken it out. From a still photo taken from a surveillance video, Wyatt identified defendant's Ford Mustang parked behind Holmes' apartment building. On cross-examination, Wyatt denied that he opened the apartment door for the attacker and fought with that person to create a crime scene. He also testified that he loved her and denied that he stabbed or shot her.

¶ 56 Chicago Police Officer Armando Martinez

¶ 57 Chicago Police Officer Armando Martinez testified that he responded to the radio call. He and his partner took an elevator to the fourth floor, met up with two other officers. When the apartment door opened, Officer Martinez immediately saw puddles of blood on the hallway floor and smeared

blood on the walls and furniture. He identified a photo of Holmes lying halfway on the bed as the position she was in when they entered the bedroom. He also identified another photo of the revolver that they found on the bedroom floor. He later learned that there were security cameras inside the common areas of the apartment building and identified surveillance videos of the officers' arrival on the fourth floor.

¶ 58 Chicago Paramedic Vincent Zittman

¶ 59 Chicago Paramedic Vincent Zittman was called to the scene and at 5:20 a.m., observed Holmes with a gunshot wound to her head, but she was not breathing and did not have a pulse. The police had declared the apartment and common areas to be a crime scene, so he did not render any lifesaving techniques to her and did not move her body.

¶ 60 Chicago Police Officer Eric Szwed

¶ 61 Chicago Police Officer Eric Szwed, a forensic investigator, processed the scene. The lobby and entry areas, stairwell and Holmes' apartment were secured by crime scene tape. The photographs he took of these areas were introduced at trial. The photos showed that the entrance to the apartment building had a secure door that locked automatically along with a call box on the wall. He found blood on the glass of the interior door to the lobby as well as on the two handicapped access pads on the wall. Officer Szwed also processed the stairwell from the fourth floor to the first floor. On the fourth-floor stairwell, he found a white long-sleeve shirt on the floor and some faint bloody footwear impressions on the floor nearby. In the stairwell landing between the fourth and fifth floors, he also found a plastic hanger with blood on it as well as a faint swipe of blood on the wall nearby. He found some additional blood on the corner wall of the stairwell between the second and third floor, on the interior handle of the gate to exit the stairwell between the first and

second floors, and on the door leading to the lobby area. In total, he collected blood swabs from six different locations inside that stairwell.

¶ 62 He also took photographs and collected evidence from Holmes' apartment. He testified that the photographs showed the entryway into Holmes' apartment with a "significant amount of blood" on the floor, walls and on the door, and a knife handle with a broken blade on the floor. There were also five $20 bills on the floor. There was no damage to the locking mechanism to the apartment door. The photos taken from inside Holmes' bedroom showed four fired bullets. One bullet was found on the floor behind the bed, another bullet was found inside the wall behind the bed, and two fired bullets were found inside the mattress. He also photographed a revolver with two fired cartridge cases still in the cylinder on the bedroom floor, an earbud on the bedroom floor. For future DNA analysis, Officer Szwed swabbed the handle of the grip and the trigger portions of the revolver. There was also a defect in the white area of the headboard with cotton coming out of the headboard, a defect in the wall behind the headboard, and a hole in the wall above the headboard. Officer Szwed also found a brown paper bag containing two bags of white powder, suspect narcotics, in the corner of the bedroom behind a storage container. A photo of the 9 mm semiautomatic pistol inside a cloth bag in the closet were also admitted into evidence as well as a photo of a magazine that matched this weapon, which was found in the top drawer of a storage rack.

¶ 63 Officer Szwed went to the hospital and administered a gunshot residue evidence collection kit to Wyatt. Wyatt's hands had not been "bagged" prior to this test. He took photographs of Wyatt's injuries and collected his clothing. It was stipulated that Officer Szwed also collected the buccal swab and fingernail scrapings from Wyatt.

¶ 64 <u>Chicago Police Detective Michelle Wood</u>

¶ 65 Chicago Police Detective Michelle Wood testified that she and her partner, Detective John Korolis, arrived at the scene at approximately 5:00 p.m. and interviewed Wyatt. Detective Wood noticed that Wyatt had a head injury. After Wyatt received medical treatment, she arranged for Wyatt to be transported to the Area North detective division where they spoke with him for about thirty minutes. He was not considered to be a suspect and was free to leave after their conversation.

¶ 66 On September 4, 2012, the detectives met with defendant and Holmes' sister, Yunae Holmes, in a conference room located in the Area North detective division for approximately 30 minutes. Defendant told them that he was at a party on the south side of Chicago and called his mother at 2:00 a.m. because he was going to go to her apartment to pick up some money and to spend the night at her apartment. He left the party, picked up a girl, spent 45 minutes at his home on west Crenshaw, before dropping off this girl at 18th and Homan. He then met up with another girl, Shawnee, at her residence at Lake and Cicero. When he left that location, he called his mother to let her know that he was on his way to her apartment. His mother sounded "sleepy." He arrived at her apartment about 45 minutes later and saw the police were there. During the interview, defendant provided his own cell phone number along with Holmes' cell phone number. The interview ended because defendant said that he was too upset over the death of his mother. Detective Wood told him that she wanted to speak with him again, but they did not pick a date or time.

¶ 67 Detective Wood subpoenaed the cell phone records for Holmes and Wyatt. In October of 2012, pursuant that subpoena, Detective Wood obtained cell phone records that included records for the phone number that defendant had provided as his own. Detective Wood requested a cell phone study for these numbers which showed that there was an outgoing call from defendant's cell phone to Holmes' cell phone at 4:21 a.m. on September 2, 2012. The records also showed multiple

phone calls between Wilson and Spencer that night. Spencer's address was the same address where defendant was living at that time.

¶ 68 After reviewing these phone records, Detective Wood issued an investigative alert with no probable cause for defendant on November 8, 2013. She explained that if any police officer encountered him, there would be a message letting them know that she wished to speak to him regarding this incident. She testified consistently with her testimony during the hearing on defendant's pre-trial motion. During her testimony, the State presented the post-*Miranda* videotaped statements of defendant during an interview with Detectives Wood and Korolis. During this statement, defendant told them that Johnson had a gun but denied that it was defendant's gun. He also denied that he gave a gun to Spencer. He told Johnson to drive Spencer to commit the robbery, but he did not promise anything in return. He had Johnson drive Spencer because he did not want to be involved. He and Spencer planned to have Spencer go inside Holmes' apartment and demand money from her. The two of them were to split the money equally between the two of them. The plan was to rob her, but defendant denied that he told Spencer to kill her. He denied that he gave Spencer shirts, but they decided to have Spencer carry clothes and laundry detergent to make him look less suspicious and like a "regular person." He denied that Spencer called him while he was inside the apartment and said that someone else was inside the apartment. Defendant denied that he got any money from Holmes' apartment. He did not know anything about the knife. He also denied that he discussed what happened with Johnson.

¶ 69 Andrzej Sisson

¶ 70 The State also presented the testimony of Andrzej Sisson, who was responsible for the installation and management of the security system in the apartment building where Holmes died. On September 12, 2012, Sisson went to that location along with some police officers and building

management to assist in securing the videos from the surveillance system, which allowed for digital storage of approximately 30 days. The police officers specified to him which time frames and which cameras to download to limit the amount of data that needed to be transferred. During his testimony, the State introduced 25 different photos taken from the surveillance cameras stationed in the front and rear exterior, the front lobby and vestibule, the freight elevator, the passenger elevator, and the fourth-floor hallway.

¶ 71 Darrell Dautrieve

¶ 72 Darrell Dautrieve testified that he was the property manager for the apartment building at the time of this offense. He testified that to enter the building, a person needed to use a key fob, which looked like a credit card. If someone did not have a key fob, they would type in the last name of the person to get the unit number, type in that number, and it would automatically ring into the apartment through a landline phone. The person in the apartment could then unlock the front door by pressing a certain number combination. He knew that defendant was not issued a key fob. He spoke to defendant at the apartment building after the murder and told him how sorry he was for his loss. Defendant did not say anything in response, When Dautrieve continued to console him, defendant did not react.

¶ 73 During his testimony, the State introduced several surveillance videos, and Dautrieve described the physical layout of the building as well as what he saw at various parts of the videos. One of the videos showed a person, wearing white shoes, entering the building and walking towards the elevators holding clothes, laundry, and some washing detergent. The video also showed this same person enter the freight elevator holding these same items, tighten the hood on his sweatshirt, and then exit the elevator on the fourth floor holding these same items. He also identified another video,

taken from the rear exterior of the apartment building, showing a car going the wrong way in the alley behind the building and then pulling into the parking area.

¶ 74 Mike Parker

¶ 75 Mike Parker, who resided in an apartment on the fourth floor of this building, testified that he was trying to enter the building around 4:30 or 5:00 a.m. but had forgotten his key fob. He was able to get inside when someone was leaving the building during that same time. Parker had never met this person before but described him as a male. Surveillance videos showed him entering the building and walking past this male. He spoke to the police about what he saw. On December 23, 2013, he was unable to make an identification in a physical lineup.

¶ 76 Doctor Ponni Arunkumar

¶ 77 Doctor Ponni Arunkumar reviewed the autopsy of Holmes performed by another assistant medical examiner. There was a gunshot wound to the right side of her head with evidence of stippling, meaning that the shot was fired from within two feet. A deformed medium caliber silver jacketed lead bullet was recovered from her brain. She also had two stab wounds to her abdomen, which caused bleeding in her abdominal cavity. She could not determine which injury occurred first or second. In her expert opinion, the cause of death was gunshot wound to the head and multiple stab wounds being a contributing factor to the death. The manner of death was homicide. A forensic investigator collected evidence from the autopsy, including a blood card for Holmes', her clothing, right and left-hand fingernail clippings, and a fired bullet.

¶ 78 Dena Inempolideis

¶ 79 Several forensic analysts from the Illinois State Police Forensic Science Center examined some of the evidence collected in this case. Firearms expert Dena Inempolidis testified that she determined that the Colt Model .38 Special caliber revolver was the weapon that fired the bullet

recovered from Holmes' brain as well as the three of the four other bullets recovered from the bedroom. She could not eliminate the revolver as the source of the fourth bullet recovered from the bedroom. She also determined that this revolver, which showed damage to the wooden handle, jammed and misfired when she initially test-fired it. From the shell casings recovered from the bedroom, she was unable to identify or eliminate it as being fired from the revolver. She did not perform any type of comparison with the 9 mm semiautomatic handgun found in the bedroom closet with the shell casings these shell casings are not the type of ammunition that could be fired from that type of weapon because of the different in the calibers.

¶ 80 Sheila Daugherty

¶ 81 Sheila Daughtery, who was qualified as an expert in the field of latent fingerprints, tested the two portions of the broken knife as well as one plastic hanger. She found no suitable latent fingerprint impressions on any of these items.

¶ 82 Bill Cheng

¶ 83 Bill Cheng, who was qualified as an expert in the field of forensic biology, tested the plastic hanger for the presence of blood. He swabbed the item, blood was indicated, and he preserved the sample for further testing.

¶ 84 Elizabeth Zawicki

¶ 85 Elizabeth Zawicki, who was qualified as an expert in the field of forensic biology, tested various pieces of evidence recovered in this case for the presence of cellular material. She tested the two portions of the broken knife and determined that blood was indicated on both the handle portion of the knife, as well as the blade portion. Zawicki testified that she swabbed the inner portion of the earbud, that would go inside a person's ear, and found cellular material. She swabbed the outer portion of the earbud and blood was indicated. When Zawicki analyzed the white shirt,

blood was indicated, and the entire stain was preserved for DNA analysis. She swabbed the inside of the shirt cuffs for the presence of cellular material and preserved it for DNA analysis. She also swabbed the fingernail scrapings for Curtis Wyatt for cellular material, and she preserved these samples for DNA analysis. Her testified also indicated that blood was present.

¶ 86 Jennifer Belna

¶ 87 The portion of the ear bud that would go inside a person's ear was swabbed for cellular material and blood was found on the exterior portion of the ear bud. Jennifer Belna, who was qualified as an expert in the field of forensic DNA analysis, testified that she conducted a DNA analysis on the buccal swab standard collected from defendant and was able to identify a DNA profile which was suitable for comparison. She also conducted a DNA analysis on the cellular material from the earbud found inside the bedroom, and she identified a human male DNA profile. She compared the human male DNA profile with the DNA profile of Spencer. She testified that this human male DNA profile on the earbud matched the DNA profile of Spencer and did not match the profile of Wyatt. She explained that this profile would be expected to occur in approximately one in 8.7 quintillion black, one in 3.7 sextillion white, and one in 550 quintillion Hispanic unrelated individuals. She further testified that the blood on the outside of the ear bud matched the DNA of Wyatt. She explained that this profile match would be expected to occur in approximately one in 1.4 billion black, one in 51 billion white, or one in 22 billion Hispanic unrelated individuals.

¶ 88 Belna also testified that she concluded that the blood found on both parts of the broken knife matched the DNA profile of Wyatt, and did not match the DNA profile of Spencer. When the white shirt was analyzed, blood was indicated, and the entire stain was preserved for DNA analysis. The DNA analysis indicated a human male DNA profile which matched the DNA profile of Wyatt and did not match the DNA profile of Spencer. The sample from the first-floor stairwell also tested

positive for blood and the human male DNA profile was identified as that of Wyatt. This profile was expected to occur in approximately one in 1.7 sextillion black, one in 200 sextillion white, or one in 53 sextillion Hispanic unrelated individuals. The DNA analysis of the cuff of the white shirt revealed a partial mixture of human DNA profile with at least two people in this mixture. The analyst was unable to separate out the parts of that mixture and was unable to determine a single profile.

¶ 89 The fingernail clippings from Wyatt's right hand matched the DNA profile of Wyatt, and the fingernail clippings from his left hand showed a mixture of two human DNA profiles. The major contributor the DNA profile was Wyatte, and the remaining parts of the mixture was not suitable for comparison.

¶ 90 Ellen Chapman

¶ 91 The gunshot residue test for Wyatt was analyzed by Ellen Chapman. The time of the shooting was listed as 5:11 a.m., and the GSR kit was administered at 8:40 p.m. Chapman concluded that Wyatt may not have discharged a firearm with right hand, and if he did discharge a firearm then the particles were removed by activity, were not deposited, or were not detected by the procedure. Handwashing has the potential to remove these types of particles.

¶ 92 Another forensic analyst, Rosa Lopez, tested the white powder and determined that it tested positive for the presence of cocaine. The substance weighed 58.5 grams.

¶ 93 Chicago Police Officer Karen Burgess

¶ 94 Chicago Police Officer Karen Burgess testified at trial consistently with her testimony during the hearing on defendant's pre-trial motion regarding the circumstances surrounding his transportation to the police station on December 21, 2012.

¶ 95 Chicago Police Officer Jeremiah Johnson

¶ 96 On December 23, 2013, Chicago Police Officer Jeremiah Johnson testified that he was assigned to the fugitive apprehension unit, he located Spencer at 411 North Hamlin and placed him under arrest. He and his partner transported Spencer to the Area North detective division and placed him into an interview room. Later that same day, the officers located Loriana Johnson at her place of employment, placed her under arrest, and transported her to the station. Loriana Johnson and Spencer were kept separate and apart from each other.

¶ 97 Joseph Sierra

¶ 98 Joseph Sierra testified that he was a custodian of records for T-Mobile. On October 11, 2012, T-Mobile responded to a subpoena, dated September 14, 2012, for the phone numbers registered to Holmes and Wyatt. When T-Mobile searched the phone records associated with Holmes' phone number, they discovered that there was a second phone number associated with that account, which matched the phone number defendant provided to Detective Wood. The phone records showed an outgoing call from defendant's phone to Holmes at 4:21 a.m. on September 2, 2019.

¶ 99 Chicago Police Detective Don Frugoli

¶ 100 Chicago Police Detective Don Frugoli, assigned to the Regional Computer Forensics Laboratory, conducted a forensic analysis of defendant's cell phone. Detective Frugoli initially determined that he could not conduct an analysis because the phone was "locked" but shipped this device to Apple, Inc. to conduct a user data extraction. He received the extraction back from Apple, Inc., analyzed the data, and generated reports from what he saw. The subpoenaed phone records showed that there were numerous calls between defendant, Johnson, and Spencer leading up to the murder. He testified he also found videos on defendant's IPhone, which were made on defendant's cell phone on various dates in October of 2013. In some of the videos, defendant recorded himself posing in front of luxury items and brick-sized stacks of $100 bills and fanning money in front of

a mirror. In another video, defendant and his friends arrive at a Chase Bank branch office in his Mustang and Holmes' Lexis where defendant withdraws $20,000 in cash. Defendant proceeds to throw the money into the air to a group of women.

¶ 101 Verdict

¶ 102 The jury found defendant guilty of first degree murder of Holmes, attempt first degree murder of Wyatt, and home invasion. The trial court denied defendant's motion for a new trial. Defendant was sentenced to consecutive terms of 45 years' imprisonment for first degree murder, 25 years' imprisonment for attempt first degree murder, and 29 years' imprisonment for home invasion.

¶ 103 ANALYSIS

¶ 104 **I. Unlawful arrest during traffic stop**

¶ 105 Defendant first argues that the trial court erred in denying his motion to quash his arrest and suppress evidence because he was unlawfully subject to arrest where the police unlawfully arrested him at the scene and, alternatively, where the police detained him at the station for five hours while treating him as suspect and working to develop probable cause. The State responds that the trial court properly denied defendant's motion where the evidence established that defendant voluntarily accompanied the police officers to the police station and willingly remained in the interview room. In this case, we find that the evidence presented at the hearing on the motion supports the trial court's finding that defendant voluntarily accompanied the detectives to the police station.[4]

¶ 106 A circuit court's ruling on a motion to quash arrest and suppress evidence is subject to a two-part standard of review. *People v. Almond,* 2015 IL 113817, ¶ 55; *People v. Grant*, 2012 IL 112734,

[4] Defendant did not challenge the propriety of the investigative alert with no probable cause issued in this case at the trial level or now on appeal.

¶ 12. The circuit court's factual findings and credibility determinations are accorded great deference and will not be disturbed unless they are against the manifest weight of the evidence. *Almond*, 2015 IL 113817, ¶ 55; *Grant*, 2012 IL 112734, ¶ 12. The circuit court's ultimate ruling as to whether evidence should be suppressed, however, is subject to *de novo* review. *Almond*, 2015 IL 113817, ¶ 55; *Grant*, 2012 IL 112734, ¶ 12. A reviewing court may consider the testimony adduced at trial in addition to the testimony presented during the suppression hearing when considering the propriety of the circuit court's ruling. *Almond*, 2015 IL 113817, ¶ 55.

¶ 107 A person's right to be free from unlawful searches and seizures is protected by both the federal and Illinois state constitutions. U.S. Const., amend. IV; Ill. Const. 1970 art. I, § 6; *People v. Bartlett*, 241 Ill.2d 217, 226 (2011). Our supreme court has typically construed the search and seizure provision contained in the Illinois state constitution in a manner consistent with the United States Supreme Court's fourth amendment jurisprudence. *People v. Gherna*, 203 Ill.2d 165, 176 (2003); *People v. Anthony*, 198 Ill.2d 194, 201 (2001). This constitutional guarantee "applies to all seizures of the person." *People v. Thomas*, 198 Ill.2d 103, 108 (2001). It is well-settled, however, that "not every encounter between a police officer and a private citizen involves a seizure or restraint of liberty that implicates the fourth amendment." *Almond*, 2015 IL 113817, ¶ 56. For example, "consensual encounters do not implicate the fourth amendment." *Gherna*, 203 Ill.2d at 177; see also *Almond*, 2015 IL 113817, ¶ 56.

¶ 108 For purposes of fourth amendment analysis, a person is "seized" when, considering the totality of the circumstances, a reasonable person would believe that he was not free to leave and to terminate the encounter. *Almond*, 2015 IL 113817, ¶ 57; *People v. Wead*, 363 Ill.App.3d 121, 132 (2005). A court may consider a number of factors when determining whether an individual was subject to a seizure under the fourth amendment, including: the threatening presence of multiple

police officers; the display of weapons by the officer; some physical touching of the person by the officer; the officer's use of language or tone of voice suggesting that the individual is compelled to abide by the officer's request; and the occurrences of practices that accompany an arrest such as searching, booking, handcuffing, photographing and fingerprinting the individual. *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980); *Almond*, 2015 IL 113817, ¶ 57; *Wead*, 363 Ill.App.3d at 132. The test for determining whether an individual was under arrest is an objective one. *People v. Buie*, 238 Ill.App.3d 260, 267 (1st Dist. 1992). A person who voluntarily accompanies police officers for questioning has not been arrested or seized under the fourth amendment. *People v. Soto*, 2017 IL App (1st) 140893, ¶ 49.

¶ 109 The evidence presented at the hearing on the motion supports the trial court's finding that defendant voluntarily accompanied the detectives to the police station. The record establishes that three uniformed officers approached two of defendant's friends to investigate why the license plate did not belong to that car, and defendant walked over to them to see what was happening and involved himself in this interaction. Consequently, defendant's own testimony contradicts his claim that he was seized during a traffic stop. Upon learning that a police detective wished to speak to him about the investigation into his mother's murder, defendant agreed to accompany the three officers to the police station. During this encounter, the officers did not display their weapons and there was no formal declaration of arrest or a show of police authority which compelled him to go to the police station. Moreover, the officers did not use language suggesting that he was required to go to the police station.

¶ 110 Officer Burgess testified that she asked defendant, "Would you like to come speak with [the detectives][,]" and she also told him that it was his choice. Defendant also relies upon Officer Burgess' decision to have defendant discuss this matter in her squad car, and we agree with the

trial court's assessment that her explanation, that she did so because defendant became quiet and appeared uncomfortable discussing it "in front of two other people", was reasonable. At trial, Officer Burgess also explained that it was cold outside, and she chose to have the conversation in the squad car, which was heated.

¶ 111 While defendant was not searched prior to entering the squad car or given a *Miranda* warning prior to being placed in the police car, defendant was handcuffed. Officer Burgess, however, explained that this was done solely for "officer safety" in that their squad car did not have a "cage" to separate the front and back seats and she had to ride in the back seat next to defendant. The officer also testified that she explained to defendant, prior to handcuffing him, that he would be handcuffed only for the duration of the transport. Defendant had his own car at the scene, but there is no evidence that he asked to drive his own car to the police station, or that the officers told him that he could not drive his own car and meet them at the station. In fact, defendant did not rely upon this fact at trial.

¶ 112 Therefore, we find that the evidence supports the trial court's conclusion that defendant voluntarily accompanied the officers to the police station.

¶ 113 **II. Unlawful arrest at police station**

¶ 114 We further find that the evidence presented at the hearing on the motion supports the trial court's finding that defendant voluntarily remained at the police station until he was formally placed under arrest upon making inculpatory statements. Although defendant remained at the station for the next five hours, before he was informed of his *Miranda* rights and placed under arrest, the mere passage of time does not automatically turn a voluntary encounter into a seizure under the fourth amendment. See *e.g.*, *People v. Hill*, 272 Ill.App.3d 597, 603-04 (1st Dist. 1995) (finding that the defendant was not unlawfully seized where he voluntarily went to the police

station and voluntarily remained there overnight until he made an inculpatory statement 23 hours later). When defendant initially arrived at the police station, the officers removed the handcuffs. Defendant sat in an area open to the public, left alone for a period, and, while in this area, defendant had access to an exit door. Defendant admitted that he sat in this area and used his cell phone during this time. Defendant was not fingerprinted, photographed, or given his *Miranda* rights. Instead, he was placed in an interview room at approximately 10:42 p.m. Detective Wood testified that she never told him that he was free to leave, but she also testified that defendant never asked her if he was under arrest and never said that he wanted to leave.

¶ 115 Defendant argues that the tenor of the conversation was "accusatory[.]" However, defendant never testified during the hearing on the motion. The evidence introduced at the hearing showed that, during the interview, Detectives Wood and Korolis asked defendant if he could identify Spencer because there were multiple phone calls between the two of them before and after the murder. Detective Wood explained that she did not know if Spencer was the person who used this phone. She also asked him about his last conversation with his mother and the phone calls that he made to his mother as well as the phone calls between defendant and Spencer. She later obtained a booking photo of Spencer and showed defendant photo as well as a surveillance photo. She asked him why Spencer would have been in his mother's building that night. At that point, defendant said, "it was supposed to be a robbery." She denied that she asked defendant why he killed his mother.

¶ 116 We are not persuaded by defendant's argument that no reasonable person in defendant's position, "as an entertainer going to a Saturday night performance" would willingly agree to go to and spend five hours at the police station. Defendant's argument ignores the fact that defendant was at the police station to speak to the police about the murder of his mother.

¶ 117 Defendant relies upon his testimony at his earlier motion, that Detective Wood took his cell phone away from him prior to entering the interview room. However, Detective Wood testified that she never took his cell phone during the period prior to defendant being formally arrested. Defendant also relies upon the fact that during his conversation with the detectives a few days after the murder, only lasted 30 minutes and the detectives ended it once defendant became upset. However, there is no evidence that defendant became upset during this subsequent interview necessitating the detectives to end it. Moreover, the detectives met with defendant a second time to ask him questions about this case, this interview occurring at defendant's home, and defendant does not suggest that the detectives engaged in any coercive conduct during either of these encounters. Contrary to defendant's argument otherwise, his earlier cooperation with the police investigation into the murder of his mother supports the trial court's decision that defendant voluntarily remained at the police station to further assist them.

¶ 118 Here, based on the totality of the circumstances, we do not find that the trial court erred in finding that defendant's encounter with police was voluntary or in denying his motion to quash his arrest and suppress evidence.

¶ 119 **III. Unlawful extension of duration of traffic stop**

¶ 120 Defendant asserts that his trial counsel was ineffective for failing to file a motion to quash his arrest and suppress evidence on the grounds that Officer Burgess unlawfully extended the duration of the traffic stop. Relying upon *People v. Bass*, 2021 IL 125434, defendant contends that the police transformed an initially lawful seizure during the traffic stop into an unlawful seizure when the duration of the stop exceeded beyond the time reasonably required to complete the purpose of the stop. He relies upon the point in the encounter in which Officer Burgess spoke to defendant on the street about the investigative alert with no probable cause and then continued to speak with

him about this alert inside the squad car. In turn, the State contends that defendant cannot establish that his trial counsel was ineffective where his underlying claim is meritless because Officer Burgess did not exceed the scope of the initial stop. As pointed out above, we find that defendant: (1) voluntarily agreed to talk to the police at the time of the traffic stop; (2) voluntarily accompanied the police to continue that discussion; and (3) was not seized at that point, so there was no unlawful extension of the traffic stop.

¶ 121 Claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced the defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill.2d 142, 163 (2001). To show sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Both prongs of *Strickland* analysis must be proven. *People v. Bell*, 2021 IL App (1st) 190366, ¶ 62. The "effectiveness of *** counsel must be assessed against an objective standard of reasonableness from the perspective of the time of the alleged error and without hindsight." *People v. Reed*, 2014 IL App (1st) 122610, ¶ 66. Moreover, to provide effective assistance of counsel, trial counsel is not required to raise futile motions. *Id.* ¶ 92. A failure to establish either prong of the *Strickland* test is fatal to a claim of ineffective assistance. *People v. Peterson*, 2017 IL 120331, ¶ 79.

¶ 122 Initially, defendant cannot establish the first prong of *Strickland* where his claim that he was subjected to unlawful seizure is meritless. Unlike the defendant in *Bass*, who was seized during a traffic stop, the evidence shows that defendant was not "seized" by the police officers, and instead, his encounter with the police amounted to a consensual encounter. In *Bass*, the defendant was a passenger in a vehicle which was stopped by the police for running a red light. During the traffic stop, the officers ordered the occupants out of the vehicle, ran a name check for some of them, and discovered there was an investigative alert with no probable cause issued for defendant. The defendant was then placed under arrest.

¶ 123 In *Bass*, our supreme court recognized that a "traffic stop is a seizure of both the driver and the passengers, analogous to a so-called *Terry* stop." *Bass*, 2021 IL 125434, ¶ 15. "A lawfully initiated traffic stop may violate the fourth amendment if it is prolonged beyond the time reasonably required to complete its mission and attend to related safety concerns. *People v. Bass*, 2021 IL 125434, ¶ 16 (citing *Rodriguez v. United States*, 575 U.S. 348, 354 (2015), citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). "The 'mission' of a traffic stop is to address the traffic violation that warranted the stop, and authority for the stop ends when tasks related to the stop's purpose are, or reasonably should have been, completed." *Id*. at ¶ 17. Our Supreme Court found that "[o]rdinary inquiries related to traffic stops include checking the driver's license, doing a warrant check on the driver, or asking for registration and proof of insurance." *Rodriguez*, 575 U.S. at 355-56. However, "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop…do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not *measurably* extend the duration of the stop." [Emphasis added] *Bass*, 2021 IL 125434, ¶ 18 (citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)).

¶ 124 However, defendant's own description of the encounter with the police shows that it amounted to a consensual encounter and was not a seizure. It is well-established that a consensual encounter does not implicate the fourth amendment. *People v. Gherna*, 203 Ill.2d 165, 177 (2003). For purposes of the fourth amendment, an individual is "seized" when an officer "'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *Florida v. Bostick*, 501 U.S. 429, 434 (1991). "Distinguishing between a voluntary encounter and a seizure requires a court to analyze how an officer's conduct would objectively appear to a reasonable and innocent person." *People v. Townsend*, 2022 IL App (1st) 200911, ¶ 85 (citing *People v. Williams*, 2016 IL App (1st) 132615, ¶ 37, citing *People v. Luedemann*, 222 Ill.2d 530, 550 (2006)). "It is well settled that a seizure does not occur simply because a law enforcement officer approaches an individual and puts questions to that person if he or she is willing to listen." *People v. Luedemann*, 222 Ill.2d 530, 551 (2006) (citing *People v. Gherna*, 203 Ill.2d 165, 178 (2003)). "'…[W]hen a person is walking down the street, the appropriate test is whether a reasonable person would feel free to leave ***.'" *People v. Williams*, 2016 IL App (1st) 132615, ¶ 37 (quoting *Luedemann*, 222 Ill.2d at 550-51, quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)).

¶ 125 As previously stated, a court may consider a number of factors when determining whether an individual was subject to a seizure under the fourth amendment, including: the threatening presence of multiple police officers; the display of weapons by the officer; some physical touching of the person by the officer; the officer's use of language or tone of voice suggesting that the individual is compelled to abide by the officer's request; and the occurrences of practices that accompany an arrest such as searching, booking, handcuffing, photographing and fingerprinting the individual. *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980); *Almond*, 2015 IL 113817, ¶ 57; *Wead*, 363 Ill.App.3d at 132.

¶ 126 Here, defendant admitted that he was not inside the car or part of the initial encounter with the police officers, but that he approached the officers. He testified that he was driving his own car, a Ford Mustang, when he saw "two group members being pulled over" in a Crown Victoria. When he saw the three officers talking to them, he exited his own car and walked across the street, approached the officers, and asked them what was going on. He told them that the plates belonged to him. The officer told him that they were "running" his name "[b]ecause the plates that were on that car that [his friends] were driving those were my plates." There was no display of a weapon by the officers, there was no physical touching, and there was no evidence that the officer's used language or a tone of voice compelling the individual to comply with the officer's request. Based on these factors and the facts of this case, we find that this encounter falls on the voluntary side of the line.

¶ 127 Moreover, when the officer approached defendant and informed him that there was an investigative alert with no probable cause, and spoke to him about it on the street, these actions did not change the consensual encounter into a seizure. The United States Supreme Court has "'held repeatedly that mere police questioning does not constitute a seizure.'" *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991). Moreover, Officer Burgess testified that she asked defendant, "Would you like to come speak with them." Thus, no additional fourth amendment justification for speaking with defendant about the investigative alert with no probable cause was required.

¶ 128 Defendant also relies upon the fact that the officer asked to speak to him about the alert inside her squad car. Again, the circumstances surrounding this request shows that this encounter continued to be consensual. Officer Burgess testified that she suggested that they speak inside her squad car once defendant became quiet because "…I thought he might be quiet because he didn't

want to speak about it or discuss going on and talking to them in front of two other people. I didn't know his relationship with them…" She also understood that this alert concerned the death of his mother; "...a very personal matter." At trial, she further explained that she spoke with defendant inside the squad car because the weather was cold, and the squad car was heated.

¶ 129 We find that defendant cannot establish the merit of his underlying fourth amendment claim. Consequently, he cannot meet the requirements for a finding that his trial counsel was ineffective.

¶ 130 **III. Suppression of Defendant's pre-*Miranda* statements**

¶ 131 Defendant contends the trial court erred in finding that he was not in custody at the time he provided the pre-*Miranda* statement. Defendant also contends that the State violated 725 ILCS 5/103-2.1 (West 2013), where statements were taken when defendant was in custody but not recorded. The State counters that the trial court properly denied defendant's motion to suppress because defendant was not under arrest when he provided an initial inculpatory statement to the police, and the inculpatory statement provided probable cause for the police to place defendant under arrest, at which point they informed him of his *Miranda* rights and activated the ERI to record defendant at 3:43 a.m., five and one-half hours after he arrived at the station. The State also contends that defendant forfeited his claim that section 103-2.1 was violated where defendant did not raise this issue at the trial level.

¶ 132 Initially, we find defendant forfeited his argument that the detectives violated 725 ILCS 5/103-2.1 (West 2013) where statements were taken when defendant was in custody but not recorded. Defendant failed to argue this particular claim in his written pre-trial motion to suppress; instead he argued that he did not re-initiate a discussion with the police after he invoked his right to counsel. Defendant also failed to argue this claim in his motion filed at the close of the State's case-in chief. To preserve an argument for appeal from a jury trial, the defendant's "challenge

must be presented to the trial court not only at the motion to suppress stage, but it must also be included in the defendant's post[]trial motion." *People v. Johnson*, 334 Ill.App.3d 666, 672 (4th Dist. 2002).

¶ 133 As to defendant's contention that he was in custody at the time that he made oral statements to the detectives before he was advised of his *Miranda* rights, a trial court's decision on a motion to suppress is reviewed under a two-part standard. *In re D.L.H.*, 2015 IL 117341, ¶ 46. Factual findings of the trial court will be reversed only if they are against the manifest weight of the evidence, but the ultimate legal determination regarding whether suppression is warranted is reviewed *de novo*. *Id*. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence. *People v. Relwani*, 2019 IL 123385, ¶ 18.

¶ 134 In explaining when the requirement to provide *Miranda* warnings applies, the Supreme Court clarified that "[b]y custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. In other words, *Miranda*'s protections apply where a defendant is both (1) in custody, and (2) subjected to interrogation. *Id.* at 467-68; See also *People v. Sims*, 2012 IL App (2d) 200391, ¶ 138.

¶ 135 When examining whether a defendant is in custody, we first examine the circumstances surrounding the claimed interrogation to determine whether a reasonable person, under those circumstances, would have felt that he or she was at liberty to terminate the interrogation and leave. *People v. Slater*, 228 Ill.2d 137, 150 (2008). Our supreme court identified six factors to consider in determining whether a statement was made in a custodial setting, including "(1) the location, time, length, mood, and mode of questioning; (2) the number of police officers present during the

interrogation; (3) the present or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Slater*. 228 Ill.2d at 150.

¶ 136 Defendant argues that a reasonable person, in his situation, would not feel free to leave because he left his car behind, he was handcuffed during the trip to the station, the tone of questioning, the interview took place in an interview room, and difference between the previous encounters with the police with this interview.

¶ 137 The first factor – the location, time, length, mood, and mode of questioning – cuts in favor of a conclusion that defendant was not in custody at the time he made the statements. Defendant was at the police station when he provided the statements. Defendant did not present any evidence to show that the mood of the conversation was anything other than calm and cordial. Detective Wood testified that they conversed about the phone records between various people. She asked defendant if he could identify Spencer because there were multiple phone calls between the two of them before and after the murder, and she did not know if Spencer was the person who used this phone. She also asked him about his last conversation with his mother and the phone calls that he made to his mother as well as the phone calls between defendant and Spencer. She later obtained a booking photo of Spencer and showed defendant photo as well as a surveillance photo. When she asked him who it was, defendant stated, "I already know you guys know that's Boo." She asked him why Spencer would have been in his mother's building that night. At that point, defendant said, "it was supposed to be a robbery." She denied that she asked defendant why he killed his mother. Detective Korolis denied that during the unrecorded portion of the interview, he told defendant "[I]f you work with me, I will talk to the State's Attorney." Defendant was inside the

interview room for approximately five and one-half hours before he was informed of his *Miranda* rights, and Detective Wood testified that she did not speak with defendant the entire time as she was doing paperwork.

¶ 138 Defendant does not rely upon the absence of any family and friends but relies upon the fact that he was briefly handcuffed during the trip to the police station. Officer Burgess explained to defendant that he would only be handcuffed during the trip for "officer safety" as the squad car did not have a cage, and he was not searched beforehand. There were no other indicia of a formal arrest procedure present. Defendant also admitted that he told Officer Burgess that he had been trying to contact Detective Wood regarding the investigation into his mother's murder.

¶ 139 Finally, nothing in the evidence suggests that defendant's age, intelligence, or mental makeup in any way hindered his ability to understand his conversation with the detectives or its implications. At the time of the statement, defendant was 22 years old, had graduated from high school with some college classwork, and there was no evidence that he could not read and write English. Defendant also did not appear to be intoxicated.

¶ 140 Defendant also relies upon the differences between his previous encounters with the police and the last interview. Again, during these previous encounters, defendant voluntarily cooperated with the same police detectives as they were investigating his mother's murder, and there is no evidence that these officers engaged in any coercive behavior. Both times, defendant spoke with the detectives, and at the first meeting, the detectives ended the interview when defendant became upset, and at the second meeting, the detectives left defendant's residence after defendant had answered their questions. Defendant also admitted that he told Officer Burgess that he had been trying to contact the detectives regarding their investigation. Moreover, the difference in the size of the room in which the meetings occurred are not persuasive as "[a]ny room in a police facility

might lend itself to questioning of witnesses,…we have no case holding that the place of the interview, in itself, is dispositive." *People v. Harris,* 389 Ill.App.3d 107, 120-21 (1st Dist. 2009) (citing *People v. Calhoun,* 382 Ill.App.3d 1140, 1147 (4th Dist. 2008)

¶ 141 After examining and weighing the relevant factors, we determine that a reasonable person, innocent of any crime would have believed that he could terminate the encounter and was free to leave. Therefore, the trial court's finding that defendant was not in custody at the time that he provided his initial inculpatory statement, and prior to being formally placed under arrest and informed of his *Miranda* rights at approximately 3:43 a.m. on December 22, 2013, is not against the manifest weight of the evidence.

¶ 142 In reaching this conclusion, we have considered the cases cited by defendant in support of his argument and find them distinguishable. See *People v. Alfaro,* 386 Ill.App.3d 271 (2nd Dist. 2008) and *People v. Savory,* 105 Ill.App.3d 1023 (2nd Dist. 1982). Unlike the facts in the instant case, in *Alfaro,* the defendant was questioned in an accusatory manner at the police station where the defendant confessed to his involvement in the crime at least twice before receiving *Miranda* warnings. *Alfaro*, 386 Ill.App.3d at 298-99. For instance, in *Alfaro,* at one point the officer told defendant that defendant to tell him what actually happened, "or it will [all] come down to you[,]" and when the defendant persisted in denying his involvement, the officer told him that he was not being truthful. *Id*. at 293. Likewise, the court found that the defendant in *Savory* was in custody when the officer told the 14-year-old defendant that "they had reliable information discounting his version of the events." *Savory*, 105 Ill.App.3d at 1029-30. Here, the detectives questioning defendant did not discount defendant's account or accuse him of lying during their questioning.

¶ 143 Thus, we affirm the trial court's decision to deny defendant's motion to suppress his pre-*Miranda* statements.

¶ 144 **V. Suppression of his post-*Miranda* statement because he invoked his right to counsel**

¶ 145 Defendant contends that his post-*Miranda* statement should be suppressed because he invoked his right to counsel during the videotaped interview, and the State did not sustain its burden of proving that he voluntarily and intelligently re-initiated the conversation. The State, in turn, argues that defendant re-initiated the interrogation, and defendant knowingly and intelligently waived his right to the presence of counsel during questioning.

¶ 146 A defendant's right against self-incrimination, including the right to an attorney, is guaranteed by the fifth and fourteenth amendments of the United States Constitution and by article I, section 10, of the Illinois Constitution of 1970. *People v. McCauley*, 163 Ill.2d 414, 421 (1994). A defendant may waive these rights provided that the waiver is voluntary, knowing and intelligent. *McCauley*, 163 Ill.2d at 421. When a defendant invokes that right after being advised of his *Miranda* rights, interrogation by law enforcement authorities must cease unless the defendant initiates further communications with the police. *People v. Woolley*, 178 Ill.2d 175, 197 (1997) (citing *Edwards v. Arizona*, 451 U.S. 477, 485 (1981)). This rule is designed to prevent the police from badgering a defendant into waiving his previous assertion of his right to counsel. *Id.* at 198 (citing *Michigan v. Harvey*, 494 U.S. 344, 350 (1990)).

¶ 147 In determining whether statements defendant provided after the right to counsel has been invoked are admissible as substantive evidence, a two-part inquiry must be made. *Id.* (citing *Oregon v. Bradshaw*, 462 U.S. 1039, 1044-45 (1983)). The first question is whether the accused, after invoking his right to counsel, initiated further conversation evincing a willingness and desire for a generalization discussion about the investigation. *Id.* (citing *Bradshaw*, 462 U.S. at 1044-45). Communications that relate to the routine matters of the custodial relationship, such as requests for water or to use a restroom or a telephone, will not generally constitute initiation. *Id.* at 198-99

(citing *Bradshaw*, 462 U.S. at 1045). If the police initiated further communication, defendant's statements are inadmissible. *Id*. at 199. If, however, defendant initiated the conversation with the police, the court moves to the second question of whether, under the totality of the circumstances, the defendant knowingly and intelligently waived his right to counsel. *Id*. In addition, even where the defendant has reinitiated contact, the burden remains upon the prosecution to establish that subsequently, defendant knowingly and intelligently waived his right to counsel, which he had previously invoked. *People v. Crotty*, 394 Ill.App.3d 651, 655-56 (2nd Dist. 2009) (citing *Bradshaw*, 462 U.S. at 1044).

¶ 148 In defendant's pre-trial motion, and now on appeal, defendant does not contend that he did not knowingly and intelligently waive his right to counsel after re-initiation. Instead, he solely focuses on to two conversations, suggesting that they constituted further interrogation such that he did not knowingly and intelligently initiate further conversation evincing a willingness and desire for a generalization discussion about the investigation. Specifically, he alleged that on December 22, 2013, at approximately 4:07 p.m., when defendant was returned to the interview room from being fingerprinted and photographed, Detective Taraszkiewicz told defendant, "Just go along with what the detective says and he'll help you out * * * you have to knock on the door and ask to speak to us again" and "You let us know if you want to tell your side of the story." He also alleged that on December 22, 2013, at approximately 9:40 p.m., when being escorted back from the bathroom, Detective Wood told him that "If you want to talk, knock on the door and let us know."

¶ 149 Detective Taraszkiewicz testified that he accompanied defendant to be fingerprinted and photographed. He denied that he made these statements to defendant, and he testified that he never heard any other detective make these remarks to him. Detective John Korolis testified that, after defendant became a suspect upon making an incriminating statement, the ERI equipment was

activated at 3:43 a.m., on December 22, 2013, and defendant made a statement after waiving his *Miranda* rights. Defendant then invoked his *Miranda* rights at 4:33 a.m., on December 22, 2013, at which point, he and Detective Wood terminated the interview. At approximately 4:07 p.m. on December 22, 2013, when defendant was taken to the lockup area to be fingerprinted and photographed, defendant stated that he wanted to talk to the detectives about the investigation. Detective Korolis reminded him that he had asked for an attorney and that they could no longer talk to him.

¶ 150 On December 22, 2013, defendant was returned to the interview room at 4:30 p.m., and then at approximately 4:43 p.m., defendant knocked on the door and asked to use to bathroom. When taking him to the bathroom, defendant told Detectives Korolis and Wood that he wanted to clear up the phone records. Detective Korolis testified that he reminded him that he had asked for an attorney, they would need to provide him his *Miranda* warnings again, and he would have to waive those rights again if he wanted to speak to them again. When defendant returned to the interview room, defendant told the detectives, "I'm ready." However, the detectives did not have any additional conversation with him.

¶ 151 Later that evening, the same two detectives escorted defendant to the washroom, at which point, defendant told them that he wanted to talk about the investigation to clear up the phone calls. On December 22, 2013, at 9:39 p.m., defendant started talking about the phone calls, but Detective Korolis told him that he asked for an attorney, and they could not talk to him unless they provided him with his *Miranda* rights again, and he waived those rights for a second time. The ERI shows that on December 22, 2013, at 9:43 p.m., Detective Korolis said to defendant, "When we went to the bathroom, you said you wanted to talk about the phone, right?" Defendant responded, "Yes[,]" was re-advised of his *Miranda* rights, and defendant waived his rights.

¶ 152 From this testimony, the State met its burden of showing that defendant voluntarily re-initiated further conversation with the detectives. Defendant's statements that he wanted to clear up the phone records showed a "'willingness and a desire for a generalized discussion about the investigation.'" *People v. Woolley*, 178 Ill.2d 175, 198 (1997) (quoting *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983). After defendant informed the detectives that he wanted to clear up the phone calls, the detectives reminded him twice that he had invoked his right to counsel and refused to continue speaking with him. The detectives did not speak to him at this point. Approximately five hours transpired, and defendant again asserted to the detectives that he wanted to talk to them. However, Detective Korolis told him that he asked for an attorney, and they could not talk to him unless they provided him with his *Miranda* rights again, and he waived those rights for a second time. Once they were back inside the interview room and being recorded by the ERI, defendant agreed when asked that he had asked to speak with the detectives again.

¶ 153 The record does not support defendant's contention that the detectives made coercive statements to him when he was outside the interview room. Defendant did not testify at the hearing, Detectives Korolis and Taraszkiewicz denied making these statements, and the trial court found both of these detectives to be credible. We therefore affirm the trial court's ruling denying defendant's motion to suppress his confession.

VI. Suppression of post-*Miranda* statement because it was coercive and involuntary

¶ 154 Defendant argues that his post-*Miranda* statement to the police at the station was inadmissible because it was coerced and involuntary. He also acknowledges he forfeited review of this claim where "trial counsel's oral and written motions to suppress…on this basis were untimely." However, he does not ask us to review this claim under the lens of plain error as an exception to forfeiture. Instead, if we were to find that the issue was forfeited, he asks us to review this claim

to determine whether his trial counsel was ineffective for failing to timely raise the voluntariness of his statement.

¶ 155 In response, the State contends that, pursuant to *People v. Hughes*, 2015 IL 117242, defendant forfeited his newfound claims where they are "based on a host of new theories which were not raised before the trial court…" The State points out that defendant filed a pre-trial written motion to suppress, but this motion did not contain any of the bases that defendant now relies upon on direct appeal. Alternatively, the State contends that defendant cannot establish either prong of *Strickland* where his underlying claims are meritless, and he was not prejudiced by the admission of defendant's post-*Miranda* statement based upon the overwhelming evidence independent of this particular statement.

¶ 156 At the outset, we find that defendant failed to properly preserve these claims pursuant to *Hughes.* "'Failure to raise issues in the trial court denies that court the opportunity to grant a new trial, if warranted. This casts a needless burden of preparing and processing appeals upon appellate counsel for the defense, the prosecution, and upon the court of review.'" *Hughes*, 2015 IL 117242, ¶ 38 (quoting *People v. Caballero*, 102 Ill.2d 23, 31 (1984)). Without defendant raising this argument in the trial court, the State had no opportunity to present evidence rebut it. See *Id*., (noting "how new factual theories on appeal deprive the formerly prevailing party of the opportunity to present evidence on that point"); see also *People v. McAdrian*, 52 Ill.2d 250, 254 (1972) ("The failure to urge a particular theory before the trial court will often cause the opposing party to refrain from presenting available pertinent rebuttal evidence on such theory, which evidence could have a positive bearing on the disposition of the case in both the trial and reviewing courts."). As the trial court never specifically considered whether defendant's post-*Miranda* statement to the police

should have been suppressed on the grounds now raised, we decline defendant's invitation to do so for the first time on appeal.

¶ 157 Alternatively, defendant argues that his trial counsel was ineffective for failing to file a motion to suppress on these grounds. As previously stated, ineffective-assistance-of-counsel claims are evaluated under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Henderson*, 2013 IL 114040, ¶ 15. "Under this test, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. ¶ 15. Prejudice in the context of the failure to seek suppression of evidence requires defendant to show that the unargued suppression motion was meritorious and that there is a reasonable probability that the verdict would have been different without the excludable evidence. *Id*. In the context of prejudice, "a 'reasonable probability' is defined as a showing sufficient to undermine confidence in the outcome, rendering the result unreliable or fundamentally unfair." *People v. Patterson*, 2014 IL 115102, ¶ 81. Both prongs of *Strickland* analysis must be proven. *People v. Bell*, 2021 IL App (1st) 190366, ¶ 62.

¶ 158 We need not determine here whether counsel was deficient in failing to seek suppression of defendant's statement because defendant cannot show prejudice by counsel's inaction. Here, excluding defendant's post-*Miranda* statement to the police, the evidence of defendant's guilt for first degree murder, attempt first degree murder, and home invasion was overwhelming. Johnson testified that defendant previously asked her to take a friend somewhere to "make a run." A few hours before the murder, defendant called her to ask her to bring a gun to him, hidden inside her home. When she arrived at defendant's home, she saw Spencer and defendant together, and handed this gun to defendant. She then heard defendant and Spencer discuss that Spencer should "take

everything[,]" which she understood to mean a robbery. She admitted that she drove Spencer to Holmes' home, following defendant who was in his Ford Mustang. She parked the car, and Spencer exited her car holding clothes on hangers.

¶ 159 Following this discussion between defendant and Spencer in which they planned how Spencer would enter Holmes' residence, armed with a handgun, surveillance videos showed Spencer entering the apartment building holding clothes on hangers. Wyatt briefly woke up when he heard Holmes speaking to someone on the phone. Holmes told her that she was speaking with defendant, which was corroborated by the telephone records. Defendant even admitted to the police, during his initial meeting with them, that he called Holmes. Wyatt identified Spencer as the person he saw standing in the bedroom after he awoke to the sound of gunfire and who then fired five shots at him and repeatedly hit him in the head with the gun. He also identified Spencer as the attacker in a physical lineup.

¶ 160 Spencer returned to Johnson's car ten minutes later wearing no shoes, sweating, panicking, and smelling "like blood." When Johnson asked Spencer about the smell, Spencer "snapped" and said, "I had to do it." He told her that the gun jammed and then he grabbed a knife. This evidence was corroborated by the trial testimony of a firearms expert that the Colt .38 caliber revolver recovered at the scene showed damage, jammed, and misfired when she initially test-fired it. This expert determined that this revolver was the gun used to shoot Holmes. A broken knife was found at the scene, and the autopsy revealed that Holmes had been shot and stabbed. When Spencer exited the car to dump out the clothes inside a garbage bin, Johnson saw blood in the back seat of her car where he was seated. Two weeks after the murder, she asked defendant "why did he do it[,]" and defendant said, "An easy target." He also told her that "it was for the money." Defendant told Johnson that he picked her to participate "[b]ecause [she] was easy."

¶ 161 From a still photograph taken from the surveillance video, Wyatt identified defendant's Ford Mustang parked behind Holmes' apartment building around the time of the murder. Spencer's DNA was found on the ear bud recovered from inside Holmes' bedroom. At the time of the murder, Spencer resided in the same building as defendant.

¶ 162 Moreover, defendant's initial statement to the police, a few days after the murder, was not supported by the physical evidence or the phone records. Defendant told the detective that in the hours leading up to the murder, he spent time with two different women, neither of them being Johnson, and then drove over to his mother's apartment building, arriving after the police were already at the scene. In addition to Johnson's testimony that she was with defendant and Spencer at this time, the phone records, however, showed that there were multiple phone calls between defendant and Johnson, and Spencer and defendant in the hours before the shooting. Moreover, Wyatt identified defendant's car parked in the rear parking lot of Holmes' apartment building around the time of the shooting, and before the police arrived.

¶ 163 Accordingly, even without the inclusion of this statement, there would remain overwhelming evidence of defendant's guilt. Thus, we are unable to conclude that defendant was prejudiced by his counsel's failure to seek to suppress the statement, and defendant's allegation of ineffective assistance therefore must fail.

¶ 164 **VII. Admissibility of video evidence to establish motive and intent**

¶ 165 Defendant argues that the trial court abused its discretion in allowing the prosecution to present videos recovered from defendant's cell phone including a music rap video depicting defendant withdrawing money from a Chase Bank branch and throwing it into the air to other fans, as well as other videos showing defendant fanning cash in front of a mirror, counting cash, driving Holmes' Lexis while "flick[ing]" $100 bills, wearing a large gold chain and gym shoes. Defendant

contends that this evidence was not relevant, and even if it was relevant, it was unduly prejudicial and cumulative of other evidence admitted at trial. In turn, the State argues that the trial court did not abuse its discretion where this evidence was relevant to establish his motive for orchestrating the murder of Holmes, was not substantially prejudicial, and not cumulative of the other evidence showing defendant's financial incentive.

¶ 166 In Illinois, a trial court's decision on a motion *in limine* will not be reversed by this court unless the decision represents a clear abuse of discretion. *People v. Gliniewicz*, 2018 IL App (2d) 170490, ¶ 32. Likewise, the decision to admit evidence is within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. *People v. Pikes*, 2013 IL 115171, ¶ 12. An abuse of discretion occurs only when the trial court's evaluation is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Kidd*, 175 Ill.2d 1, 37 (1996).

¶ 167 Generally, all relevant evidence is admissible, except as otherwise provided by law, and evidence that his not relevant is not admissible. Ill.R.Evid. 402 (eff Jan. 1, 2011). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Ill.R.Evid. 401 (eff. Jan. 1, 2011). Although relevant, evidence may still be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Ill.R.Evid. 403 (eff. Jan. 1, 2011); *People v. Epstein*, 2022 IL 127824, ¶ 22 ("Rule 403 provides for exclusion of relevant evidence only if its probative value is *substantially* outweighed by the risk of unfair prejudice.") [emphasis in original]. The effect of prejudicial and inflammatory evidence depends on the circumstances of the case, and it is the trial court's function to weigh the potential prejudicial effect against the evidence's probative value. *People v. Williams*, 181 Ill.2d 297, 314 (1998).

"Under this standard, a reviewing court owes some deference to the trial court's ability to evaluate the evidence's impact on the jury." *Cerda*, 2021 IL App (1st) 171433, ¶ 98 (citing *People v. Foreman*, 2019 IL App (3d) 160334, ¶ 30)).

¶ 168 We have reviewed the record and find that defendant has failed to demonstrate an abuse of discretion on the part of the trial court. The State proceeded to trial under the theory that defendant's motive and intent for committing this crime was that defendant wanted to financially benefit from Holmes' death. While the State is not required to prove motive, it is entitled to do so when evidence of motive exists. *People v. Cerda*, 2021 IL App (1st) 171433, ¶ 109 (citing *People v. Johnson*, 368 Ill.App.3d 1146, 1157 (4th Dist. 2006). "Generally, any evidence which tends to show the accused had a motive for killing the deceased is relevant and admissible so long as the evidence, to a slight degree, establishes the existence of the motive relied upon." *People v. Irby*, 237 Ill.App.3d 38, 65 (2d Dist. 1992); see also *People v. Cook*, 2018 IL App (1st) 142134, ¶ 53. Such motive evidence is admissible even when it may reveal the commission of a separate crime. *People v. Lasley*, 158 Ill.App.3d 614, 624 (1st Dist. 1987).

¶ 169 Defendant admitted to the police detectives that he and Spencer decided to have Spencer rob Holmes, but defendant denied that their plot was to have Spencer kill Holmes during the robbery. To support the State's theory that the two codefendants plotted to also kill Holmes, they sought to introduce evidence that defendant's motive for killing his mother was financial gain and greed. The State introduced evidence showing that defendant's salary varied from $150 to $600 to per week, and ten days after Holmes' murder, he withdrew between $75,000-$80,000 from their joint bank accounts at Chase Bank. While these accounts were joint accounts with Holmes and Wilson, it is arguable that Holmes would have noticed such large withdrawals from these accounts.

¶ 170 One of the videos showed defendant withdrawing a large sum of money from a Chase Bank branch, the same bank in which Holmes had a bank account from which defendant withdraw a large sum of money. The other videos showed him showing off his financial gain by displaying large amounts of cash as well as the items that he purchased. This evidence supported the State's theory of why defendant orchestrated the murder of Holmes.

¶ 171 Defendant also argues that this evidence should not have been admitted because the State did not show that the videos were created on defendant's cell phone near the time of the murder. The evidence at trial showed that these videos were created around October of 2013, approximately one year after the murder. We do not find that the passage of this period of time affected the relevancy of these videos. Any concern about the passage of time between Holmes' murder and the video evidence would go to the weight of the evidence, not its admissibility, which defense counsel addressed during closing argument. Defense counsel argued to the jury that there was no proof that the money in these videos came from Holmes' bank account.

¶ 172 Defendant also argues that the admission of this evidence was unduly prejudicial where it showed that he was violent, selfish and it was used to "prime the jurors' implicit biases against [defendant] based on his race, youth, and socioeconomic status." Contrary to defendant's suggestion, none of the videos show violent behavior on defendant's part. The videos show defendant throwing money into the air, driving a car, showing off gold jewelry and gym shoes, and fanning large stacks of money. None of these actions can be considered to be violent behavior. Instead, they support the State's theory that defendant's actions were motivated by his desire to enrich himself.

¶ 173 Moreover, defendant did not object to the inclusion of the rap video at trial on the same basis now espoused on appeal. For the first time, defendant points to the lyrics of the video, utilizing the

word "choppa" and suggests that this word refers to "automatic guns." He also suggests that racial slurs could be heard in the background sound on the video. Defendant did not raise these objections at trial when the trial court could have had the opportunity to address it or suggest that the audio portion of this video not be provided to the jury. Moreover, the rap video lyrics were not transcribed for the jury, neither party referenced the lyrics at trial, and there is no indication that the jury could have understood the meaning of this word. See *People v. Boone*, 2020 IL App (1st) 152862-U, ¶ 85 (court rejected defendant's argument that the vulgarity in rap video was more prejudicial than probative where the rap video lyrics were not transcribed, the parties did not question the witness regarding the lyrics, and there was no indication that they could have understood the gestures made by the defendant communicated gang membership). In reviewing the trial court's decision to allow the State to introduce this evidence, we also recognize that the inclusion of rap videos here was particularly relevant where it showed defendant leaving a Chase Bank branch after withdrawing a large sum of cash, and months earlier, defendant had withdrawn money from the same bank and from Holmes' account.

¶ 174 Any further concern that these videos may invoke negative images of defendant was resolved by the instructions that the jury received. The jury was instructed that, "[n]either sympathy nor prejudice should influence you." Defendant points to a concern that the inclusion of a rap video would lead a danger that the jury could be influenced by their implicit biases because this it promotes "an unlawful lifestyle that can be highly prejudicial." In doing so, he references Illinois Pattern Jury Instruction, Criminal, No. 1.01B, which was approved on April 30, 2021, and provides additional language that, "You should not be biased in favor or against any person because of that person's race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability or socioeconomic status." Defendant, however, recognizes that this jury instruction had not been

enacted as part of the pattern jury instructions at the time of defendant's trial. Moreover, the jury received the additional instruction that they could only consider these videos as evidence of defendant's motive and intent. From these instructions, the jury received the proper instructions as to how they could consider this evidence.

¶ 175 Defendant cites to *People v. McBride*, 2020 IL App (2d) 170873, as a case in which the court found that videos showing large amounts of cash, a large gold chain, tattoos, and rap music "may be associated with an unlawful life." Defendant's analysis of the facts in *McBride* is incorrect. In *McBride*, the court held that the admission of evidence that the officers found $2,000 in cash in the defendant's bedroom was harmless error in the defendant's trial for several counts of unlawful possession of a weapon by a felon. *Id.* ¶ 32. The court found that, "[v]iewed in the context of defendant's felony drug conviction, the admission of evidence of the cash tended to portray defendant as a drug dealer." *Id.* Thus, in *McBride*, the court solely considered the admission of cash, not all of the other evidence suggested by defendant. Additionally, here, in sharp contrast, evidence of defendant's possession of a large sum of money was relevant to establish his motive and intent for committing the relevant crimes of home invasion and first degree murder.

¶ 176 Defendant also argues that this evidence should have been excluded because it was cumulative of the bank records showing that defendant withdrew a large sum of money, as well as Johnson's testimony that defendant told her that he "did it for the money." We find that the trial court did not abuse its discretion in rejecting this argument. Illinois Rule of Evidence 403, in addition to setting forth the test for admissibility of prejudicial evidence, also prohibits the "needless presentation of cumulative evidence." *Id.* "Evidence is considered to be cumulative when it adds nothing to what was already before the jury." *People v. Ortiz*, 235 Ill.2d 319, 335 (2009). While the jury had the bank records, showing that defendant withdrew a large sum of money within ten days of her death,

evidence of what he did with the money was of a different nature in that it demonstrated that he was motivated by greed in orchestrating the murder of his mother. Moreover, defendant's suggestion that this evidence was cumulative of Johnson's testimony as to defendant's inculpatory statement, it was proper for the State to corroborate Johnson's trial testimony. One of the focuses of defendant's theory of defense was to attack the credibility of Johnson, and evidence corroborating her trial testimony that defendant expressed a desire to commit these offenses cannot be considered to be cumulative.

¶ 177 Thus, we conclude that the trial court exercised appropriate discretion in allowing the State to introduce these videos.

¶ 178 **VIII. Closing and rebuttal arguments**

¶ 179 We next address defendant's claim that the State made several improper comments during closing argument. "[I]t is well established that a prosecutor is allowed wide latitude in closing argument [citation] and it is entirely proper for the prosecutor, during closing argument, to comment on the evidence offered at trial and to draw legitimate inferences from the evidence, even if those inferences are detrimental to the defendant." *People v. Desantiago*, 365 Ill.App.3d 855, 866 (1st Dist. 2006). Moreover, the State is permitted to remark upon matters of common knowledge and experience during closing arguments. *People v. Runge*, 234 Ill.2d 68, 146 (2009). "While a prosecutor may not make arguments or assumptions that have no basis in evidence, improper comments or remarks are not reversible error unless they are a material factor in the conviction or cause substantial prejudice to the accused." *People v. Sutton*, 353 Ill.App.3d 487, 498 (1st Dist. 2004). "In reviewing allegations of prosecutorial misconduct, the closing arguments of both the State and the defendant must be examined in their entirety, and the complained-of remarks must be placed in their proper context." (Internal quotation marks omitted.) *People v.*

Caffey, 205 Ill.2d 52, 104 (2001). Improper comments alone will not warrant reversal unless they are a material factor in convicting the defendant. *People v. Woods*, 2011 IL App (1st) 091959, ¶ 42.

¶ 180 Neither party addresses the proper standard of review for this claim. However, we recognize that there is currently a split in the appellate court regarding which standard of review should apply to issues regarding prosecutorial misconduct in closing argument. This split stems from two statements made by the Illinois Supreme Court in *People v. Wheeler*, 226 Ill.2d 92, 121 (2007), which suggested that the *de novo* standard applies, and *People v. Blue*, 189 Ill.2d 99, 128 (2000), which suggested that the abuse of discretion standard applies. In *Phagan*, this district found that the abuse of discretion standard is the proper standard, as "the trial judge is present for the entire trial, * * * has the benefit of 'hearing the remarks of counsel on both sides" and is better suited to determine whether anything that happened or was said justifies the challenged remark." *People v. Phagan*, 2019 IL App (1st) 153031, ¶¶ 48-50 (quoting *North Chicago Street Ry. Co. v. Cotton*, 140 Ill. 486, 502 (1892)); See also *People v. Cornejo*, 2020 IL App (1st) 180199, ¶ 128. In making this determination, we noted that "the pedigree for an abuse of discretion standard spans more than a hundred years." *Id*. at ¶ 49 (citing *People v. McCann*, 247 Ill.App.3d 130, 170-71 (1910); and *Bulliner v. People*, 95 Ill. 394, 405-06 (1880)). We need not resolve the question of the extent to which each of these standards apply in this case. In our view, these comments do not necessitate a new trial under either standard.

¶ 181 Moreover, defendant concedes that he failed to properly preserve his argument regarding the alleged impropriety of these remarks by failing to object to the comments during trial and failed to raise these claims in his posttrial motion. *People v. Enoch*, 122 Ill.2d 176, 186 (1988). However, he argues that we should review for plain error. The plain-error doctrine bypasses normal forfeiture

principles and allows us to review unpreserved claims of error in certain circumstances. *People v. Thompson*, 238 Ill.2d 598, 613 (2010). The plain-error doctrine allows a reviewing court to consider unpreserved issues where the evidence is so closely balanced that the error alone severely threatened to tip the scales of justice against the defendant (*People v. Herron*, 215 Ill.2d 167, 186-87 (2005)), or the error was so serious that it affected the fairness of the proceeding and challenged the integrity of the judicial process where the error affected a defendant's substantial rights. *Id*. at 187; Ill.S.Ct.R. 615(a) (eff. Jan. 1, 1967). In any event, a defendant must preliminary establish there was an error. Consequently, our first task is to determine whether defendant has established that there was error. *People v. Herron*, 215 Ill.2d 167, 187 (2005).

¶ 182 Defendant contends that he was prejudiced by the State's comments that his actions, motivated by greed, broke the "mother and child bond" that existed between defendant and Holmes. He also relies upon the State's comments about the videos showed that defendant's intent and motive was his desire to live a particular lifestyle that included "fancy doors on his Mustang, to get the [bling] that he loved to flash around and put on You Tube to show off and to be the big man…" Defendant suggests that the State improperly relied upon misstatements of evidence and emotional appeals to garner sympathy for Holmes.

¶ 183 First, we do not agree with defendant's argument that the State misstated the evidence. He contends that the State argued that the defendant "needed money" but there was no evidence to support it. From the comments outlined in defendant's brief, it is evident that the State never suggested that defendant "needed money" in the sense that he did it because he was in debt or could not meet his own needs, but was, instead, motivated by greed in conspiring to rob and kill his mother.

¶ 184 The complained-of comments regarding defendant's action resulted in breaking the "bond" between him and Holmes were proper in that references to a familial bonds constituted remarks based upon matters of common knowledge and experience. Moreover, these remarks were also relevant to motive or legitimate inferences drawn from the evidence. The State's comments regarding the bond that existed between defendant and his mother was a reasonable inference based upon evidence showing that their relationship appeared to be loving and one in which Holmes' continued to financially support defendant, her adult son. Johnson testified that, two weeks after the murder, she asked defendant why he committed this offense, and he responded, "it was for the money." The State also introduced evidence that within days of making this statement, he withdrew over $75,000 from his mother's bank account at Chase Bank.

¶ 185 Defendant cites to *People v. Blue*, 189 Ill.2d 99 (2000), as a case in which the Supreme Court found that it was error for the State to comment about the victim's personal background and suffering where it was an improper emotional appeal because these comments are designed to evoke sympathy for the victim. In *Blue*, the State argued, in part, that the victim's family needed to "hear" from the jury. The Supreme Court found that these comments were immaterial to the defendant's guilt or innocence, were directed towards evoking sympathy, and suggested to the jury that the family's pain could be alleviated by a guilty verdict. The facts in *Blue* are distinguishable. Here, the State's comments were directed at the nature of the relationship that existed between defendant and the murder victim in this case, not family members who were not directly associated with defendant's actions.

¶ 186 Moreover, the trial court provided a limiting instruction to the jury to ensure that the jury would consider evidence relating to the videos only on the issue of motive and intent and not for defendant's criminal propensity. The jury was also instructed more than once that the statements

of attorneys in closing argument are not evidence and that it should disregard any such statement that was not based on the evidence. See Illinois Pattern Instructions Criminal No. 1.03 (approved July 18, 2014). It is well settled that jury instructions "carry more weight than the arguments of counsel." *People v. Boston*, 2018 IL App (1st) 140369, ¶ 103. For that reason, we have recognized that "[a] trial court's instructions that closing arguments are not evidence protect [a] defendant against any prejudice caused by improper comments made during closing arguments." *Id*. "Absent some indication to the contrary, we must presume that jurors follow the law as set forth in the instructions given them." *People v. Wilmington*, 2013 IL 112938, ¶ 49.

¶ 187 Even if we were to find that there was error in the inclusion of these comments, defendant cannot establish the first prong of plain error where the evidence was not closely balanced. As previously outlined, the evidence against defendant was overwhelming as to his guilt for first degree murder, attempt first degree murder, and home invasion. Finally, defendant contends that his counsel was ineffective for failing to object to the State's argument. Because defendant cannot establish the closely balanced prong of plain error, he therefore cannot establish the prejudice prong of *Strickland*. *People v. White*, 2011 IL 109689, ¶ 133 (where a defendant cannot establish prejudice, his claims of ineffective-assistance-of-counsel and plain error under the closely-balanced-evidence prong both fail).

¶ 188 We therefore reject defendant's argument that he was denied his right to a fair trial by the arguments made by the prosecution during closing and rebuttal arguments.

¶ 189 CONCLUSION

¶ 190 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 191 Affirmed.