

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 05—CF—646
)	
CRYSTEL A. STRELIOFF,)	Honorable
)	T. Jordan Gallagher,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: The trial court did not err in denying defendant’s motion to dismiss the indictment; there was sufficient evidence to prove defendant guilty of child abduction beyond a reasonable doubt; defense counsel did not provide ineffective assistance; and the trial court did not err in awarding defendant’s ex-husband expenses he incurred in searching for and returning their children.

¶ 1 Following a jury trial held *in absentia*, defendant, Crystel A. Strelieff, was convicted of four counts of child abduction (720 ILCS 5/10—5(b)(2) (West 2004)). Defendant’s ex-husband, Brian Strelieff (Brian), had sole custody of their children M.S. and L.S., but defendant had taken them from Illinois to California in the summer of 2004 and did not return them. Defendant was sentenced

to concurrent terms of three years' imprisonment on two merged counts. On appeal, defendant argues that: (1) the trial court should have dismissed the indictment because the State presented false and misleading testimony to the grand jury; (2) she was not proven guilty beyond a reasonable doubt; (3) trial counsel was ineffective for failing to secure testimony relevant to an affirmative defense of necessity; and (4) the trial court erred in awarding Brian \$73,340 in reimbursement. We affirm.

¶ 2

I. BACKGROUND

¶ 3 Defendant was initially charged by indictment on June 29, 2005, with six counts of child abduction (720 ILCS 5/10—5(b)(1), (b)(2) (West 2004)). Counts I and II, which alleged violations of section 10—5(b)(1), were subsequently nol-prossed by the State. Counts III through VI alleged that defendant committed child abduction under section 10—5(b)(2) on or about August 17, 2004, through June 28, 2005. Count III alleged that defendant violated Judge Brown's April 28, 2000, order by removing M.S. from the court's jurisdiction. Count IV alleged the same regarding L.S. As amended, count V alleged that defendant violated Judge Spence's November 5, 2002, order by removing M.S. from the court's jurisdiction, and count VI alleged the same regarding L.S. While the case was pending, defendant and the children remained in California. Defendant reported to Illinois probation services beginning in May 26, 2005 as a condition of her bond, but she stopped reporting in May 2008, when a warrant was issued for her arrest for failing to appear in court as ordered.

¶ 4 The charges against defendant stemmed from the alleged violations of the above-mentioned child custody orders. An order dissolving the marriage between defendant and Brian was entered by Judge Brown on April 28, 2000. The order granted sole custody of the children to Brian, with visitation rights to defendant. The order allowed either parent to travel outside of Illinois for

vacation without court approval or consent of the other party, provided that notice was given to the other party. However, neither parent was allowed to change the permanent residence of the children from the state of Illinois without first obtaining the written consent of the other parent or court approval. Judge Spence's November 5, 2002, order granted defendant's temporary restraining order that she filed in response to Brian's petition to move to Canada with the children. The trial court's order stated that both parties were restrained from "removing" the minor children from Illinois. Defendant was given leave to take the children to California for the Christmas holiday that year, but "[a]ny other removal [was] subject to court order."

¶ 5 On June 5, 2006, the State filed a motion *in limine* to preclude the children from testifying about alleged prior sexual abuse by Brian, as defendant had indicated that she planned to raise the abuse to support an affirmative defense of necessity. The State argued that alleged abuse prior to February 25, 2004, was not relevant because the indictment alleged that the child abduction took place between August 17, 2004, and June 28, 2005. The State further argued that testimony about past abuse would not be relevant or assist in establishing the necessity defense because the injury sought to be avoided must be imminent. The State argued that here, however, the children were staying with defendant, without contact with their father, the entire time the child abduction offenses were alleged to have occurred. On June 6, 2006, Judge DiMarzio denied the State's motion, ruling that evidence of sexual abuse was relevant to the defense of necessity. Defense counsel requested to be able to take evidence depositions of the children on the basis that they were unavailable to come to Illinois as witnesses, and the issue was continued.¹

¹At a November 3, 2006, hearing, the prosecutor stated that the California supreme court had denied defendant's appeal of an order requiring that the children be returned to Illinois, and it was

¶ 6 On January 19, 2007, defendant's attorney Gary Johnson was granted leave to withdraw as counsel. California attorney Patrick Smith was granted leave to represent defendant *pro hac vice*. On May 30, 2008, defendant failed to appear in court as ordered, and attorney Smith said that he was unable to locate her. The trial court issued a warrant for her arrest.

¶ 7 On August 15, 2008, the defense filed two motions to dismiss the indictment. The first motion alleged that Detective Mark Palmsiano presented false testimony during the grand jury proceeding. In response to a juror's question, Palmsiano testified that the Department of Children and Family Services (DCFS) had investigated Brian in April 2004 for alleged sexual abuse and had changed its conclusion from "indicated" to "unfounded," and that the case was still classified as "unfounded" at the time of the proceeding. The second motion to dismiss the indictment, as amended on September 4, 2008, alleged that the April 2000 order was superceded by other orders and that the November 2002 order was dissolved and no longer in effect at the time in question.

¶ 8 A hearing on defendant's motions to dismiss the indictment took place on September 15, 2008. After hearing testimony, the trial court denied the first motion to dismiss, finding that Detective Palmsiano testified based on his knowledge and that his testimony was not false. The trial

ordering that they be returned immediately. According to the prosecutor, the children subsequently failed to appear in the California court, protective warrants were issued, and defendant told California authorities that the children had run away and were missing. A September 5, 2008, pleading filed by defendant also stated that the children had run away and were not in the custody of either parent. At defendant's sentencing hearing, Brian testified that the children were found in Nevada by U.S. Marshals in April or May 2009. Defendant's pre-sentence investigation report states that she was arrested on a warrant in this case in Las Vegas, Nevada in May 2009.

court also denied defendant's second motion to dismiss, ruling that whether the court orders were valid and/or superseded by other orders were questions for the jury to decide. The same day, the defense filed a third motion to dismiss the indictment, arguing that the prosecution against her was barred under double jeopardy, because she had already been found in criminal contempt for taking the children to California. The trial court denied the motion the following day.

¶ 9 On February 2, 2009, the State filed a motion to bar opinion evidence as to whether the children were sexually abused by Brian. Defense counsel made the following offer of proof. (1) Brian could testify about a 1997 incident of redness and rectal tearing in M.S. (2) Francis Butera, a psychologist from the school the children attended, would testify that in 1999, Brian was playing at the school playground when his children were not present and letting children climb all over him. His actions seemed inappropriate, and at least one parent complained. In another incident around that time, Butera saw L.S. sitting on Brian's lap in the driver's seat of a van, and Brian was grinding his crotch against her. L.S. had a look of discomfort on her face. Both children showed signs of being troubled, isolated, and introverted. After speaking to the children, Butera determined that the signs indicated abuse. Butera would also testify that the children were unkempt and dirty when they stayed with Brian. (3) Officer Antanacci would testify that on October 14, 2003, he went to Brian's home pursuant to a 911 call from M.S., who reported that his father was threatening to kill him because the television remote was lost. The house was dirty, cluttered, and smelled. Antanacci took photos of the home, which were included in the offer of proof. Antanacci filed a child abuse and neglect report against Brian. (4) Teachers would testify that from October 2003 to February 2004, the children came to school dirty, were not dressed appropriately, and were not well cared-for. (5) In February and April 2004, the children reported abuse by Brian.

¶ 10 The trial court granted the State’s motion to bar, ruling that: many of the incidents did not constitute domestic violence; defendant had other means to address the problems, such as seeking relief through the court; and the incidents were too remote in time to constitute imminent danger of domestic violence.

¶ 11 A. Trial

¶ 12 Defendant’s jury trial proceeded *in absentia*, with testimony beginning on February 3, 2009. Brian testified as follows. He and defendant married in 1990, and they lived in California. They had two children: son M.S., born in October 1991, and daughter L.S., born in April 1994. Brian was self-employed in the software industry and traveled for extended periods of time, but the family owned a home in California. Defendant’s relatives also lived in California. The Strelieff family moved to Illinois in 1996 because Brian obtained contract work through Motorola. The marriage deteriorated, and defendant filed for a divorce in California in 1997. The California court determined that Illinois had jurisdiction, and the dissolution was litigated in Illinois. After lengthy proceedings, Judge Brown issued a dissolution judgment on April 28, 2000. The trial court found that joint custody would not be appropriate because the parties were incapable of reaching joint decisions, and it found that it was in the children’s best interest that Brian be awarded sole custody. Defendant was given visitation rights. The judgment allowed either parent to take the children out of Illinois for trips without leave of the court or the other parent’s consent, as long as the other parent received notice. It further stated that neither parent was allowed to “remove the permanent residence” of the children from Illinois without first obtaining the consent of the other parent or court approval.

¶ 13 Defendant filed a motion to reconsider the dissolution judgment, but the trial court left sole custody of the children with Brian in a June 2001 ruling on the motion. In February 2002, the trial court denied a petition by defendant to change custody, and in May 2002, it denied defendant's motion to reconsider that ruling. In October 2002, Brian filed a motion to move with the children to Canada, where he had family. In response, defendant filed an emergency petition for a temporary restraining order and modification of custody. On November 5, 2002, Judge Spence granted the temporary restraining order and further ordered that both parents were prohibited from removing the children from Illinois. Brian testified that sole custody of the children remained with him at that time.

¶ 14 In April 2003, defendant obtained an order of protection against Brian. The order stated that the children were to remain in her possession while the order was in effect. Brian sought relief in the court, and Judge Spence vacated the order of protection and ordered that the children be returned to Brian. In June 2003, the trial court granted leave for defendant to take the children to California from June 25 to July 13, 2003. In January 2004, defendant filed an amended petition for modification of custody.

¶ 15 Brian testified that from 2000 to January 2004, defendant would go out of state and return about three to four times per year. Of those trips, she would go to California once or twice per year. The California trips were done with notice to him or by court order.

¶ 16 On February 25, 2004, DCFS informed Brian that it was investigating a complaint against him. DCFS told him that during the investigation, he could voluntarily agree to leave the children with defendant, or DCFS would temporarily put them in a foster home. Brian verbally agreed with DCFS to have the children stay with defendant and to have no contact with them during the

investigation. Brian felt that foster care would be more traumatic to the children than staying with defendant. During the investigation, defendant had the kids try to contact Brian three times, but he always denied contact because of the voluntary agreement.

¶ 17 On April 6, 2004, defendant filed a petition to move with the children to California, arguing that the move was in their best interests. Defendant sought the removal in conjunction with her pending motion for modification of custody. Some time after that petition, Brian learned that DCFS had completed its investigation and determined that the allegations were unfounded. Brian informed the trial court and defendant that he intended to resume the visitation schedule as set forth in the April 2000 order. On April 20, 2004, Brian went to L.S.'s school to let her know that he would be picking her up after school. He had not seen L.S. since February 25, and he was not allowed to see her that day either because she made another allegation against him. For this DCFS investigation, Brian again agreed to allow the children to stay with defendant and have no contact with them. In the following months, proceedings on defendant's motions to change custody and remove the children continued. On August 31, 2004, the trial court ordered that defendant attend a mandatory class for divorced parents before it issued its ruling. The same day, Brian contacted the children's schools to determine whether they were attending. He learned that they were not enrolled in Illinois schools, and he determined that they were enrolled in California schools.² Brian filed pleadings regarding the children's schooling and residency. Brian did not know that defendant and the children had gone to California in June 2004; he did not find that out until much later. "And by that time it was obvious it was not for vacation." When Brian found out that the children were not enrolled in

²The parties stipulated that the children were enrolled in Illinois schools for the 2003-2004 school year and California schools for the 2004-2005 school year.

Illinois schools, he unilaterally rescinded his voluntary no-contact agreement. He did not tell defendant of this decision.

¶ 18 On February 2, 2005, the trial court denied defendant's motions to change custody and move the children to California. Brian obtained a certified copy of the order and immediately drove to California to get the children. He registered the order in California and went to L.S.'s school to see if she would be released to him. However, the same day, L.S. made abuse allegations resulting in the involvement of the California DCFS. An emergency protective order was issued against Brian on February 4, 2005, requiring him to have no contact with defendant or the children. The order gave temporary care and control of the children to defendant, and it stated that it would expire on February 11, 2005. On February 9, 2005, the parties appeared at a dependency hearing in California. The California DCFS was given temporary placement and custody of the children, and they were released to defendant. Brian was ordered to have no contact with the children. On February 10, Brian filed a motion arguing that Illinois had jurisdiction of the case, so the children should be sent back to Illinois. From the time of the February 2005 allegation until June 2006, it was Brian's understanding that the California DCFS was vested with temporary custody of the children, and that they were released to defendant pending a final decision.

¶ 19 On January 20, 2006, a California court ruled that California did not have subject matter jurisdiction over the issue, and the children should be returned to Illinois. Defendant appealed that decision, and a California appellate court affirmed on August 8, 2006. The California supreme court subsequently declined to hear the case and ordered that the children be returned to Illinois immediately. However, at the time of trial, they still had not been returned to Illinois.

¶ 20 Sue Cattaneo, an Illinois DCFS child protection investigator, provided the following testimony. On April 20, 2004, she was assigned to investigate Brian and his children. Brian had sole custody of the children, and he arranged for them to live with defendant during the investigation. DCFS asked that Brian not have contact with the children during the investigation, and he voluntarily agreed; there was no court order prohibiting contact. However, if Brian had not agreed to having no contact with the children, DCFS, under its general policy, would have taken steps to temporarily remove the children from Brian's possession based on the allegations against him.

¶ 21 Prior to June 9, 2004, defendant told Cattaneo that when the school year ended, she was going to take the children to California for vacation and would be staying with her family. Cattaneo talked to defendant about the status of the dissolution proceedings, and defendant said that she was hoping that the court would award her custody of the children and allow them to move with her to California. Cattaneo did not object to defendant's plan to take the children to California for the summer, and she had contact with defendant while she was there. Still, at no point during the investigation did Cattaneo tell defendant that she should leave Illinois and take the children to California. At the end of July and early August, defendant was feeling frustrated with all of the continuances on her motions to change custody and remove the children. She said that she wanted a decision before the school year started because she wanted the kids to start school in California if custody was going to be changed. Cattaneo agreed that defendant said that if Cattaneo wanted to speak to the children at any time, defendant would bring them to her. In late August, defendant said that the children were doing well in the California schools.

¶ 22 Also at the end of August, Brian said that he wanted to start seeing the children again, thereby rescinding his voluntary no-contact agreement. Cattaneo told Brian that she could not take any action at that point because the children were not in Illinois.

¶ 23 The Illinois DCFS investigation was completed around September 1. At some point, Cattaneo met with the police and prosecutors and determined that no criminal charges would be filed against Brian. Also on an unspecified date, Cattaneo and defendant discussed the fact that the investigation was completed. Cattaneo said that the children need to come back so that the custody hearing could be finished and they could be turned over to Brian if the trial court did not change custody. Defendant said that: she did not trust the Kane County court system; she felt like she would not be given custody; and she would not be coming back to Illinois. Cattaneo told defendant that she needed to return. Cattaneo told defendant that if the divorce court did not change custody to her and Brian sought to visit the children, Cattaneo would have a petition filed in juvenile court to remove the children from Brian's custody because DCFS felt that they should not be living with him.

¶ 24 Cattaneo spoke with a representative from the California DCFS on February 9, 2005, about the investigation in that state. Brian's no-contact agreement with the Illinois DCFS was no longer in effect, but Cattaneo told the California representative that the Illinois DCFS had concerns about the children being in Brian's custody or in contact with him. Cattaneo expressed the same concerns to defendant. She also reiterated that if the court did not change custody to defendant when she returned to Illinois, the State's Attorney's Office said that it would file a juvenile petition to keep the children out of Brian's custody at that time. Cattaneo agreed that she essentially communicated

to defendant that Brian would not have physical custody of the children as of February 2005 and before that time.

¶ 25 Nancy Bryden, an investigator with the California DCFS, testified as follows. On February 4, 2005, the agency opened a case regarding L.S. and M.S. Bryden learned that Brian had legal custody of the children. On February 9, custody was vested with the California DCFS, and the children were released to defendant. Brian was ordered not to have contact with the children. A California DCFS record showed that both parents said that there was a no-contact agreement in effect from February 2004 until the filing of the California petition on February 9. On March 30, 2005, Bryden asked defendant why she was in California. Defendant said that she was told by the Kane County DCFS that she should move to California; defendant never said that she was on vacation or there temporarily. Bryden did not recall whether defendant actually said that she “moved” the children to California or “took” them there. Bryden agreed that defendant also never said that she had a lawful custody order. Defendant was living with the children at her parents’ house, and she was not working. Bryden later stopped the investigation because of the family law case in Illinois. The allegations L.S. made against Brian were never resolved by the California DCFS.

¶ 26 On April 22, 2005, the California court ordered that the children be returned to Illinois based on jurisdiction. The order was then stayed due to an appeal. On January 20, 2006, the children were again ordered to be returned to Illinois, but that did not occur for an unspecified reason. On August 8, 2006, the California appellate court ordered the children returned to Illinois. On September 18, 2006, the California supreme court denied to hear an appeal from the decision. On October 4, 2006, the California appellate court again ordered the children returned to Illinois. The California court

ordered defendant and the children personally served on October 25, 2006, but service was unsuccessful. Defendant appeared in court in California on October 27 but the children did not. Bryden informed the California court that the children were absent without leave.

¶ 27 Detective Mark Palmsiano testified that on December 29, 2004, he was assigned to investigate a possible child abduction by defendant. Palmsiano spoke with defendant by phone, and she said that she was in California with the children. Defendant said that the children were enrolled in school there, and she believed that she could have the children because DCFS was investigating some allegations. Defendant also mentioned trying to obtain a court order from Judge Grady. Palmsiano did not find a court order showing that defendant could have the children. On January 10, 2005, Palmsiano spoke to Cattaneo, who informed him that due to past allegations against Brian, DCFS was still investigating the case. She said that if Brian was able to take custody of the children in the near future, DCFS would immediately intervene and seek emergency shelter care for the children. Defendant voluntarily came to the police station on May 26, 2005, to be booked on the instant charges, after being arrested in California.

¶ 28 Dr. Sara Bonkowski testified that she was in private practice as a therapist in Glen Ellyn. She counseled M.S. and L.S. in 2003 and 2004. She was aware that at some point during that time, Brian agreed not to contact the children. To Bonkowski's knowledge, during that time defendant cooperated whenever a no-contact agreement was lifted. It was routine for defendant to go to California with the children for Christmas and over the summer. Bonkowski last had contact with the children in June 2004.

¶ 29 The jury found defendant guilty of all four counts of child abduction.

¶ 30

B. Sentencing

¶ 31 Defendant filed a posttrial motion on March 6, 2009. The trial court denied the motion on November 6, 2009, and proceeded to the sentencing hearing. Brian testified as follows. From 1997 to 2004 there were about six DCFS investigations against him. One investigation was found to be indicated, but it was changed to unfounded on appeal. Since February 2004, Brian had only seen the children in the context of legal proceedings in California and Nevada. Brian had incurred \$63,313 in legal bills trying to get the children returned to Illinois from California. Brian also flew to California a total of 12 to 18 times and Nevada about 5 times trying to get the children back. The airfare for California ranged from \$250 to \$800, and the airfare for Nevada was about \$400. He rented cars in California for about 40 to 50 days and in Nevada for 12 to 15 days, at a cost of about \$75 per day. He also rented a car in Illinois and drove to California about 12 times, spending about \$350 per week for the car rental and \$300 for gas. He would stay in hotels in California, spending about \$120 per night. Brian further testified about the emotional and physical impact the child abductions had on him. Also, when he finally saw his children, they were completely different people and had emotional problems.

¶ 32 Defendant submitted a letter from M.S., who was 18 by that time. M.S. said that he and L.S. were sexually abused and neglected by Brian, and that the courts had failed to protect them.

¶ 33 The trial court merged the convictions for counts III and V (regarding M.S.) and IV and VI (regarding L.S.) and sentenced defendant to three years on each, to run concurrently. The trial court also ordered defendant to pay Brian \$73,340 in reimbursement pursuant to section 10—5(e) of the child abduction statute (720 ILCS 5/10—5(e) (West 2008)), which allows the court to “assess any reasonable expense incurred in searching for or returning a child against any person convicted of

violating” the statute. The fine consisted of: \$63,000 for Brian’s California attorney fees; 12 flights to California at \$250 each (\$3,000); five flights to Nevada at \$400 each (\$2,000); 40 days of car rental in California at \$75 per day (\$3,000); 12 days of car rental in Nevada at the same cost (\$900); and 12 nights of hotel stays in California at \$120 per night (\$1,440). Defendant timely appealed.

¶ 34

II. ANALYSIS

¶ 35

A. Motion to Dismiss Indictment

¶ 36 Defendant first argues that the trial court erred in refusing to dismiss the indictment based on Detective Palmsiano’s false testimony in response to a juror’s question about the current status of the DCFS investigation against Brian.

¶ 37 The grand jury’s role is to determine whether probable cause exists that a person has committed a crime, which would warrant a trial. *People v. DiVincenzo*, 183 Ill. 2d 239, 254 (1998). Prosecutors advise the grand jury by informing them of the proposed charges and pertinent law. *Id.* Generally, a defendant may not challenge the validity of an indictment that a legally constituted grand jury returns, but a defendant may challenge an indictment procured through prosecutorial misconduct. *Id.* at 255. To obtain the dismissal of the indictment, a defendant must show that the prosecutorial misconduct affected the grand jury’s deliberations and rose to the level of a deprivation of due process or a miscarriage of justice. *Id.* at 257. “The due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence.” *Id.* The prosecutor’s deception need not be intentional. *People v. Oliver*, 368 Ill. App. 3d 690, 696 (2006). The defendant must show that the denial of due process is “unequivocally clear” and resulted in prejudice that is “actual and substantial.” *Id.* at 695. Prosecutorial misconduct resulting in a due

process violation is actually and substantially prejudicial only if the grand jury would not have otherwise indicted the defendant. *Id.* at 696-97. Where the facts about what occurred at a grand jury proceedings are undisputed, as in this case, we review *de novo* the question of whether the State prejudicially denied the defendant due process. *People v. Sampson*, 406 Ill. App. 3d 1054, 1057 (2011).

¶ 38 The testimony in question took place during the grand jury proceedings on June 28, 2005. Detective Palmsiano testified as follows. During the parties' dissolution proceedings, defendant alleged that Brian had sexually abused the children. However, the trial court ruled that the allegations were unfounded and awarded sole custody of M.S. and L.S. to Brian. In April 2004, defendant again alleged that Brian was abusing the children. Brian agreed to not have contact with the children during the pendency of the investigation. On August 17, 2004, defendant enrolled the children in California schools without Brian's consent and without the court's permission.

¶ 39 The following exchange then took place among a grand juror, Assistant State's Attorney Hull, and Detective Palmsiano:

¶ 40 "MR. HULL: Does anybody have any questions of a factual nature at all?

¶ 41 A JUROR: What were the findings on your investigation on the sexual abuse? The – the fourth or fifth or whichever one, the last one when he let his ex-wife have the kids while you were doing it.

¶ 42 MR. HULL: And, detective, do you want me to follow up with some questions on that?

¶ 43 THE WITNESS: If you could, please.

¶ 44 MR. HULL: Okay. And I want to make sure I understand your question. You're talking about the last one in April of 2004?

¶ 45 A JUROR: When he let the two children stay with the mom.

¶ 46 BY MR. HULL:

¶ 47 Q. During the course of your investigation in the April incident, did you learn that DCFS investigated that charge?

¶ 48 A. Yes, they did.

¶ 49 Q. And did you learn that they did that in conjunction with the West Dundee Police Department?

¶ 50 A. Yes, they did.

¶ 51 Q. And the West Dundee police officer that investigated that was a Detective Haines?

¶ 52 A. Correct.

¶ 53 Q. Did you learn that after DCFS completed that investigation—well, let me take a step back.

¶ 54 When DCFS does an investigation, are you familiar with the term indicated?

¶ 55 A. Yes, I am.

¶ 56 Q. Are you also familiar with the term unfounded?

¶ 57 A. Yes, I am.

¶ 58 Q. ***

¶ 59 An indicated finding, is it your understanding that that would mean that there is credible evidence that something occurred?

¶ 60 A. Yes, there was.

¶ 61 Q. And if it was unfounded, that would mean that there was no credible evidence that anything had occurred, correct?

¶ 62 A. Correct.

¶ 63 Q. As it relates to the April of 2004 investigation, had you learned that DCFS had originally indicated the report indicating that they found that there was credible evidence that the abuse had occurred?

¶ 64 A. Yes.

¶ 65 Q. Have you since learned, then, that after an appeal process, the Department of Children and Family Services changed that from indicated to an unfounded, meaning there was no credible evidence that it had occurred?

¶ 66 A. That is also correct.

¶ 67 Q. And as you testified to, is it accurate that it still remains unfounded at this time?

¶ 68 A. That is correct.

¶ 69 MR. HULL: Does that answer –

¶ 70 A JUROR: Yeah.”

¶ 71 At the September 15, 2008, hearing on defendant’s motion to dismiss the indictment, Palmsiano testified as follows. He was investigating defendant for child abduction while Sergeant Haines was investigating the allegations that Brian had abused the children. Palmsiano communicated with Haines about the case but was not personally following the DCFS investigation. At the time of the grand jury proceeding, the DCFS investigation was ongoing. Palmsiano did not know if DCFS had completed the investigation or whether it was indicated or unfounded. However,

he knew that DCFS had originally found credible evidence because it would have been necessary to continue the investigation. Palmsiano had also seen a September 2004 letter from DCFS stating that the information it had “pertaining to prior involvement” was not conclusive to make a finding of abuse, which Palmsiano relied on when testifying that the investigation was unfounded.³ Palmsiano agreed that at the grand jury proceeding, he answered in the affirmative when asked whether the investigation still remained unfounded, even though he did not know the current status of the investigation. He based his answer on the fact that no criminal charges had been filed against Brian; the investigation remained unfounded as far as his knowledge of the case.

¶ 72 Meryl Paniak, chief administrative law judge, testified at the same hearing regarding a separate motion to dismiss the indictment. She testified that the allegations against Brian remained indicated until February 2008, when the director issued his final decision. However, on April 22, 2005, an order was entered changing the status of the investigation to “unfounded.” Paniak testified that the reason for the change was because of a circuit court order in the divorce case finding that the children were not abused or neglected. The circuit court subsequently vacated that finding, and on June 27, 2005 (the day before the grand jury hearing), an order was entered vacating the April 22 order, meaning that the status of the investigation returned to “indicated.” A copy of the June 27 order was not sent to the West Dundee Police Department, the Kane County State’s Attorney’s office, or defendant. Subsequently, Brian appealed the department’s decision, and after a full hearing the director issued the February 2008 decision finding the investigation “unfounded.”

³As defense counsel pointed out, the letter, which was entered into evidence, also stated that DCFS had gathered information to support an indicated finding of abuse.

¶ 73 The trial court granted the State's oral "motion to dismiss" defendant's motion to dismiss the indictment based on Palmsiano's testimony. The trial court stated that "although the questions that [Palmsiano] was asked and his answers may not be the best representation of what happened with the DCFS investigation, I do not find them to be false." The trial court stated that the September 2004 letter was not clear and that Palmsiano testified based on his knowledge of Sergeant Haines's investigation.

¶ 74 Defendant points out that Palmsiano affirmatively told the grand jury that the investigation was classified as unfounded at that time even though he had no personal knowledge of the status of the investigation at that time. Defendant maintains that Palmsiano's testimony was demonstratively incorrect, because the evidence showed that DCFS had returned the investigation to indicated status, meaning that DCFS found that there was credible abuse by Brian. Defendant analogizes this case to *Oliver*. There, this court held that the State presented deceptive evidence because an officer concealed the hearsay nature of his testimony about a drug transaction, to the extent that he testified about personally observing events that he did not, and additionally mischaracterized the observations of the actual eyewitness so as to establish probable cause where none existed. *Oliver*, 368 Ill. App. 3d at 695, 697. Defendant argues that, like *Oliver*, the State's and Palmsiano's concealment of the fact that Palmsiano had no personal basis for his testimony gave unwarranted authority to factually incorrect evidence, and therefore Palmsiano's testimony may be considered perjury and be held to violate due process.

¶ 75 Defendant further argues that the testimony was prejudicial because the grand juror's question about the status of the DCFS investigation directly concerned a statutory affirmative defense to child abduction that "the person was fleeing an incidence or pattern of domestic violence"

(720 ILCS 5/10—5(c)(3) (West 2004)). Defendant argues that it is reasonable to believe that if the grand jury had been truthfully told that the DCFS investigation of sexual abuse of the children was classified as indicated, the grand jury would have found that defendant was fleeing an incidence or pattern of domestic violence and would have refused to indict defendant. Defendant argues that the appropriate scope of grand jury proceedings extends beyond simply considering whether there is sufficient evidence to support probable cause on the essential elements of an offense. Defendant cites *People v. Hayes*, 139 Ill. 2d 89, 120 (1990), *overruled in part on other grounds*, *People v. Tisdell*, 201 Ill. 2d 210, 219 (2002). In *Hayes*, our supreme court held that it was not error for the prosecutor to call members of the defendant's family to testify as to his whereabouts at the time of the crime. The court stated that because the defendant's family members provided an alibi, their testimony allowed the grand jury to assess whether the defendant had the opportunity to commit the crime. *Id.* at 120-21. Defendant argues that if the grand jury properly investigated a potential alibi defense in *Hayes*, it must be similarly empowered to consider the statutory necessity defense here. Defendant maintains that Palmsiano's testimony was "doubly deceptive" as in *Oliver* (*Oliver*, 368 Ill. App. 3d at 697) because the detective not only falsely implied that he had personal knowledge of the status of the DCFS investigation, but he also provided materially false evidence during the grand jury's investigation of an affirmative defense that was within its purview.

¶ 76 Regarding the hearsay content of Palmsiano's testimony, the State is not required to inform a grand jury that a witness's testimony constitutes hearsay. *People v. Holmes*, 397 Ill. App. 3d 737, 742 (2010). Hearsay testimony does not invalidate an indictment; instead, a defendant must show that the testimony was so deceptive or inaccurate that it affected the grand jury's deliberations. *Id.* Here, the State did not err with its manner of presenting Palmsiano's testimony. Unlike *Oliver*,

neither the State nor Palmsiano implied that he had first-hand knowledge of the events, but rather the State emphasized that Detective Haines was in charge of the abuse allegations and questioned Palmsiano about what he had “learned” about the investigation. Defendant argues that Palmsiano’s testimony was deceptive because he had absolutely no knowledge of the status of the investigation. However, Palmsiano later testified that he based his response on the DCFS letter from September 2004, which we agree with the trial court is ambiguous, and his knowledge that Brian had not been arrested for an offense. Thus, Palmsiano’s response was not made in a complete vacuum.

¶ 77 Still, it remains that the State did present the jury with the factually incorrect statement that the DCFS investigation against Brian was still “unfounded” as of that date, as evidence later showed that the status had returned to “indicated” the day before. The State argues that the statement does not constitute perjury or a denial of due process because the record does not show that either Palmsiano or the prosecutor knew of the changed status of the investigation. However, as stated, the State’s presentation of deceptive evidence need not be intentional to create a denial of due process. *Oliver*, 368 Ill. App. 3d at 696.

¶ 78 In any event, we need not decide whether the error arguably rose to the level of a denial of due process because we conclude that defendant cannot show that she suffered prejudice because of the incorrect statement, in that the grand jury would not have otherwise indicted her. See *id* at 696-97. To begin with, the State was not required to present evidence regarding the affirmative defense. See *People v. Beu*, 268 Ill. App. 3d 93, 97-98 (1994) (prosecutor does not have a duty to present exculpatory evidence or evidence of a potential affirmative defense to the grand jury). Indeed, the State is not even required to present evidence for each element of the offense as long as there is some evidence relative to the charge and the indictment is valid on its face. *Holmes*, 397 Ill. App. 3d at

744. Defendant does not dispute that the State presented evidence on the statutory crime of child abduction, but rather solely contests testimony relevant to the affirmative defense. We recognize that here the State chose to present evidence that was relevant to the affirmative defense. Still, the State was not required to present enough evidence for the jury to determine guilt or innocence, as that is an issue to be decided at trial. See *id.* The grand jury was told that during the parties' dissolution proceedings, defendant alleged that Brian had sexually abused the children, but that the trial court ruled that the allegations were unfounded and awarded sole custody of the children to Brian. The grand jury was aware of the repeated allegations of abuse, as the grand juror asked about the status of the "fourth or fifth" investigation, and the grand jury was also aware that custody remained with Brian. Thus, even if the jury was informed that the current investigation remained "indicated" rather than "unfounded," it would not likely have substantially influenced the grand jury's determination of probable cause because it did not undermine the evidence of the underlying offense, and the grand jury was already aware of the long history of abuse allegations.

¶ 79

B. Sufficiency of the Evidence

¶ 80 Defendant next argues that she was not proven guilty of child abduction beyond a reasonable doubt. The standard of review for a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so

improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 81 Defendant was convicted of child abduction under section 10—5(b)(2) of the Criminal Code of 1961 (720 ILCS 5/10—5(b)(2) (West 2004)), which states that a person commits child abduction when he or she “[i]ntentionally violates a court order prohibiting the person from concealing or detaining the child or removing the child from the jurisdiction of the court.” The jury was instructed on one affirmative defense to the crime, that the “person had custody of the child pursuant to a court order granting legal custody or visitation rights which existed at the time of the alleged violation.” 720 ILCS 5/10—5(c)(1) (West 2004). As stated, defendant was charged with violating the April 28, 2000, order prohibiting the parents from moving the permanent residence of the children outside Illinois without the prior approval of the other parent or the court. She was also charged with violating the November 5, 2005, order restraining the parties from removing the children from Illinois. The indictment alleged that the offenses occurred from August 17, 2004, through June 28, 2005.

¶ 82 Defendant argues that no rational jury could have found that she intended to violate the court orders, or that she did not have custody or physical possession of the children pursuant to a court order granting legal custody or visitation rights. Defendant argues that from February 25, 2004, until February 5, 2005, she had physical possession of the children by permission and consent of the Illinois DCFS and Brian, who had sole custody of the children through the family court. She argues that from February 5, 2005, to the date of the indictment in late June 2005, the children were placed with her by the California DCFS, which had temporary custody through orders of the California

court. Thus, she argues, at all times she had open and authorized physical possession of the children, making the affirmative defense of section 10—5(c)(1) applicable.

¶ 83 Defendant notes that Brian testified that he agreed on February 25, 2004, and April 20, 2004, to let the children stay with her during the DCFS investigations. She further notes that DCFS investigator Cattaneo testified that if Brian did not agree to have no contact with the children, DCFS would have asked the court to remove them from his care. Defendant maintains that although the safety plan was a verbal agreement, it carried the implicit authority of DCFS and was entered as an alternative to the State seeking to remove custody from Brian through protective custody proceedings in court. Defendant argues that while she did not possess the children under the authority of a court order as technically required by the affirmative defense of section 10—5(c)(1), she should not be convicted of child abduction for possessing the children in good faith and with the approval of the custodian and DCFS. Defendant further argues that records show that the family court knew that Brian had agreed that the children should stay with her during the pendency of the DCFS investigations, as reflected in its February 2, 2005, order denying her petition for modification of custody. Defendant argues the family court “took no steps to force [her] to return to Illinois.” Defendant also points out that DCFS investigator Cattaneo knew that she was with the children in California and had regular contact with her. Defendant argues that no rational jury could find that she had the intent to commit child abduction or acted without legal authority when the children were openly and legally placed with her at the times covered by the indictment.

¶ 84 The State points out that defendant is essentially arguing that DCFS’s and Brian’s agreement that she serve as a placement for the children during the investigation of sexual abuse allegation, and the California DCFS’s later placement of the children with her after that agency was granted

temporary custody following another abuse allegation, superceded the April 28, 2000, and November 5, 2002, family court orders. The State argues that her assertion that the family court did not take any steps to force her to return to Illinois is incorrect. The State notes that on October 4 and November 29, 2004, the family court issued body attachments for defendant, finding her in contempt for failing to appear, failing to provide the children's residence, violating visitation orders, and failing to enroll the children in Kane County schools.

¶ 85 The State further argues that the relevant statute and jury instructions did not require the jury to consider that Brian or DCFS at some time in the past agreed to temporarily place the children with defendant. The States argues that there was evidence of defendant's repeated attempts to gain custody of the children in the family court, including a petition to modify custody filed on January 22, 2004, and a motion filed on April 6, 2004, the latter being subsequent to the children being placed with her during the pendency of the DCFS investigation. The State argues that these motions belie defendant's argument that she possessed the children in good faith and did not have the intent to commit child abduction or act without legal authority during the time covered by the indictment.

¶ 86 We conclude that, viewing the evidence in the light most favorable to the State, a rational jury could find defendant guilty of child abduction as charged. As defendant recognizes, the affirmative defense she seeks to apply here pertains only to a *court order* giving the defendant legal custody or visitation rights at the time of the alleged violation. Here, defendant did not have a court order arguably releasing the children to her until the February 2005 proceedings in California. Thus, a rational trier of fact could determine that the affirmative defense did not apply to at least a portion of the time period alleged in the indictment. Defendant argues that it would violate all notions of fair play to convict her of child abduction when she had possession of the children by consent of

Brian and the Illinois DCFS. Still, although they may have initially agreed that defendant could have physical possession of the children, Brian testified that he withdrew his consent at the end of August 2004, and Cattaneo also testified that at some point after the DCFS investigation was completed, she told defendant that she needed to bring the children back to Illinois. Further, neither Brian nor DCFS agreed to allow defendant to permanently move the children to California, in violation of the court orders. Also, as the State notes, the Illinois family court issued orders clearly showing that defendant did not have permission to keep the children in California. In October and November 2004, it issued body attachments for defendant based on contempt findings for, among other things, violating visitation orders and failing to enroll the children in Kane County schools. Evidence that defendant knew she did not have permission to keep the children in California was further provided by defendant's prior filings of a motion to modify custody and petition to move the children to California. Cattaneo's testimony added to the evidence of defendant's intent to violate the court orders, as Cattaneo testified that after she told defendant that she needed to bring the children back to Illinois, defendant said that she did not trust the Kane County court system and would not be coming back. Accordingly, based on all of the evidence presented, a rational jury could have found beyond a reasonable doubt that defendant intentionally violated the Illinois court orders prohibiting her from moving the children outside of Illinois, and that for at least of a portion of the time, she did not otherwise have custody of the children pursuant to a court order granting legal custody or visitation rights.

¶ 87

C. Ineffective Assistance of Trial Counsel

¶ 88 Defendant next argues that her trial counsel was ineffective for failing to present evidence from M.S. and L.S. regarding prior incidents of abuse by Brian, thereby failing to present evidence

supporting the statutory affirmative defense that defendant was “fleeing an incidence or pattern of domestic violence.” See 720 ILCS 5/10—5(c)(3) (West 2004). To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Albanese*, 104 Ill. 2d 504, 526 (1984). The defendant must first establish that, despite the strong presumption that counsel acted competently and that the challenged action was the product of sound trial strategy, counsel's representation fell below an objective standard of competence under prevailing professional norms, to the extent that he or she was not functioning as the counsel guaranteed by the sixth amendment. *People v. Manning*, 241 Ill. 2d 319, 326-27 (2011). Second, the defendant must establish prejudice by showing a reasonable probability that the proceeding would have resulted differently had counsel's representation not been deficient. *People v. Houston*, 229 Ill. 2d 1, 11 (2008).

¶ 89 Defendant notes that prior to trial, Judge DiMarzio denied the State’s motion to preclude the children from testifying about alleged prior sexual abuse by Brian. Judge DiMarzio stated that “the perceived harm was specific horrific sexual assaults by the father, allegedly perpetrated many times over an extended period of time and allegedly skillfully concealed.” He stated that, without determining whether the evidence would be sufficient to sustain a necessity defense, the evidence was relevant to the necessity defense. Defendant argues that her subsequent defense counsel, attorney Smith of California, failed to pursue the children’s testimony for trial but instead proffered alternative evidence for the affirmative defense, such as testimony from the school psychologist and an abuse and neglect report that an officer filed as a result of the condition of Brian’s residence. This evidence was barred from admission at trial by Judge Gallagher. Defendant argues that attorney

Smith's failure to present the relevant and admissible testimony of the children effectively deprived her of the right to present a statutory necessity defense.

¶ 90 We conclude that defendant cannot satisfy the first prong of the *Strickland* test and overcome the presumption that her trial counsel acted competently. At trial, California DCFS investigator Bryden testified that in September 2006, the California supreme court denied to hear an appeal from the August 2006 decision of the California appellate court ordering that the children be returned to Illinois. The California appellate court again ordered that the children be returned to Illinois in October 2006, but service on the children was unsuccessful. As stated in our recitation of the facts of this case, at a November 3, 2006, hearing on the instant child abduction charges, the prosecutor stated that after the children failed to appear in court, protective warrants were issued, and defendant told the California authorities that the children had run away and were missing. A September 5, 2008, pleading filed by the defense also stated that the children had run away and were not in either parent's custody. Brian testified at defendant's sentencing hearing that the children were found in Nevada in April or May 2009. Thus, the record indicates that the children were missing from October 2006 until spring 2009. Attorney Smith did not begin representing defendant until early 2007, well after the children had run away. As such, attorney Smith would not have had access to the children to take evidence depositions from them or secure their presence at trial, defeating defendant's argument that he was ineffective for failing to do so.

¶ 91 Defendant additionally states in the header of her ineffective assistance of counsel argument that the trial court also erred by barring her proffered evidence, other than the children's testimony, in support of the affirmative defense. However, defendant fails to further argue this point, thereby forfeiting the issue for review. See Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (points not argued in

the appellant's brief are forfeited); *People v. Jacobs*, 405 Ill. App. 3d 210, 218 (2010) (the appellant must clearly define issues, cite pertinent authority, and present cohesive arguments; the appellant may not impose the burden of argument and research on the appellate court, nor is it the court's role to act as advocate or search the record for error).

¶ 92

D. Restitution

¶ 93 Last, defendant argues that the trial court erred by ordering her to pay Brian \$73,340 in reimbursement. The State argues that defendant has forfeited this issue because she did not raise it in a posttrial motion. See *People v. Reed*, 177 Ill. 2d 389, 395 (1997) (failure to raise sentencing issue in a postsentencing motion forfeits the issue or review). However, defendant asks that we review the issue for plain error. The plain error doctrine allows a reviewing court to consider an unpreserved error where either (1) a clear error occurs and the evidence is closely balanced, or (2) a clear error occurs that is so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). The plain error doctrine may be applied to sentencing issues. *People v. Fouts*, 319 Ill. App. 3d 550, 552 (2001). In applying the plain error test, the first step is to determine whether error occurred at all. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 94

The trial court ordered defendant to reimburse Brian for attorney fees and travel expenses pursuant to a provision in the child abduction statute, which states: "In addition to any sentence imposed, the court may assess any reasonable expense incurred in search for or returning the child against any person convicted of violating this Section." 720 ILCS 5/10—5(e) (West 2004). The reimbursement consisted of \$63,000 for Brian's California attorney fees and \$10,340 for travel expenses to California and Nevada.

¶ 95 Defendant argues that the expenses did not result from “searching for” or “returning” the children, as required by section 10—5(e). The primary rule of statutory construction is to ascertain and give effect to the legislature's intent, which is best determined by the statutory language's plain and ordinary meaning. *People v. Jamison*, 229 Ill. 2d 184, 188 (2008). If a penal statute is ambiguous, the rule of lenity applies and the statute will be strictly construed in the defendant's favor, “with nothing taken by intendment or implication beyond the obvious or literal meaning of the statute.” *People v. Perry*, 224 Ill. 2d 312, 333 (2007). We review *de novo* questions of statutory interpretation. *People v. Williams*, 239 Ill. 2d 503, 506 (2011). However, the determination of restitution is within the trial court's discretion. *People v. Graham*, 406 Ill. App. 3d 1183, 1193 (2011).

¶ 96 Defendant first argues that the majority of expenses were incurred outside of the time of the offense alleged in the indictment and should not qualify for reimbursement. However, the “date alleged in the indictment is generally not material, and the indictment is sufficient if the State proves the offense occurred at any time within the statute of limitations period,” as long as the alleged dates do not prejudice the preparation of the defense. *People v. Quiroz*, 253 Ill. App. 3d 739, 747-48 (1993). More importantly, nothing in the reimbursement provision requires that the expenses be incurred solely within the dates alleged in the indictment, and, logically, expenses in searching for and returning a child can only be incurred after the initial abduction takes place. Accordingly, defendant's argument is without merit.

¶ 97 Defendant further argues that Brian's legal bills did not result from searching for the children. We agree with this point, but the statute also allows reimbursement for expenses in returning a child. Defendant argues that incurring significant legal bills in California should fall outside the plain and

ordinary meaning of returning the children to Illinois because the proceedings involved determining the proper venue for investigating child abuse allegations against him. Defendant cites *People v. Nicholl*, 210 Ill. App. 3d 1001, 1013 (1991), for the proposition that restitution may not be ordered for matters unrelated to the charges before the court. However, Brian incurred his legal bills precisely because defendant removed the children from Illinois and Brian could not “return” them to Illinois without obtaining permission from the California courts. While the California courts’ intervention may initially have been based on abuse, it quickly turned into a question of jurisdiction. Further, defendant chose to appeal the California trial court’s ruling finding that Illinois had jurisdiction, and then further appeal the appellate court’s affirmance of that ruling. Defendant certainly acted within her legal rights in seeking the review, but the additional proceedings would have necessarily increased Brian’s legal costs. In sum, Brian’s legal costs were directly incurred in furtherance of returning the children to Illinois, from where, the jury concluded, defendant had wrongfully removed them. Therefore, the costs fall within the statute’s plain language of “any reasonable expense[s] incurred in *** returning the” children (emphasis added) (720 ILCS 5/10—5(e) (West 2004)), and the trial court acted within its discretion in ordering defendant to pay them.

¶ 98 Defendant further argues that Brian’s testimony about his travel expenses of over \$10,000 was too speculative to support the reimbursement award, and he should have been required to provide specific dates of travel and records of actual expenses incurred. Defendant cites *People v. Jones*, 206 Ill. App. 3d 477, 482 (1990), where this court held that alleged losses not supported by the evidence cannot be used as a basis for awarding restitution.

¶ 99 We conclude that Brian's testimony provided a sufficient basis for the trial court to award travel expenses. According to testimony from trial, Brian first went to California in an effort to get the children back in February 2005. California court proceedings were finally resolved in October 2006. The evidence indicated that the children ran away the same month, and Brian testified at sentencing that they were found in Nevada by U.S. Marshals in April or May 2009. Thus, the travel expenses covered a period of slightly more than four years, during which time there were ongoing court proceedings or the children were missing. The trial court awarded Brian the lowest average cost of his travel and lodging expenses, and the amount awarded equates to about \$2,500 for each of four years. Brian's testimony about his travel expenses distinguishes this case from *Jones*, where the reviewing court could not determine from the record that a bank's losses exceeded \$50, in contrast to the \$1,939.98 awarded by the court, and the State also conceded that the amount of restitution should be modified. *Jones*, 206 Ill. App. 3d at 482. Here, Brian's testimony provided sufficient evidence for the trial court to award Brian travel expenses related to searching for and returning the children, and it did not abuse its discretion in doing so. As we have found no error in the trial court's award of expenses, there can be no plain error. See *People v. Calhoun*, 404 Ill. App. 3d 362, 382 (2010).

¶ 100

III. CONCLUSION

¶ 101 For the reasons stated, we affirm the judgment of the Kane County circuit court.

¶ 102 Affirmed.