

intentionally. On January 3, 2008, an investigator from the St. Clair County sheriff's department asked the defendant to come to the sheriff's office to see if she could help them determine how the fire had started. Investigator Mike Hundelt testified that the defendant drove herself to his office, was not a suspect, and in his opinion, was not in custody and was free to leave anytime. Accordingly, she was not read her *Miranda* rights. On cross-examination, Hundelt testified that although the defendant was never told that she could leave the interview, she was also not told that she had to remain during it.

¶ 5 A videotape recording of the interview was made and was admitted into evidence at the hearing on the defendant's motion to suppress. Because the contents of this and other recordings are directly relevant to the issues raised by the defendant on appeal, we shall discuss the recordings in some detail. In the recording, the defendant is questioned for approximately 20 minutes about the events of the day before, then the two investigators (Hundelt and his supervisor) excuse themselves from the room and leave the defendant alone. Approximately 15 minutes later, still alone, the defendant says aloud that she needs to get back to her kids, then exits the room, leaving the door open behind her. A voice that sounds like that of the defendant can be heard crying in the hallway several minutes after that. Approximately 15 minutes later, the defendant and the two investigators return to the room, along with an investigator from the State Fire Marshall's office, Greg Vespa. Hundelt subsequently testified that no contact between the defendant and the investigators occurred during the approximately 30 minutes she was left alone, that the hallway area was very open, that no one was "watching" the defendant, and that she could have left the building at any time she wished to leave. As she reenters the interview room, the defendant states that she needs to get back to her kids, and Hundelt tells her that they will go back into the room and "end it." Additional conversation then occurs, with the defendant answering questions and volunteering information about her grief over the loss of her husband and her home. Vespa

then explains that he is having difficulty understanding the layout of the house, and asks the defendant if she can help him understand that, to which the defendant nods and answers "Sure." Throughout the interview, the defendant appears at times to be distraught over the death of her husband and the loss of her home, while the demeanor of the investigators is consoling and accommodating, with them repeatedly stating that they do not understand what happened at the house and need her help to try to figure it out. The defendant then spends a substantial amount of time helping Vespa create a detailed floor plan of the house, describing to him the various firearms Erick owned, and constructing a time line of what she did the previous day. She is visibly less distraught during this portion of the interview, and at no time during the interview does she appear to have difficulty understanding or answering questions. Subsequently, at approximately one hour and 45 minutes into the interview, the defendant receives a cell phone call, which she states is from her daughters; she answers the call, listens briefly, then tells the caller, "No, it's fine *** let me finish up what I'm doing here, and call back." She then returns to conversing with the investigators about the contents of the house, electrical issues with the house, and what she did in the days before the fire.

¶ 6 At approximately two hours and 15 minutes into the interview, Vespa asks the defendant if she believes Erick might have committed suicide. A discussion of the couple's marital problems, and Erick's overall mental health, ensues. Vespa then asks if Erick had any enemies, or anyone who was mad at him. The defendant states that he did not. Approximately five minutes later, Vespa asks for consent to return to the home to try to determine the cause of the fire, and the defendant agrees to sign a form to allow him to do so. When Hundelt stands up to go get a consent form for Vespa, the defendant states that she needs to go in the hallway because her mother-in-law is coming to the sheriff's office, and because it is cold in the interview room. Hundelt and Vespa, still consoling and accommodating, tell her that is fine, and all three leave the room. Hundelt testified that the

defendant subsequently signed the consent form in the hallway, off-camera, then left, stating to Hundelt that she needed to be home with her kids.

¶ 7 An autopsy performed later on January 3, 2008, indicated that Erick had been shot in the chest and had died from that injury. It also indicated that after his death, Erick was again shot, this time in the head, and that the fire occurred after both shootings. On January 4, 2008, officials sought to again question the defendant. When they learned that she was at the local office of the American Red Cross, they sent a patrol car to pick her up and bring her to the sheriff's office. She rode in the front seat of the car and was not handcuffed. The interview that followed was conducted initially by two investigators, Chris Coyne and Tim Schrader. Coyne testified that although he picked up the defendant at the American Red Cross, they did not discuss the case until they arrived at the sheriff's office and the defendant was given her *Miranda* rights. On cross-examination, Coyne stated that he advised the defendant of her *Miranda* rights because he "intended to ask her questions specifically surrounding the events that led to the death of her husband."

¶ 8 A videotape recording of the January 4, 2008, interview was made and, like the previous recording, was admitted into evidence at the hearing on the defendant's motion to suppress. In it, Coyne tells the defendant that the investigation into the fire has become a homicide investigation and that he wants to help her and her family find answers to what happened. He tells her that there are many "procedural" steps they must follow, which is why she was not allowed to smoke in the patrol car on the way to the sheriff's office. He then tells her that before he can question her he must advise her of her *Miranda* rights, stating that it is "again, not a big deal, just a procedural thing." The defendant responds, "This is a big deal, because I don't understand this." She states that the previous day when she was interviewed, she was not read her rights or asked to sign an acknowledgment that she received her rights, to which Schrader responds, "Yesterday we didn't have the information

that we have today," and that everyone who would be subsequently interviewed during the homicide investigation would be read their *Miranda* rights. The defendant then states she is confused and feels sick. Coyne tells her he cannot imagine how she feels, then begins to go over the rights acknowledgment form with her. As he reads each right to her, he asks her if she understands that right, and the defendant nods her head that she does. At Schrader's direction, she then places her initials after each right and dates and signs the form.

¶ 9 The investigators begin to question the defendant in a cordial manner. At approximately 40 minutes into the interview, after being asked by Coyne if she can think of anyone who might have wanted to harm Erick, the defendant states that she does not understand "any of this" and that she wants to go home and be with her kids. Coyne responds, again in a cordial manner, that he understands but that the investigators are trying to do a good job for the defendant and "really need" her help. The defendant responds that she understands but that she has helped all she can and wants to be with her kids. She then asks, "Can I go with my kids?" Coyne does not answer her directly but tells her that he understands; when the defendant says she is hot, Coyne offers that she could take her coat off. He then asks if he can get the defendant a soda; she responds, "No, I want to leave." Coyne then remarks that the defendant seems agitated, which she denies. When Coyne asks if she is angry with the investigators, she says she is not but that she needs to be with her kids. Coyne responds, "I know you do," and tells the defendant that the investigators have "a lot of good guys" working on the case, because he would love to be able to sit down with the defendant and "put the pieces of the puzzle together" for her; he states that she deserves closure, as does her family, and he reiterates that he understands how hard everything is for her; he then tells her that "time is of the essence" and that she is "the biggest ally that we have to piece this puzzle together." The defendant then asks where her husband's body is, and Coyne tells her that he does not know. The defendant then volunteers that Erick's cousin

told her that an investigator visited him late the night before to ask who Erick went hunting with. Coyne responds affirmatively, and the defendant states that she wishes the investigators would tell her who Erick went hunting with, because she does not know. She and Coyne continue to discuss the defendant's desire to both help the investigators and be with her kids. The interview continues for approximately one more hour, during which the defendant periodically states that she wants to go home, wants to be with her kids, and wants to leave. Coyne subsequently testified, at the hearing on the defendant's motion to suppress, that he did not interpret the defendant's statements as a desire to end the questioning, or a desire to have an attorney present, but rather her expression of the fact that she really wished she could be with her kids instead of speaking with investigators about the death of her husband.

¶ 10 At approximately one hour and 39 minutes into the interview, the defendant asks: "Can I go home now? I need to be with my kids," to which Schrader responds that she can leave but that investigators are "gonna probably have to talk to you again." The investigators then cease questioning the defendant and prepare to leave the room. As they get up to leave, Coyne asks the defendant to "sit tight for us, if you would." The defendant remains seated after the investigators leave the room. Less than two minutes later, Hundelt enters the room and asks if he can ask "a couple more" questions. The defendant hesitates, tells Hundelt she needs to be with her kids, then agrees to speak with him "if it's only gonna be a minute or two." Hundelt then confronts the defendant with the "problems" with the story she has been telling investigators, including the fact that she was apparently the last person to see Erick alive and the fact that witnesses placed her car at the house less than 15 minutes before the house was fully engulfed by flames, a fact that did not match her story that when she left the house it was "pitch dark." When the defendant again asks to leave, Hundelt agrees that she can, stands up to leave the room, and says "we're gonna get you out of here." However, he

returns several minutes later and tells the defendant that, at the direction of Hundelt's supervisor, she is being placed in custody. He then tells her that he needs to go over her *Miranda* rights with her again before asking her any additional questions.

¶ 11 They discuss other matters for a few minutes, then Hundelt reiterates that he wants to talk to the defendant about the murder but that he cannot do so without first going over her rights with her again. He subsequently does so, stating each right aloud, and as he does so, the defendant states that she understands each right, and she initials the form provided to her acknowledging that she has been informed of each right and understands it. However, the defendant refuses to sign the form at the bottom. Hundelt tells her that even if she does not sign the form, she can still talk to him about the murder if she wants to, but that "there's no forcing [her] to talk." The defendant then states that she will not answer any more questions until she is allowed to talk to her mother-in-law and to smoke a cigarette. Hundelt tells her he will try to arrange it, then leaves the room. He returns, tells her the investigators are trying to reach her mother-in-law for her and that he is trying to figure out where she can go to smoke, then leaves again. When he returns, Hundelt takes the defendant to the roof of the building, where she can smoke.

¶ 12 An audiotape recording of the conversation between Hundelt and the defendant on the rooftop was made and was admitted into evidence at the hearing on the defendant's motion to suppress. During that conversation, the defendant asks if she should get a lawyer. Hundelt states that he cannot answer that and that it is up to the defendant to decide. She also asks if she is being charged, and Hundelt explains that she is under an "investigative hold" for up to 48 hours while the investigation is completed and that only the State's Attorney can decide if she will be charged. The defendant then continues to speak with Hundelt. During her narrative of the events surrounding the murder, she insinuates that her drug dealer, Lance Schanter, might have killed Erick. She continues to deny her involvement in the murder.

¶ 13 When Hundelt and the defendant returned to the interview room, their conversation was again recorded on videotape. Hundelt begins by asking the defendant if he threatened her in any way to get her to talk to him, and she states that he did not. They then speak again of the events surrounding the murder, with the defendant answering questions and volunteering her own narrative of the events, including references to Schanter's purported involvement in the murder. Subsequently, she mentions that she might need legal counsel, at which point Hundelt tells her that is a choice she has to make and that if she does not want to talk to him anymore, she just needs to tell him that she does not want to talk anymore or wants an attorney. She nevertheless continues speaking to Hundelt. After approximately 25 minutes of conversation, she again asks to smoke a cigarette, and she and Hundelt return to the roof.

¶ 14 During the second rooftop conversation, also recorded on audiotape and admitted into evidence, the defendant confesses that Schanter gave her a handgun that Schanter legally owned, that Schanter took down her FOID card information so that he could claim he "sold" her the gun, and that she, not Schanter, went to her house and killed Erick. She claims, however, that she did so in self-defense, after Erick "came at" her. She confesses that she later returned to the home and started the fire.

¶ 15 After the defendant finished smoking, she and Hundelt returned to the interview room and were again recorded on videotape. Hundelt again begins the videotaped session by asking the defendant if while they were out of the room he forced her to talk to him or coerced her in any way, and the defendant again agrees that he did not. The defendant then reiterates her confession of how the shooting and fire occurred. Approximately 20 minutes later, after the defendant winds up her narrative, Hundelt leaves the room, apparently to get the defendant another soda. Left alone in the room, the defendant states aloud, "I should have had a lawyer." When Hundelt returns, a little over 10 minutes later, and asks the

defendant if she wants any food, she says that she does not but that she feels "like I should have had a lawyer." Hundelt reminds her of their previous conversations about that, and the defendant agrees that she knows it was her choice, but says, "I feel like I should have one now." Hundelt again tells her that is her choice, then she states, "It doesn't matter now," and recounts again her involvement in the murder, adding no new details but expressing regret and remorse for what she did. Subsequently, she states that she thinks she needs to speak with an attorney because she needs to know what is going to happen next and "you guys can't answer that." Hundelt explicitly asks if she is requesting to speak with an attorney, then responds to her questions about what is going to happen by explaining to her the various possibilities and the role of the State's Attorney in each one. The defendant eventually states that she does want to speak with an attorney, and Hundelt tells her that he does not want to ask her any more questions if that is how she feels, because he does not want her to feel as if her rights have been violated. When asked, the defendant states that she does not feel as if her rights have been violated. Although the defendant made additional statements about the crime, none of which added details she had not stated before, those statements were eventually suppressed by the trial court and are not at issue in this appeal.

¶ 16 Following a jury trial at which the unsuppressed statements made by the defendant, described above, were presented to the jury, along with live testimony, including that of the defendant, the defendant was found guilty of first-degree murder. At the defendant's sentencing hearing, she stated that she could not "proceed with sentencing" with her trial counsel still representing her. The trial judge declined to continue the hearing, and the defendant stated that she could not proceed *pro se* and therefore had "no choice" but to go forward with her trial counsel. She was sentenced to 33 years in prison, and this timely appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 17

ANALYSIS

¶ 18 On appeal, the defendant first contends the trial court erred when it denied the defendant's motion to suppress certain statements she made during her interviews with investigators. Specifically, the defendant contends that during both her January 3, 2008, interview and her January 4, 2008, interview, she was in custody, and that she invoked her right to remain silent, but that her invocations "were ignored and questioning continued"; she also contends that twice during her January 4, 2008, interview she requested an attorney but was ignored on this point as well.

¶ 19 Because the circumstances surrounding her January 3 interview and her January 4 interview were very different, we shall address each interview separately, beginning with the January 3 interview. The defendant contends she was "in custody" during the January 3 interview, that she should have received her *Miranda* rights, and that the questioning of her should have ceased when she "invoked her right to remain silent." To determine if a defendant is in custody, and therefore if *Miranda* warnings are required, this court must make two discrete inquiries, asking what the circumstances surrounding the interview were and then asking, given those circumstances, whether a reasonable person would have felt free to terminate the interview and leave. *People v. Slater*, 228 Ill. 2d 137, 150 (2008). Among the factors we consider when examining the circumstances surrounding the interview are the following:

"(1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Id.*

¶ 20 We have described at length above the circumstances surrounding the January 3 interview and the contents of that interview. Although the defendant contends that the recording of the interview demonstrates "that no reasonable person would have thought that she was free to leave the second floor interrogation room of the Sheriff's Department," we do not agree. As the State points out, the defendant drove herself to and from the interview, was questioned in an unlocked room, and was left alone in that room for an extended break in questioning, during which she did in fact, without asking permission, leave the room. Hundelt testified that no contact between the defendant and the investigators occurred during the approximately 30 minutes she was left alone, that the hallway area was very open, that no one was "watching" the defendant, and that she could have left the building at any time she wished to leave. He also testified that she was not in custody, nor was she even considered a suspect at that point in time, when authorities did not yet know that a murder had occurred. Moreover, during the questioning, the defendant received a cell phone call, purportedly from her daughters, answered the call, listened briefly, then told the caller, "No, it's fine *** let me finish up what I'm doing here, and call back." It was the defendant who ultimately terminated the January 3 interview, telling Hundelt she needed to be home with her kids. Although, as noted above, the defendant at times seemed distraught during the interview, at no time did she appear to have difficulty understanding or answering questions. Given the circumstances surrounding the interview, and the recording of the interview itself, there is simply no indicia in this case that the defendant herself believed she was in custody on January 3, let alone that a reasonable person would have believed himself or herself to be in custody.

¶ 21 With regard to the defendant's January 4 interview, as explained above, the interview began with the defendant being advised of her *Miranda* rights, with her signifying to the investigators that she understood her rights and then with her initialing and signing a form

acknowledging that she had been advised of her rights and understood them. Although it is true, as the defendant contends, that Coyne told the defendant that the rights advisory was "again, not a big deal, just a procedural thing," he did so in the context of explaining to her the more stringent procedural steps the investigators were required to follow once the case became a homicide investigation. More importantly, when the defendant indicated that she "didn't understand," Coyne went over each right with her until she expressed that she did understand her rights. He did so in a cordial, nonconfrontational manner, and at no point did the defendant state that she felt she was being coerced or that her rights were being violated.

¶ 22 Although the defendant contends she "invoked her right to remain silent," she can point to no statement she made to that effect. Instead, she contends that her multiple statements that she wanted to leave to be with her children were somehow the equivalent of invoking her right to remain silent. We do not agree. Again, the specific facts surrounding the interview, and the specific language used by the defendant and the investigators during the interview, are recited at length above, and we see no reason to repeat them. Suffice it to say that although it is true that there is no magic, talismanic language that must be used to invoke the right to remain silent, we do not believe the defendant's statements that she wanted to be home with her children rather than at the sheriff's department meet the long-standing requirement of Illinois law that a defendant's demand to end an interview "must be specific." See, e.g., *People v. Pierce*, 223 Ill. App. 3d 423, 429 (1991). Indeed, each time the defendant made such a statement, she then nevertheless continued to answer questions and to volunteer information to the investigators, conduct incongruent with a desire to end the interview. As the trial judge pointed out, the January 3 and January 4 interviews were opportunities for the defendant to "build an alibi," and she repeatedly took advantage of these opportunities, trying to cast blame for the murder first on Erick's unknown hunting companions, then on her drug dealer, and trying to otherwise deceive the investigators and

prevent them from learning the truth about what happened to Erick Shephard. Her contention that she was compelled to speak to them against her will and in violation of her rights is disingenuous and unconvincing.

¶ 23 The defendant also contends that at two points during the January 4 interview she requested an attorney but was ignored on this point as well. As the State points out, this argument was never raised in the trial court and is therefore waived. See, e.g., *People v. Pulliam*, 176 Ill. 2d 261, 277 (1997). Waiver notwithstanding, although the defendant mentioned several times during the questioning, recounted at length above, that she might need a lawyer, none of her statements were clear and unequivocal invocations of her right to counsel, as required by Illinois law. See, e.g., *People v. Oaks*, 169 Ill. 2d 409, 451 (1996) (ambiguous remarks such as "Should I see a lawyer?" are insufficient to invoke right to counsel and prevent further questioning), *overruled on other grounds by In re G.O.*, 191 Ill. 2d 37 (2000). Moreover, each time the defendant asked Hundelt if she should speak to a lawyer, he advised her that he could not answer that question and that the decision whether to speak to a lawyer was entirely up to her. When the defendant eventually stated that she did want to speak with an attorney, Hundelt told her that he did not want to ask her any more questions, because he did not want her to feel as if her rights had been violated. When asked, the defendant stated that she did not feel as if her rights had been violated, further evidence that until that point she had not made a clear, unambiguous, and unequivocal request for counsel.

¶ 24 The defendant also contends the trial court abused its discretion when it denied her motion to continue her sentencing hearing so that she could procure new counsel. The defendant cites no cases that support this proposition and accordingly has waived this issue. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an

opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Waiver notwithstanding, as the State points out, the record shows that the defendant was indigent at the time of her sentencing, and it has long been the law in Illinois that an indigent defendant has no right to choose his or her own counsel. See, *e.g.*, *People v. Lewis*, 88 Ill. 2d 129, 160 (1981). Moreover, as the State points out, the trial judge made a finding on the record that the defendant's counsel had served her well at trial, describing counsel's performance as "an aggressive defense." Our review of the record supports this finding, and we find no error in the trial judge's decision.

¶ 25

CONCLUSION

¶ 26 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 27 Affirmed.