FIRST DIVISION
May 22, 2017

2017 IL App (1st) 141334-U
No. 1-14-1334

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 2741 |
| | ) | |
| RICHARD LYONS, | ) | Honorable |
| | ) | Vincent M. Gaughan, |
| Defendant-Appellant. | ) | Judge Presiding. |

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justice Simon concurred in the judgment of the court.
Justice Mikva concurred in part and dissented in part.

**ORDER**

¶ 1 *Held:* There was sufficient evidence, albeit circumstantial, to support defendant's conviction for first degree murder; the testimony of the State's blood spatter expert was not required to be excluded where a proper foundation was laid for his testimony; the State did not improperly bolster a witness's testimony where the witness testified consistently with his original statement and was never impeached; although the court committed error in failing to properly admonish the jury pursuant to Rule 431(b), the evidence was not closely balanced and thus no plain error resulted; the court did not err in failing to *sua sponte* present the jury with IPI Criminal Nos. 3.11 and 3.15; the trial court properly exercised its discretion in denying defendant's *Chambers* motion where the declarant's statements were not admissions against penal interests; we are unable to address defendant's claims of ineffective assistance of counsel on direct appeal where the evidence necessary to review such claims is not contained in the record; affirmed.

¶ 2 Following a jury trial, defendant Richard Lyons was convicted of first degree murder for

the death of his nine-year-old daughter, Mya Lyons, and sentenced to 60 years in prison. Defendant told police shortly after Mya's death that he found her seriously injured in an alley near his home and drove her to the hospital, where she was pronounced dead from blunt and sharp force injuries. At trial, the State presented this account through the testimony of the officer who took defendant's statement. Defendant did not himself testify or call any witnesses.

¶ 3 According to the medical examiner, the evidence showed that Mya was strangled and received fatal blunt force injuries to the head. Only when she was already dead or dying was Mya then repeatedly stabbed. At trial, the State's theory was that defendant killed Mya by throwing her into a lockbox affixed to a pole behind the Lyons home. He then placed her body in his van and, seated on the floor with her in his lap, stabbed her to cover up the true cause of her death, dumped her body in the alley, staged the area to look like a crime scene, and feigned searching for and discovering Mya later the same evening. The State relied in large part on the opinion testimony of its blood spatter and crime scene reconstruction expert, who analyzed clothing and photographs to conclude that defendant stabbed Mya in his van after she sustained her initial fatal injuries.

¶ 4 In this direct appeal, defendant challenges his conviction on numerous grounds, contending that (1) the evidence was insufficient to establish his guilt beyond a reasonable doubt where the State's theory was convoluted, speculative, and based primarily on dubious blood spatter evidence; (2) an adequate foundation was not laid for the testimony of the State's blood spatter and crime reconstruction expert; (3) the circuit court erroneously allowed the State to bolster the testimony of a key witness with inadmissible prior consistent statements; (4) the court's failure to properly question and instruct potential jurors during *voir dire* regarding the State's burden of proof and the fact that a criminal defendant need not present evidence

constituted plain error; (5) the court's failure to instruct jurors at trial regarding how to evaluate prior statements and eyewitness testimony constituted plain error; and (6) defendant's sixth amendment right to present a meaningful defense was violated when the out-of-court statements of an individual who was initially arrested and investigated in connection with Mya's murder were excluded. Defendant also makes numerous ineffective assistance of counsel arguments that we are unable to address on the merits due to the underdevelopment of the record.

¶ 5 Although it contests all of defendant's other appellate claims, the State concedes that the circuit court did not fully comply with the requirements of Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)). Rule 431(b) governs the questioning of prospective jurors to ensure that they understand and accept the principles that a criminal defendant is presumed innocent, that the State has the burden of proof, and that the defendant has no obligation to present evidence or testify at trial. We conclude, following a thorough review of the record in this case, that the evidence presented at trial was sufficient to support a finding of defendant's guilt beyond a reasonable doubt. We also conclude that the trial court did not err in allowing the blood spatter expert to testify because a sufficient foundation was laid. Similarly, the State had not bolstered the testimony of an eyewitness where the witness's statement was not inconsistent and he was not impeached. Further, we find that although the court below committed error when it failed to fully admonish the jury pursuant to Rule 431(b), the evidence was not closely balanced, thus no plain error resulted. We also find no error regarding the jury instructions, and we do not find defendant's right to present a meaningful defense was infringed upon. Therefore, we affirm defendant's conviction for the first degree murder of his daughter, Mya.

¶ 6 BACKGROUND

¶ 7 At defendant's jury trial, the State presented the testimony of Mya's mother; several of the Lyons's neighbors; the staff on duty when Mya arrived at a nearby hospital; the officers, detectives, forensic scientists, and medical examiner who investigated Mya's death; and the State's blood spatter and crime scene reconstruction expert. Because defendant challenges the sufficiency of the evidence to sustain his conviction, we set forth this testimony and the parties' exhibits in some detail.

¶ 8 A. Mya

¶ 9 1. Ericka Barnes

¶ 10 Mya's mother, Ericka Barnes, testified that Mya was nine years old on July 14, 2008, and had just completed the third grade. Mya lived with Ms. Barnes in Addison, Illinois, but visited her father (defendant) every other weekend. In the summer when she did not attend school, Mya also sometimes stayed with defendant for a week or two at a time. She was staying with him in mid-July 2008. Ms. Barnes testified that, in the early morning hours of July 15, 2008, she received a telephone call from defendant's mother and immediately went to Jackson Park Hospital, where she learned that Mya was dead. Ms. Barnes did not recall seeing defendant at the hospital. She testified that he never approached her or tried to speak to her about Mya or anything that had happened the previous night.

¶ 11 Ms. Barnes testified that she kept in touch with the detectives investigating Mya's death approximately every other week—"like over 100 times"—and went to the block where defendant lived to knock on doors and talk to the neighbors because she "wanted answers" and thought neighbors might be more likely to confide in her than in the police. Approximately one year after Mya's death, Ms. Barnes also returned to the neighborhood to hold a vigil for Mya, which she stated defendant did not attend.

¶ 12 Ms. Barnes testified that, in her experience, Mya had never run away from home or left home without permission. According to Ms. Barnes, Mya was scared of the dark and always wanted the light on at night when she slept.

¶ 13 B. The Night of July 14, 2008

¶ 14 1. Nakia Akins

¶ 15 Nakia Akins testified that she lives at 8449 South Gilbert Court with her boyfriend and her two teenage children. She stated that her house is, like the Lyons home, on the east side of the street, with six houses and two empty lots between the two homes. Although Ms. Akins has been at that address since 2005, she testified that she has lived on the 8400 block of South Gilbert Court her entire life. When asked to describe the block, Ms. Akins stated: "It's a very small-dead-end street, one way in and one way out. Like a small little town, everybody knows everybody. The kids are close. They all grew up on the block together." Ms. Akins testified that there was not much violent crime on the block and there had not been any in the time leading up to Mya's death.

¶ 16 Ms. Akins explained that traffic enters Gilbert Court from Vincennes Avenue to the south and the street dead ends to the north, where there is a wall with Metra train tracks on top of it. She also described the alley that runs parallel to Gilbert Court behind the houses on the east side of the street. The alley does not run all the way to Vincennes Avenue, but makes a turn to connect to Gilbert Court at the south end of the street near Vincennes Avenue. The alley makes a similar turn to connect with Gilbert Court at the north end of the street near the train tracks. Ms. Akins testified that at the time of Mya's death, the vacant lot at the north end of the street was "full of trees and shrubbery" with "a lot of branches that cover[ed] over the alley" where it turned to meet Gilbert Court and the area was "not maintained at all." In her experience, people

did not walk through the alley to go anywhere but sometimes "salvage people" would dump things in the alley at that location. Ms. Akins stated that her children may have ridden their bicycles through the alley but they never stopped to play there.

¶ 17 Ms. Akins stated that she knew the Lyons family in 2008. She said that defendant, whom she identified in court, lived at 8427 South Gilbert Court with his wife, their young daughter, and Mya's half brother Richard Lyons, Jr., who was known as "Fudge." Although defendant's mother had lived with the family in the past, Ms. Akins did not believe she was living with them in 2008. Ms. Akins also knew Mya, and identified Mya as defendant's second child that Ms. Akins saw "periodically on weekends and for extended periods through the summer." Ms. Akins testified that Mya was staying with her father in the days leading up to July 14, 2008.

¶ 18 Ms. Akins was then asked to describe the events of July 14, 2008. She testified that she saw Mya playing outside that evening and, sometime between 10:45 and 11 p.m., Mya came into Ms. Akins's house, arriving shortly after Fudge, who at the time was 12 or 13 years old and friends with Ms. Akins's children. According to Ms. Akins, at some point Fudge's phone rang and he answered it, although she could not hear what was said and did not know who he spoke with. Ms. Akins stated that, following the call, Fudge was "rushing Mya along and saying 'Come on, Mya. We have to go.' " The two left and, one or two minutes later, Fudge knocked on the door to retrieve his hat, which he had left upstairs. Mya stood at the door waiting for him. Fudge again said, " 'Come on, Mya. Let's go,' " and the two ran off along the sidewalk in the direction of their home. Ms. Akins explained that it "stood out" to her and "[i]t was unusual for [defendant]'s children to be out at that time," because they were "usually among the first set of kids to go in the house at the end of the day." She could not say for certain but guessed that on a typical day, Fudge and Mya were home by 9 p.m.

¶ 19 Ms. Akins stated that she and her son had gone to sleep when she was awakened by Fudge knocking on her front door. According to Ms. Akins, Fudge asked if Mya was there and Ms. Akins told him no, that she had last seen Mya leave with Fudge earlier. Ms. Akins asked Fudge what was wrong and he replied: " 'We can't find Mya. That lady says she saw her in the alley.' " Ms. Akins said she told Fudge she would help him find Mya, then she closed the door and went upstairs to get dressed. As she closed the door she saw Fudge's grandmother coming up the sidewalk to meet him at "[a] light trot." The two headed north again on the street back toward the Lyons home. Ms. Akins testified that the time was 11:50 p.m. "Maybe 30 seconds" later, Ms. Akins went out her front door to the gate by the sidewalk and looked down the street in both directions. She stated that it was "very calm and quiet" and she did not see anyone.

¶ 20 "Shortly thereafter," Ms. Akins said she saw defendant's van turn onto Gilbert Court from Vincennes Avenue and enter the alley at the south end of the block. She could not see who was driving but assumed it was defendant because it was his van and she could not recall anyone else ever driving it. Ms. Akins said defendant and his wife each had a car and he only used the van "[p]eriodically *** [l]ike if they were taking all the kids out." She "didn't see them utilize the van for like everyday use." Ms. Akins said that it was not uncommon for the van to be parked either in front of the Lyons home or next to the carriage house behind the home. The van drove down the alley behind her house, "curved around and stopped." Ms. Akins could hear voices, specifically those of defendant and his wife, but could not make out what was said. Ms. Akins then saw the van continue down the alley and heard "[t]ires screeching to a halt" followed seconds later by a scream.

¶ 21 According to Ms. Akins, "[v]ery shortly" after that, the van came out of the alley at the north end of the street by the train tracks, drove down Gilbert Court, and stopped in front of the

Lyons home. Ms. Akins ran down the street and saw defendant was driving the van. She testified that defendant "was screaming and crying and saying 'Let's go. Let's go.' " She recalled defendant's wife, his mother and his mother's boyfriend, and Fudge all standing on the front porch of the Lyons home. According to her, none of them moved or said anything, but a man whom she understood to be defendant's uncle—whom she later learned was named Derrick—came from the back of the house and got in the van on the passenger's side. Ms. Akins could not see if he entered the front or the rear of the vehicle. According to her, none of the other family members moved toward the van or asked any questions. Defendant then drove the van to the end of the street and turned right onto Vincennes.

¶ 22 Ms. Akins testified that, in the days and weeks following Mya's death, she continued to see the Lyons family on the block and saw defendant's other daughter, who was four or five years old, playing outside with the children who lived on the north end of the block, just as she had before Mya's death.

¶ 23 On cross-examination, Ms. Akins was asked about other individuals who were on the block the night of July 14, 2008. She stated that her daughter was out of town that night and her son was "pretty much a homebody so he stays in the house most of the time." She agreed that some new homes had just been built between her house and the Lyons home, but did not believe a security guard was assigned to the homes. She testified that a boy named Howard, who was 12 or 13 years old like her son, lived at the north end of the block near the alley, where other children ranging in age from 7 to 17 also lived. When asked if she knew whether anyone was living in the carriage house behind the Lyons home, Ms. Akins said, "No." She stated that Mya's grandmother was not living in the carriage house at that time but was living "over east somewhere." According to Ms. Akins, there was a fire in the carriage house—she could not

recall when but believed it was the year before—and it "was boarded up and no one was living there." Ms. Akins did not recall seeing a man walking his dog on the block the night of Mya's murder but stated that, as she ran toward the Lyons home, she saw another neighbor, Crystal Rose, exit a parked car where she was sitting with her boyfriend, "Antwon or Anton" on the opposite side of the street from the Lyons home.

¶ 24 Ms. Akins also testified that, although there is now a fence preventing anyone from walking up onto the train tracks from the alley, the fence was not in place on the night in question. According to her, it was also possible for a person at the north end of Gilbert Court to cut through a yard to the next street and walk through an underpass to reach Halsted Street on the other side of the train tracks.

¶ 25 2. Officer June Conway

¶ 26 Officer June Conway of the Chicago police department testified that she lives at 8433 South Gilbert Court, "one house south" of the Lyons home, with a vacant lot separating the two houses. Officer Conway stated that on July 14, 2008, she had been living at that address for approximately a week and a half and did not yet know any of the neighbors. She testified that she was preparing to work the night shift, midnight to 8:30 a.m., and left her home dressed in full uniform around 11:40 or 11:45 p.m. According to Officer Conway, as she began walking to her car, which was parked in front of her home, a dark van pulled up and the man driving it asked her if she had seen his daughter. Officer Conway identified defendant in court as the man she spoke with, although she did not know him at the time. Officer Conway testified that she told defendant that she had seen a girl in a pink shirt running through the alley. According to Officer Conway, defendant did not ask her any additional questions or say anything in response, but simply drove off. Officer Conway then continued to her parked car. Her car was facing north and

she did not see where defendant, who was headed south, went next.

¶ 27 Officer Conway further testified that a boy she now knows to be defendant's son "Junior" or Fudge was also in the van. She did not notice any blood on defendant when she spoke to him and she did not see any blood in the van. Although she was only a few feet from the van, she explained that it was dark both in the van and on the street that night. When asked if she saw the shirt defendant was wearing, she stated: "I don't recall seeing a shirt. I'm sure he had on a shirt [], but I just don't recall."

¶ 28 Officer Conway further testified that she saw the girl in the alley between 6:30 and 7:30 p.m., when it was still light outside. She was on her back porch bringing her pet birds into the house and saw "a little girl to the left just run through the yard into the alley, run from her backyard into the back alley." Officer Conway agreed that the girl was running in what Conway now knows to be the direction of Nakia Akins's home. She stated that neither defendant nor any member of his family ever came to her after the night of July 14, 2008, to ask her for any additional details about what she saw that night.

¶ 29 3. Anton Martin

¶ 30 Anton Martin testified that, on the night of July 14, 2008, he was working as a UPS supervisor. His coworker and girlfriend of approximately three years, Crystal Rose, lived across the street from the Lyons home at 8424 South Gilbert Court. Mr. Martin stated that at approximately 10:30 p.m., he and Ms. Rose left work and drove to her house, arriving there around 10:45 or 10:50 p.m. Mr. Martin parked his car one house north and on the same side of the street as Ms. Rose's house, facing south toward Vincennes Avenue. According to Mr. Martin, Ms. Rose went into her house to check on her children while he remained in his vehicle. She returned about five minutes later and the two sat in the front seat and watched a movie on a

portable DVD player, something they sometimes did when they did not want to wake up Ms. Rose's family.

¶ 31 Mr. Martin explained that he was on the 8400 block of South Gilbert Court "[e]very day pretty much" and knew defendant, whom he identified in court, to be a neighbor of Ms. Rose's. Mr. Martin stated that defendant had three vehicles: a black van, a small car that Mr. Martin assumed was defendant's work car, and a white car used by defendant's wife. Although the vehicles were usually parked in front of the Lyons home, Mr. Martin testified that he also sometimes saw the van parked behind the house. According to Mr. Martin, when he and Ms. Rose arrived at her house on July 14, 2008, he did not see defendant's van parked anywhere on the street.

¶ 32 Mr. Martin further testified that, around 11:05 or 11:10 p.m., he saw Mya and Fudge walking from Nakia Akins's house at the south end of the block. The two went through a gangway on the side of their house and out of view. Mr. Martin stated that, about 15-20 minutes later, he saw Fudge leave the house, cross the street in front of Mr. Martin's car, and go through the gangway next to Ms. Rose's house and onto the next block. A "couple of minutes or so" later, Mr. Martin saw defendant's van exit the alley near the south end of the block, turn onto Gilbert Court heading south, and then turn onto Vincennes Avenue. "About five minutes later," Mr. Martin said, he saw Fudge come back through the gangway adjacent to Ms. Rose's house, cross the street, and enter the front door of the Lyons home. Mr. Martin stated that "[a] couple of minutes after that," defendant's van returned onto Gilbert Court and parked, facing north, on the east side of the street in front of the Lyons home. Defendant got out of the van, went into his house for about five minutes, and then got back in the van. According to Mr. Martin, when defendant went into the house he was wearing "like a white T-shirt" and when he returned, "[h]e

had changed shirts" and "had on a blue shirt." Mr. Martin did not see what defendant wore for bottoms.

¶ 33 Although Mr. Martin initially testified that Fudge returned to the Lyons home before defendant arrived and went inside to change his shirt, on cross-examination he testified that these two events happened in the reverse order:

"Q. At approximately 15-to-20 minutes after seeing Mya and her brother go home, you saw Fudge leave his house again. Correct?

A. Yes, ma'am.

Q. And run to the next block over?

A. Yes, ma'am.

Q. And it's after that that you say you saw the van pull onto the block?

A. Yes, ma'am.

Q. And you say you saw [defendant] park the van?

A. Uh-huh.

Q. And get out of the van?

A. Yes, ma'am.

Q. Wearing a white T-shirt?

A. Yes, ma'am.

Q. And this happened while Fudge is still out of the house?

A. I believe so, ma'am. Yes. I believe that's what I testified to.

Yes, ma'am."

¶ 34 According to Mr. Martin, defendant then drove to the north end of Gilbert Court where it

dead ends at the train tracks, did a three-point turn, drove back past Mr. Martin's vehicle, and made a right turn onto Vincennes Avenue. "About five minutes later," the van turned back onto Gilbert Court, turned into the alley where it connects to Gilbert Court near Vincennes Avenue, and drove slowly down the alley. Mr. Martin could see the van because it still had its headlights on and there was a vacant lot, but lost sight of it as it approached the Lyons home. Mr. Martin testified that "[a]bout ten minutes later" he heard screaming and the van came "screeching out of the alley" at the north end of Gilbert Court near the dead end:

> "He comes to a screeching halt in front of his house and he's screaming 'Mya's hurt. Mya's hurt.' At that time the uncle comes running out of the house and hops in the van and then they take off and go down Vincennes and make a left."

¶ 35 Mr. Martin testified that he, Crystal, and some other neighbors walked to the end of the block to see what was going on, using the light from their cell phones to see because that area was "pitch black." Mr. Martin said he walked into the alley and saw "a pool of blood and some pink flip-flops." According to him, no one touched anything; he and the other neighbors left the alley and called the police. When the officers arrived, they first talked to the neighbors as a group and then interviewed each of the neighbors separately.

¶ 36 Although on cross-examination, defense counsel attempted to draw out inconsistencies between Mr. Martin's testimony at trial and previous statements he gave to the police on either July 14 or 15, 2008, and to an assistant State's Attorney on January 21, 2009, Mr. Martin repeatedly stated that he told the officers and the assistant State's Attorney everything he testified to at trial. Further, Martin agreed with defense counsel that, at some point between 11 and 11:50 p.m., he saw a black Chevy Cavalier drive past him, park in front of a house at the

north end of the street for a couple of minutes and then leave. He also stated that, just after seeing Mya and Fudge, he saw a man walking his dog near the north end of the street. He knew the man was new to the block and, according to Mr. Martin, Mya sometimes played with the man's children.

¶ 37 C. At Jackson Park Hospital

¶ 38 1. Vernetta Robinson

¶ 39 Vernetta Robinson, a registered nurse, was on duty when Derrick Lyons carried Mya into the emergency room at Jackson Park Hospital at approximately 12:05 a.m. on July 15, 2008. When asked to describe Mya's injuries, Ms. Robinson stated: "She had multiple gaping stab wounds to her abdomen. She had a laceration to her neck, the front and the back. It appeared that her throat was cut completely open." Although Mya's intestines were protruding from "a large gaping wound" on the left side of her abdomen, none of her wounds were bleeding. Ms. Robinson stated that, upon further evaluation, "a large number of secretions" were found in Mya's vaginal area.

¶ 40 Ms. Robinson testified that when she tried to start an I.V., she discovered that Mya's hand was "very cold at that point and pale," signifying to her that "she had been lifeless for some time." Mya had no heart rate and was not breathing on her own. An emergency room doctor soon pronounced her dead. Ms. Robinson stated that all of this took approximately 10 to 15 minutes. She testified that Derrick Lyons did not say anything to the hospital staff about treatment that had been administered to Mya and did not stay in the emergency room area while the staff worked on her. Ms. Robinson confirmed that all of the nurses and doctors who worked on Mya wore gloves, Mya's clothing was packaged in sealed bags for the police, a sexual assault kit was prepared for later analysis, and a police officer came to photograph Mya's body before it was

moved. When shown a photograph of Mya at the hospital, Ms. Robinson identified what she believed was "probably bloody sputum" (aspirated blood) at the end of the intubation tube.

¶ 41 Once Mya was pronounced dead, Ms. Robinson went to the waiting area to look for Mya's father, whom she was told was parking his car. Ms. Robinson identified a photo of the hospital and confirmed that the parking spaces directly in front of the doors to the emergency room were marked for ambulance parking only. However, she stated that families still parked there "all the time" in order to get their loved ones inside the emergency room quickly. Ms. Robinson testified that when the doctor told defendant that Mya was dead, he did not ask any questions and she did not see him cry, but he "kind of scrunched up his face" and asked to see Mya. According to Ms. Robinson, defendant was in the room with Mya for 10 to 15 minutes and was joined for a portion of that time by his mother.

¶ 42 2. Irenda Johnson

¶ 43 Irenda Johnson, a nursing supervisor, was also on duty when Mya was brought to Jackson Park Hospital. Ms. Johnson stated that when she stepped in to assist her colleagues who were attempting to resuscitate Mya, Mya showed "[n]o signs of life"—she was cold and had no pulse, blood pressure, or respiration. Ms. Johnson also described Mya's extensive wounds, stating: "She had multiple wounds to her abdomen. She had a wound like to her left chest area and she had a laceration to the back of her neck and she, also, had a laceration like coming around the left side of her neck – back right side to the left side." When Ms. Johnson first saw her, Mya was clothed, wearing a tank top and jeans with a belt. Once she was pronounced dead, her clothing was cut and removed from her body. As part of the sexual assault kit performed on Mya, Ms. Johnson testified that swabs were taken from Mya's mouth and vagina (from which a yellow discharge was observed), her pubic hair was combed, and scrapings were taken from beneath

each of her finger nails. The kit, along with Mya's clothing, was then turned over to the Chicago police. Ms. Johnson confirmed that she and the other nurses wore gloves at all times while working on Mya, and that Mya's body was not cleaned prior to viewing because it was anticipated that a criminal investigation would ensue. A gown was put on Mya's body and she was left in the same bed.

¶ 44 Ms. Johnson further testified that she was in the room with Mya when defendant and his mother came in together to see her. She testified that they left on their own after "[r]oughly maybe five minutes or so." According to Ms. Johnson, defendant never tried to pull down Mya's gown or the sheet covering her to look at her and never asked any questions about Mya's injuries, but instead kept repeating: "Oh. She's so pretty. Oh. She's so pretty. Momma, isn't she pretty?" and closing his eyes. Ms. Johnson later spoke to defendant and she said he "told [her] what happened." According to Ms. Johnson, when she asked him why he did not call 911 and why he drove all the way to Jackson Park Hospital when, according to her, there were other hospitals closer to his home, defendant did not answer her.

¶ 45 3. Detective Luke Connelly

¶ 46 Detective Luke Connelly of the Chicago police department testified that he was called at approximately 1:30 a.m. on July 15, 2008, to go to Jackson Park Hospital and assist with the investigation of Mya's death. There, he first spoke with officers already on the scene and the attending physician. At approximately 2 a.m., Detective Connelly then spoke with Mya's family members. He explained to her mother, Ericka Barnes, that an autopsy would be performed on Mya. Detective Connelly also spoke with defendant, whom he identified in open court, defendant's mother, and Derrick Lyons. These three were then driven to the police station to be interviewed. According to Detective Connelly, at the hospital defendant was "calm" and

"cooperative." He was not crying, and he did not ask the detectives any questions regarding what had happened to Mya.

¶ 47 D. Initial Police Interview of Defendant

¶ 48 Detective Connelly testified that, at approximately 3 a.m. on July 15, 2008, he interviewed defendant at the police station for approximately 45 minutes. He again described defendant as "calm" and "cooperative," and stated that defendant answered all of the questions he was asked. When asked if, at the time of the interview, defendant was a suspect, Detective Connelly stated: "Absolutely not. No."

¶ 49 According to Detective Connelly, defendant stated that he came home from work at approximately 6:15 p.m. on July 14, 2008, and saw Mya playing outside with a friend. At about 7:30 p.m., the family sat down to dinner. Mya was there, with defendant's son "Fudge," and defendant's other daughter. At some point during dinner, defendant's mother also arrived with Derrick, who Detective Connelly said defendant described as "an uncle" who was living with the family for approximately one month. Defendant said that after dinner, at about 9 p.m., Mya and Fudge went to the home of Nakia Akins to visit a friend. Defendant then fell asleep with his wife in the upstairs bedroom.

¶ 50 According to Detective Connelly, defendant stated that he woke up at around 11 p.m. and called Fudge to tell him it was time to come home. He knew that both Fudge and Mya came home because he could hear them talking downstairs. Sometime after that he heard the back door open and close, which he believed was his mother going to her home in the coach house located behind the main house. Defendant stated that at about 11:15 p.m., he came downstairs and saw that Mya was not in her room and that his mother was still in the house, braiding Derrick's hair. Defendant told Detective Connelly that he then went to Fudge's bedroom to ask him where Mya

was, and Fudge said he thought Mya was in her room, but when defendant told him that she was not, Fudge told him that Mya had said she wanted to stay overnight at a friend's house. When asked whether defendant told him the house at which Fudge said that Mya wanted to stay, Detective Connelly responded: "[Defendant] described it as the northeast corner. It's a difficult location to really pin down. It's a slanted street. He didn't know the addresses. He described it as a house on the northeast corner – the northwest corner."

¶ 51 Detective Connelly testified that defendant then told him that he sent Fudge to look for Mya at Nakia's house while he went to the neighbor's house where he thought she might be. He spoke to a girl at that house, as well as someone named Ricky or Eric, but Mya was not there. Defendant then went back to his house to get a flashlight and began looking for Mya in the alley until Fudge returned. He told Fudge to get in the van with him and the two drove around looking for Mya. They initially drove west toward Halsted, but came back because Fudge wanted to check at the Akins home again to see if Mya had returned there. When Mya was not there, Fudge got back in the van and they continued to drive around. According to Detective Connelly, defendant then described his encounter with one of the family's next-door-neighbors, a woman whom he believed was a police officer wearing a badge. When defendant asked her if she had seen his daughter, the woman asked if Mya was wearing pink and stated that she had seen her a few hours earlier in the alley "looking around like she was looking for somebody." Defendant said that he also spoke to another neighbor, a man walking his dog, who asked if he had found his daughter, before driving into the alley at the south end of the block and continuing north up the alley.

¶ 52 According to Detective Connelly, defendant then said that when he came to the northeast part of the alley, just past the turn, he saw Mya's body and immediately put his van in reverse,

running into a pole. He told Fudge to "go get Nanna" (defendant's mother), then drove up the alley, got out and saw that it was Mya, and screamed. He could see that she was injured and told Detective Connelly that at the time, he thought Mya had been attacked by a dog. Defendant stated that he put Mya in the rear of his van, drove out of the alley—almost hitting someone who ran in front of him to avoid his vehicle—and back to the front of the Lyons home, where he saw Derrick outside in front of the house and told him to get in the van. Defendant told Detective Connelly that he didn't know where to go and Derrick told him to go to Jackson Park Hospital.

¶ 53 Detective Connelly further testified that defendant told him that, once they reached the hospital, defendant told Derrick to take Mya into the hospital because "[h]e didn't want to go in." Derrick brought Mya into the emergency room while defendant parked the van. According to Detective Connelly, defendant "said he was hoping that Derrick would come out and tell him that Mya was okay and when he didn't, he went into the hospital and was notified that she had died."

¶ 54 Detective Connelly testified that, at approximately 5 or 6 a.m. on July 15, 2008, defendant and Derrick were photographed at the police station wearing the clothing they wore when they arrived at the hospital. He identified for the jury the two photographs that were taken. In one, defendant is wearing a blue short-sleeved shirt and matching blue shorts and in the other, Derrick is wearing a white T-shirt and jeans. On cross-examination, Detective Connelly agreed that he did not call an evidence technician to photograph the men's clothing before they left the hospital, only a single photograph of defendant was taken, and no clothing was collected as evidence. Detective Connelly was aware that Mya had been transported to the hospital in defendant's van, which was still parked at the hospital. He requested and was voluntarily given keys to the van by defendant so that it could be photographed. According to Detective Connelly,

the photographs were taken and the keys were returned to defendant, who took the van home.

¶ 55 E. Police Investigation

¶ 56 1. Sergeant Augustine Salgado

¶ 57 Sergeant Augustine Salgado testified that he was working the midnight shift on July 14, 2008, and responded to a call from a citizen to come to the 8400 block of South Gilbert Court. At approximately 1:10 a.m. on July 15, Sergeant Salgado turned onto Gilbert Court from Vincennes Avenue and drove to the end of the block where the street dead ends, exited his vehicle, and met Ms. Akins, who was coming out of the alley. Sergeant Salgado stated that the street lights where the alley met Gilbert Court were not working, the area was "completely dark," and he would not have been able to see anything in the alley without his flashlight. Sergeant Salgado testified that he entered the alley with Ms. Akins, saw a pool of blood and some pink sandals in the middle of the alley, called for additional units to respond, and returned to his car for crime-scene tape to begin taping off the area. He described the alley as "overgrown by weeds and [with] a lot of debris around."

¶ 58 On cross-examination, Sergeant Salgado acknowledged that across Gilbert Court to the west was another alley that was not part of the area he secured. He stated that he was at the scene "[t]he whole night" and did not see any other police officers searching or securing that area.

¶ 59 2. Officer David Ryan

¶ 60 Officer David Ryan, a forensic investigator with the Chicago police department's mobile crime lab, testified that at approximately 2 a.m. on July 15, 2008, he was assigned to respond to the scene of a homicide on the 8400 block of South Gilbert Court. He and his partner drove to the location and met with other officers already on the scene. Officer Ryan testified that the two streetlights in the area near where the alley joined the north end of Gilbert Court were not

working and "[i]t was pitch black." According to him, the embankment for the railroad tracks rose 25 to 30 feet on one side, a vacant lot was on the other side, and the area was "like a jungle," with overgrown vegetation and weeds. These conditions continued until the short stretch of alley turned to run north and south behind the homes on the east side of Gilbert Court. Forty to fifty feet from the turn, a utility pole with a light mounted on it provided some light to this portion of the alley. Officer Ryan explained that a bus yard borders the alley to the east and is separated from it by a four-foot-high concrete wall with an eight-to-ten-foot-high chain-link fence mounted on top of it. The alley continues south back out to Gilbert Court, almost at Vincennes Avenue.

¶ 61 Officer Ryan further testified that, in the dark portion of the alley to the north, he observed a dry bloodstain, a larger pool of blood a little further east, and, 16 or 18 feet further on, some drops of blood. According to Officer Ryan, other than those three locations, he saw no other blood anywhere in the alley. Near the large pool of blood there was a pair of "pink clog-type sandals, little girl sandals, that were what appeared to be placed on the pavement near the blood." When asked to describe what he meant by "placed," Officer Ryan explained that the sandals "were sitting the same direction just slightly apart." Officer Ryan testified that he also found two pink hair barrettes in two separate locations closer to the alley entrance at Gilbert Court.

¶ 62 Officer Ryan testified that he was on the scene for approximately two hours. He explained in detail how he marked the locations of various objects, took photographs and videos, and collected physical evidence in the alley, including the pink clogs, the barrettes, and swabs of what appeared to be blood. He and the other officers searched the north and east sections of the alley, the vacant lot, the railroad area and the embankment leading up to it, and the surrounding

area, including the bus yard and "[e]very area up and down the block on both sides of the street." They found no other blood or any other evidence of a crime scene, including no weapon.

¶ 63 After their search, Officer Ryan and the mobile crime unit drove 15 to 20 minutes to Jackson Park Hospital, where a 2000 Chevy Express conversion van was being secured by officers on the scene. He and his partner photographed the interior and exterior of the van. Officer Ryan testified that when he opened the driver's door, there was what appeared to be blood on the left side, or the outer side, of the driver's seat and on the interior panel of the driver's door. He further stated that he and his partner then walked around and opened the doors on the other side of the van. When he opened the front passenger door, there did not appear to be blood in the front passenger area, so he then opened the double doors that were behind the front passenger door. Officer Ryan also stated, "[t]he only operating door was the right-hand side door if you were looking into the van." Once he opened the back passenger side door, he observed blood on the floor of the middle section of the van, on the back of the front passenger's seat, and on the seat cushions and seat backs of the two captain's chairs that were inside the middle section of the van. Officer Ryan also described how he and his partner swabbed a number of the apparent blood stains for analysis, including ones on the interior door panel and the passenger's side captain's chair in the middle section of the van. They observed and photographed a large orange and black flashlight in between the two front seats of the van. Although Officer Ryan was not asked about it, one of the photographs he took shows a dent in the rear bumper of the van that appears consistent with the van being hit by or backing into something.

¶ 64 Officer Ryan then went into the hospital and photographed Mya before proceeding to the police station. There, he and his partner met with Detective Paul Alfini, photographed Derrick

Lyons and defendant, and administered a buccal swab to each of them to establish DNA profiles for purposes of comparison.

¶ 65 Officer Ryan and his partner then returned to the 8400 block of South Gilbert Court to take additional daylight photographs of the alley as well as the inside and outside of the Lyons home. One of the photos depicts a butcher's block in the kitchen of the home that contained two knives and had three empty slots for additional knives. Officer Ryan stated that those appeared to be slots for two additional butcher-type knives and one steak knife. He testified that he saw two other knives in the kitchen, but they did not match the pattern of the knives that were in the butcher's block. Officer Ryan and his partner also participated in the comprehensive search of the block that was underway. Officer Ryan testified that police officers and detectives at the scene searched again through the north and east sections of the alley, through the nearby bus yard, through the backyards and empty lots, and through garbage cans. They found no cutting instrument or possible murder weapon and no other area that was an apparent crime scene. Some red-stained soil was collected, but tests revealed that the stain was not caused by blood. The officers also recovered a Styrofoam cup and an empty Pepsi bottle from the vacant lot adjoining the alley that appeared to have been recently discarded.

¶ 66 Officer Ryan walked the jury through the photographs that he and his partner took of the scene in the alley, the van and Mya at Jackson Park Hospital, defendant and Derrick Lyons at the police station, and the interior and exterior of the Lyons home and surrounding area that were taken the next morning.

¶ 67 3. Detective Patrick Durkin

¶ 68 Detective Patrick Durkin, a Chicago police department homicide detective, came on duty the morning of July 15, 2008, and proceeded to the 8400 block of South Gilbert Court, where he

remained for "the better part of two days." He testified that, at some point during the daylight hours of July 15, he was in front of and across the street from the Lyons home and saw defendant's black van, which he identified from a photograph, drive down the alley and park in the side yard. Although he "took no notice of it" at the time, at some point during the day, he opened the unlocked door of the van directly behind the passenger's seat. Detective Durkin stated that he did not enter the van, but looked inside. He described it as "your typical van," but with "a large pool of blood or a portion of the rug [that] was soaked with blood on the floor." He observed no blood anywhere in the van other than on the carpet, including no blood on the middle row of seats or on the rear of the front passenger's seat. Detective Durkin further stated that a week later, he viewed photographs of the interior of the van as it appeared at Jackson Park Hospital in the early morning hours of July 15, 2008, and saw that "there was blood on several different parts of the interior seats."

¶ 69 Detective Durkin also testified regarding a meeting he had on May 3, 2010, with other detectives working on the case, an assistant State's Attorney, and Rod Englert, a bloodstain analysis expert. At the meeting, they looked at Mya's autopsy photographs and discussed certain "pattern-type abrasions" that appeared on Mya's body. Detective Durkin agreed that at the time, those present at the meeting did not know what had caused the patterns.

¶ 70 Following the meeting, Detective Durkin and his partner, Detective John Fassl, went to the 8400 block of South Gilbert Court, where they were met by Mr. Englert and others. Detective Durkin explained that the visit was arranged because Mr. Englert "had expressed a desire to go back to the scene and look at a particular part of the alley." Detectives Durkin and Fassl parked behind the Lyons home and entered the backyard to knock on the rear door of the house. Detective Durkin then described what he saw there, just below the porch:

> "I saw what I can best describe as a realtor lockbox, something that one would carry a key and put a key in so a realtor could open the door if he needed to. There's a combination on it. I saw this box attached to a post.
>
> * * *
>
> I noticed it borne [*sic*] a pattern that seemed to me exactly like the pattern that I had just viewed an hour or so earlier in the morgue photos of Mya Lyons that we were discussing what could have caused this pattern."

Detective Durkin testified that a search warrant was obtained and the lockbox, which he identified for the jury in photographs, was removed by an evidence technician.

¶ 71 4. Detective Paul Alfini

¶ 72 Chicago police department homicide detective Paul Alfini next described the investigation into Mya's death. Detective Alfini testified that he first arrived with his partner at the 8400 block of South Gilbert Court at approximately 1:40 or 1:45 a.m. on July 15, 2008. The two toured the crime scene, participated in searches of the area, and interviewed witnesses. They then went to Jackson Park Hospital to view Mya's body. Detective Alfini also instructed forensic investigators to photograph defendant and Derrick Lyons in their bloodstained clothing. At the time, he did not take note of defendant's shoes, nor did he seize either man's clothing. Detective Alfini explained that, based on the information he had at the time, the men "had merely transported Mya to the hospital and [he] saw no justification to take their clothes."

¶ 73 Detective Alfini returned to the 8400 block of South Gilbert Court later in the morning of July 15, 2008. He testified that a comprehensive search was done of the block to locate a murder

weapon or any other evidence. According to Detective Alfini, 42 recruits from the police academy lined up shoulder to shoulder to conduct a grid search of the vacant lot adjacent to the alley but did not find anything. A city crew then arrived with a backhoe and lawnmower to cut the heavy brush and trees down to about a foot from the ground and the recruits repeated their search. Despite these efforts, no additional evidence was identified.

¶ 74 As part of his ongoing investigation, Detective Alfini stated that he re-interviewed Derrick Lyons, Fudge, and defendant's wife on July 24 and 25, 2008. He also was in frequent contact with Mya's mother, Erica Barnes, who he stated contacted the police "very frequently, approximately two to three times a month." On cross-examination, Detective Alfini testified that another person he interviewed during the course of his investigation was Steven Shirley, who he determined lived in the coach house behind the Lyons home at 8427 South Gilbert Court.

¶ 75 After showing photographs of the inside of defendant's van to a consultant in the field of bloodstain pattern analysis, Detective Alfini obtained two search warrants: one for the van, which was executed on July 26, 2008, and one for the Lyons residence, which was executed on July 27, 2008. When police searched the Lyons residence, Detective Alfini stated that they were looking for "[a]ny evidence, cutting instruments in particular, clothing and a flashlight that was shown in pictures of the van on the night of the occurrence." Detective Alfini identified a number of photographs for the jury as he described the search. He stated that the police searched for but were unable to find the clothing worn by defendant when he brought Mya to the hospital. However, they did recover the clothing worn by Derrick Lyons from the bedroom he was using—the one previously used by Mya—which consisted of a shirt, pants, and a pair of black gym shoes. According to Detective Alfini, officers also recovered the flashlight they were looking for from the second floor, just outside the master bedroom.

¶ 76 Detective Alfini also met with Rod Englert and took him, at Mr. Englert's request, to inspect the van, then to the state crime lab to examine evidence, and then to the county morgue to speak with the medical examiner. According to Detective Alfini, there were many pieces of evidence to analyze and the police did not complete the process until late December 2010. On January 17, 2011, defendant was arrested for Mya's murder.

¶ 77 5. Detective Henry Barsch

¶ 78 Chicago police department homicide detective Henry Barsch testified that, on July 26, 2008, he helped execute a search warrant for defendant's black Chevy van. Detective Barsch stated that he was present when two Chicago police department evidence technicians photographed the inside and outside of the van, taking close-up photographs of stains believed to be blood, which Detective Barsch identified for the jury. Detective Barsch stated that on that date, the technicians also swabbed various stains for analysis—including one found near the CD player, one on the seatbelt of the driver's seat, and another on the back support of the middle row, passenger's side seat—and collected dashboard vents from the center and passenger's side that had red stains on them. Detective Barsch stated that although some stains suspected to be blood remained, in general the van "appeared to have been cleaned up or wiped up" and a bottle of hydrogen peroxide was found in one of the cupholders. As could be seen in the photographs, there were no longer any large bloodstains on the carpet behind the driver's seat or the front passenger's seat.

¶ 79 F. The State's Forensic Evidence

¶ 80 1. Dr. Steven Cina

¶ 81 Dr. Steven Cina, chief medical examiner at the Cook County medical examiner's office, testified for the State as an expert in the area of forensic pathology. Dr. Cina explained that

although he did not perform Mya's autopsy, given the high homicide rate in Cook County and staff turnover, it was not uncommon for him to testify in cases where another member of his office performed the autopsy in question. Dr. Cina stated that he was familiar with this case and had reviewed the autopsy report and accompanying photographs for Mya's autopsy, which a former employee of his office performed on July 15, 2008.

¶ 82 Dr. Cina first explained the difference between sharp force injuries like stab wounds and blunt force injuries like scrapes and bruises. He testified that Mya received multiple sharp force injuries, including two to the front of her neck, one to the back right side of her neck, a "pretty major one" to the left side of her chest, and a series to her lower abdomen, including one deep enough for a loop of her intestines to protrude from the wound and a "very tight cluster" of wounds to the right side of her abdomen. In his opinion, the wounds were caused by a sharp weapon like a knife. Dr. Cina noted that the tissue exposed by the wounds was "very yellow" instead of pink or reddish in appearance, something he explained signified "a perimortem wound, meaning the person was dying or the person was already dead" when the wound was inflicted. He also noted that the injuries were "quite deep," as evidenced by the fact that cuts were visible on Mya's internal organs. Dr. Cina opined that this would have required a blade of at least three or four inches in length.

¶ 83 Dr. Cina pointed out what he described as "a patterned abrasion *** a series of lines that [we]re relatively evenly spaced" on the back of Mya's left arm, as well as other "faint linear mark[s]" appearing on Mya's left upper arm. According to Dr. Cina, the marks in both areas were "similar to each other" and showed "some periodicity, that is there [we]re a series of lines that [we]re relatively evenly spaced." There was also a nonspecific abrasion on the top of Mya's right shoulder with "a suggestion below that of that [same] sort of periodic pattern." Dr. Cina

also identified a "blunt force pattern impact" on Mya's back. He stated: "you can see something with a pattern to it caused this injury. There are definite spaced out vertical impressions that are relatively parallel to each other."

¶ 84 Dr. Cina then identified and described a series of small red dots on Mya's upper eyelids, cheeks, and the whites of her eyes called petechiae, which he stated showed that she was strangled before she died:

> "And petechiae are caused by alternating venus pressure on the neck or upper chest. We commonly see them in strangulations or partial suspension hangings where somebody can get up on their toes a little bit and relieve the pressure and then they drop down and the pressure goes back and forth. This alternating pressure on the neck or upper chest causes little blood vessels to pop forming these little red dots. So very common in asphyxia deaths with compression in the neck."

¶ 85 Dr. Cina also noted that Mya had a faint purple bruise on her neck, a small scrape on the left side of her nose, and scrapes on both sides of her forehead. According to him, some of the scrapes on the upper left side of her forehead were blunt force injuries. Swelling and bruising of Mya's brain and bleeding into the deep tissues overlying the skull and into the scalp also indicated that Mya suffered blunt force impact to the head. Similar findings in different areas within the skull indicated what Dr. Cina described as a "very diffuse process"; Mya's "brain was significantly rattled within the skull and significantly insulted by the impact." Dr. Cina stated that such injuries would not necessarily have caused any external bleeding. Mya also suffered skull fractures indicating "a very forceful impact to the left side of the head."

¶ 86 Dr. Cina also noticed that Mya had one or more abrasions on the back of one of her thumbs and a number of abrasions on her knuckles that he stated could have been caused by efforts to defend herself from blunt force attacks. She had no injuries consistent with having defended herself against sharp force attacks. Dr. Cina stated that, if Mya's attacker was much larger than her, he or she may not have suffered any injuries during the attack.

¶ 87 Dr. Cina testified that the sexual assault kit performed on Mya was tested and no evidence was found that she had been sexually assaulted.

¶ 88 When asked if he had an opinion regarding the order in which Mya's injuries were inflicted, Dr. Cina stated:

> "I believe the asphyxia injuries and the blunt force were toward the front end of the assault. The brain takes, you know, several minutes, sometimes several hours to swell up after it's injured, so since the brain was significantly swollen, which I believe ultimately [it] was, you know, an irreversible cause of death in this case, I think that happened fairly early on.
>
> The asphyxia requires blood [pressure] in order to blow out those petechiae that we saw, all those little dots, so the person had to be alive during that component of the assault. So I believe they were alive during the blunt force. They were alive during the asphyxia component. I can't really tell which of those came first.
>
> The sharp force injuries I was surprised that several organs were penetrated that there was very little internal bleeding and that some of the wounds looked very yellow, those perimortem ones

> that either the person is dying or dead when they were inflicted, so I believe they were later in the sequence after the blunt force and the asphyxia injuries."

Dr. Cina also believed that the lack of defensive wounds and the positioning of the almost parallel cuts to Mya's abdomen in a tight cluster, rather than spread out randomly at different angles, also indicated that she was not struggling to defend herself when those wounds were inflicted.

¶ 89 Although Dr. Cina testified that, absent immediate neurosurgery, the head trauma inflicted on Mya created irreversible swelling and was a "nonsurvivable injury," he stated that it was possible Mya was unconscious but still breathing for a period of time following the impacts, before her brain swelled enough to kill her. And, although perimortem sharp force injuries would cause much less bleeding, Dr. Cina stated that the wounds in this case still could have caused a pool of blood.

¶ 90 Dr. Cina explained that "pinkish foaming material" originating from the lungs is a sign of pulmonary edema. When someone is dying, their breathing and heart rate slow and fluid begins to form in the lungs. Blood can leak from the capillaries into the lungs, either as part of the process of dying or because of an injury to the lungs, and mix there with air and water to form a white, pink, or red foam. He testified that, if someone is already dead, you would expect "little drips here and there" and not much aspirated blood. Although, he agreed that if a body was "given a good squeeze," aspirated blood could be blown out that way. He could not say if this might happen if a body were dropped on its back. On cross-examination, when he was shown a photograph of Mya in the hospital, Dr. Cina agreed there appeared to be a "dried pinkish foamy material" at the end of her intubation tube that was compatible with pulmonary edema fluid. He

did not agree that it was aspirated blood, however, but believed it was exuded upward "just by pressure" because "it ha[d] nowhere else to go but up." He believed the foamy liquid found near the pool of blood in the alley was also this type of "passive pulmonary edema." Dr. Cina reiterated that the abrasions on the left side of Mya's face and forehead were nonspecific abrasions. He agreed that gravel could cause abrasions, but stated that they could also have been caused by any rough surface.

¶ 91 Dr. Cina was shown the lockbox recovered from under the rear porch of the Lyons home. He identified it as the one that was also examined and measured by Dr. Jones when she conducted Mya's autopsy. Although he agreed that absent any DNA evidence, he could not say for sure that the lockbox caused any of Mya's injuries, Dr. Cina stated that the linear marks on the bottom of the lockbox were consistent with the pattern abrasion marks found on Mya's body. In other words, something "firm and heavy with a pattern that's similar to that found on the lockbox would be something capable of causing those pattern injuries."

¶ 92 On cross-examination, Dr. Cina agreed that the cut on the back of Mya's neck was inconsistent with the theory that an adult male held Mya, facing forward, in his lap and cut her by pulling the knife toward the front of her body. He agreed that instead, in that position, the attacker would have had to lean Mya forward to inflict the wound. He further agreed that an attacker stabbing towards his own body in this manner would run the risk of injuring himself. Dr. Cina testified that at least one of Mya's wounds had a squared off edge and a sharp edge, indicating it was made by a single-edged weapon. Although Dr. Cina could not rule out that more than one knife was used, he testified that a single knife could have inflicted all of the sharp force wounds, "just going into various depths or sometimes cutting instead of stabbing."

¶ 93 2. Casey Karaffa

¶ 94 Casey Karaffa, a former forensic scientist for the Illinois State Police's Forensic Science Center in Chicago, testified for the State as an expert in the field of forensic biology. While working at the state crime lab, Ms. Karaffa received and tested the vaginal, oral, and anal swabs from the sexual assault kit performed on Mya on July 15, 2008, at Jackson Park Hospital and observed no semen in any of the swabs. Ms. Karaffa received and examined Mya's underwear, jeans, tank top, and socks and observed no semen-like stains on any of the clothing.

¶ 95 Ms. Karaffa explained how she tested a number of swabs or items collected by police officers for the presence of blood and preserved the samples for further DNA analysis. She agreed that even if blood was present on a surface, it was possible for a swab to test negative for the presence of blood if cleaning chemicals had been applied to the surface.

¶ 96 Ms. Karaffa testified that swabs taken on July 15, 2008, from both the interior driver's door panel and the rear passenger's side seat cushion of defendant's van tested positive for the presence of blood. According to Ms. Karaffa, two vents collected from inside the van on July 26, 2008—one from the front passenger's side dashboard and the other from the center of the dashboard—tested negative for the presence of blood. However, three additional sets of swabs collected on July 26, 2008, from various places in the van, including the front passenger's seat, seatbelt frame, rear passenger's side seat back, and the dashboard near the CD player, tested positive for blood.

¶ 97 Ms. Karaffa further testified that, although blood was not indicated in swabs collected on November 4, 2009, from a leather armrest cover from the left arm of the driver's side captain's chair, the dashboard, the CD player, or from a vent on the driver's side near the steering wheel, blood was indicated from the gray foam swatch of insulation taken from inside that vent. Ms. Karaffa additionally examined six red-brown stains collected from the van on November 4,

2009, from what appeared to be the interior-facing surface of a window shade. She stated that four "appeared to have come from the same stain possibly" and were grouped together for testing to increase the chance of getting a DNA profile from a small amount of material. That test, as well as tests performed on the other two drops found on the shade, indicated the presence of blood.

¶ 98 Ms. Karaffa similarly tested a number of items collected from the Lyons home. She examined a flashlight recovered on July 27, 2008, and found no blood-like stains on the outside of the flashlight, but when she unscrewed the glass piece that covered the bulb, she identified four small stains that tested positive for the presence of blood. Ms. Karaffa also visually inspected but found no blood-like stains on a pair of black gym shoes collected on July 27, 2008. Ms. Karaffa examined the lockbox recovered by Chicago police in May 2010 and found no blood-like stains, but swabbed portions of the lockbox for DNA analysis.

¶ 99 Finally, Ms. Karaffa tested swabs and items collected from the alley near the 8400 block of South Gilbert Court. Three swabs taken from the alley on July 15, 2008, tested positive for the presence of blood and were preserved for DNA testing. A soil sample collected that same day from near the alley was visually inspected for blood but appeared to contain only red melted plastic. Ms. Karaffa stated that although she observed red-brown stains on a pair of pink clogs collected on July 15, 2008, testing did not indicate the presence of blood on the clogs. Swabs from the hair barrettes found in the alley did indicate the presence of blood.

¶ 100 3. Stipulated Testimony

¶ 101 The parties stipulated that if called to testify, Jennifer Barrett, a forensic analyst with the Illinois State Police crime lab, would be qualified as an expert to testify in the field of latent fingerprint analysis. Ms. Barrett would testify that she processed a number of items—including a

pair of clogs, a Styrofoam cup, a plastic bottle, a lighter, and pink plastic barrettes—that were submitted to her using methods generally accepted in the field and found no latent fingerprints suitable for comparison.

¶ 102 The parties further stipulated that if called to testify, Jamie Jett, a forensic scientist with the Illinois State Police crime lab, would be qualified as an expert to testify in the field of forensic microscopy. Ms. Jett would testify that she tested the sexual assault evidence kit collected from Mya on July 15, 2008, containing head and pubic hair combings, fingernail scrapings, and the bags used to cover Mya's hands. Ms. Jett would testify that, along with fibers and miscellaneous debris, the head hair combings contained hairs that were microscopically similar to a hair standard taken from Mya as well as other hairs that were microscopically dissimilar to Mya's hair. Ms. Jett would further testify that the pubic hair combings and materials collected from the bags consisted only of fibers and miscellaneous debris and that nothing of apparent evidentiary value was observed in the fingernail scrapings (a single blue cotton fiber was too common to have evidentiary value).

¶ 103 The parties also stipulated that, if called to testify, Ryan Paulsen, a forensic analyst with the Illinois state police crime lab, would be qualified as an expert to testify in the field of forensic DNA analysis. Mr. Paulsen would testify that no cellular material was found on the lockbox, that three blood stains collected from the alley on July 15, 2008, identified a complete female DNA profile matching Mya's DNA, and that Mya could not be excluded from a partial DNA profile identified from stains on the hair barrettes found in the alley.

¶ 104 4. Michael Matthews

¶ 105 Michael Matthews, a forensic analyst in the biochemistry section of the Illinois State Police crime lab, testified for the State as an expert in the field of forensic biology and DNA

analysis. According to Mr. Matthews, swabs from Mya's fingernail clippings collected on July 15, 2008, did not contain enough or any male DNA to proceed with DNA testing. The stains present on Mya's jeans tested positive for Mya's DNA, as did swabs taken from the stains on the flashlight recovered on July 27, 2008. There was insufficient DNA on both a lighter and a Styrofoam cup recovered from the alley on July 15, 2008, to test, and swabs from a plastic bottle revealed a mixture of the DNA of two people whom Mr. Matthews was unable to identify.

¶ 106 Mr. Matthews also tested a number of swabs taken from defendant's van. He testified that a swab collected on July 15, 2008, from the rear passenger's side seat cushion was tested for saliva and came back negative. Samples taken from that same seat cushion of the van, where blood had been indicated through previous analysis, tested positive for Mya's DNA, as did blood samples taken on July 26, 2008, from the front passenger's seatbelt frame and rear passenger's side seat back. Swabs collected the same day from the CD player of the van contained insufficient DNA to test, as did a piece of gray foam insulation cut out from inside a vent near the steering wheel on the driver's side of the van on November 4, 2009. Mr. Matthews further testified that the window shade collected from the van on November 4, 2009, and swabs from the inside driver's door panel of the van collected on July 15, 2008, identified a female DNA profile from which Mya could not be excluded.

¶ 107 5. Rod Englert

¶ 108 Finally, the State called Mr. Rod Englert, a bloodstain pattern analysis and crime scene reconstruction expert from Portland, Oregon. Mr. Englert testified that he has a degree in police science and graduated from both the FBI academy and the Los Angeles police academy. He worked for many years as an undercover narcotics officer and a homicide detective and had over 6,200 hours of in-service training, over 50 years of experience in crime scene reconstruction, and

40 years of experience in blood pattern analysis. Mr. Englert testified that he had conducted thousands of his own experiments; lectured internationally hundreds of times; provided training for police forces, medical examiners, lawyers, and judges around the world; and testified as an expert over 400 times.

¶ 109 Mr. Englert stated that "[i]t takes a lot of time visiting scenes" and "a lot of study" to become an expert in the field of bloodstain pattern analysis. He noted that when he first started doing the work in the 1970s, he learned primarily from books but "felt very uncomfortable and insecure." He explained that his confidence grew "the more he got into it," although he acknowledged that he is "still learning today." Mr. Englert admitted that he has been "stumped" before and stated that he will only give an opinion when he is sure what a pattern is telling him: "[Y]ou rely on what the evidence tells you. You can't go beyond it. Because you can get biased. Someone can tell you something and you say, well that sounds good. But when you get in the evidence may speak differently. So you really have to fight bias." Mr. Englert explained that he did his own experiments with a blood substitute because, in his field, you cannot depend upon a pattern interpretation unless you can replicate it over and over.

¶ 110 At trial, defense counsel stated on the record that he had "no objection to [Mr. Englert's] qualifications to testify as an expert in blood pattern analysis," but objected that there was an insufficient foundation for him to testify as a crime scene reconstruction expert. On further examination to establish such a foundation, Mr. Englert acknowledged that, although he had worked in the field for over 50 years, crime scene reconstruction is a broad category that can include disciplines that are outside of his field of expertise, such as forensic pathology. The circuit court overruled the objection.

¶ 111 Mr. Englert then performed a tutorial and demonstration for the jury, in which he

explained the difference between patterns indicating that blood had dropped straight down to hit a surface at a 90-degree angle as compared to low, medium, and high velocity "spatter," indicating directionality and movement. He explained that high velocity spatter, caused by impact with bullets or machinery, creates a fine mist, whereas medium velocity spatter, caused by something forcefully impacting a blood source, such as a knife, an object used as a bludgeon, or a fist, will "create a random distribution *** of large and small drops that go away from the impact in the direction of the instrument." Mr. Englert testified that one can use the length and width of the drops to mathematically determine the angle, "[b]ut you don't need to do that" to tell the direction of the source. He also identified a "cast off" pattern caused by blood flying off of a knife or other weapon with blood on it and "grabbing" patterns that he stated were "very typical," but "wouldn't look like that to you if you just went to a scene and weren't trained in this." He testified that contrary to what most people would think, a perpetrator who stabs his victim will not necessarily be covered in blood.

¶ 112 Mr. Englert testified that he was contacted by the State in early 2009 to interpret blood patterns in this case and was not given any indication of what his opinion should be. He and his partner reviewed police, autopsy, and lab reports; the clothing worn by Mya and Derrick Lyons; and hundreds of photographs, including photographs of the van and the clothing worn by defendant and Derrick Lyons at the hospital. Mr. Englert traveled to Chicago in November 2009 to view the physical evidence in the case, including defendant's van. Mr. Englert provided the State with his opinion in late 2010 and was asked to write a report.

¶ 113 Mr. Englert identified for the jury "projected stains on top of saturation," *i.e.*, "impact spatter where force has hit some blood and projected it out," as well as cast-off stains on Mya's clothing that were consistent with her having been stabbed multiple times by a single-edged

blade. He additionally identified what he believed was a "grabbing pattern" on the bottom right leg of Mya's pants. He observed blood stains on Mya's socks but not on her shoes, indicating that she was not wearing her shoes when she was stabbed.

¶ 114 Mr. Englert further identified faint pulmonary edema stains on Derrick Lyons's white T-shirt, as well as darker pooling and transfer patterns consistent with the fact that he carried Mya into the hospital, but no cast-off or impact spatter stains. He examined and identified no blood on Derrick's shoes.

¶ 115 Mr. Englert then reviewed photographs of defendant's van taken by the police on July 15, 2008. He identified numerous medium velocity projected stains going in different directions on the interior of the van that he said were "[c]onsistent with force impact of blood," as well as a "void" area with no stains that he believed had been covered by a floor mat that was later removed. In his opinion, the spatter stains found in the van could not have been caused by simply placing Mya there and driving her to the hospital.

¶ 116 Finally, Mr. Englert analyzed stains shown in a photograph of the white sneakers defendant was wearing the night Mya died. He identified medium velocity impact spatter on the inward facing sides of both shoes going from back to front at an upward angle. According to Mr. Englert, these stains were not consistent with blood dripping on the shoes. Mr. Englert identified no similar spatter stains on the clothes defendant was wearing at the hospital, however, which exhibited only pooling stains consistent with picking Mya up and carrying her. He further testified that there was no blood spatter or evidence of a struggle in the alley, indicating that the stabbing had not occurred there. Rather, the pools and drops of blood found there were consistent with Mya having been placed there after she was already bleeding.

¶ 117 Mr. Englert's opinion, given all of this evidence, was that the initial attack took place

near the lockbox under the rear porch stairs of the Lyons home. Mr. Englert testified that he believed the attacker then moved Mya to the van and held her between the attacker's legs on the floor of the van between the front seats and the first row of back seats—seated upright with Mya's back to the attacker's chest and with the attacker's legs spread out in front—and stabbed her there by repeatedly bringing the knife back toward both of their bodies, before transferring Mya's body to the alley. Mr. Englert stated that "as awkward as this look[ed] this [wa]s in [his] opinion how the blood went from back to front onto [defendant's] shoes."

¶ 118 On cross-examination, Mr. Englert acknowledged that the photo of the shoes that he analyzed did not show the back or bottom of the shoes, that he assumed it was Mya's blood on the shoes but that the stains on the shoes had not been tested, and that certain drops of blood inside the van that he at first thought were Mya's blood (on the CD player in the front console, the driver's side vent by the steering wheel, and on the armrest) either turned out not to be blood at all, or were identified as blood from an unknown donor.

¶ 119 The defense rested without presenting any witnesses.

¶ 120 In its closing argument, the State argued its theory of the case: that defendant confronted Mya behind his home and he became angry—perhaps because she came home late, perhaps because she said something that he did not like—and "snapped," slamming her against the lockbox and causing multiple skull fractures. Then, when he saw what he had done, he took Mya into the van where he repeatedly stabbed her to make it look like someone else had killed her. The State argued that defendant then placed Mya's body in the darkest part of the alley to ensure that he would be the one to find her and placed her shoes and barrettes nearby. He returned home, told Fudge to go look for Mya, then drove his van down the alley and onto Vincennes to dispose of the knife, returned home to change his clothes, and pretended to search for Mya

before driving to the north end of the alley, “finding” her body, and taking it to the hospital.

¶ 121 Defense counsel in turn portrayed the State’s version of events as speculative and far-fetched, arguing that it was much more likely that Mya, who had already stayed out later than she was allowed to that night, was sneaking out of the house when she surprised a burglar trying to break into the basement of the house or gain access to keys contained in the lockbox. The would-be burglar knocked Mya unconscious to keep her from screaming and then moved her body somewhere else to stab her, perhaps even in the unlocked van parked nearby.

¶ 122 In its rebuttal, the State argued that defendant's version of the events on the night in question was just "a very compelling story," that involved a "mystery ghost burglar." The State emphasized that defendant's actions were not consistent with that of a grieving father and also surmised that his conduct in putting Mya on the floor of the van, as opposed to the seat, was intentional in order to cover up the blood that was already on the floor of the van as a result of May having been stabbed in there earlier. The State further called into question other actions by defendant such as, *inter alia*, not calling 911, stopping and waiting for Derrick to get into the van prior to driving to the hospital, not going into the hospital when he and Derrick first arrived, and not saving his bloody clothes. The State asserted that, "[w]hen the defendant says there's no eyewitnesses, therefore, I'm not guilty, another way of saying that is you have my story, there was no one else out there who could tell the story, so I win."

¶ 123 The jury found defendant guilty and, following argument, the circuit court denied his posttrial motion. The court ultimately sentenced defendant to 60 years in prison.

¶ 124 JURISDICTION

¶ 125 Defendant timely filed his notice of appeal in this matter on April 4, 2014, the same day that he was sentenced. Accordingly, this court has jurisdiction pursuant to article VI, section 6,

of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 126 ANALYSIS

¶ 127 I. Sufficiency of the Evidence

¶ 128 Defendant argues on appeal that the evidence presented at trial was insufficient to support his conviction for first degree murder. He contends that the State's case was not based on rational inferences but on an implausible timeline, a convoluted theory of what took place on the night of July 14, 2008, and the questionable testimony of the State's blood spatter expert. Defendant argues that no rational jury could have found him guilty beyond a reasonable doubt of Mya's murder based on the State's evidence. In response, the State insists that the evidence of defendant's guilt was "overwhelming." According to the State, the issues raised by defendant are either based on misrepresentations regarding what the evidence showed or criticisms of the evidence that were made clear at trial and properly considered by the jury in reaching its verdict.

¶ 129 When a criminal defendant challenges the sufficiency of the evidence that resulted in a conviction, our function is not to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, "after viewing the evidence in the light most favorable to the prosecution," we must determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Id.* Except in cases where testimony is "so lacking in credibility that a reasonable doubt of defendant's guilt remains" (*People v. Schott*, 145 Ill. 2d 188, 207 (1991)), we afford great deference to the jury's assessments of witness credibility, as it is "in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony" (*People v.*

*Richardson*, 234 Ill. 2d 233, 251 (2009)). Likewise, "[w]here evidence is presented and such evidence is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution." *People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007). The trier of fact is "not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*

¶ 130 "Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish guilt or innocence of the defendant." *Id.* at 417. It is well-established that a conviction may be based solely on circumstantial evidence, and the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstantial evidence. *Id*. Instead, "[i]t is sufficient if all the evidence taken as a whole satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." (Internal quotation marks omitted.) *Id.* (quoting *People v. Edwards*, 218 Ill. App. 3d 184, 196 (1991)).

¶ 131 Defendant initially argues that a guilty verdict based on the State's theory of the case cannot stand because it depends on absurd inferences regarding defendant's behavior that do not comport with the way in which any rational person would behave. Specifically, defendant argues that no one who had just murdered his child would invite others into the van to witness the bloodied interior as defendant did when he had Fudge help him search for Mya and when he later asked Derrick to help him take Mya to the hospital. Nor, according to defendant, would a guilty man ever approach a uniformed police officer like Officer Conway to ask about his dead daughter, voluntarily submit to questioning by the police, or hand over the keys to the van where he stabbed his victim to detectives so that it could be photographed. Defendant also points out that if he truly killed Mya by throwing her into the lockbox behind the Lyons home, he had every

reason and opportunity to remove and destroy the lockbox but instead left it untouched outside his home for nearly two years. He similarly left his van in his yard, unlocked and only partially cleaned, and did not dispose of the blood-spotted flashlight that was in the van the night of Mya's death but only moved it inside his house.

¶ 132 In response, the State attacks the alternative version of events posited by defense counsel during closing arguments—that Mya may have been sneaking out of the house when she surprised a burglar—as being unsupported by the evidence; namely, with the testimony by Mya's mother that she was scared of the dark and the failure to account for how a burglar could have transported Mya's body to the end of the alley without keys to defendant's van or without leaving a trail of blood if Mya was instead carried there.

¶ 133 The State also argues that its case did not rest on any implausible inferences regarding defendant's behavior. It contends that Fudge and Officer Conway would not have seen the blood in the van because it was dark, that Derrick would have assumed that the blood was the result of defendant placing Mya's body in the van to take her to the hospital, and that both the exculpatory statement defendant gave to detectives and his willingness to let them inspect his van were consistent with a killer boldly masquerading as a concerned and grieving father with nothing to hide. The State also points out that the flashlight from the van, though not destroyed or hidden, had clearly been wiped clean of any visible blood spatter, and insists that defendant would have had no reason to suspect that the lockbox had left an identifiable pattern on Mya's body that would have led anyone to believe it was the true murder weapon.

¶ 134 Defendant also argues that the State's timeline fits so many events into such a brief window of time that it "strains credulity." According to this timeline, Mya and Fudge left the Akins home at around 11 p.m. and, according to Officer Conway, by 11:40 or 11:45 p.m.

defendant and Fudge drove up to her in the van to ask if she had seen Mya. Mr. Martin testified that only 15 or 20 minutes passed between when he saw Mya and Fudge run home together and when he saw Fudge leave the house again, apparently looking for Mya. Defendant argues that this 15 to 20 minute period is just too short a period of time for him to have done everything the State surmised that he did in its closing, which included arguing with Mya, strangling her and throwing her into the lockbox, retrieving a knife and stabbing her in the van to cover the true cause of her death, driving her body to the end of the alley, staging the murder scene, and returning home to ask Fudge where she was. The State does not deny that this was a narrow window of time, but argues that it was for the jury to determine whether it was enough time for these events to have occurred.

¶ 135 Defendant's remaining arguments regarding the sufficiency of the evidence rest on his contentions that blood stain analysis in general is a "particularly suspect field of forensic science" and that Mr. Englert's testimony in particular was "so lacking in foundation or so contradicted by other evidence that it could not supply the basis for a finding of guilt beyond a reasonable doubt." Defendant also argues that Mr. Englert's testimony should have been excluded on this basis, an argument that we address later in this order. Even if we believed that Mr. Englert's testimony was improperly admitted, which we do not, for purposes of considering the sufficiency of the evidence we consider *all evidence* submitted at defendant's trial, including Mr. Englert's testimony. *People v. Lopez*, 229 Ill. 2d 322, 367 (2008).

¶ 136 The jury received extensive information regarding Mr. Englert's qualifications, observed Mr. Englert testify at length, watched a live demonstration that he performed in open court to replicate the blood patters he identified in this case, and observed defense counsel attack Mr. Englert's credibility on cross-examination as to all of the points raised by defendant on appeal.

The jury was well aware, for instance, that the stains Mr. Englert analyzed from defendant's shoes were not tested to determine if they were in fact Mya's blood. The jury was likewise aware that Mr. Englert did not inspect the shoes themselves but drew his conclusions regarding the relative positions of the attacker and victim in this case from a single photograph showing the shoes from only one angle. These were certainly facts that could have diminished Mr. Englert's credibility in the jury's eyes. We have reviewed both the testimony and the photographs relied upon by Mr. Englert, however, and do not find that his testimony was "so lacking in credibility" as to be unbelievable. The jury was entitled to believe Mr. Englert's testimony that the medium velocity spatter identified in defendant's van was caused by someone inflicting repeated sharp force injuries to Mya in the van. The jury was likewise entitled to believe Mr. Englert's testimony that medium velocity spatter identified in the photo of defendant's shoes demonstrated that he was the one who inflicted those wounds.

¶ 137 From Mr. Martin's testimony, which suggested that defendant paused in his search efforts for Mya to change his shirt, combined with the fact that medium velocity spatter was found on defendant's shoes but not on his clothing, the jury could also reasonably have concluded that defendant changed his clothing in an effort to conceal evidence linking him to Mya's injuries. "Evidence that a defendant has attempted to conceal or suppress evidence is admissible as tending to show consciousness of guilt." *People v. Turner*, 78 Ill. App. 3d 82 (1979). Defendant asserts that Mr. Martin "initially failed to report much of what he testified to at trial to authorities" and supplemented his account with new facts only after the police focused on defendant as a suspect. Although defense counsel attempted to draw out such inconsistencies on cross-examination, Mr. Martin repeatedly testified that he told officers everything he testified to at trial and defense counsel failed to introduce any evidence to the contrary. Additionally, Ms.

Akins testified that she saw Mr. Martin and Crystal sitting in his car, which corroborates Mr. Martin's testimony regarding his presence at that location and ability to view defendant's actions that night.

¶ 138 In total, we find that the inferences from the evidence relied on by the State in this case were not, as defendant claims, "so contrary to human experience as to be unreasonable." It was for the jury to decide what weight to afford all of the evidence and what inferences to draw. We cannot say that the inferences the State asked for and that the jury drew from the evidence were so unreasonable that this verdict cannot stand.

¶ 139 In cases relied on by defendant, the State asked the trier of fact to draw far more tenuous inferences from the evidence. In *People v. Rivera*, 2011 IL App (2d) 091060, ¶¶ 31-34, for example, although the DNA evidence positively excluded the defendant as the source of sperm found in the victim, the State speculated that the vaginal swab may have been contaminated or the sperm may have originated from a prior consensual encounter with an unknown individual. In *People v. Caulson*, 13 Ill. 2d 290, 297 (1958), the court found that the victim's testimony that "five men took his wallet, at gunpoint, voluntarily accompanied him to his home on the vague promise of more money, and permitted him to go inside alone while they obligingly waited outside, trusting that [he] would keep his promise and not call the police *** taxe[d] the gullibility of the credulous." In *People v. Dawson*, 22 Ill. 2d 260, 265 (1961), the court found it "simply incredible" that a reputable police officer would commit armed robbery in front of many witnesses and retire to a nearby bar rather than flee the scene of the crime.

¶ 140 Likewise, in cases cited by defendant in which this court reversed the convictions of defendants whom the evidence showed voluntarily cooperated with the police, the State's evidence was much weaker than the evidence presented here. In *People v. Gomez*, 215 Ill. App.

3d 208, 219 (1991), not only did the defendant voluntarily return from out of state to assist a murder investigation by answering officers' questions and providing fingerprint and hair samples, but the court found the State's inconclusive hair, blood, and paint evidence was "totally inadequate" to corroborate its only other evidence, fingerprints that, on their own, lacked a sufficient temporal and physical proximity to the crime to sustain a conviction. And in *People v. Ortiz*, 196 Ill. 2d 236, 240-43, 268 (2001), the court found that the "circumstantial evidence was scant at best" that a commercial driver knew or should have known that he was hauling drugs in a secret compartment of the truck he was hired to drive, particularly where the defendant asked the state trooper who pulled him over for a traffic violation if he wanted to search the vehicle.

¶ 141 Finally, because the circumstantial evidence in this case links defendant to the sharp force injuries Mya suffered and not directly to the blunt force injuries or strangulation that the medical examiner testified likely first caused her death, defendant argues that this case is like *People v. Ehlert*, 211 Ill. 2d 192, 215-16 (2004), where our supreme court affirmed the appellate court's reversal of the defendant's conviction for the first degree murder of her newborn child. The evidence in that case established that, soon after giving birth, the defendant wrapped the infant in a plastic bag and deposited it in or alongside a nearby creek. *Id.* at 209. The medical examiner testified that the infant may have been suffocated but could also have died from natural causes. *Id.* Based on the record before it in *Ehlert*, our supreme court held that the State failed to sufficiently establish a link between the defendant's "criminal agency" and the cause of the infant's death. *Id.* at 209-10.

¶ 142 Defendant overlooks a key distinction between *Ehlert* and this case. There was no evidence in *Ehlert* that a murder took place at all. Here, someone plainly killed Mya Lyons. The evidence additionally showed that someone stabbed Mya when she was already dead or dying.

Absent any information to the contrary, the jury could reasonably have inferred that the same individual committed both acts; *i.e.*, that the latter injuries were motivated by a desire to cover-up the former and that such extreme measures would generally only be taken by a person attempting to cover up his or her own crime. We conclude that, based on the evidence presented at trial, a rational trier of fact could have found defendant guilty beyond a reasonable doubt of Mya's murder.

¶ 143 II. Foundation for Blood Spatter Expert Testimony

¶ 144 Defendant argues that Mr. Englert's testimony was "riddled with unfounded assumptions and unexplained gaps incompatible with the law's demand of an adequate foundation." The State responds that defendant has forfeited this issue, because although defendant raised issues regarding the State's expert in both his pretrial and posttrial motions, those issues were markedly different than the instant ones and defendant failed to object at trial. In his reply, defendant asserts that the State misrepresents the law.

¶ 145 To preserve an issue for appellate review, "both a trial objection and a written post[]trial motion raising the issue are required." *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant filed a pretrial motion seeking to exclude Mr. Englert's testimony in its entirety pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), and a posttrial motion, arguing that Mr. Englert did not meet the criteria for testifying as an expert. Further, during trial defense counsel objected to Mr. Englert's ability to testify as an expert in crime scene reconstruction. Although we agree with the State that defendant's previous arguments do not mirror those made on appeal, we find that they are similar enough that defendant preserved them for review. And if not preserved, although forfeiture may limit a party's ability to raise an argument, it does not limit the court's right to consider an argument. *People v. Benford*, 349 Ill. App. 3d 721, 734

(2004). As such, we address defendant's contentions on this issue on the merits.

¶ 146 Blood stain evidence can be the subject of expert evaluation. *People v. Knox*, 121 Ill. App. 3d 579, 584 (1984). "A witness may be qualified to testify as an expert by 'knowledge, skill, experience, training, or education.' " *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 115 (quoting Ill. R. Evid. 702 (eff. Jan. 1, 2011)). In order for expert testimony to be admissible, the proponent must establish the expert's credentials and lay an adequate foundation that establishes that the information upon which the expert bases his opinion is reliable. *Id.* In order to determine whether that information is reliable, the court is required to ask whether it is "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." Ill. R. Evid. 703 (eff. Jan. 1, 2011). " 'If a proper foundation has been laid, the expert's testimony is admissible, but the weight to be assigned to that testimony is for the jury to determine.' " *Simmons*, 2016 IL App (1st) 131300, ¶ 115 (quoting *Fronabarger v. Burns*, 385 Ill. App. 3d 560, 565 (2008)). We apply an abuse of discretion standard when ruling on a defendant's foundational challenge. *Id.* ¶ 114.

¶ 147 Defendant points to three foundational issues in Mr. Englert's testimony, which he argues made such testimony inadmissible: (1) Mr. Englert improperly assumed that everything that appeared to be blood in photographs and on clothing he examined was in fact Mya's blood; (2) Mr. Englert analyzed the blood on defendant's shoes from a single, inadequate photo showing the shoes from only one angle; and (3) Mr. Englert's very specific conclusions regarding the speed and direction of the blood shown in the photographs was not based on specific measurements or mathematical calculations, but only on his assessment as someone who "sees [such patterns] all the time."

¶ 148 The State argues, and we agree, that each of these concerns goes to the weight and not to

the admissibility of Mr. Englert's testimony. The record reflects that Mr. Englert was cross-examined on each of these issues. Mr. Englert acknowledged, for example, that certain individual drops or stains within the van either tested negative for blood or were not Mya's blood. However, defendant does not appear to dispute that the majority of the stains in the van and on all of the clothing inspected by Mr. Englert were made by Mya's blood. Forensic scientist Ms. Karaffa also testified that it was possible for a swab of a genuine blood stain to test negative for the presence of blood if cleaning chemicals had been applied to it. And although Mr. Englert was only able to analyze the stains on defendant's shoes from a single photograph, it is difficult to see how the possible presence of blood on the bottom or outside of the shoes could have altered Mr. Englert's conclusions regarding the distinctive medium velocity spatter marks that he identified on the sides of the shoes visible in the photograph. Finally, although Mr. Englert did not base his opinions on specific measurements or mathematical formulae, his testified that he had years of experience, not just in identifying recognizable patterns, but in recreating those patterns through thousands of his own experiments. The jury heard all of this and it was up to the jury to determine Mr. Englert's credibility.

¶ 149 Nor were the jurors in this case—like those in the cases defendant relies on—asked to believe an expert's conclusions simply because the expert was well-qualified. See *People v. Jones*, 2015 IL App (1st) 121016, ¶ 54 (ballistics expert gave an opinion based on an "overall pattern" of similarities without providing a striation-to-striation account of how he made the comparison); *People v. Safford*, 392 Ill. App. 3d 212, 221 (2009) (fingerprint examiner failed to note which details or points of comparison he relied on to match two fingerprints). Instead, Mr. Englert gave a detailed tutorial and demonstration explaining his methods before walking the jury, one piece of evidence at a time, through his analysis and pointing out the characteristics of

the stains that he relied on to form his conclusions. It was not an abuse of the circuit court's discretion to permit such testimony.

¶ 150 III. Anton Martin's Testimony

¶ 151 Defendant further argues that he deserves a new trial because the court erred in permitting the State to bolster Mr. Martin's testimony with inadmissible prior consistent statements. Specifically, defendant asserts Mr. Martin's trial testimony "differed markedly" from his initial statement to the police in 2008, and that after the defense impeached Mr. Martin with the prior statement, the State, over defendant's objection, was allowed to elicit testimony that in both 2009 and 2010, Mr. Martin gave a new version of his story to the police that included details regarding defendant's van. The State responds that a careful review of the record shows that Mr. Martin was never actually impeached with any inconsistent statement, and thus there was no need for his testimony to be rehabilitated with a prior consistent statement.

¶ 152 We agree with the State and find that Mr. Martin was never impeached. We also find that the trial court did not improperly allow his testimony to be bolstered with prior consistent statements. "In general, a prior statement that is consistent with a witness's trial testimony is inadmissible to bolster that witness's credibility [citation] or to rehabilitate a witness who has been impeached by a prior consistent statement." *People v. Denson*, 2013 IL App (2d) 110652, ¶ 29. Here, Mr. Martin's testimony at trial was consistent with his original statement to the police in 2008. On cross-examination, the following exchange occurred between Mr. Martin and defense counsel:

> "Q. You told them[1] the first time you saw the van was right before hearing those loud screams, correct?

[1] The "them" that defense counsel refers to here are the officers that Mr. Martin spoke with in 2008 near the time Mya was found dead.

A. No. That's not what I said.

Q. You told them that you'd seen the black van drive in the alley from the south end of Gilbert, correct?

A. Yes, I did.

Q. And then you heard the loud screams from a man?

A. Yes, ma'am.

Q. You never mentioned that the van was not there when you arrived home, correct?

A. Yes, I did.

Q. And it's your testimony you told that to Detective Hackett?

A. Yes, I did.

Q. You never told Detective Hackett that while sitting in the car you saw Richard Lyons['s] van pull in front of the house?

A. Yes, I did.

Q. You never told Detective Hackett that you saw Richard Lyons get out of the car in a white T-shirt?

A. Yes, I did.

Q. You never told Detective Hackett that you then saw him return in a different outfit?

A. Yes, I did."

It is clear from the foregoing testimony that Mr. Martin was not impeached. He never admitted to telling the officers anything different than what he was testifying to at trial. In fact, Mr. Martin testified that he gave Detective Hackett as much detailed information as possible and told

the detective everything he saw. Mr. Martin also stated that the detective was not taking notes when he conducted his interview. We find that Mr. Martin's testimony regarding the events in question remained the same.

¶ 153 Defendant emphasizes that Mr. Martin was impeached at trial during another exchange with defense counsel, wherein defense counsel asked Mr. Martin whether during the interview he "told Detective Hackett that from 11:00 to 11:50 [p.m.], you'd only seen one vehicle drive onto Gilbert, correct?" to which Mr. Martin responded, "Yes, ma'am." Defense counsel then elicited testimony from Martin that the "vehicle" he had seen was a black car that looked like a Cavalier and was only parked at 8407 Gilbert for a couple of minutes. Defendant points to Mr. Martin's direct examination testimony that when Mr. Martin arrived at his girlfriend's house on that night he did not see defendant's van parked anywhere on Gilbert, and when asked what he saw after seeing Fudge run through the gangway of Crystal's house, Martin responded, "I saw Richard's van come out of the alley towards the end of the block at the east side of the street and he turned onto Gilbert Court and turned onto Vincennes." Thus, Defendant asserts that because on direct examination Martin stated that he did not see defendant's vehicle on the block when he arrived at Crystal's and on cross-examination, he said he only saw one vehicle drive onto Gilbert, he was impeached. We disagree.

¶ 154 A close review of the record shows that Martin's testimony was consistent with his statement and thus he was not impeached. On cross-examination, in what this court can only presume was an attempt to impeach Martin, defense counsel engaged in the following questioning:

> "Q. And during that interview you told detective Hackett that from 11:00 to 11:50 [p.m.], you'd only seen one vehicle drive onto Gilbert. Correct?

A. Yes, ma'am.

Q. The vehicle was a black car which they see all the time?

A. It looked like a Cavalier. Yes, ma'am.

Q. You told them next that then you'd seen a black van drive in the alley to the south end of Gilbert?

A. Yes, ma'am.

* * *

Q. The black car that you -- the only car that you said you saw drive up the street that night was a black Cavalier, correct?

A. Yes, ma'am.

Q. And a Cavalier is a car?

A. Yes, ma'am.

Q. Not a van?

A. Correct."

Contrary to defendant's argument, we do not see how the foregoing exchange could be viewed as impeachment. This exchange is confusing at best. It appears as though Mr. Martin believes defense counsel has asked him whether the only car *besides defendant's van* that he saw drive up Gilbert that night was the black Cavalier, to which Mr. Martin consistently responded in the affirmative. Defense counsel's questioning regarding the difference between a van and a car also fails to show that Mr. Martin's testimony fell within the bounds of inconsistency. Because we have found that this witness's testimony remained the same and he was not impeached, it follows that his testimony did not improperly bolster his credibility.

¶ 155 IV. Plain Error Review of *Voir Dire* Admonitions and Jury Instructions

¶ 156 A. Rule 431(b) Admonishment

¶ 157 The plain error doctrine allows us to consider otherwise forfeited claims of error where a "clear and obvious error occurred" and either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The burden of persuasion is on the defendant to establish plain error. *People v. McLaurin*, 235 Ill. 2d 478, 495 (2009). We must first consider whether an error occurred at all. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009).

¶ 158 Defendant argues that the circuit court failed to properly question potential jurors during *voir dire*, as required by Illinois Supreme Court Rule 431(b) (eff. July 1, 2012)). Although this error was not preserved in the circuit court, defendant argues we may consider it as a matter of plain error. The State acknowledges that the circuit court failed to comply with Rule 431(b), but contends that the plain error doctrine does not apply here because the evidence was not closely balanced.

¶ 159 In criminal cases, Rule 431(b) requires the circuit court to question potential jurors regarding four distinct principles. The rule states:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a

> reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her ***." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

The court must "provide each juror an opportunity to respond to specific questions concerning the[se] principles." *Id.*

¶ 160 Our supreme court has held that the language of Rule 431(b) is "clear and unambiguous." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010). The rule "mandates a specific question and response process" pursuant to which the circuit court "must ask each potential juror whether he or she understands *and* accepts each of the principles in the rule." (Emphasis added.) *Id.* Failure to question potential jurors regarding any one of the four principles is error, as is asking potential jurors if they understand but not if they also accept a principle or *vice versa*. *Id.* Although the questioning may be performed in a group or individually, each prospective juror must be given an opportunity to respond regarding his or her understanding and acceptance of each of the four enumerated principles. *Id.* Rule 431(b) is a codification of the holding in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984). *Thompson*, 238 Ill. 2d at 617. In *Zehr*, our supreme court explained that this procedure is no mere formality; rather, "[e]ach of these questions go to the heart of a particular bias or prejudice which would deprive [a] defendant of his right to a fair and impartial jury." (Internal quotation marks omitted.) *Zehr*, 103 Ill. 2d at 477. "If a juror has a prejudice against any of these basic guarantees, an instruction given at the end of the trial will have little curative effect." *Id.*

¶ 161 The circuit court in this case failed to comply with Rule 431(b) in several respects. The court first previewed the *Zehr* issues in its opening remarks to the venire members:

> "Under the law the defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and it is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.
>
> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. And this burden remains on the State throughout the case. The defendant is not required to prove his innocence, nor is he required to present any evidence on his own behalf. He may rely upon the presumption of innocence."

¶ 162 When the court then questioned the potential jurors on these concepts, however, it only asked if any of the potential jurors did not understand the presumption of innocence:

> "Ladies and gentlemen, I want to discuss some basic principles of constitutional law that apply in all criminal cases.
>
> First off is the presumption of innocence ***. Any person placed on trial in a criminal case is presumed to be innocent of that charge against him. That means he can rely upon the presumption of innocence or he or she can rely on the presumption of innocence. They do not have to present any evidence on their own behalf.
>
> Does anyone not understand the concept of presumption of innocence, please raise your hand in the inner or outer part of the

courtroom?

Let the record indicate nobody has raised their hand."

The State agrees that the circuit court failed to ask the venire members if they also *accepted* the presumption of innocence. Regarding the third principle of Rule 431(b), the record further reflects—although the State makes no specific concession on this point—that the circuit court also did not ask the potential jurors whether they either understood or accepted the concept that a criminal defendant need not present evidence. Rather, the court merged this concept into the admonishment regarding the presumption of innocence. Our supreme court held in *Thompson* that these same omissions constituted noncompliance with Rule 431(b). *Thompson*, 238 Ill. 2d at 607.

¶ 163 Defense counsel later attempted to ask the two omitted questions regarding criminal defendants having no burden to present evidence, albeit not very clearly:

> "And another question I'm going to ask as a group, at the beginning of this case the Judge told you that the defen[s]e can rely on the State's burden to prove the defendant guilty beyond a reasonable doubt, that the defense does not have to present any evidence. Based on the accusations in this case, would anyone be unable to be fair if the defense did not present any evidence? That was sort of confusing. I asked that a confusing way. Did everyone understand what I was asking.
>
> And no one raised their hand. Thank you."

Even if defense counsel had clearly asked whether the potential jurors accepted the presumption of innocence and whether they both understood and accepted that a criminal defendant need not

present evidence, this could not have cured the circuit court's error in failing to make this inquiry where twelve jurors and an alternate had already been selected and escorted from the courtroom at the time defense counsel asked this of the jury. Three additional alternate jurors who ultimately played no role in deciding the case were the only venire members selected who were provided an opportunity to respond to this belated questioning by defense counsel.

¶ 164 The circuit court also asked the venire members if they had any "qualms" or "problems" with the fact that the State's burden in a criminal case is to establish proof of the defendant's guilt beyond a reasonable doubt. Defendant contends this did not comply with the second principle set forth in Rule 431(b) because potential jurors were not also asked if they *understood* the concept. However, we agree with the State that there was no error on this point because the court later told the jury that the burden of proof beyond a reasonable doubt would stay with the State throughout the entire case and asked if anyone did not understand this. We conclude that any juror who failed to understand the burden itself would have responded in the affirmative to this belated question. None did.

¶ 165 Defendant does not challenge the circuit court's questioning of potential jurors with respect to the fourth and final principle—that a criminal defendant's decision not to testify on his own behalf may not be held against him—and the record reflects that the court complied with Rule 431(b) in this regard.

¶ 166 Having found that the circuit court failed to fully comply with Rule 431(b)—specifically by failing to question potential jurors regarding whether they accepted the presumption of innocence and whether they both understood and accepted the principle that a criminal defendant need not present evidence—we next consider whether that error rose to the level of plain error. Consistent with our supreme court's holding in *Thompson*, that noncompliance with Rule 431(b)

is not an error so serious that it will necessarily result in an unfair trial (*Id.* at 614-15), defendant does not contend that the second prong of the plain error doctrine is implicated here. Rather, he argues that reversal is required because the evidence in this case was closely balanced, such that the failure to ensure against biased jurors may have tipped the scale in favor of a guilty verdict.

¶ 167 We note that whether the evidence was sufficient to sustain a verdict of guilty and whether it was closely balanced for purposes of applying the plain error doctrine are different questions subject to different standards. *Piatkowski*, 225 Ill. 2d at 566. When considering the sufficiency of the evidence we must view it in the light most favorable to the prosecution. *Id.* We do not view the evidence through this same lens when we consider whether it was nevertheless closely balanced. *Id.* at 566-67. Instead, we must "make a commonsense assessment of the evidence within the context of the circumstances of the individual case." *People v. Belknap*, 2014 IL 117094, ¶ 52. As our supreme court made clear in *Belknap*, what we are supposed to engage in is "a commonsense, contextual analysis of the totality of the evidence." *Id.* ¶ 49.

¶ 168 Defendant asserts that the evidence was closely balanced where the State "offered a purely circumstantial case premised on a convoluted theory of the crime." In response, the State stresses that circumstantial evidence can be enough to support a conviction, especially when it is overwhelming, as it was here. See *Saxon*, 374 Ill. App. 3d at 417 (determining that "[a] defendant can be convicted solely on circumstantial evidence"). Defendant emphasizes that the State failed to produce an eyewitness to the murder or any motive as to why defendant would commit such a heinous crime. However, Mr. Martin testified as an eyewitness to defendant's conduct before, during, and after the time when May was killed, and no evidence of motive is necessary in order to sustain a conviction. See *People v. Smith*, 141 Ill. 2d 40, 56 (1990) ("It has long been recognized by this court that motive is not an essential element of the crime of murder,

and the State has no obligation to prove motive in order to sustain a conviction of murder").

¶ 169 Unlike our foregoing review of defendant's sufficiency of the evidence argument, we do not view the evidence in the light most favorable to the prosecution, thus we find it pertinent to objectively resummarize the evidence at trial in order to determine whether it was closely balanced. The evidence at trial established that on July 14, 2008, around 11 p.m., Mya and her 13-year old brother, Fudge, were playing with the neighbor's children at the south end of Gilbert Court when defendant called Fudge and told them to come home. At this same time, Mr. Martin observed Mya and Fudge come down the street and head into the gangway on the side of their house. This is the last time anyone who testified at trial saw Mya alive. The testimony from the medical examiners and Mr. Englert, the State's blood spatter expert, showed that Mya was first attacked behind her house, where she was slammed into a lockbox hanging on a steel pole in the back of defendant's house. Mya was also strangled and stabbed numerous times. According to the State, Mya was killed by defendant after she stayed out past curfew and defendant became irate, slammed her into the lockbox and post, and then tried to cover it up by stabbing her and staging her body in the alley. Conversely, according to the defense's theory of the case, Mya interrupted a burglary when she wandered out of the house alone that night and was killed for catching this unknown perpetrator in the act.

¶ 170 Mr. Englert, a seasoned blood spatter analysis expert, testified that the blood spatter patterns found in defendant's van established that Mya had to have been stabbed in the van and further stated that the blood spatter pattern on defendant's shoes meant that he was the one who stabbed Mya. Mr. Englert explained that the spatter pattern on defendant's shoes was medium velocity spatter that he believed was consistent with defendant holding Mya in between his legs and stabbing inward towards her while she was seated in an upright position. Mr. Englert stated

that the blood on defendant's shoes could not have been caused by him merely stepping in blood. Mr. Englert's testimony was corroborated by Mr. Matthews, a forensic analyst, who testified that blood samples taken from the rear passenger side seat cushion tested positive for Mya's DNA. Mr. Englert testified regarding the medium velocity spatter that was found in various areas throughout defendant's van, including the window shades and the crevices of the flashlight. Mr. Matthews also testified regarding the window shade, stating that the swabs collected from the shade tested positive for female DNA, from which Mya could not be excluded. Additionally, Mr. Englert stated that although the blood found in the vents and foam insulation was not able to be matched through a DNA profile, he believed it to be Mya's blood. Mr. Englert's testimony that Mya was stabbed in the van, rather than merely placed there after she was stabbed, was uncontroverted. The defense did not dispute that Mya was stabbed in the van, and defense counsel argued in closing that the burglar who purportedly committed the murder stabbed Mya in the van and then moved her body to the wooded alley area. Additionally, Mr. Englert testified that it was his opinion that the scene where Mya's body was found was staged, consistent with the State's theory that defendant killed Mya by slamming her into the lock box and then tried to cover it up by stabbing her.

¶ 171 Mr. Martin testified that he saw defendant drive his van out of the south end of the alley onto Gilbert Court and then onto Vincennes, and then return to Gilbert several minutes later, which would have been enough time for defendant to get rid of the murder weapon. Mr. Martin also observed defendant go into his house and change his shirt from a white one to a blue one during the time in which the State posited that defendant killed Mya. Subsequently, defendant approached Officer June Conway, who was new to the neighborhood, to ask if she had seen Mya, which she answered in the affirmative by stating that she had seen a girl in a pink shirt

"running through the alley." However, defendant did not ask Officer Conway any follow-up questions or for any assistance in finding Mya. Thereafter, both Mr. Martin and another neighbor, Ms. Akins, saw defendant drive back onto Gilbert. Once defendant began screaming when he found Mya in the alley, he did not immediately rush to the hospital. He waited for his uncle Derrick and they drove to a hospital that was not the closest one to defendant's home. Upon arriving at the hospital, the testimony established that defendant did not go into the hospital and instead remained in his van. After finally going into the hospital, defendant was informed of Mya's death but did not ask any questions. Defendant just closed his eyes and said, "Oh. She's so pretty, Momma, isn't she pretty?"

¶ 172 Contrary to the position adopted by the dissent, we believe that when viewed using "a commonsense, contextual analysis of the totality of the evidence," (*Belknap*, 2014 IL 117094, ¶ 49), the foregoing evidence is not closely balanced and weighs in favor of the State. Without citation to authority, the dissent states that,

> "All things being equal, it is reasonable to infer that a person who tried to cover up a murder also committed the murder. However, that inference is weakened here, where other family members whom [defendant] may have been willing to take extreme measures to protect also had access to Mya on the night that she was killed, including [defendant's] wife, his mother, his mother's boyfriend, his uncle Derrick, and his son Fudge."

We recognize that our courts have long found that actions taken in covering-up a crime tend to show consciousness of guilt. See *People v. Wilson*, 8 Ill. App. 3d 1075, 1079 (1972) (any attempt to conceal evidence tends to show consciousness of guilt); *People v. Gambony*, 402 Ill. 74, 80 (1948) (any attempt by a party to a lawsuit, either civil or criminal, to conceal evidence is

relevant). However, we strongly disagree with the dissent's contention that the circumstances of this case somehow undermined this well-settled inference. The dissent appears to insinuate that one of defendant's family members was, in fact, responsible for Mya's murder. Such a supposition is troubling, because the record is absolutely devoid of any evidence that anyone besides defendant killed Mya. There is also no evidence of defendant's relationships with his other family members or any testimony that could create the inference that defendant would sacrifice his freedom to cover up their possible wrongdoing. Further, although the dissent points out that the State failed to call any of defendant's family members as witnesses at trial, we fail to see how this is relevant to the issue at hand. Certainly, the absence or lack of testimony is not evidence, and thus cannot be weighed by a court when determining whether the evidence was closely balanced.

¶ 173 Here, the blood spatter analysis expert was uncontroverted, and the jury could have drawn reasonable inferences from his testimony. The fact that Mya was stabbed in the van was not in dispute. In its closing argument, the defense went so far as to actually acknowledge, "[s]o maybe the burglar did stab her in the van." Eyewitness testimony from Mr. Martin firmly established defendant's actions and the timeline of events on the night in question. Also, Ms. Akins corroborated Mr. Martin's ability to observe defendant's actions because she saw Mr. Martin and his girlfriend in his car, just as he had testified to. Therefore, we disagree with defendant's contention that the circumstantial evidence of this case rendered it closely balanced.

¶ 174 Defendant next argues that this case is unlike others where the evidence was found not to be closely balanced because the State failed to offer an inculpatory statement from defendant. Instead, defendant argues, the State used his exculpatory statement in its case-in-chief, and then attempted to discredit his statement throughout the remainder of its case. Defendant points to the

State's case as falling short of being proven where a reasonable juror could infer lack of a guilty conscience when defendant approached Officer Conway, who was in uniform, while he was purportedly covered in blood. The State responds, and we agree, that defendant mischaracterizes the evidence. According to the timeline set forth in Mr. Martin's testimony, defendant had changed out of his bloody clothes prior to speaking with the officer. As a result, we are unconvinced by defendant's reliance on this limited example of his behavior as being indicative of his lack of guilt.

¶ 175 Defendant next argues that Mr. Englert's testimony rendered the evidence closely balanced because "[a] conscientious juror might well have ignored much of Englert's account as speculative junk science incompatible with proof beyond a reasonable doubt, especially where Englert appeared to leap to conclusions about the key evidence from little more than blurry photos and assumptions, and where Englert acknowledged that he had not pathology training, yet testified as to cause of injuries as if he were a doctor." The State responds that Mr. Englert is the foremost expert in his field and that defendant can only minimize his testimony by questioning the entire field of blood spatter analysis.

¶ 176 Contrary to defendant's assertions, we do not find the record contains any indication that Mr. Englert's testimony was discredited by the jurors or viewed as "junk science." The jury did not ask any questions that suggested their disbelief of Mr. Englert's testimony. Thus, this court is unsure upon which basis defendant's contention that Mr. Englert's testimony "was too thickly colored with exaggeration to credit" is premised. Mr. Englert performed an in-court demonstration wherein he struck an instrument into a bloodlike substance and showed the jury exactly how the bloodlike substance created medium velocity impact splatter in a pattern just like the blood found in defendant's van. While it is true that Mr. Englert was not able to examine the

blood on defendant's shoes in person, he was able to observe and examine photographs of the blood pattern on defendant's shoes that were taken the night of the murder. Mr. Englert opined that Mya was not stabbed in the alley, that the scene in the alley was staged, that Mya was stabbed in the van, and that the blood on defendant's shoes could only have been caused during the stabbing in the van. All of these opinions were rendered to the requisite degree of scientific certainty, and were supported by the demonstration Mr. Englert performed in court. Thus, it would have been reasonable for the jury to accept as true that the substance defendant's shoes was blood and was, in fact, Mya's blood. Thus, we fail to see how the evidence here was closely balanced.

¶ 177 Additionally, defendant contends that Mr. Martin's "suspect" testimony rendered the evidence closely balanced, because at the time he made his observations on the night of Mya's murder, he "had no reason to pay attention." We do not find this argument convincing. Mr. Martin's testimony was clear and he did not contradict himself. He testified that he was sitting in a parked car near defendant's home and observed various people coming and going from defendant's home. He also was able to estimate how much time had elapsed during each person's exit or entrance. Defendant argues that Mr. Martin "had no reason to pay attention," however, such a statement is pure speculation regarding Mr. Martin's thoughts on the night in question. Defendant also asserts that Mr. Martin's testimony contained contradictions to his first statement to police. However, as we have previously found, Mr. Martin testified to what he witnessed on the night in question and when asked whether he told officers the same information he testified about at trial, Mr. Martin consistently responded that he had. The fact that the officer who first interviewed Mr. Martin did not write down his statement word-for-word, coupled with the confusion regarding how many vehicles he saw that night, does not render Mr. Martin's

testimony to be a contradiction. Thus, we believe Mr. Martin's consistent, unimpeached testimony was strong evidence in favor of the State's case. It is well-established that a "positive identification by a single eyewitness who had ample opportunity to observe is sufficient to support a conviction." *In re M.W.*, 232 Ill. 2d 408, 435 (2009) (quoting *Piatkowski*, 225 Ill. 2d at 566). We recognize that Mr. Martin did not observe defendant actually commit the murder, however, he observed defendant's behavior before, during, and after the murder and was able to consistently testify regarding what he saw. Martin was not impeached and there was no evidence that his testimony would be biased against defendant for any reason. Martin's testimony established a clear timeline of defendant's whereabouts during the time Mya was killed and supported the State's theory of the case. His testimony helped weigh the evidence in favor of the State.

¶ 178 Finally, defendant argues that the evidence was closely balanced due to the "cumulative effect" of the trial court's alleged error in failing to tender two instructions to the jury. As will be discussed below, we do not find that the court's failure to *sua sponte* tender two instructions was error, thus the jury not receiving these instructions could not have contributed to any supposed cumulative effect that would have rendered the evidence closely balanced. As such, although we find that defendant satisfied the first prong of plain error where the trial court committed error in failing to properly admonish the jury pursuant to Rule 431(b), viewing the evidence in a commonsense manner in the context of the totality of the circumstances, we conclude that the evidence in this case was not closely balanced. Although the evidence was circumstantial and defendant's motive was not clear, other evidence, such as Mr. Martin and Mr. Englert's testimony, solidified defendant as the perpetrator.

¶ 179 B. Illinois Pattern Instructions 3.11 and 3.15

¶ 180 Defendant also argues that the trial court erred where it failed to provide the jury with Illinois Pattern Jury Instructions, Criminal No. 3.11 (4th ed. 2000), the pattern instruction governing prior inconsistent statements, and Illinois Pattern Jury Instructions, Criminal No. 3.15 (4th ed. 2000), the eyewitness identification instruction. Consistent with his previous argument regarding jury admonitions, defendant acknowledges that he did not raise this issue in the court below and asserts that the court's failure to provide these two jury instructions was plain error.

¶ 181 We reiterate that the plain error doctrine allows us to consider otherwise forfeited claims of error where a "clear and obvious error occurred" and either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Piatkowski*, 225 Ill. 2d at 565. "[A]n omitted jury instruction constitutes plain error only when the omission creates a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial." *People v. Hopp*, 209 Ill. 2d 1, 12 (2004).

¶ 182 Defendant asserts that our review of this issue should be *de novo*, but the State argues that abuse of discretion is the proper standard. We agree with defendant. Unlike our review of a scenario in which a defendant requests an instruction that is denied by the trial court and thus requires abuse of discretion review, here, our review is *de novo* because the issue of whether these two instructions were due is a legal one and neither of these instructions were requested in the court below. *People v. McDonald*, 2016 IL 118882, ¶ 42 (holding that "when the trial court, after reviewing all the evidence, determines that there is insufficient evidence to justify the giving of a jury instruction, the proper standard of review of that decision is abuse of

discretion"). We now turn to defendant's two contentions of error as they relate to the jury instructions.

¶ 183 Defendant argues that the trial court erred by failing to *sua sponte* give IPI Criminal No. 3.15, which instructs the jury when eyewitness identification is an issue in the case. IPI Criminal No. 3.15 states:

> "When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following: [1] The opportunity the witness had to view the offender at the time of the offense. [2] The witness's degree of attention at the time of the offense. [3] The witness's earlier description of the offender. [4] The level of certainty shown by the witness when confronting the defendant. [5] The length of time between the offense and the identification confrontation." Illinois Pattern Jury Instructions, Criminal, No. 3.15 (4th ed. 2000).

¶ 184 Defendant asserts that because Mr. Martin's eyewitness identification of defendant was at issue in this case, IPI Criminal No. 3.15 was due. The State responds that IPI Criminal No. 3.15 was not required to be given because Mr. Martin's identification of defendant was not, in fact, an issue in this case since defendant never challenged Martin's identification. The State specifically argues that defendant's claim that Mr. Martin may have confused defendant for Derrick was wholly unsupported by the record. We agree with the State. There is nothing in the record that supports defendant's argument that Mr. Martin's identification of defendant was at issue or contested. Although defendant attempts to argue that Mr. Martin did not have a reason to pay attention to defendant or the happenings on the night in question, there is nothing in Mr. Martin's testimony that convinces this court that he was not testifying truthfully. Mr. Martin was familiar

with defendant and knew how he looked. It was not as if Mr. Martin was asked to identify a stranger. Further, we find unconvincing defendant's argument that Mr. Martin's testimony failed to provide the jury with information regarding the lighting conditions. If defense counsel wanted to make that an issue, then she was free to do so at trial. However, there is no evidence in the record that the street lighting near where Mr. Martin observed defendant was defective in any way. Officer Ryan testified that the light at the end of the street where Gilbert meets the alley was non-functioning but that all other lights were functioning, which runs contrary to the State's assertion that the lighting could have affected Mr. Martin's identification of defendant.

¶ 185 Further, we find that no error was committed where the jury received IPI Criminal No. 1.02, which informed the jurors of many of the same topics covered in IPI Criminal No. 3.15, and specifically reads:

> "Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability to observe, his memory, his manner while testifying, any interest bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the testimony in the case." Illinois Pattern Jury Instructions, Criminal, No. 1.02 (4th ed. 2000).

¶ 186 This instruction is similar to IPI Criminal No. 3.15 in that it addresses the memory of the witness and requires the jurors to consider the witness's ability to observe at the time in question. Thus, even if a juror was confused by Martin's testimony or considered his statements to be inconsistent, that juror would have received other guidance in the form of IPI Criminal No. 1.02. Based on the foregoing, we find IPI Criminal No. 3.15 inapplicable here, but even if it was, the jury was still adequately instructed so as to ensure a fair trial for defendant, and thus the court's

failure to *sua sponte* give this instruction was not error.

¶ 187 Defendant also argues that the trial court should have *sua sponte* given the jury IPI Criminal No. 3.11, which states:

> "The believability of a witness may be challenged on evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.
>
> It is for you to determine what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made." Illinois Pattern Jury Instructions, Criminal, No. 3.11 (4th ed. 2000).

Defendant contends that IPI Criminal No. 3.11 was due because Mr. Martin was impeached when confronted with his prior inconsistent statement. "The pattern jury instruction regarding inconsistent statements is appropriately given when two statements are inconsistent on a material matter." *People v. Eggert*, 324 Ill. App. 3d 79, 82 (2001). As stated previously, we do not find that Mr. Martin's testimony ever became inconsistent with his original statement to police on the night of Mya's murder. At best, there was some vagueness or confusion in his testimony regarding whether he saw one vehicle in total or one vehicle in addition to defendant's van. However, this confusion did not render his two statements inconsistent. Therefore, we find that there was no error because the omission of IPI Criminal No. 3.11 did not create a serious risk that the jury convicted defendant due to its misunderstanding of the law where Mr. Martin's two statements were not inconsistent on any material matters. As a result, we do not find any error in

the court failing to *sua sponte* provide the jury with IPI Criminal no. 3.11.

¶ 188 Having determined that defendant failed to satisfy the requisite first element of plain error review, we now turn to his alternative argument that counsel was ineffective for failing to request these two jury instructions. In order to make out a claim for ineffective assistance of counsel, a defendant must satisfy both parts of the *Strickland* test: that counsel's representation was objectively unreasonable and, but for the attorney's errors, there was a reasonable probability the outcome at trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

¶ 189 Defendant argues that his counsel was ineffective for failing to request that the court give IPI Criminal Nos. 3.11 and 3.15 to the jury. The State responds that defendant cannot satisfy the *Strickland* requirements because not raising the issue of Mr. Martin's eyewitness identification of defendant was strategic, and regardless, the fact that the jury received IPI Criminal No. 1.02 negates defendant's contention that the outcome would have been different. In his reply, defendant asserts that the State fails to explain under which strategy defense counsel might have been acting when he failed to ask for IPI Criminal Nos. 3.11 and 3.15.

¶ 190 Our review of the record has led us to determine that defendant's ineffective assistance claim would best be brought on collateral review. "[W]here, as here, the record is insufficient because it has not been precisely developed for the object of litigating a specific claim of ineffectiveness raised in the circuit court, thereby not allowing both sides to have an opportunity to present evidence thereon, such a claim should be brought on collateral review rather than on direct appeal." *People v. Ligon*, 239 Ill. 2d 94, 105 (2010). The issue of ineffective assistance of counsel was not raised in defendant's possttrial motion, and was only briefly addressed as an alternative argument in defendant's appellate brief. Thus, we do not believe the parties have had

an adequate opportunity to explore the issue of trial counsel's effectiveness. The State posits that trial counsel's decision to forego requesting two jury instructions was "strategic." However, the State does not set forth, and our review of the record does not produce, any evidence or insight into trial counsel's decisions. As a result, we decline to address defendant's ineffective assistance claim on direct appeal.

¶ 191 V. Out-of-Court Statements Made by Another Suspect

¶ 192 Defendant also argues that, pursuant to Illinois Rule of Evidence 804(b)(3) (Ill. R. Evid. 804(b)(3) (eff. Jan. 1, 2011)) and his sixth amendment right to present a meaningful defense, he should have been allowed to present evidence regarding certain out-of-court statements made by Terry Robertson (a/k/a Robinson), a neighborhood scrap collector who was first arrested for Mya's murder. At trial, Mr. Robertson invoked his fifth amendment right not to testify, the State did not offer him immunity in exchange for his testimony, and the circuit court excluded as hearsay Robertson's admissions and the testimony of his acquaintances who claimed that he told them that he was "scrapping" in the east alley of Gilbert Court on the night of Mya's death.

¶ 193 On appeal, defendant argues that testimony regarding those statements was admissible pursuant to the hearsay exception for declarations against interest. That exception "is founded on the assumption that a person is unlikely to fabricate a statement against his or her own interest." *People v. Tenney*, 205 Ill. 2d 411, 433 (2002) (citing *People v. Chambers*, 410 U.S. 284, 298-99 (1973)). In *Chambers*, the United States Supreme Court identified four factors bearing on the reliability of an out-of-court statement: "(1) the statement was spontaneously made to a close acquaintance shortly after the crime occurred; (2) the statement is corroborated by some other evidence; (3) the statement is self-incriminating and against the declarant's interests; and (4) there was adequate opportunity for cross-examination of the declarant." *Chambers*, 401 U.S. at

300-01. Cases have since treated these factors as guidelines, not requirements, and a statement may be admissible even where all four factors are not present. *Tenney*, 205 Ill. 2d at 435. However, our supreme court has held that the "bedrock for the exception," and the one factor that "obviously, must be present," is a self-incriminating statement. *People v. Keene*, 169 Ill. 2d 1, 29 (1995). The criteria for admission under Rule 804(b)(3) of the Illinois Rules of Evidence are similar to those expressed in *Chambers*: "[a] statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." Ill. R. Evid. 804(b)(3) (eff. Jan. 1, 2011). We review this issue for an abuse of discretion. *Tenney*, 205 Ill. 2d at 436.

¶ 194 Here, acquaintances of Mr. Robertson told police officers that, in the day or two following Mya's death, he made statements to them indicating that he had been "scrapping" for copper on Gilbert Court on the night of July 14, 2008, and saw a "commotion" before the police arrived. Mr. Robertson purportedly stated that he "was right over there," that he "was there before the police," and that "[t]he body was fresh that's why [he] didn't smell her." According to these individuals, Mr. Robertson did not indicate that he ever saw Mya's body and stated that he left the area before the police arrived because "he didn't want to get involved." One acquaintance said Mr. Robertson stated: "Man, I was over there. I had got this chill out my body, and I just rolled off." From this, the acquaintance inferred that Mr. Robertson "might have gotten himself involved with something in regard to that little girl." Having reviewed the offer of proof presented by defendant in support of his motion *in limine* to admit testimony regarding Mr. Robertson's out-of-court statements, we cannot say that it was an abuse of discretion for the circuit court to deny that motion.

¶ 195 Although the statements made by Mr. Robertson are somewhat odd, objectively they

establish nothing more than Mr. Robertson's presence in the area on July 14, 2008. They are consistent with an individual bragging about his proximity to a violent crime that was recently reported in the news. The statements did not directly implicate Mr. Robertson in Mya's murder. To the extent that they implicated him in the crime of "scrapping"— an offense Mr. Robertson had been convicted of before and which provided a reason for him to assert his fifth amendment right not to testify — we conclude that this does not infuse them with sufficient indicia of reliability to mandate their admissibility as statements against the declarant's interest. The record is clear that Mr. Robertson made the statements only to acquaintances of his who were already well aware that he was a scrapper. We fail to see how, under these circumstances, the statements fell "within the basic rationale of the exception" that a person is unlikely to make up something that is incriminatory. *Chambers*, 410 U.S. at 299, 302. Thus, the trial court did not abuse its discretion in refusing to admit this evidence.

¶ 196 Alternatively, defendant argues that where the facts of the police investigation of Mr. Robertson were relevant evidence regardless of the exclusion of his statements as hearsay, counsel was ineffective for failing to introduce these facts at trial. Specifically, defendant asserts that trial counsel misunderstood the trial court's ruling that only barred admission of Mr. Robertson's statements and evidence of other crimes, but not his arrest. The State responds that the record shows that trial counsel actually made the strategic decision not to put forward any other evidence regarding Mr. Robertson in light of the trial court's ruling. Further, the State contends that defendant has failed to present any authority that would establish that evidence of Mr. Robertson's arrest was even admissible.

¶ 197 As we found previously in this decision, the record is insufficient for us to make a determination regarding the effectiveness of trial counsel. We reiterate, "where, as here, the

record is insufficient because it has not been precisely developed for the object of litigating a specific claim of ineffectiveness raised in the circuit court, thereby not allowing both sides to have an opportunity to present evidence thereon, such a claim should be brought on collateral review rather than on direct appeal." *Ligon*, 239 Ill. 2d at 105. In his appellate brief, defendant, *inter alia*, argues:

- "[Defendant's] trial counsel, however, never presented any evidence of Robertson's arrest, apparently mistakenly believing it to have been excluded by the Court's order barring Robertson's statements."
- The record indicates that [defendant's] defense did not present evidence of Robertson's arrest only because it misunderstood the scope of the court's ruling *in limine*."

¶ 198 Neither of these assertions by defendant are supported with citations to the record on appeal, despite the second argument explicitly referring to what *the record indicates*. (Emphasis added.) Similarly, the State also makes arguments without citation to evidence in the record. For example, the State contends, "the record shows that far from misunderstanding the trial court's ruling, defense counsel actually made a strategic decision not to put in any other evidence regarding Robinson in light of the trial court's ruling." There is nothing in the record that evinces trial counsel's strategy and that would allow us to review defendant's claim of ineffectiveness. Defendant did not raise any issues of ineffective assistance of trial counsel in his posttrial motion. He also only briefly addressed them in his appellate brief. Further, because the State claims that trial counsel's decisions were based on strategy, a more complete record tailored to the issue of trial counsel's effectiveness is required in order to render a decision on the merits. As a result, we decline to address defendant's contention that his trial counsel was ineffective.

¶ 199 CONCLUSION

¶ 200 For the foregoing reasons, we affirm defendant's conviction for first degree murder.

¶ 201 Affirmed.

¶ 202 JUSTICE MIKVA, concurring in part and dissenting in part.

¶ 203 I agree that the State presented sufficient evidence from which a rational trier of fact could have found Mr. Lyons guilty beyond a reasonable doubt of Mya's murder. However, I also believe that the trial court's failure to comply with Rule 431(b) did rise to the level of plain error because the evidence at trial was closely balanced, and I respectfully dissent from the court's opinion on that basis. I agree with the court's analysis of the remaining issues, but with the exception of two issues I believe would be likely to reoccur on remand—Mr. Lyons's challenge to the foundation for the State's blood spatter evidence and his challenge to the circuit court's denial of his motion *in limine* to introduce evidence of Mr. Robertson's out-of-court statements—I would not reach those issues. I would instead remand this case for a new trial.

¶ 204 I do not suggest that the evidence in this case was closely balanced simply because it was circumstantial rather than direct. I do, however, believe a "commonsense assessment of the evidence" (*Belknap*, 2014 IL 117094, ¶ 52) requires us to acknowledge when the facts of a particular case limit the range of reasonable inferences that might otherwise be drawn from circumstantial evidence. Here, there was surely circumstantial evidence that Mr. Lyons stabbed Mya and placed her body in the alley when she was already dead or dying. According to the State's theory, Mr. Lyons did this to make it look like Mya was the victim of a random stabbing and to conceal the fact that the true causes of her death were blunt force trauma and strangulation injuries she received some time before she was stabbed. But I believe the evidence did not

overwhelmingly point to Mr. Lyons as the person who killed Mya, to the exclusion of other individuals who were in the vicinity of the Lyons home on July 14, 2008.

¶ 205 All things being equal, it is reasonable to infer that a person who tried to cover up a murder also committed the murder. However, that inference is weakened here, where other family members whom Mr. Lyons may have been willing to take extreme measures to protect also had access to Mya on the night that she was killed, including Mr. Lyons's wife, his mother, his mother's boyfriend, his uncle Derrick, and his son Fudge. It was Fudge who witnesses identified as the last person to see Mya alive. It was also Fudge who—according to the State's theory—was in the house when Mr. Lyons went inside and changed his bloody shirt after stabbing Mya, and Fudge was the one who Mr. Lyons invited into the bloodied van to "search" for Mya. And yet, the State did not call Fudge or any of the other family members as witnesses at trial. I disagree with the State's contention that, on this record, an inference that Mr. Lyons may have attempted to cover up Mya's murder even if he was not the person who inflicted the wounds that killed her is "beyond ludicrous" or "entirely contrary to normal common sense experience." It is true that a trier of fact need not "search out *** potential explanations compatible with innocence and elevate them to the status of reasonable doubt" (*People v. Arndt*, 50 Ill. 2d 390, 396 (1972)), but no searching is necessary to observe that the conventional wisdom that the one who conceals a crime is the one who committed the crime—an inference crucial to the State's theory—was undermined by the circumstances of this case.

¶ 206 Moreover, the evidence that Mr. Lyons was the one who stabbed Mya was not as overwhelming as the State insists it was. I find it significant that the State's case hinged largely on the opinion testimony of its blood spatter expert, Mr. Englert, who reached some very specific conclusions about the manner in which Mya's injuries were inflicted solely based on

photographs of the interior of Mr. Lyons's van and a single, somewhat blurry photograph showing the tops and inward-facing sides of Mr. Lyons's shoes. Mr. Englert concluded, for example, that Mya was stabbed while seated between Mr. Lyons's legs, with both individuals facing the same direction and with Mr. Lyons repeatedly drawing the knife or other weapon back toward his own body. Mr. Englert acknowledged that doing this would have been very awkward, that the wounds to the back of Mya's neck would have been difficult to inflict while in this position, that Mr. Lyons's shoes were never examined or tested for Mya's blood, and that Mr. Englert never inspected the van before most of the blood stains were removed. Although it was for the jury to decide whether Mr. Englert was a credible witness, aspects of his testimony are certainly troubling and it is clear that, absent his conclusions, the jury would not have been able to draw the connections between the various pieces of circumstantial evidence that the State's theory depended on.

¶ 207 Nor do I suggest that the evidence in this case was closely balanced simply because the State failed to present evidence of any motive Mr. Lyons had to kill Mya. However, the complete absence of any motive in a purely circumstantial case is undoubtedly significant. See *People v. Hendricks*, 137 Ill. 2d 31, 53 (1990) ("[m]otive, although not an element of murder, may be a material factor at issue in establishing guilt, particularly when the only evidence is circumstantial"); *People v. Novotny*, 371 Ill. 58, 61-62 (1939) (although the State is not required to establish a defendant's motive, such evidence is nevertheless "important in considering the question whether [the defendant] did commit [the crime]," such that "it is always proper for the People to prove motive where it can be done"). Here, the State failed to present even circumstantial evidence to support its suggestion that Mr. Lyons may have killed Mya in a fit of rage because she came home late.

¶ 208 The absence of any evidence of motive plainly distinguishes this case from all of the cases cited by the State in which courts found the evidence—though circumstantial—was not closely balanced. See, *e.g.*, *People v. Ealy*, 2015 IL App (2d) 131106, ¶¶ 21-22 (evidence was presented that the defendant had a financial motive to rob and murder the manager of a fast food restaurant); *People v. Coleman*, 2014 IL App (5th) 110274, ¶ 139 (evidence was presented that the defendant wanted to divorce the victim but did not want to jeopardize his job with a prominent Christian ministry by filing for divorce); *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 43 (evidence of the defendant's Internet searches was admitted to establish his motive and intent to kill or solicit another to kill the victim); *People v. Hall*, 194 Ill. 2d 305, 331, 337 (2000) (evidence, albeit conflicting evidence, was admitted regarding the defendant's motive to kill the two victims); *People v. Dukes*, 146 Ill. App. 3d 790, 792 (1986) (evidence was presented that the victim had ejected the defendants from his game room and otherwise "clashed with [the] defendants on several occasions" prior to the fire that damaged the victim's building); *People v. Pappas*, 66 Ill. App. 3d 360, 371 (1978) (noting that "[t]he entire record hint[ed] strongly that [the] defendant may well have had a motive for commission of the crime").

¶ 209 Additionally, although the jury was entitled to draw inferences in favor of Mr. Lyons's guilt from his behavior on the night Mya was killed, we must consider all of Mr. Lyons's actions that night, including conduct that would have been counterintuitive had he just killed Mya: it was undisputed that Mr. Lyons approached a uniformed police officer to ask about his daughter; drove around the neighborhood drawing attention to the fact that she was missing; invited his son and uncle into the van where, according to the State, he had stabbed her just moments earlier; and then brought her to the hospital himself, before voluntarily submitting to questioning and handing over the keys to his van for police to inspect and photograph it.

¶ 210 Finally, I note that the jury requested additional evidence during its deliberations, suggesting that it may not have believed that the evidence presented at trial overwhelmingly proved that Mr. Lyons was guilty. See *People v. Mueller*, 2015 IL App (5th) 130013, ¶ 37 (noting that the mere fact that the jury requested more information did not, in and of itself, indicate that the jury believed it was a close case, but did demonstrate that the jury did not find the evidence presented to be overwhelming). The jury asked for, but was not provided with, police reports made during the investigation and notes of the prior statements given by Anton Martin to the police and the assistant State's Attorney. The latter request is significant in light of the fact that Mr. Martin's testimony played a critical role in establishing Mr. Lyons's actions and the State's timeline. At trial, Mr. Martin seemed to confuse or reorder certain events he testified about, first stating that Fudge was already back at the Lyons home when Mr. Lyons entered it and changed his shirt, but later stating that this happened while Fudge was still out of the house. This request reflects the possibility that the jury was also concerned, as defense counsel argued, that Mr. Martin might have changed some details in his timeline to better suit the State's theory after it decided that Mr. Lyons was a suspect.

¶ 211 In sum, I believe Mr. Lyons satisfied his burden to show that the evidence was closely balanced in this case. I do not reach this conclusion because the evidence was circumstantial, because the evidence pointed to the cover-up and not the crime, because there was no evidence of motive, because the State's forensic expert reached surprisingly specific conclusions from limited physical evidence, or because the jurors themselves wanted to see more evidence before making their decision. I reach it because, where *all* of these circumstances are present, a "commonsense, contextual analysis of the totality of the evidence" permits no other conclusion.

¶ 212 Although "[t]he language of Rule 431(b) is clear and unambiguous," our supreme court

has noted that "failure to comply with the rule has been a recurring problem." *Thompson*, 238 Ill. 2d at 606, 615. The court initially predicted that compliance would improve in the years after the rule was adopted, as circuit courts became familiar with its requirements. *Id.* at 616 ("We are confident that trial courts will continue to take notice of this important rule and employ all necessary steps to ensure full compliance in every criminal case tried before a jury."). Whether or not compliance with Rule 431(b) has generally improved, it appears from the opinions and unpublished orders of this court that the circuit court judge in this case has fallen into a pattern of only partial compliance. See, *e.g.*, *People v. Pledge*, 2016 IL App (1st) 132200-U, ¶ 49; *People v. Vanstephens*, 2015 IL App (1st) 131223-U, ¶ 28; *People v. Johnson*, 2013 IL App (1st) 111317, ¶¶ 56-59; *People v. Lawrence*, 2013 IL App (1st) 113772-U, ¶ 70; *People v. Radcliff*, 2011 IL App (1st) 091400, ¶¶ 14-16, 18-19. The circuit court was affirmed in each of these cases because the defendant was unable to make a showing of plain error. Although closely balanced cases may not present themselves often, they do exist. When error occurs in such cases, our obligation is clear: we must "err on the side of fairness, so as not to convict an innocent person." (Internal quotation marks omitted.) *Piatkowski*, 225 Ill. 2d at 566.

¶ 213 We can never know whether the jury's verdict in this case was affected by the circuit court's failure to comply with Rule 431(b). But a case like this—involving the inexplicably brutal murder of a young girl and a defendant who chose to rely on the presumption of innocence and not present evidence—is a perfect example of why compliance with the rule is no empty formality. It was imperative for the jurors in this case to understand and agree with the fundamental principles that the burden of proof is on the State and no conclusion may be drawn from a defendant's failure to present evidence. Mr. Lyons was entitled to a trial by jurors who understood that, no matter how desperately they wanted to know what really happened to Mya,

he was not required to provide them with a better explanation than the one offered by the State. Because I cannot be sure that this is what Mr. Lyons received, I would reverse and remand for a new trial.