

appendix. We deny the State's motion to strike.

¶ 3

FACTS

¶ 4 Defendant and Heather Smith, age 21, were the parents of Ashton Miller, who was three months old at the time of his death. Defendant and Heather were both heroin addicts and they both injected heroin on the day Ashton died. Heather pled guilty to aggravated battery of a child and was awaiting sentencing at the time of defendant's trial. Defendant was tried before a jury during which the following evidence was adduced.

¶ 5 Eddie Lee, fire chief of the Mitchell Fire Protection District, testified that during the early morning hours of October 26, 2011, he responded to a call of a three-month-old not breathing. When he arrived on the scene, he found defendant outside of the home. Lee said defendant was hysterical and told him Ashton was not breathing. Two women were attempting to perform CPR on Ashton. Lee took over CPR, but found no signs of life. An ambulance crew arrived and took over for Lee. Lee said he noticed darkness around Ashton's mouth, nose, and eye area. He also saw bruising and discoloration. Lee tried to comfort the family. Lee never saw defendant near Ashton. Lee testified that in similar situations he has found it difficult to get a parent away from the baby. On cross-examination, Lee admitted that the condition of Ashton's face could have been caused by blood pooling after death.

¶ 6 Joe Sullivan, an emergency medical technician for the ambulance service that responded to the scene, testified that when he arrived the first responders from the fire department were already performing CPR on Ashton. Sullivan and his partner took Ashton to the ambulance to continue CPR. Once inside the ambulance where the lighting is good, Sullivan could see rigor mortis had already set in, and after conferring with a doctor, they stopped resuscitation efforts and contacted the coroner. Sullivan and his partner went back into the house and notified the family there was nothing more that could be done and that they were going to call the coroner. Sullivan testified that Heather became hysterical, while

defendant "did not appear to be very upset *** it didn't seem very appropriate."

¶ 7 Heather testified that she was 21 years old and she started dating defendant when she was 15. She and defendant also had a one-year-old daughter, Emily, when Ashton was born. When Ashton was one month old, he went to live with the Vaughns, defendant's sister and brother-in-law, so Heather could go back to work. Defendant was unable to handle caring for both children while Heather worked. However, after about three weeks, defendant and Heather took Ashton back because they thought the Vaughns were getting too attached to him. At the time of Ashton's death, Heather, defendant, and their children were living in a couple of rooms in the Vaughns' house.

¶ 8 Heather testified defendant did not show affection to Ashton in the same way he did with Emily because defendant believed Ashton was not his child, but his cousin Ryan's child. Heather admitted that she had an affair with Ryan. Defendant called Ashton an "alien," said Ashton was "ugly," and said he looked like Ryan, not him. The State introduced into evidence a picture of Ashton taken when he was approximately one month old which shows Ashton with a black eye. Heather said defendant gave Ashton the black eye when defendant hit him because he would not stop crying. Defendant told Heather to tell people Ashton got a black eye because the dog knocked Ashton off the couch. Heather did as defendant requested and lied to others as to how Ashton got a black eye.

¶ 9 Heather testified that on the day Ashton died, she and defendant picked him up from defendant's mother's house. His grandmother babysat him that day. Ashton did not have bruises on him when they picked him up from her house. Defendant and Heather were arguing and went to an ATM to get money so they could buy heroin. Defendant was belittling Heather and telling her that she and Ashton ruined his life. She said that when defendant got out of the car, she called her father to come pick her up. Her father told her he would call her back in 15 minutes. When he called back, defendant was in the car and she

did not want defendant to know she called her father, so she told her father not to come and get her. Heather testified that she had been doing heroin for approximately two months at the time Ashton died. Heather saw defendant do heroin more than once on the day Ashton died.

¶ 10 According to Heather, both she and defendant were high and were getting ready for bed at approximately 8 p.m. Ashton was fussy and crying and defendant told her she better get him to stop crying. Defendant took Ashton, shook him, and told him to shut up. Defendant also told Ashton he could not stand him and he put his hand over Ashton's face and then put a pillow over Ashton, so the Vaughns, who lived downstairs, would not hear him crying. Defendant then punched Ashton in the "butt." At this point, Heather asked defendant if she could take Ashton downstairs to the Vaughns, but defendant refused because he said the Vaughns babysat too often. Heather then asked if she could call her sister to take him. Defendant allowed Heather to call her sister, but her sister was in Tennessee and was unable to get Ashton.

¶ 11 Heather picked up Ashton from the bed. She testified Ashton was "breathing hard *** like trying to catch his breath." Heather took him into the other room because she did not want defendant to hurt him any more. She testified that she did not take Ashton downstairs because she was terrified of defendant and did not want to cross him. Heather laid Ashton facedown on the couch and then went back into the bedroom to sleep. She did not hear Ashton the rest of the night. Heather woke up around 4 a.m. She said defendant was already awake. They laid in bed and talked for 15 to 20 minutes before she got up to check on Ashton. When she got up to check on Ashton, defendant said, "I hope he's not dead." Heather found Ashton unresponsive and purple. She started screaming that he was dead and went downstairs and woke everybody.

¶ 12 Heather's sister-in-law came upstairs and performed CPR on Ashton while Heather

was on the phone with paramedics. Heather's 9-1-1 call was played for the jury. Heather testified defendant was downstairs when the paramedics arrived and kept asking the paramedics why Ashton's face was purple. When no one was around, defendant told Heather he was scared he did that to Ashton's face. Heather admitted that when she was questioned by police the following day, she did not tell police what she saw defendant do to Ashton. She merely said that she put Ashton to bed on the couch. The following week, defendant and Heather went to court concerning custody of Emily. As they were walking into court, Heather told defendant that he knew what he did to Ashton and defendant asked her if she was going to tell and she said, "no."

¶ 13 The first time Heather was interviewed, she was in drug rehab at Touchette Regional Hospital attempting to get off heroin. During the second interview, Heather admitted she laid Ashton on the couch incorrectly. She laid him facedown despite the fact that her brother-in-law told her never to do that. During the second interview, she told the police about defendant's mistreatment of Ashton, including shaking, hitting, and placing a pillow over him.

¶ 14 On cross-examination, Heather admitted to shooting heroin every day for two months prior to Ashton's death. Originally, during her first interview with police, Heather denied doing drugs. She further admitted that she shot up twice the day Ashton died, once when she and defendant picked Ashton up and once when they got home. She said defendant started doing heroin before her and he encouraged her to try it, saying if she did they would not argue anymore. She further admitted she told the police heroin made her lazy and she did not bathe Ashton as much as she should have.

¶ 15 After Ashton died, Heather and defendant moved out of the Vaughns' house and went to live with friends because Heather's mother would not allow defendant to move in with her. Heather said defendant threatened to commit suicide, so she stayed with him until he entered

detox. Heather admitted Ashton was not in the same position he was in when she laid him on the couch. She said his face was buried in the cushions when she found him, and he had scooted up a bit. Heather admitted that she did not tell anyone about defendant's mistreatment of Ashton on the night he died until her second interview with police when the police showed her that she had been charged with first-degree murder for laying Ashton on his stomach when she knew she was not supposed to do that.

¶ 16 On redirect, Heather testified that she lied about what happened to Ashton because she was scared defendant would kill her if she told the truth. She said defendant beat her every day for five years. She said her family routinely took photographs of the injuries inflicted upon her over the years. She finally told police the truth during the second interview because defendant was not outside waiting for her. Heather testified that she did not murder Ashton and that she never hit Ashton. She explained why she pled guilty to aggravated battery of a child: "Because I'm his mother and I should have done something more."

¶ 17 Detective Carol Presson, an investigator with the Madison County sheriff's department, testified that she attended an autopsy of Ashton on October 26, 2011, at 10 a.m. and interviewed defendant, Heather, and other family members. She first interviewed defendant and Heather on October 27, 2011. The second interviews took place on November 13, 2011. The interviews were recorded. Presson said Heather was reluctant to say what happened until she was shown her indictments for first-degree murder and aggravated battery of a child. After the police showed her the indictment, Heather said, "I don't know if it can help me," and then proceeded to implicate defendant. Presson said she checked Heather's father's cell phone bill and it did not indicate that Heather called him from defendant's phone as Heather claimed to have done on the date of Ashton's death.

¶ 18 Presson testified that Heather had a black eye during the first interview. Presson

further testified that during the second interview, after she showed Heather the indictment, Heather became more believable. Heather's demeanor changed, her eye contact was better, and she stopped repeating the detective's questions.

¶ 19 Dr. Raj Nanduri, a board-certified forensic pathologist, performed an autopsy on Ashton on October 26, 2011. Dr. Nanduri noted a bruise on the right side of Ashton's head, which occurred right around the time of death, as evidenced by the lack of inflammation around the bruise. According to Dr. Nanduri, if there is inflammation, it means the bruise has been there longer. Dr. Nanduri testified the bruise was the result of a blow or compression of some sort which resulted in injury to soft tissue and caused blood to come out, which in turn caused the bruise. Dr. Nanduri noted that there were numerous abrasions or scratches on Ashton's face and ears. She said that the scratches were similar to what would occur if a baby scratched itself with its nails, but in this instance, Ashton did not do it to himself because the scratches were too deep, well defined, and large to have been caused by Ashton. Dr. Nanduri specifically testified as follows:

"[S]o this kind of tells me that there is something, some kind of pressure or pressure being applied to the face and we do see them in suffocation type of deaths where somebody tries to prevent a child from breathing or prevent a child from crying or something to that affect. Some—the hand has been applied to the face to keep the child quiet."

Dr. Nanduri said the abrasions were inflicted near the time of death and reiterated that the abrasions were not inflicted by Ashton because he was too small to make those abrasions on himself.

¶ 20 Dr. Nanduri also found a bruise under Ashton's armpit and other bruises on his body, all of which occurred near the time of death. Dr. Nanduri did not notice any bruising on Ashton's back during his external examination, but she saw a bruise around the right buttock

area once she did an internal exam. Dr. Nanduri said the bruise did not show up externally because the buttock has a lot of fat. She also said this bruise occurred near the time of death and was consistent with somebody punching or hitting Ashton in the buttock. There was a bruise on the front of Ashton's chest which showed a lot of bleeding underneath the skin. Dr. Nanduri said that bruise also occurred at or near the time of death, but she had some reservations about that because she said it could have been caused by attempts to resuscitate Ashton. She said Ashton's face was blue, but testified that could have been caused by blood pooling after death. Dr. Nanduri said Ashton had no signs of disease or sickness. She estimated that Ashton had been dead anywhere from four to six hours when he was found, give or take an hour each way.

¶ 21 Dr. Nanduri did not believe this was a regular sleep-related asphyxia, which occurs when a baby is laid on its stomach and is unable to get air, due to the abrasions on the face and the bruises on the body. After looking into the events surrounding Ashton's death and hearing what investigators pieced together, Dr. Nanduri believed that Ashton died from suffocation-type asphyxia. Dr. Nanduri classified Ashton's death as a homicide, meaning that the death occurred at the hands of another. She testified that the clues found in the autopsy were in line with what Heather said occurred. After watching Heather's second interview, Dr. Nanduri's suspicions about cause of death were confirmed. While the autopsy findings did not indicate that Ashton died as a result of shaken baby syndrome or a case of sudden infant death syndrome (SIDS) where a child dies and there are no injuries, the injuries to Ashton's body indicate that "somebody beat the child, somebody suffocated the child, somebody tried to harm the child to keep the child from crying excessively or doing whatever the child does." Dr. Nanduri opined that there was not an hour gap in the time in which Ashton was hurt, put down, and passed away, but rather all of these things happened within approximately 10 minutes of each other.

¶ 22 Lyndon Smith, Heather's father, testified that he learned of Ashton's death at 7:45 a.m. on October 26, 2011, when defendant called him to tell him Ashton died. Smith specifically asked defendant if Ashton died of SIDS, and defendant replied Ashton did not die from SIDS, but suffocated. Smith testified that on one occasion prior to his death, Ashton had a black eye and defendant told Smith the dog caused the black eye. Smith said he was not aware his daughter was doing drugs prior to Ashton's death, but was aware defendant was doing heroin because he went with defendant four or five times to purchase it and use it with him. Smith confirmed that Heather called him on the evening of October 25, 2011, because defendant was being mean to her and wanted Smith to come get her. As Smith was trying to arrange for a ride for Heather, Heather called back and Smith stopped trying to make arrangements to get her a ride.

¶ 23 Kimberly Smith, Heather's sister, testified she saw Ashton approximately once a week while he was alive. About six weeks prior to his death, Ashton had bruises on his face. A copy of the picture she took of Ashton with the bruises was introduced into evidence. She thought the bruises looked like they were caused by fingertip pressure to Ashton's head. Approximately three weeks before he died, Kimberly took another picture of Ashton which showed him with a black eye and scratches on his face. That photo was also introduced into evidence.

¶ 24 On October 25, 2011, Kimberly received a phone call from Heather in which Heather asked her to come get Ashton. Kimberly was on her way home from Tennessee and was unable to get Ashton. Kimberly said her family's relationship with defendant was not good. She saw Heather with a black eye on "several" occasions. A picture of Heather with a black eye taken approximately a year earlier was introduced into evidence. The black eyes were caused by defendant. Kimberly testified she heard defendant threaten to hit Heather when she went to pick up Ashton and Emily. Defendant and Heather argued frequently. Kimberly

never reported the abuse because she was afraid she would not get to see Emily and Ashton.

¶ 25 Kimberly's boyfriend, Chad Runnels, testified that he watched Ashton and Emily on several occasions and Ashton had injuries on him "quite frequently." On one occasion, Ashton arrived with a black eye, and when Chad asked defendant how Ashton got a black eye, defendant told him the dog had knocked him off the couch. In the 18 months he had been dating Kimberly, he estimated he saw Heather with eight black eyes.

¶ 26 Johnny Washington, an inmate at the Madison County jail awaiting charges on six felony counts involving sexual assault of a child who was facing the possibility of life imprisonment, testified for the State. He and defendant were on the same cellblock for a period of time during which they had two conversations concerning Ashton's death. During the first conversation, defendant told him that his mother kept Ashton the week before he died, but they picked him up and then shot up some heroin and when Heather woke up at three in the morning and checked on Ashton and started screaming defendant told Washington he knew then that Ashton was dead on the couch. Defendant told him that Ashton had bruises on his "ass" and chest and on his side. Defendant said he could have put the bruise on his "ass." Defendant told Washington that if Heather kept her mouth shut they would not be in all this trouble.

¶ 27 Washington said defendant initiated the conversation with him because he was scared of pathology tests that were being performed on Ashton. During Washington's first conversation with defendant about what happened to Ashton, defendant said he "was so fucked up" he did not know what happened. During the second conversation, Washington asked defendant if he killed Ashton, and defendant replied, "I was fucked up, but I know I did." Defendant told him that every time he looked at Ashton, he thought of his cousin Ryan and even when Heather was doing CPR on Ashton, he looked over her shoulder and told her to "leave him the fuck alone." Washington denied any compensation or deal with the State

in exchange for the testimony. Washington said he was testifying because his own baby died in 1990. Washington wrote letters to his attorney in which he outlined his two conversations with defendant. Those letters were introduced into evidence.

¶ 28 The defense made a motion for a directed verdict, which the trial court denied. The defense offered no evidence. After closing arguments, the jury returned a verdict of guilty. The trial court originally imposed a sentence of 35 years, which was later reduced to 30 years. Defendant now appeals.

¶ 29

ANALYSIS

¶ 30 The issue raised by defendant on appeal is whether the State proved him guilty beyond a reasonable doubt. Defendant contends he was not proven guilty beyond a reasonable doubt because the evidence showed Ashton died from rebreathing carbon dioxide as he slept on his stomach on a couch, and if anybody is responsible for Ashton's death it is Heather because she was the person who placed Ashton on the couch facedown, despite having previously been warned not to do so. Defendant insists that the evidence showed the wounds and bruises on Ashton's body were not the cause of Ashton's death and his statement to inmate Washington was nothing more than a general expression of guilt, not a confession. Defendant also asserts that the "conjecture of the pathologist as to whether Ashton was murdered rather than killed through Heather's negligence should carry no weight." We disagree.

¶ 31 A person is guilty of first-degree murder where he or she, with knowledge that his or her acts creates a "strong probability of death or great bodily harm," kills another. 720 ILCS 5/9-1(a)(2) (West 2008). Knowledge requires conscious awareness that one's conduct is practically certain to cause a particular result. See *People v. DiVincenzo*, 183 Ill. 2d 239, 249-50, 700 N.E.2d 981, 987 (1998). The resolution of a defendant's guilt or innocence depends on the credibility of the witnesses and the weight given to their testimony. In

general, the determination of issues is left to the trier of fact, in this case the jury. *People v. Ellis*, 74 Ill. 2d 489, 496, 384 N.E.2d 331, 334 (1978).

¶ 32 It is only when we find the evidence to be so improbable or unsatisfactory as to raise a serious doubt about a defendant's guilt that we should we reverse the conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 244, 920 N.E.2d 233, 240 (2009). The standard of review in a case challenging the sufficiency of the evidence has been set forth by our supreme court in *People v. Collins*, 106 Ill. 2d 237, 478 N.E.2d 267 (1985):

"When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. As the United States Supreme Court observed in *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 61 L. Ed. 2d 560, 573, 99 S. Ct. 2781, 2789, 'the relevant question 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.' The court went on to note that, '[o]nce a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution.' (Emphasis in original.) 443 U.S. 307, 319, 61 L. Ed. 2d 560, 573, 99 S. Ct. 2781, 2789." *Collins*, 106 Ill. 2d at 261, 478 N.E.2d at 277.

With these principles in mind, we find sufficient evidence in the record to support the jury's verdict.

¶ 33 In the three months he was alive, Ashton suffered repeated abuse at defendant's hands. Defendant did not think he was Ashton's biological father and believed Heather and Ashton ruined his life. Defendant called Ashton names and did not show him affection. He gave Ashton a black eye, but lied and told people Ashton suffered that injury when the dog knocked him off the couch. Heather, her sister Kimberly, and Kimberly's boyfriend all

testified about injuries Ashton suffered over the course of his short life at the hands of defendant.

¶ 34 On the night before he died, defendant and Heather both shot up heroin. Defendant told Johnny Washington, an inmate at the jail, that he was "fucked up" due to heroin, but still he knew he killed Ashton. Heather described in detail how defendant mistreated Ashton on the night of October 25, 2011. Ashton was fussy and crying and defendant told Heather she better keep him quiet. Defendant took Ashton and shook him and told him to shut up. He told Ashton he could not stand him and put both his hands and a pillow over Ashton's face. He also punched Ashton in the buttocks. When Heather picked up Ashton to go lay him on the couch, Ashton was breathing hard like he was trying to catch his breath.

¶ 35 An autopsy performed on Ashton's body revealed injuries consistent with Heather's testimony. Dr. Nanduri found bruises underneath Ashton's armpit and other bruises on his body, all of which occurred near the time of Ashton's death. There was a bruise on the right side of Ashton's head, which Dr. Nanduri said occurred near the time of death as evidenced by the lack of inflammation around the bruise. Dr. Nanduri also testified that there were several scratches on Ashton's face, which were too deep, well defined, and large to have been caused by Ashton. Dr. Nanduri believed the scratches were caused by someone trying to prevent Ashton from breathing or crying by placing a hand over his face. Dr. Nanduri testified the abrasions also occurred near the time of death. Dr. Nanduri found a bruise on Ashton's buttocks during an internal examination, which was consistent with Heather's testimony about defendant hitting Ashton in the "butt."

¶ 36 Due to the abrasions and bruises found on the body, Dr. Nanduri did not believe Ashton's death was regular sleep-related asphyxia. Dr. Nanduri testified that Ashton died from suffocation-type asphyxia and labeled Ashton's death a homicide, specifically stating as follows:

"Well, as I said, this is subtle homicide and the things that I saw, which I don't usually see in sleep-related death, is the bruising of the face, bruising, not bruising, sorry[,] abrasions of the face, to say that there is some pressure being applied there. Bruising to the head. It could be a place where pressure has been applied, so that the head is pushed into something a pillow or bed sheet or bed cloth or whatever that prevented the child from breathing. And then there is additional injuries which indicates that it is not normal for a child to fall. I mean this child is 3 months old. It's not going to fall and sustain some injuries. But still those areas, very inside the armpit, and the sides, those are not normal areas where a child would get injuries even if it falls. So there is some pressure being applied there."

The clues found in the autopsy correlated with Heather's version of events.

¶ 37 Even though Heather testified that Ashton was alive and crying when she laid him facedown on the couch, we do not agree that this means that defendant could not be found guilty of Ashton's murder. Heather testified that Ashton was breathing heavily when she laid him on the couch. Dr. Nanduri testified that Ashton's bruises were inflicted approximately 10 minutes before he died and that the abrasions were also inflicted near the time of death. While neither the abrasions nor the bruises were the cause of death, it is clear that defendant's mistreatment of Ashton took a serious toll on his young body. Dr. Nanduri specifically testified that Ashton did not die of shaken baby syndrome, but this did not mean Ashton was not shaken. Shaking Ashton, covering his face and nose with his hand and pillow, and/or applying pressure to the back of his head and pushing him into something and not allowing him to breathe all contributed to his cause of death. Heather's second interview confirmed Dr. Nanduri's suspicions that Ashton's death was a homicide.

¶ 38 We also find Detective Presson's testimony compelling. Presson testified Heather became more believable after she showed Heather the indictment against her, causing

Heather to finally divulge defendant's mistreatment of Ashton. According to Presson, Heather's whole demeanor changed; Heather's eye contact was better and she stopped repeating the detective's questions. Nevertheless, Heather realized she was not without fault in this matter and pled guilty to aggravated battery of a child.

¶ 39 We are unpersuaded by defendant's argument that this was an accidental death caused by Heather's placement of Ashton on his stomach. The evidence showed that this was not the first time defendant abused Ashton. The State established a pattern of abuse over the course of Ashton's young life. Defendant disliked Ashton because he did not believe Ashton was his biological child. Defendant was well aware that shaking a three-month-old, covering his face with his hands and a pillow, and punching him created a strong probability of death or great bodily harm as evidenced by his statements to both Heather and Johnny Washington. Upon waking up in the early morning and not hearing Ashton fuss or cry, defendant told Heather, "I hope he's not dead." Defendant later told Washington that even though he was under the influence of heroin, he knew he was responsible for Ashton's death. Viewing the evidence in the light most favorable to the State, we find sufficient evidence existed from which a jury could determine that defendant acted with knowledge that his acts created a strong probability of death or great bodily harm as required to prove defendant guilty of first-degree murder beyond a reasonable doubt.

¶ 40 We also note that the State attempted to raise a second issue concerning defendant's sentence; however, the State did not file a cross-appeal. Challenging defendant's sentence is not among the bases for a State's appeal. Ill. S. Ct. R. 604(a)(1) (eff. Feb. 6, 2013). If the State filed a cross-appeal, the cross-appeal would fail on this basis. The State asserts, however, in its appellee brief that defendant's 30-year sentence is void, and defendant should be sentenced to natural life in prison. While a void judgment may be attacked at any time (*City of Chicago v. Roman*, 184 Ill. 2d 504, 510, 705 N.E.2d 81, 85 (1998)), we find no merit

in the State's argument that a natural-life sentence is mandated under the facts of the instant case.

¶ 41 For the foregoing reasons, we affirm the judgment and sentence of the circuit court of Madison County.

¶ 42 Affirmed.