2011 IL App (2d) 100448-U
No. 2—10—0448
Order filed August 30, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 06—CF—1790
CHRISTY LENTZ,	)	Honorable John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court properly denied the defendant's motion to suppress her videotaped statement, as it was not taken under circumstances violating *Miranda* and was voluntary. In addition, the trial court did not abuse its discretion in declining to instruct the jury on involuntary manslaughter where the evidence did not support giving such an instruction, and did not err in admitting photograph of deceased victim.

¶ 1 The defendant, Christy Lentz, was convicted of the first-degree murder (720 ILCS 5/9—1—A1 (West 2008)) of her father, Michael Lentz. She was sentenced to 50 years' imprisonment. On appeal, she argues that the trial court erred in: (1) denying her motion to suppress

statements; (2) refusing to instruct the jury on involuntary manslaughter; and (3) allowing a gruesome photograph of the victim to be published to the jury. We affirm.

¶ 2 The evidence presented in this case at trial and at the various pretrial hearings was lengthy, and rather than lay it all out here we briefly summarize the general developments in the case and procedural history. We will discuss the evidence in more detail as it pertains to our analysis of the specific issues raised by the defendant.

¶ 3 On June 9, 2006, the defendant and her sister Jill Baker called the police to the home of their father, whom they had not seen since late May. The police opened a missing persons investigation and interviewed the defendant on June 14, 2006. On June 21, 2006, the police went by the father's place of business, Industrial Pneumatics Supply, where the defendant also worked. The door was locked and there was a handwritten sign saying that the business was closed due to a family emergency. The police officers noticed a smell of decomposition. They obtained a search warrant and searched the business, where they found a wrapped and taped bundle containing human remains. The body inside had been put head-down into a plastic bin and it appeared that unsuccessful attempts to burn the body in the bin had been made. The police then went to the house of Chuck Minauskas, the defendant's boyfriend, where they found the defendant, her daughter Taylor, and Minauskas. They transported all three to the Villa Park police station. The defendant was questioned and gave a statement. At the conclusion of the defendant's statement, she was arrested and charged with the murder of her father.

¶ 4 Prior to trial, the defendant moved to suppress her statement. Over several days between May and December 2008, the trial court heard evidence and arguments related to the motion. It ultimately denied the motion to suppress. The case went to trial before a jury, and the defendant's videotaped statement was played in full. On January 21, 2010, the jury found the defendant guilty

of first-degree murder. Following the denial of her posttrial motion and her motion to reconsider sentence, the defendant filed this appeal.

¶ 5 I. The Denial of the Motion to Suppress

¶ 6 The defendant's primary argument on appeal is that the trial court erred in denying her motion to suppress her videotaped statement to the police, for two reasons. She argues that her statement was given in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), because she was in a custodial setting once she went to the police station, but she was not given *Miranda* warnings until part way through her questioning. She also contends that even if her questioning did not violate *Miranda*, her statement was involuntary and should have been suppressed for that reason. The review of a trial court's ruling on a defendant's motion to suppress involves questions of both law and fact. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). We accord great deference to the trial court's findings of fact and credibility determinations and will not reverse them unless they are against the manifest weight of the evidence. *Id.* **However, we review *de novo* the ultimate legal question of whether a confession was voluntary. *Id.*** In making this determination, we consider the evidence presented at trial as well as that presented at the suppression hearing. *Id.* at 252.

¶ 7 A. Whether the Defendant's Questioning Violated *Miranda*

¶ 8 The defendant's initial contention is that her questioning violated *Miranda* because it amounted to custodial interrogation, but she was not given *Miranda* warnings until after she had been answering questions for about an hour and a half. The threshold determination to be made for such an argument is whether the defendant was "in custody" at the time she gave her statement, as the requirement of *Miranda* warnings applies only to custodial interrogation. *People v. Slater*, 228 Ill. 2d 137, 150 (2008), citing *Yarborough v. Alvarado*, 541 U.S. 652, 661 (2004). In making this determination, a court must consider the circumstances surrounding the interrogation, and whether,

given those circumstances, a reasonable person would have felt free to terminate the questioning and leave. *Id*., citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995), and *People v. Braggs*, 209 Ill. 2d 492, 505-06 (2003). Relevant circumstances to be considered include: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. *Slater*, 228 Ill. 2d at 150. It is also proper to consider whether the defendant had reason to believe that he or she was the focus of a criminal investigation. *People v. Vasquez*, 393 Ill. App. 3d 185, 190 (2009). No single factor is dispositive, and in each case the court considers all of the circumstances surrounding the detention. *People v. Reynolds*, 257 Ill. App. 3d 792, 800 (1994). After examining and weighing the various factors, this court then must make an objective determination as to whether, under the facts presented, a reasonable person who was innocent of any crime would have believed that he or she could terminate the encounter and leave. *Slater*, 228 Ill. 2d at 150.

¶ 9 The evidence presented at the hearing on the motion to suppress included the following. Villa Park police officer Tiffany Wayda testified that, before June 21, 2006, she had been assigned to the missing person investigation on Michael Lentz. On June 21, between 2 and 3 p.m., Wayda and a fellow detective went to the business where the defendant worked, looking for the defendant in order to get some phone records from her. Wayda and her partner found no one at the business, but after walking around the back of the building they noticed the smell of decomposition and saw flies near a window. She and her partner obtained a warrant to enter the building and search for a body, and returned to the building some time between 4 and 7 p.m. Once a body was discovered at

the building, a second search warrant for the premises as a whole was obtained. Wayda got back to the Villa Park police station at about 8:30 p.m.

¶ 10 Wood Dale police officer Jordan Anderson testified that on June 21, 2006, he was told to go to the Villa Park police station, where he and other police officers were assigned to find Minauskas. He and three other officers drove together to Minauskas' home. Two other officers also drove there in a separate car. Both of the police cars were unmarked cars and all of the officers were dressed in plain clothes but wore identification showing that they were police. Anderson testified that when they arrived at Minauskas' house at about 9:52 p.m., Minauskas and the defendant, along with their daughter Taylor, were standing in the driveway. Anderson and another officer approached the defendant. Anderson testified that he said, "Hi, Ms. Lentz. My name is Detective Anderson. I'm from the major crimes task force, and we'd like to talk to you in reference to the missing persons case that we're investigating." He asked the defendant to come to the police station with him so that they could talk to her there. The defendant said fine, but she would need to bring her daughter. Anderson agreed and offered the defendant a ride to the police station, saying that they would bring her back when they were done. The defendant did not display any hesitation in accompanying them to the police station. The defendant and Taylor got into the back of one police car and four officers got into the same car (one on either side of them in the back seat and two in front). At the police station, the defendant got out of the police car herself. She and some of the other officers went into the police station through a secured door, not the front door that is open to the public.

¶ 11 Wood Dale police officer William Frese was one of the officers who drove with Anderson to Minauskas's house. Once they arrived, Frese and another officer went to speak with Minauskas. According to Frese, he spoke with Minauskas in the driveway and asked him to come down to the station. It was his intention to transport Minauskas, not arrest him. Minauskas testified that he, the

defendant, and Taylor (who was seven years old) had arrived home from bowling and he had gone into the house. He was coming out of his back door with an armload of clothes and some papers when he encountered the police. The police told him that he had to go with them to the station. Minauskas asked for and eventually received permission to put the things he was carrying down in the kitchen, but testified that the police watched him carefully while he was doing it. The police drove him to the police station and he was brought to an interview room. The witnesses agreed that there was no "cage" or secure divider between the back and front seats of either of the police cars. At no point did the police handcuff anyone, use physical force on anyone, or raise their voices. The officers did not say that anyone was under arrest.

¶ 12 After the defendant was brought to the police station, she was questioned by Wayda and Villa Park police officer Todd Kubish, beginning about 11 p.m. A third officer was also present to operate the video recorder. All of the officers were in civilian dress and none of them displayed their weapons at any point during the questioning. The videotape begins after the defendant had begun speaking. Kubish testified that this was because the operator was trying to get the recorder started. He did not talk with the defendant about anything that was the purpose of the questioning before the tape started. Wayda testified that she was already known to the defendant because of her earlier work on the missing person investigation and that, prior to the start of the tape, she introduced Kubish to the defendant.

¶ 13 At the start of the videotape, the defendant's demeanor was relaxed and helpful. She stated that the last time she saw her father was on a Monday, the 21st or 22nd of May (2006), around 8:30 or 9 a.m. He came to the office briefly for about 20 minutes. She had gotten there a few minutes earlier. She then gave a general description of their business as a distributor of pneumatic tools. She handled shipping, receiving, the books, customer service, and "a little bit of everything." A little

while ago her father made her the president of the company. Her father wanted to retire and recently told her that he wanted to sell the company but wouldn't because then she would not have a job; she told him to go ahead and sell it. Her father was 58 or 59. He often came into work in the morning and would have breakfast with the defendant and Taylor and then "take off and do his own thing." The defendant said her father was a drinker, and would meet his buddies at 10 in the morning and drink all day.

¶ 14 At this point, about five minutes into the questioning, Kubish stopped and told the defendant that he had forgotten to ask her something, and switched gears:

"Q [Kubish] Tonight, how did you get here today?

A [the defendant] They transported us here.

Q Okay. I mean where were you at when they came?

A At Chuck's house.

* * *

Q And the officers asked you if you would be willing to come in here?

A Uh-huh.

Q You weren't forced to come in here or anything like that?

A No.

Q Nobody dragged you out of the house?

A No.

Q Nobody threatened you to come in here?

A No.

Q And you know why we're here, right? We're here to talk about your father?

A Right.

Q That he's missing, correct?

A Right.

Q I just wanted to make sure.

A No, that's fine. That's great."

Kubish then stated that the date was Wednesday, June 21st, and the time was 11:10 p.m. He noted that the defendant had something to drink and asked if she needed anything, a bathroom break or pizza or anything, and the defendant said no. The following exchange occurred:

"Q [Kubish] Okay, good. All right. So everything's okay?

A [the defendant] My daughter needs to go to bed soon.

Q Okay. [LAUGHS] I'm sure she's being very occupied.

A I'm sure."

¶ 15 Kubish then returned to asking about the events on the last day the defendant saw her father. The defendant said her father had come in briefly and said that he was going to Door County to take care of "whatever needs to be taken care of." She explained that her father had a cottage in Door County that he had been trying to sell, and also had gotten into an accident up there. She then began a lengthy narrative about her father getting his truck stuck in snow in his driveway in March when she and Taylor had been up there with him, and that apparently a snowmobile had run into the truck after they had left it, and that the sheriff's office there had come to investigate. When the defendant was asked again about May 22 and what her father had said he was going to do in Door County, she offered that maybe he was going to talk to the real estate agent, but she wasn't sure. A few days before he left, they had gotten an email from the real estate agent saying that someone had looked at the property and was very interested, but the buyer had a question about the road, which the town initially told her father was his property and he had been maintaining it, but recently the town had

posted it as a snowmobile route. So, that was what he was probably going to see about when he said he was going to go up there and take care of things. She then described the property further. When asked what happened after that, the defendant said that her father probably went to the bar. She did not think that she talked to him further that day. She thought the next time she talked to him was a day or two later when he called her. It was about 10 in the morning, and she talked to him for a few minutes. He was leaving for Door County and told her to call him if she needed anything.

¶ 16 Kubish continued the questioning, asking open-ended questions in a non-confrontational manner. The defendant state that she and her father were pretty close, and laughed when she agreed that her father was close to Taylor. (The defendant laughed periodically throughout the first two hours of questioning, often in a manner indicating rueful agreement with what the officers said.) Her father would not call them every day, however; it would be normal for him to not call for a day or two because he was "a very private person" and he would go "on his little binges." Kubish asked about whether the business was a lot of work, and the defendant spoke again about how her father wanted to retire but would not sell the business because he was concerned about Taylor's well-being. The defendant then laughingly confided that she was a "big animal lover" and that what she really wanted to do is open a "cat haven." They then returned to the subject of the business and the defendant said that she was basically taking over the whole business. The only person who worked at the business other than she and her father was a part-time secretary. The secretary probably had not been in for the last three weeks or so, since before her father went missing. Her brothers and sisters had offered to help her with the business, but she had not taken them up on it. The only people with keys to the building were herself, her father, the secretary, and her sister Jill. A salesman used to work in the business, but left for another job when her father wanted him to do "outside sales." As far as she knew, he turned in his key when he left.

¶ 17 The defendant confirmed that she had waited about two weeks before reporting her father missing, because her father often kept things to himself and did not tell her about his activities. The "biggest thing" was that he had not talked to Taylor in that time, because he and Taylor were close. During the month that he had been gone, the defendant had been running the business. She was "stressed with all that's been going on," and she would go to the office and check for messages, place orders and ship things out, and do the banking. She went to the office every day. She then answered questions about her activities earlier on the present day, and stated that she had gone to the office twice that morning to check for messages and do paperwork. Minauskas did not go to the office today; he probably had not been at the office since 1999 after he quit or was fired from the business. He had turned in his key when he left and she did not think he still had a key. She discussed her relationship with Minauskas, including his recent arrest for domestic violence, and her father's dislike of Minauskas. Her brother and her father hated each other and would not talk. Asked to describe her father, the defendant laughingly said that "obviously" he liked girls, and described several recent girlfriends as well as a sexual act that one of them would perform on her father.

¶ 18 Kubish followed up on a possible lead to one of the girlfriends, asking where she lived and whether the defendant had met her. The defendant said she had, but had not seen the girlfriend recently and did not know her last name. She commented that her father had gotten a computer from the girlfriend, and Kubish suggested coming out to the business to see if perhaps they could get any information about the girlfriend from the computer. Kubish asked why the defendant had not had the secretary come in to help her with the paperwork since her father had been missing, and the defendant said that the secretary had come in on one or two days. She agreed that her secretary needed the work and that she could use the help. Her brother and Minauskas had been at the office

since her father had been gone. Her brother just walked in the back door and said that the place hadn't changed; Minauskas was only there to pick her up. Jill had not been there since her father had been gone. The defendant mentioned that her brother had pointed out that one of their uncles had shot himself and another uncle was on depression, and her brother's doctors were trying to get him on depression medication too. Her brother had told her that he didn't know why their father was not on depression medication. Kubish asked if the defendant was suggesting that her father might have hurt himself, and she said no, she did not think he would have. Although her father had fun gambling, he did not go gambling on his own and the defendant did not think he owed anyone money.

¶ 19 Asked when was the last time she had seen her father before Monday, the 22nd of May, the defendant gave an involved description about a White Sox game the previous Saturday or Sunday that she was supposed to have gone to with him but neither of them ended up going, because Minauskas would not keep Taylor so that the defendant could go. Her father decided to stay and do some work. Kubish asked the defendant a little more about her activities earlier on the present day, and the defendant said she and Minauskas got to the bowling alley about 2 or 2:30 in the afternoon, and spent four or five hours in the bar. Asked about how Taylor was handling the absence of her grandfather, the defendant said that she had been downplaying the absence to Taylor and Taylor appeared to be accepting it all right. Taylor knew that the defendant and Jill had gone to Door County to look for him.

¶ 20 At 12:30 a.m., Kubish suggested that they take a break because they needed to switch tapes. The defendant asked, "Is there any way that I could take my daughter home soon to put her to bed? Because it's kind of late." Kubish responded, "Well, we're just trying to get through all this now, so—." The defendant said okay. The break lasted 32 minutes. During the break, the defendant went

to the bathroom. Kubish and Wayda, who were both smokers, accompanied the defendant outside and the defendant smoked a couple of cigarettes. (It is not clear if either of the officers also smoked a cigarette during the break.) While she was outside, the defendant saw her daughter Taylor asleep on a bench, and her brother Michael and her brother-in-law Howard (Jill's husband) nearby.

¶ 21 At 1:02 a.m., the questioning resumed. The defendant confirmed that she had seen her brother and Howard during the break, as well as Taylor "[o]n a park bench, being bitten by mosquitoes." Wayda asked if she was sleeping outside and the defendant said yes. Wayda said she was sure that Taylor would be brought back inside when Howard finished smoking and they went back inside. Kubish then began reconfirming that the defendant had been at the business earlier in the day, and the defendant said that she had been there in the morning and also stopped by in the afternoon on the way to the bank. Kubish went back over her activities and movements that day. Kubish asked her if she had noticed anything unusual at the business, and she said no.

¶ 22 A few minutes later, at 1:07 a.m., Kubish brought out a *Miranda* waiver form and said he was going to quickly go over a couple of things with the defendant. He read the *Miranda* rights to the defendant one at a time and asked if she understood each one, and the defendant said she did, and signed next to each line. He then read the waiver of rights to her. The defendant said she understood it and signed the waiver. Kubish then continued questioning her, asking about various phone calls shown on phone records and who had been using the company gas cards that she had told them about. Both officers then questioned her in a slightly more confrontational manner about bank records she had promised to give them but had not, and different stories they had gotten from her and Jill regarding who picked up the mail at the business. Wayda suggested to the defendant that the landlord said that the business was behind on its rent, which the defendant denied. The police also questioned the defendant about discrepancies between her statement that the secretary had been at

work for a few days since her father left and had been paid for those days, and bank records showing that the last check to the secretary had been issued before her father disappeared and had been cashed on May 22nd, the last day the defendant said she saw her father. In the course of explaining her recent communications with the landlord, the defendant said that she had not been sleeping well, because she was "[j]ust worried and not sleeping and Taylor and —." Wayda asked why she was worried about Taylor, and the defendant said she was not worried about her but Taylor was "a handful" and "a lot to deal with." They then continued discussing the interactions with the landlord.

¶ 23 At approximately 1:39 a.m., there was a one-minute break while the officers left to get additional information from another room. The defendant remained in the room with the officer operating the video recorder. When they returned, Kubish said that they had spoken with the secretary, who told them that she had not been at work since May 15th, and that the defendant had been calling her and telling her not to come in because the defendant was doing inventory and her father was crabby. Shortly after that, Kubish began to press the defendant about saying that she had been at work earlier that day but had not noticed anything strange or unusual. Kubish then told her that they had been at her business inside the office earlier that day, and again pressed her about whether she noticed anything unusual. Wayda joined in, saying that she wanted the defendant to tell her what was going on, why she was not telling the secretary or the landlord that her father was missing, and saying "We know you know, because if you were at your business today, we know you know what we're talking about and what we saw, what we smelled and what we know is going on." The defendant said she did not understand what they saw today. She could not explain the air fresheners and the white powder all over the floor, or what they were for. It was normal to have Lysol and air fresheners and carpet cleaner around, because it was a smelly shop. Wayda told her

that when a dead body decomposes it smells, and that's what the fresheners and the powder were for, and asked the defendant to tell her what was going on.

¶ 24 There was another one-minute break at 1:47 a.m., as the videotape was changed. Kubish and Wayda began pressing the defendant again to tell them what was going on. They asked whether the secretary was "a part of this, a part of what we found today," and the defendant said no. Wayda asked the defendant if she thought no one would ever "find him" or notice the smell, and whether someone put her up to this, and the defendant said no. Wayda asked if anyone else was involved and the defendant said no. She repeated this. Both officers then spoke at length about the importance of the defendant taking the opportunity to tell them the truth, not take the whole blame or credit herself if there was someone else involved, and said they could understand the pressure she had been under. The defendant became emotional and reflective. She said that her father had pulled a gun on her at work a few weeks ago, and had hit her in the past. He had come to her house and said he would put her in jail and beat her; she didn't know why. Other people did not know about it. After the officers again asked her to tell them what was going on, the defendant hesitated and said that she would probably never be able to see her daughter again. Both officers immediately responded that that was not true. The defendant then told the police that her father came at her with a gun and she pushed him and he shot himself, and she "freaked out." This admission came approximately 45 minutes after she had been given *Miranda* warnings. She then related the events leading up to the fight and how it occurred. She did not tell her brother and sister or Minauskas what happened. No one else knew. The officers expressed disbelief that the defendant could have done all that was done with the body by herself, and the defendant repeated that no one else knew. She had driven her father's truck to Kenosha and left it by the side of the road, and took the bus back. The gun was in her dad's desk drawer. When the police again asked her to explain how she could have moved her

father's approximately 200-pound body without help, she said that she really did not want to explain anything right then. Wayda asked her if she would talk about it later, and she said she probably would. Kubish then asked her about a different subject and the defendant continued answering questions. A few minutes later, Wayda left the room. Kubish asked how the defendant was feeling. She said "sick," and agreed that she was feeling pretty bad about what had happened with her father. Kubish mentioned the defendant's father and deceased mother "up there" looking down on her, and reminded her that she initially called the police for help. The following exchange then occurred:

"A [the defendant] I know, but what about my daughter?

Q [Kubish] Obviously, we're going to take care of your daughter. We're going to do the right thing. But you need to do the right thing. I can't tell you what's going to happen with your daughter until you tell me what happened with your dad. I mean turn, look at me.

A I'm obviously not going to be able to see her.

Q No, you are going to be able to see her. Once we get this straightened out, you can see your daughter.

A I can't go home with her.

Q Well, we need to know what happened. Listen, look at me. You can't look at me right now because you're not being completely honest with us."

Kubish went on to say that they needed to know "why this happened" and how her father came to be positioned as he was when they found him. The defendant and Kubish then continued talking. The defendant described her father being abusive and bullying toward her, and provided more details about how she dealt with her father's body after he died. At times the defendant became emotional and cried. She also stopped talking and put her head down occasionally. The questioning continued

until approximately 5:30 a.m. Kubish and Wayda agreed that at no point during the interview did they tell the defendant that she was free to leave, although in the beginning they did not consider her to be under arrest.

¶ 25 After viewing the videotape of the questioning in its entirety and hearing the witnesses and attorneys' arguments, the trial court denied the motion to suppress. In announcing its ruling, the trial court began by stating that one of the important factors was that the questioning of the defendant on June 21, 2006, was a follow-up to a missing persons investigation that the defendant had initiated, so that at least at the beginning of the interview "the defendant was in a position from a reasonably innocent person's perspective as being the family member of a missing person cooperating with the police in locating this missing person." The court noted that the videotape, which it described as the "single best evidence of the defendant's not being in custody and not reasonably believing that she was in *** custody when she went into that conference room," showed the defendant as speaking freely and casually during the initial questioning, including her acknowledgment that she had agreed to come to the station to talk with the police. During the portion of the interview before the *Miranda* warnings were given, the defendant did not respond to questions in a manner that indicated any belief that she was in custody and was not free to go. The court also considered the demeanor of the police in questioning the defendant, stating that "certainly up until the time the *Miranda* warnings were given," the overall character of the interview "was not confrontational, not accusatory, was consistent with the ongoing missing persons" investigation. The court noted that the defendant "expressed an ongoing tension between her desire to stay and answer the police questions and her desire to make sure her child was taken home and gotten to bed." However, the defendant did not speak with any urgency about this concern, and a reasonable inference from her statements was that the defendant intended to take her daughter home herself and did not believe that she was not free

to leave. The trial court also observed that there were no formal indicia of arrest, such as being booked or handcuffed, and thus the court found that the defendant could reasonably believe that she was voluntarily furthering the investigation, not being arrested. The trial court concluded that the defendant was not in custody during the first portion of the interview prior to the *Miranda* warnings being given, and that she was appropriately warned prior to the police confronting her with the inconsistencies in her statements and the discovery of her father's body.

¶ 26 Our own review of the record leads us to the same conclusion, because the majority of the relevant factors favor a finding that the defendant was not in custody during the pre-*Miranda* portion of the interview. The first factor is the location, time, length, mood, and mode of the questioning. *Slater*, 228 Ill. 2d at 150. The questioning took place at a police station, in a conference room in a portion of the building not open to the general public. However, given that the defendant knew that the police wanted to talk to Minauskas at the same time and would want to do so separately, the location of the questioning would not be especially suggestive of custody to a reasonable person. The questioning took place during the late evening and early morning hours. There is no indication, however, that the police chose the time in an attempt to make the defendant more vulnerable; rather, they picked up the defendant for questioning as soon after the discovery of the body as practicable, and commenced the interview within an hour after the defendant arrived at the police station. As for the mood and mode of the questioning, the trial court placed great weight on these factors, and we agree that both the tone of the questions being asked and the defendant's relaxed demeanor demonstrated a cooperative and voluntary interview rather than a custodial interrogation.

¶ 27 The second factor, the number of police officers present during the interrogation, was neutral in that three officers, a usual number for interviews, were present, and they were in civilian clothes with their weapons secured in their customary holsters. Two of the officers questioned the defendant

while the third officer operated the videotape recorder. The fourth factor favors a finding that the defendant was not in custody, as none of the indicia of a formal arrest were involved, such as the show of weapons or force, physical restraint, booking or fingerprinting. The sixth factor, the age, intelligence, and mental makeup of the accused, likewise favors finding of a noncustodial interview, in that the defendant was not a minor and does not appear to have had any difficulty in understanding the nature of the questioning. The defendant argues on appeal that the defendant was tired, having been awake since 4:45 a.m. the previous morning, and she also told police that she and Minauskas had been in the bar for some hours that afternoon. Nevertheless, we agree with the trial court's determination that on the videotape the defendant, while occasionally appearing tired, was alert and oriented throughout the questioning and did not show any impairment to her ability to understand the proceedings.

¶ 28 The defendant argues that the manner by which she arrived at the place of questioning would have led a reasonable person to believe that she was in custody. In addition, Minauskas testified that the police told him that he had to come with them. This second point, what the police told Minauskas, is irrelevant because there is no evidence that the defendant was aware of it, and thus it could not have affected her perception of whether she was free to decline the request to come to the police station. See *People v. Alfaro*, 386 Ill. App. 3d 271, 291 (2008) (generally, the personal thoughts of the police officer or others involved are irrelevant unless the officer's belief that the interviewee is a suspect is communicated in some manner to him or her). However, we agree that the presence of six police officers at Minauskas' home, four of whom accompanied the defendant back to the station, might lead a reasonable person in the defendant's position to conclude that he or she did not have a choice whether to go with the police officers. The State, drawing on police testimony, argues that not all of these officers were assigned to bring the defendant in: some of the

officers were originally assigned to pick up Minauskas, and others came to Minauskas' address when they learned that the defendant was there. Regardless of the reason for the number of officers, however, this factor favors a finding that the defendant was in custody.

¶ 29 Nevertheless, viewing all of the factors together, we conclude that the defendant was not in custody during the pre-*Miranda* portion of the questioning. The defendant emphasizes that she was never told that she was free to leave, and argues that this case is like *People v. Fitzpatrick*, 107 Ill. App. 3d 876 (1982), in which the appellate court reversed the trial court's denial of the motion to suppress the defendant's statement because the police never told the defendant that he was free to leave. In that case, the parties disputed whether the defendant had agreed to come to the police station or whether he had been forced to come. *Id*. at 877-78. In this case, by contrast, the videotape shows the defendant agreeing with Kubish that she had voluntarily consented to come to the station and answer questions. This acknowledgment demonstrates that the police did not need to reassure the defendant that she was free to go: the defendant clearly viewed herself as being in control of her own presence at the station. See *People v. Eyler*, 132 Ill. App. 3d 792, 805 (1985) (a voluntary consent to accompany police to the police station for interrogation distinguishes permissible station house interrogation from illegal custodial interrogation). Similarly, as the trial court found, the defendant's comment to the police immediately before the first break that she needed to take her daughter home soon was delivered in a tone indicating that she was telling the police that she could not stay all night and would eventually have to leave—a communication that was consistent with a belief that she remained free to terminate the interview. Indeed, her manner throughout the pre-*Miranda* portion of the question was that of someone voluntarily cooperating with the police in an effort to locate her missing father. (We note that the remaining occasions on which the defendant expressed a desire to take her daughter home all occurred after the *Miranda* warnings had been given

and she was in fact in custody.) Finally, we do not view the fact that Kubish and Wayda accompanied the defendant outside while she smoked to be suggestive of custody; the police testified that otherwise the defendant could have gotten lost or locked out. The defendant's demeanor remained relaxed and cooperative even after the break, suggesting that she was not intimidated by Kubish's and Wayda's presence outside while she smoked. In sum, we find that taking all of the circumstances into account, a reasonable person in the defendant's position would not have believed that she was not free to terminate the questioning and leave during the pre-*Miranda* portion of the interview. As the defendant was not in custody during this portion, the failure of the police to warn her of her constitutional rights at the outset of the questioning did not violate *Miranda* and her statements were not subject to suppression on that basis.

¶ 30 B. Whether the Defendant's Statements Were Involuntary

¶ 31 The defendant argues that, even if her statements were not given in violation of *Miranda*, they should have been suppressed because they were involuntary. The requirement that a defendant's confession be voluntary flows from the fifth amendment's proscription against compelled self-incrimination (U.S. Const., amend. V), and also from the due process clause of the fourteenth amendment of the United States constitution (U.S. Const., amend. XIV), under which the United States Supreme Court has condemned certain interrogation techniques which, either in themselves or in their effect on "the unique characteristics of a particular suspect," are "offensive to a civilized system of justice." *People v. Richardson*, 234 Ill. 2d 233, 251 (2009), quoting *Miller v. Fenton*, 474 U.S. 104, 109 (1985). Because of these constitutional concerns, a confession that is not voluntary must be excluded. *Richardson*, 234 Ill. 2d at 253. We consider the issue of whether a statement was voluntary *de novo*. *Id.* at 251. The State bears the burden of showing that the confession was voluntary. *Id.* at 254.

¶ 32 In considering whether a confession is voluntary, a court must consider the totality of several factors including: (1) the defendant's age, intelligence, experience, education, mental capacity, and physical condition at the time of questioning; (2) the legality and duration of the detention; (3) whether the suspect was given *Miranda* warnings; (4) the duration of the questioning; and (5) the existence of any physical or mental abuse. *People v. Willis*, 215 Ill. 2d 517, 536 (2005). In considering these factors the court must bear in mind the ultimate question to be answered, which is " 'whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed.' " *Slater,* 228 Ill. 2d at 160, quoting *People v. Gilliam,* 172 Ill. 2d 484, 500 (1996). "A confession is voluntary if it is the product of free will, rather than the product of the inherently coercive atmosphere of the police station." *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005).

¶ 33 The defendant argues that some of the above factors, *i.e.*, that she had been awake for more than 18 hours at the time the questioning started and the questioning lasted for six and a half hours (including breaks), support the conclusion that her statements were not voluntary. However, her primary argument is that the police impermissibly used her desire to take her daughter home to coerce her into confessing to accidentally causing her father to shoot himself. The defendant notes that Kubish and Wayda repeatedly referred to her daughter in encouraging her to "tell us what happened" and "be honest." The defendant argues that the cumulative effect of this use of Taylor's presence at the police station, coupled with her tiredness and the length of the interrogation, wore her down to the point that her will was overborne and her confession was not voluntary.

¶ 34 A close look at the record refutes this argument. During the pre-*Miranda* portion of the questioning, Taylor was mentioned three times. The first mention occurred shortly after questioning began, when Kubish asked whether the defendant needed food, water, a bathroom break, or anything

else. At that point, the defendant told Kubish that Taylor would need to go to bed soon. Her tone of voice on the videotape indicates that she was advising the detectives that she was willing to cooperate and answer questions regarding her missing father but she would eventually need to get Taylor home to bed. The second mention occurred an hour and a half later, after Kubish said that they would need to take a break to change the tape. The defendant asked whether she could take Taylor home "soon" to put her to bed, indicating that she would like to wrap up the questioning at some point in the near future although not necessarily right then. Kubish did not respond directly, stating that they were "just trying to get through all this now." The defendant did not say anything further about Taylor. The police and the defendant then went outside for a half-hour break. Immediately after the break, Kubish made a record of the break, noting that while she was outside the defendant saw her daughter asleep and other family members nearby. The defendant agreed, but voiced a concern that Taylor was being bitten by mosquitos. Wayda reassured her that the other family members would bring Taylor back inside when they were done smoking.

¶ 35 Kubish read the *Miranda* warnings to the defendant less than five minutes after that, and the defendant signed the waiver. A little over a half hour later, at 1:39 a.m., there was a one-minute break. A few minutes after that, the police first told the defendant that they had been inside the business earlier in the day and began confronting her with the fact that the defendant had not told them the truth on various points. There was another one-minute break for the tape to be changed at 1:47 a.m. A few minutes after that, the defendant stated that her father had pulled a gun on her a few weeks ago. A few minutes later (approximately 45 minutes after receiving the *Miranda* warnings), the defendant stated, "You know, I'm probably never going to be able to see my daughter again." Kubish and Wayda both immediately responded, "that's not true." The defendant then stated that her father had come at her with a gun and she had pushed him away and that he had shot himself as

he fell. Between the time that the defendant received the *Miranda* warnings and the time she expressed concern about seeing Taylor as she was preparing to tell the police how her father was shot, the defendant did not indicate that she was concerned about Taylor in any way or wished to see her.

¶ 36 After the defendant first told the officers that her father had accidentally shot himself after she pushed him away, she provided more details about how the incident unfolded, and what she did with her father's body and his truck afterwards. Kubish and Wayda repeatedly suggested that the defendant, who was small in stature, had help from others, possibly her brother or Minauskas, in handling her father's body and disposing of the truck near Kenosha. The defendant was adamant that she had done all of it herself and that no one else knew of her father's death. The officers continued to press the defendant hard on this point, urging her to tell them the full story and be truthful. It was at this point that the defendant asked Kubish what would happen with her daughter and Kubish responded that they would take care of her daughter and do the right thing, but that he could not tell her what was going to happen with Taylor long-term until she told him what happened with her father. After that, Kubish and Wayda referred to the defendant's concern for Taylor more often—a total of eight more times—in urging the defendant to give them a full and truthful account. Although the defendant appeared increasingly tired and stressed during the remaining questioning, at no point did she change her account of any of the significant details of the story that she had told the officers.

¶ 37 This record does not support the defendant's argument that her statement was the product of police coercion relating to whether she could see Taylor or take her home. The defendant's initial comments about Taylor having to go to bed were not used by the officers to pressure the defendant; rather, the police reassured the defendant that Taylor was being cared for. When, immediately before she told the police how her father had been shot, the defendant expressed fear that she would never

see Taylor again, the officers unanimously told her that was not true. Thus, there was no coercive use of Taylor's presence or the defendant's concern for her prior to her confession that she was involved in her father's shooting and attempted to cover up his death. The circumstances here contrast with those used by the police in *Lynum v. Illinois*, 372 U.S. 528, 534 (1963), in which the police told the defendant that her children would be taken from her if she did not cooperate, and she did not give a statement until after this threat had been made. Moreover, although we do not condone the officers' later statements that they could not tell the defendant what would happen to Taylor until the defendant had provided a full and truthful statement, the defendant has not identified any manner in which those statements caused her to change her story or provide any substantial new information. Thus, whatever pressure those statements placed on the defendant, they were not the cause of her decision to tell the police about how her father had died or what she had done with his body and his truck after his death. See *People v. Anderson*, 225 Ill. App. 3d 636, 641 (1992) (statement was not the product of police coercion where defendant decided to confess prior to use of coercive tactics). Accordingly, we find that the defendant's statement was voluntarily and freely given, and therefore affirm the trial court's denial of the motion to suppress.

¶ 38 II. The Failure to Give an Involuntary Manslaughter Instruction

¶ 39 The defendant next argues that the trial court erred in refusing to instruct the jury on involuntary manslaughter. Jury instructions must "provide the jury with correct legal principles applicable to the evidence so that the jury may reach a correct conclusion according to the law and the evidence." *People v. Wales,* 357 Ill. App. 3d 153, 157 (2005). The decision to give or not give a particular jury instruction is within the sound discretion of the trial court. *People v. Jones,* 219 Ill. 2d 1, 31 (2006). An instruction on a lesser offense is justified when there is some credible evidence to support such an instruction. *Id*. If there is some credible evidence to support the giving of an

instruction on involuntary manslaughter, the failure to do so is an abuse of discretion. *Id*. The need for such an instruction depends on the facts and circumstances of each case. *Id.*

¶ 40 "The basic difference between involuntary manslaughter and first degree murder is the mental state that accompanies the conduct resulting in the victim's death." *People v. DiVincenzo*, 183 Ill. 2d 239, 249 (1998). Involuntary manslaughter requires a less culpable mental state than first-degree murder, *i.e.*, recklessness in performing acts that are likely to cause death or great bodily harm to another. *Jones*, 219 Ill. 2d at 31; 720 ILCS 5/9—3(a) (West 2004).

¶ 41 The defendant argues that some evidence supports the theory that she acted recklessly to cause her father's death, namely her videotaped statement to police that she pushed her father and that the gun he was holding discharged in such a manner that he shot himself. However, at trial, a forensic pathologist testified that the autopsy showed that the victim had been shot twice through the back of the head with the bullets exiting through the forehead and that the entrance wounds were not contact wounds. These physical findings were completely inconsistent with the defendant's videotaped statement that her father accidentally shot himself as a result of her push. Moreover, at trial the defendant recanted her earlier account, testifying that she lied to the police in her videotaped statement and that she had actually shot her father in self-defense with the gun that she had wrestled away from him. This testimony amounted to an admission that her earlier videotaped statement should not be viewed as credible evidence. The trial court denied the defendant's request to instruct the jury on involuntary manslaughter on the basis that, although the defendant's videotaped statement could be viewed as "some evidence," it was not "credible evidence" such that the instruction should be given. (The trial court did, however, give other instructions requested by the defense, including second-degree murder, self-defense, provocation, and unjustified use of force.)

In light of the trial testimony of the pathologist and the defendant herself, we find that the trial court did not abuse its discretion in declining to give the requested instruction.

¶ 42 III. The Publication of a Gruesome Photograph to the Jury

¶ 43 The defendant's final argument on appeal is that the trial court erred in permitting a particular photographic exhibit (Exhibit 94) to be published to the jury. The determination of whether evidence is admissible and whether it should be published to the jury is within the sound discretion of the trial court, and we will not reverse that determination unless there has been a clear abuse of that discretion. *People v. Sutton,* 349 Ill. App. 3d 608, 615 (2004).

¶ 44 Prior to the introduction of the photo at issue, witnesses had testified that they found the victim in the workshop area of the business. His body was wrapped in a bundle of tarps and clothing taped together with duct tape and electrical tape. Once the bundle was unwrapped, the body was found part-way inside a blue plastic trash can, which was melted in a manner suggesting that there had been an attempt to burn the body. The photo in Exhibit 94 showed the deceased victim lying head-down with his head, shoulders, and back in a blue plastic bin, bent at the waist with his legs extended straight out at an angle. A portion of his shoe and sock had been worn away or dissolved, revealing the skin of his heel and ankle. The victim's clothing and skin was somewhat shiny, suggesting that it was wet or slimy. In general, however, little of the skin or the condition of the body could be seen. The photo appeared to have been taken from about ten feet away.

¶ 45 The defendant contends that the photo was gruesome and its prejudicial impact on the jurors far outweighed its probative value, so that its publication to the jury was an abuse of discretion. The State points out that it sought to publish several other similar photographs of the victim's body and that the trial court, after lengthy deliberation and then reconsideration, allowed only one photo, Exhibit 94, to be published to the jury so that the jurors could understand the testimony regarding

the position in which the victim was found and the manner in which his body had been handled after death. The State also notes that, at the point in the trial at which the trial court considered the issue, the defendant was facing a charge of dismemberment by setting fire to the body, and the photo was helpful in showing the extent to which the plastic bin had melted. Although the charge was subsequently dismissed, the defendant did not ask the trial court to reconsider its decision regarding publication of Exhibit 94. The State argues that the admission of Exhibit 94 therefore was not an abuse of discretion. See *People v. Bounds*, 171 Ill. 2d 1, 47 (1995) (even gruesome photographs may be admitted to show the condition or location of the body at the crime scene if relevant). We agree with the State that Exhibit 94 was not needlessly gruesome and was relevant to show the location and condition of the victim's body. Accordingly, the trial court did not abuse its discretion in allowing Exhibit 94 to be published to the jury.

¶ 46 The State further argues that, even if the trial court erred in permitting Exhibit 94 to be shown to the jury, that error was harmless in light of the other evidence of the defendant's guilt. We agree. An evidentiary error that is not constitutional in nature will be considered harmless if the State meets its burden of showing that there is no reasonable probability that the jury would have acquitted the defendant if the evidence had been excluded. See *In re E.H.*, 224 Ill. 2d 172, 180 (2006) (noting that "there is a somewhat higher bar for constitutional error than other trial error to be deemed harmless"). Here, as the State points out, the evidence was not closely balanced: the physical evidence showed that the victim had been shot twice in the back of the head; the defendant's testimony that she shot her father in self-defense was contradicted by her videotaped statement (which was played in full to the jury); and the evidence showed that the defendant had taken extraordinary measures to conceal the crime. In light of this evidence, there was no reasonable probability that the outcome would have been different absent the publication of Exhibit 94. *Id.*

¶ 47 CONCLUSION

¶ 48 For all of the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 49 Affirmed.