2015 IL App (2d) 130351-U
No. 2-13-0351
Order filed June 1, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BYRON E. ADAMS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lee County. No. 09-CF-206 Honorable Charles T. Beckman, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to suppress his confession. Defendant forfeited his argument concerning impermissible opinion testimony. Affirmed.

¶ 2 In this direct appeal of his first-degree murder conviction, defendant, Byron E. Adams, raises two issues. First, defendant argues that his confession to police was not knowing and voluntary and that the trial court erred by denying his motion to suppress it. Specifically, defendant argues that his confession was induced after interrogating officers repeatedly presented a scenario that they said would, if true, support only involuntary-manslaughter, not

first-degree murder, charges. Defendant asserts that he confessed only after several hours of assurances that, if he admitted to having killed the victim in a manner consistent with the scenario police presented, involuntary manslaughter would be the only proper charge under the law. Defendant asserts that, because that representation was legally incorrect, his confession was not knowing and voluntary.

¶ 3 Second, defendant argues that reversible error occurred where a police witness provided "play-by-play" commentary while a recording of defendant's final interrogation session was played for the jury. Defendant asserts that the testimony consisted of the officer's analysis of how and why the tactics used on defendant successfully elicited a true confession, thereby, constituting impermissible opinion testimony concerning the confession's veracity. For the following reasons, we reject defendant's arguments and affirm.

¶ 4 I. BACKGROUND

¶ 5 On November 5, 2009, a grand jury charged defendant by indictment with three counts of first-degree murder. The indictment alleged that, on September 11, 2009, defendant killed Margaret Atherton when he placed a sock inside of her mouth and a pillowcase over her head: (1) knowing such acts created a strong possibility of death (720 ILCS 5/9-1(a)(2) (West 2008)); (2) intending to kill her (720 ILCS 5/9-1(a)(1) (West 2008)); and (3) knowing such acts would cause her death (720 ILCS 5/9-1(a)(1) (West 2008)).

¶ 6 On September 11, 2009, at around 2 p.m., Dixon police found Atherton's body in her bedroom. Defendant became a suspect, and, on September 13, 2009, was arrested on a warrant for possession of a stolen motor vehicle. Immediately following his arrest, however, defendant, age 51, was hospitalized in Chicago for chest pain. He remained hospitalized until September 15, 2009, when he was discharged and transferred to Lee County. Defendant was given *Miranda*

warnings both during the drive to and upon his arrival at the Lee County sheriff's department.

¶ 7 A. Motion to Suppress

¶ 8 Defendant's interrogation consisted of four sessions conducted over three days, September 15, 16, and 17, 2009. The interrogation sessions were videotaped, and the DVD's and transcriptions thereof are contained in the record on appeal. The interrogations totaled around 20 hours (generating 1,214 pages of transcription). This court has reviewed the relevant DVD's and transcripts. We note that there is no dispute that, throughout the course of the interrogations, defendant was not subjected to physical violence nor denied, as he puts it, "creature comforts," *i.e.*, he received food, beverages, medication, and bathroom breaks, etc.

¶ 9 1. First Interrogation Session

¶ 10 The first interrogation session commenced on September 15, 2009, about 10 minutes after defendant arrived at the sheriff's department. The session began at 3:39 p.m. and ended at 9:58 p.m., when defendant complained of chest pain. An ambulance took defendant to a hospital in Dixon, where he remained overnight.

¶ 11 2. Second Interrogation Session

¶ 12 Defendant returned to the sheriff's department on September 16, 2009, and a second interrogation commenced within one hour of his return. That session started at 8:08 p.m. and continued through the night, ending at 4:48 a.m. Defendant again received *Miranda* warnings. Dixon police chief Danny Langloss conducted the interrogation, along with deputy sergeant David Glessner. It was throughout this session that the interrogation techniques defendant challenges on appeal commenced.

¶ 13 Specifically, over the lengthy interrogation, Langloss, Glessner, and defendant discussed numerous topics, both related and unrelated to the crime. Both Langloss and Glessner built a

rapport with defendant, but Langloss served as the principal interrogator. Langloss explained to defendant that he was being interrogated because there was evidence that he was in Dixon the day that Atherton died. Defendant first denied both knowing Atherton and that he was involved in her death. Ultimately, defendant agreed that he delivered Atherton's newspaper. Langloss and Glessner reviewed with defendant some of the evidence that they had recovered, which included: (1) surveillance videos taken from a Walmart store in Dixon the day of Atherton's death, depicting a person who looked like defendant wearing distinctive "Raiders" clothing that defendant owned and which was found in his car—a white vehicle with license plates that started with "H2O"; (2) witness statements that they saw the vehicle with the "H2O" license plate in Atherton's neighborhood that day; and (3) records showing the car with "H2O" license plates making IPass toll violations from Chicago toward Dixon and back again, all during the relevant time frame. Defendant minimized the strength of each piece of evidence and again denied any knowledge of or involvement in Atherton's death.

¶ 14 Langloss and Glessner explained to defendant that the strength of the evidence lay in its totality and said that they hoped defendant would supply some missing "pieces of the puzzle." Langloss explained that "why" Atherton's death happened and "how" it happened were critical pieces, as they could affect the propriety of first-degree murder charges. He informed defendant that "this moment right now" was probably the most important moment of defendant's life, because it could mean the difference between "getting a [*sic*] probation or a few years in the joint to spending the rest of your life in the joint." Langloss explained that he wanted to know whether it was a planned, premeditated, intentional killing, or whether it happened as an accidental, spur-of-the-moment, "things got out of control" situation, which would constitute involuntary manslaughter, a probational offense. Langloss explained that *if* the killing was not

intentional and premeditated, then "it's our job and our responsibility to make sure that the charge would only be involuntary manslaughter, um, like I said that could get probation." He told defendant that his job was to serve and protect not just victims, but people who might have made mistakes and that, "if this was you and something got outta control, it's our job to talk to you and, I guess the word would be protect you[,] from a much serious[ ] charge and consequences than what it is you would truly deserve."

¶ 15 Defendant expressed disbelief that involuntary manslaughter could result in a sentence of probation, noting that he knew people who had killed others and never received probation. He said he wanted to "see it." Langloss brought into the interrogation room copies of the criminal statutes, and he reviewed with defendant the crime of involuntary manslaughter and its potential sentences, including the availability of probation or a two-to-five year term of imprisonment served at 50% (see 720 ILCS 5/9-3 (West 2008)). In addition, he reviewed with defendant the offense of first-degree murder, reading aloud all three subsections thereof (see 720 ILCS 5/9-1(a)(1)-(3) (West 2008)).

¶ 16 Langloss noted that Atherton's death happened in the middle of the day, defendant had parked his car where someone he knew recognized it, and he was seen walking up to the house. Langloss told defendant that, because defendant had street sense, common sense, and seemed to be a "good guy," Langloss doubted that defendant went to the house intending to kill Atherton, and he questioned whether Atherton's death was an accident and whether defendant left Atherton's house believing that she was still alive. Langloss then presented defendant with a scenario that would persist throughout the remainder of the interrogation, one that Langloss said would, *if true*, support charges of only involuntary manslaughter, as opposed to first-degree murder. Langloss said that, if something similar to that scenario actually happened, then he

would "go to bat" for defendant and tell the State's Attorney that first-degree murder charges were not appropriate. For illustrative purposes, we recount the following examples of Langloss's statements to defendant:

> "LANGLOSS: I'm just really afraid for ya and what's gonna happen to you. You seem like a good guy man. You seem like a good guy and I was—I was really hoping that it was gonna end up that—that you went there and—knocked on the door to—to talk to her—maybe she'd been kinda sweet on ya or talked to ya or whatever, ya know, ya—she'd given some indications or whatever and ya know, ya just broke up with this girl or whatever and ya know, I was really hoping that it was just gonna be something where she came and she freaked out and got scared—said she was gonna call the cops and then you—you freaked out cuz it's like here you're a black man in a white woman's house—this guy's across the street—she's yelling and screaming—what's this—what this crazy white woman gonna up and then you just made it so she couldn't scream and yell—you thought she was alive—you left and you just got the hell outta there man and I—I was really hoping that that's what this was gonna be—you thinking that she's alive and—and this was an accident even though that's still bad and you'd still be 5 years—2½ of it based on how ya are man, I just—I was hoping that's what was gonna—it was gonna be."

In addition:

> "LANGLOSS: So the person, if the person left while she was alive and they were just trying to keep her quiet cuz things had gone horribly wrong with whatever the person went there for and—and left her like that and had no intentions of killing then it would absolutely be the wrong thing to do to charge that person with 1st degree murder because that's not 1st degree murder."

Langloss said that what he thought might have happened was that defendant went to the house, knocked on the door, and Atherton let him inside (noting that, according to Atherton's husband, she always locked the door and there were no signs of forced entry or a struggle throughout the home). Langloss suggested that Atherton and defendant began having sex and then:

> "LANGLOSS: [A]ll the sudden for whatever reason, she starts just flipping out. She starts flipping out—she starts yelling or whatever and the person is concerned about this kinda freaks out as well and the person tries to stop her from yelling because there's people right across the street and so basically they—they put something into her mouth—not—not a weapon—something soft and just to keep her quiet and then the person freaks out says, ya know, I gotta go and a few minor things happen uh, and—and the person says I'm just gonna get the fuck outta here and get away from here."

Langloss continued that the person made sure Atherton could not just run out of the house and follow him, but did not hurt her. In addition, to make it look like something "different" happened, the person grabbed a towel from the house and took Atherton's purse. The person threw away the towel and purse, with money still in it, then went into Walmart and used the bathroom before returning to Chicago. Langloss said that he thought that the person responsible had no idea that what he put into her mouth and the way he left her could suffocate her. He said that, if it had been intentional and somebody choked her, the autopsy would have shown handmarks on the neck and a crushed windpipe. There were none of those things which, according to Langloss, suggested that the death was not at all premeditated or intentional. "The person—the person leave[s]—she's alive and there's never even a thought—never even a thought that she could die and this is *** an accident. It was an unintentional thing and *if that is what happened here, if that is the scenario*, God, that's huge." (Emphasis added.)

¶ 17 Defendant expressed concern about returning to prison. According to defendant, during his last period of incarceration (around 20 years ago), he witnessed the murder of a correctional officer. Defendant identified the perpetrators and was thereafter moved for his protection. He worried that he could be killed if he returned to prison. Langloss noted that, if the situation he was facing was a probational offense (*i.e.* involuntary manslaughter), the judge might consider in defendant's favor his actions on behalf of the murdered correctional officer. Langloss stated that "I can't sit here and promise ya that you'll get probation. The sentence is—the sentence for the involuntary—accident is 2 to 5 years and it's not—it's half so you actually do a little bit under half of that time and I understand your concerns about—about the—the joint but what I don't want to see [defendant] *** is you get charged with something more serious that you didn't do."

¶ 18 Langloss reiterated the scenario that defendant and Atherton engaged in consensual sex, she "freaked out," and, to quiet her, he put something soft in her mouth, noting that there would be "no reason anybody would believe that that would kill somebody," and, finally, defendant ensured that Atherton could not follow him when he left. Further:

> "LANGLOSS: *** the switch on her flipped—bi-polar, whatever—she starts freaking out—whoa, whoa, whoa, what the fuck—this was—hey, hey and she won't stop. You're like—you're like damn girl what's—what's going on—where—hey if you don't wanna do nothing straight up, whatever, ya know, and but she's just fuckin' screaming and screaming and you got this guy across the street and ya know, you just put something soft in her mouth and make it so she can't be following ya out or whatever—didn't hurt her—didn't hurt her and you leave ***."

Langloss stated that, while he could not make any promises because he was not the judge or jury, "*if* what we're talking about here is—is what happened that's totally different than the—than the other scenario [*i.e.*, first-degree murder]." (Emphasis added.)

¶ 19 Langloss repeated the aforementioned scenario numerous times throughout the remainder of the session. In addition, he repeated the theme that he did not believe that there were any intentions of hurting Atherton and that the death was accidental. He repeatedly commented that the evidence showed that the death was not intentional. He also repeatedly indicated that they wanted to help defendant, stating, for example, "please let us help you," and "I want nothing more *** then to be able to go to the State's Attorney and say this *** is what happened—this was not planned *** this was a booty call *** and she flipped out." He reminded defendant that "there's just such a huge difference in potential outcomes and for us to make the outcome what we really feel that it is, we've gotta have the information from you so we can in turn go *** [a]nd go to bat for the State's Attorney." Further:

> "LANGLOSS: [W]e know the State's Attorney and that's why right now is so important. Right now, by just being honest about the fact that going for a booty call, no big deal, makes you eligible for probation, *if that's what really happened, okay*, and you're the one that's in the house." (Emphasis added.)

¶ 20 Langloss reminded defendant:

> "LANGLOSS: [W]e're talking about potentially probation. *If things—now, if you tell me things happened totally different than what I think* and there was intentions there of hurting somebody then—then that—*then what I'm talking about with this involuntary and probation doesn't fit it.* That's just—that's the other end, do you know what mean, but I don't think that's the case[.]" (Emphasis added.)

Langloss repeated that the evidence showed there was no intention of hurting anyone and asked defendant to let him "go to bat" for him: "Let us know what happened—confirm what we think happened, okay and then go for your probation and fight that out. You're either gonna be fighting out for probation or you're gonna be fighting a first[-]degree murder case with your DNA at the scene and [defendant], I don't wanna see it happen." He asked defendant to let the police stand beside him while he faced the charges:

> "LANGLOSS: No, we're not trying to pimp a murder on ya. We're trying to show you that this is an involuntary manslaughter. It's an accident. You didn't mean for this to happen ***.
>
> ***
>
> LANGLOSS: That we're putting things out here, trying to help you.
>
> DEFENDANT: Right.
>
> LANGLOSS: And I think—I think this is the right thing—and you're gonna be stubborn and do—end up going to prison for the rest of your life because you're—you're too darn stubborn ***."

¶ 21 Langloss told defendant that "this *could* be—this is *potentially if what we think is—what we talked about is what happened*, this *potentially* is a probation case." (Emphasis added.) Defendant replied, "That's if that's what happened."

¶ 22 Langloss impressed upon defendant that the State's Attorney would soon be filing first-degree murder charges and it would then be too late to explain. He said there was a "good chance" this was not a first-degree murder but, rather, an involuntary manslaughter. He warned defendant that he would one day be sitting in prison for the rest of his life because he refused to reach for the hand that was extended to help him.

¶ 23 Defendant maintained his innocence throughout the interrogation. At different points in the session, he agreed that he had "street smarts." Defendant also questioned the amount of his bond and asked how it could have been raised without his presence in court. When told that it was the way the system worked, defendant replied, "No. I never heard nothing like that before in my life." Near the end of the session, defendant was served with an arrest warrant for first-degree murder.

¶ 24 3. Third Interrogation Session

¶ 25 A third interrogation session was conducted from 12:39 to 2:06 p.m. on September 17, 2009. Defendant received *Miranda* warnings. Langloss again served as the principal interrogator. They discussed the warrant for first-degree murder and defendant's plan to "fight it." Langloss stated:

> "LANGLOSS: What you don't have to do, okay, is deal with it from a stand point of first[-]degree murder. What you have to do is deal with it from a stand point of at least involuntary manslaughter. Now that's *only if*, [defendant], that's *only if*—that's *only if* . . .
>
> DEFENDANT: I'm not laughing at ya'll.
>
> LANGLOSS: I know. That's *only if what we were talking about yesterday is what really happened*. Now, if what happened is this was a planned attack—a calculated and there was every intention of hurting this lady, then yeah, you gotta deal with this from a level of uh, of first[-] degree murder but if what happened was you went down to her house [to] have a conversation ***." (Emphasis added.)

¶ 26 Langloss presented an alternative scenario to defendant (albeit once), that perhaps defendant arrived at the home, the door was open, and defendant entered the home after Atherton

did not respond to his calls. When he found Atherton already dead, he fled the scene. After being presented with that scenario, defendant said "No."

¶ 27 Langloss repeated that "*if* what happened in that house is what we're talking about happened, you may get probation" and continued "[y]ou *may* get involuntary manslaughter. You *may* go to—you *may* go to prison for a [few] years but even if you go to prison for 2 years, you can still get behind the wheel of your life, ya know, and—and have 15, 16, 20, 25 good years left." (Emphasis added.) Langloss continued to ask defendant to "[l]et us help you. Please let us help you." Further, Langloss said, "[D]o you know how powerful it is, ya know, for the Chief of Police to be the one standing by your side and going to bat for you[?]" Langloss impressed upon defendant that, for the first time, he could take control of his life. He asked defendant to consider Atherton's three daughters and their need for an explanation so they could move forward with their lives. He explained that defendant could trust him. He impressed upon defendant that he was a good person inside and that he could let that person out to help the children and ease his conscience.

¶ 28 Defendant maintained that he had done nothing wrong and had no relationship with Atherton. He stated that his attorneys would need to get the case moved out of Dixon, in order to get a fair trial. He complained about the amount of his bond. Langloss told him:

> "LANGLOSS: [Defendant], get over the hump. Get over the hump. You didn't have a relationship with her. Help us understand why you went there. Help us understand what happened in this house. Help us understand how—how this was completely unintentional and help us understand and—and know for sure that when you left there she was alive and you had no idea at all there's any way that she could die."

¶ 29 Defendant said he could not admit to something he did not do. Langloss said he was going to talk to the State's Attorney and ask for more time to get defendant "over the hump." If he could not "get over this hump" by then, "then I will not stand in the way of them charging you with first[-]degree murder."

¶ 30 4. Fourth and Final Interrogation Session

¶ 31 Later in the afternoon on September 17, 2009, *defendant* told jail personnel that he wished to speak with Langloss. Accordingly, a fourth and final interrogation session commenced at 6:36 p.m. Langloss gave defendant *Miranda* warnings. He confirmed that defendant had, by that time, appeared before a judge and was appointed counsel. Defendant had already been charged with and arraigned on first-degree murder. Langloss confirmed with defendant that defendant wished to speak with Langloss without the presence of his counsel. Defendant said "right."

¶ 32 Defendant noted that he had been charged with first-degree murder. Langloss told defendant that, after he left the last interrogation, he did speak with the State's Attorney about what he thought the investigation showed (*i.e.*, not first-degree murder). He relayed that the State's Attorney said that Langloss had only an unsubstantiated theory and, without more, the State's Attorney was not interested in his theory. Langloss said, with respect to the State's Attorney's office, "I'm not the boss of them." Langloss reiterated, however, the scenario where the death was not intentional and told defendant he wished to help him so that defendant could "fight it down" from a maximum of five years' imprisonment for involuntary manslaughter.

¶ 33 Defendant told Langloss that he was upset that, in the jail, he had been moved out of the general population and into a solitary cell. The following exchange began:

"DEFENDANT: *** [Y]ou say you wanna help.

LANGLOSS: Yeah.

DEFENDANT: I had mentioned Cassandra Brown [a recent girlfriend]; right?

LANGLOSS: Uh-huh.

DEFENDANT: This is the only thing I ask you. Put me back in the regular population and I would like to see Cassandra."

¶ 34 Langloss informed defendant that he had no control over the jail, but that he could call to find out why defendant was moved and whether he could be placed back in the general population. They discussed Brown and then Langloss repeated that he had spoken with the State's Attorney, who felt that the evidence against defendant was overwhelming and, therefore, he did not care whether Langloss spoke with defendant any longer. Langloss said that he felt that, based on the investigation, the State's Attorney's position was "not right" and:

"LANGLOSS: [Y]ou're kinda lucky in the idea that through my position I'm willing to go to bat for ya. If I come out and publicly say that I think that this case is charged wrong um, and that this is an involuntary manslaughter—*if what I think happened happened now*—I mean, that's—okay—um, then—then they're gonna have one hell of a time proving their case. You see what I'm saying?" (Emphasis added.)

¶ 35 After further general discussion, Langloss stood up to leave and get a drink. Defendant then said:

"DEFENDANT: I'll tell you what. I know I can't be able to see her [Brown]. That's the only thing I ask before I talk to y'all. If you could talk to her and just tell her I'm gonna try to talk to her over the phone. But if I can't—I know I probably can't see her cuz you said y'all don't deal with that and then I'm gonna talk to y'all about everything."

Defendant repeated that he wanted Langloss to help him. He said that he would talk to Langloss if he could talk with Brown over the phone, and he repeated that he wanted to return to the general population. Langloss, in turn, repeated that where defendant was placed within the jail was the sheriff's decision, but he said he would talk with him about it. Langloss received authorization for defendant to telephone Brown from the interrogation room. Before connecting the call, however, Langloss told defendant that he first needed defendant to be honest about the fact that he was in Dixon on Friday, September 11, 2009. If defendant was honest about that, Langloss would connect the call. Defendant said:

"DEFENDANT: I believe ya but what about uh, let me ask ya one thing. What is this gonna be when I do have? When is it gonna be the end?

LANGLOSS: *If* what you say is consistent with what I think, okay, *if what you say is consistent with what I think happened*, alright, then I feel that this will be an involuntary manslaughter case, alright. Let me put this another way; if you tell me the truth, okay, about what—what happened here—the truth—okay, right now we just [have] a theory—you tell the truth and *if the truth is what we think happened*, then—then I don't see any way that it can be anything other than involuntary manslaughter and I'm gonna go to bat for you on that, if you are honest and I give you my word.

DEFENDANT: Then how much I get for it?

LANGLOSS: I don't know that. *** I need a good faith from you, too, alright? I give you my word. All I wanna know is were you in Dixon on Friday?

DEFENDANT: I wanna come out that cell and go back in the population.

LANGLOSS: I'll work on that. That's not my decision. That's the sheriff's decision; okay? *** I will personally talk to the sheriff and ask him to put you in general population.

DEFENDANT: Okay, I know you want me to tell you what I'm gonna tell you but I just wanna get that (unintelligible) um . . .

LANGLOSS: What I—what I wanna do, okay, is I wanna help you and I wanna take that step and I wanna be . . .

DEFENDANT: You honestly believe I'm good? You honestly believe I'm cool?

LANGLOSS: I do. Yes I do. ***

***

DEFENDANT: *** is first degree lesser than uh . . .

LANGLOSS: Involuntary is less than first degree. There's a range—there's a range between there. Involuntary is something that was an accident and like I said what I think happened when—when—when you left there, what I think is that she was alive and you had no idea—you just got her shut up and got the hell outta there. That's what I think and by saying that you were in Dixon on that day is not saying that you went into her house; alright? I'm not asking you for—I'm not asking you to put your blind trust in me before you make this phone call on—on talking to me so I can help you. I'm gonna show you you can trust me. You'll be talking to her in a few minutes.

DEFENDANT: I know.

LANGLOSS: Okay? Um, and I gotta make sure, ya know, and I think I can trust you; okay? I really do think I can trust you but I think that this is man to man fair; ya know what I mean? All I wanna know and as soon as—as soon as you let me know I'm

gonan have [another officer] come in and make the call cuz she is waiting right now to talk to you. Were you in Dixon on Friday? That's all I wanna know.

DEFENDANT: Yeah. Yeah." (Emphasis added.)

¶ 36 Before the phone call commenced, defendant asked Langloss what would happen next. Langloss explained that he would make the phone call to Brown, and then Langloss would ask defendant to tell him the truth about what happened. Langloss repeated that, *if* the truth was consistent with what he believed had happened, he would "go to bat" for defendant with the State's Attorney's office and tell prosecutors that defendant was charged with the wrong offense. Defendant asked what would happen after that was "settled," whether he could avoid trial, and what Langloss thought was the "most" defendant would receive as a sentence. Langloss said he did not know, but that, if defendant was honest, and *if* it happened the way they thought it had happened, then, for involuntary manslaughter, the most defendant could receive was five years' imprisonment, serving only half that amount, and the least he could receive would be probation. Langloss said that he would not promise anything that would not come true and that he would stand by what he told defendant. Defendant said he planned to take Langloss's word on that.

¶ 37 Prior to making the telephone call to Brown, lieutenant Clayton Whelan entered the room. Whelen was involved in defendant's first interrogation session, and he had been direct and confrontational with defendant about the evidence connecting defendant to the crime. Upon entering, Whelan said to defendant, "Maybe I was wrong about you." Defendant responded, "Oh no, you ain't wrong." Defendant made his telephone call to Brown. During the call, defendant is heard saying to Brown that he was going to be going away for a long time.

¶ 38 After the call was finished and Langloss returned, defendant commenced speaking about the crime. He started by saying that there had been pushing and shoving and "kinda like y'all

said" it "was truly an accident." Defendant said that he "put the thing in there and didn't mean to make nothing go wrong," he just wanted to stop the "hollering." Langloss asked defendant detailed questions about the event. In sum, defendant explained that he started a relationship with Atherton shortly after he began delivering her newspaper. He went to the house on September 11, 2009, to tell Atherton that he was involved with Brown. According to defendant, they started arguing and Atherton was "hollering." There were people outside, and, so, he shoved two socks, one rolled inside the other one, into her mouth. He said, "I didn't know that thing that over her head was gonna suffocate her." Langloss asked what defendant put over Atherton's head, and defendant replied, "I guess it was a pillow case." Defendant said that he just put the pillowcase over Atherton's head and left it there. He maintained "I did not mean to kill her. I just meant to put the (unintelligible) and the sock in her mouth to stop her and that just happened [to] grab that pillow case and put it on there. That's all it was. I had no reason to."

¶ 39 Defendant explained that he next tied Atherton's hands behind her back with a long piece of black cloth that he found on the floor. Defendant agreed that he wore a "Raiders" outfit and drove the vehicle with the "H2O" license plate to Atherton's home, and he acknowledged taking her purse and a red, white, and blue towel from the home before going to Walmart, buying gas, and returning to Chicago. Defendant said that he panicked and did not intend to kill Atherton.

¶ 40 After detailing defendant's story and stepping outside of the interrogation room, Langloss returned and explained that the police were bothered by the fact that the pillowcase over Atherton's head was twisted so tightly that they had to cut it off. This was viewed as being inconsistent with defendant's statement that he just slipped it over her head. Defendant agreed that he might have twisted the pillowcase a little and demonstrated how he had done so. Langloss also said that, according to the coroner, Atherton's hands were tied behind her back

after she had died, which was inconsistent with defendant's story. Defendant reiterated that Atherton was alive when he tied her hands.

¶ 41 In the end, Langloss explained that, if the scenario he had presented throughout the interrogation had, in fact, been the truth, he would have been willing to go to bat for defendant. Defendant said that he had told Langloss the truth, but that "I see you're not gonna go to bat for me" and "I just fucked up" and "I just got made a damn fool of myself." Langloss explained that:

> "LANGLOSS: [U]nfortunately, when you put that over her head like that and—and wrapped it—it's not an involuntary murder type situation.
>
> ***
>
> Well now you have given the truth but it's different than—than the scenario that I drew up.
>
> ***
>
> Everything would have changed if it'd happened the way I said it happened."

¶ 42 5. Motion to Suppress Hearing

¶ 43 Defendant moved to suppress his confession, arguing that he was induced to adopt Langloss's proposed explanation for the killing by offers of leniency, the promise that Langloss would stand by and advocate for him with the State's Attorney, and Langloss's representation that defendant would qualify for involuntary-manslaughter charges and could then avoid prison.

¶ 44 Two hearings were conducted on defendant's motion to suppress. Langloss was the sole testifying witness at both hearings. Defense counsel asked Langloss to confirm that he repeatedly told defendant that he: (1) would go to bat for him; (2) would stand by him; and (3) would make sure that the State's Attorney filed the correct charges. Langloss replied,

"Absolutely, sir. If that had been the scenario, then that's exactly what I would have done, yes, sir." Langloss explained that his comments about helping defendant were all conditioned in the context of the theory that was discussed. He explained that the discussion of receiving probation for involuntary manslaughter was based on the theory, and "if [defendant's explanation] wasn't the theory, then there's no possibility of involuntary manslaughter and by his own words he killed her and she was dead when he left so he knew it wasn't the truth and he tried to convince us that it was, sir. He made that conscious decision, he decided that."

¶ 45 Langloss agreed that it appeared that defendant understood the criminal justice system and he "[a]ppeared to be very street smart, very aware of what was going on through our conversation." Langloss explained that the interrogation team was concerned that defendant was manipulating the interrogation. At times, he would "play dumb" and "mess with" the investigators. Accordingly, Langloss agreed that, because he wanted to see if defendant was being manipulative, he conditioned defendant's phone call to Brown on his being honest about his presence in Dixon on the day Atherton died. He further agreed that, "[w]e used trickery and deception for a good portion of the interview on Wednesday [September 16, 2009,] and a portion of the interview on Thursday [September 17, 2009]."

¶ 46 6. Trial Court's Ruling

¶ 47 On May 15, 2012, the trial court denied defendant's motion to suppress. The court reviewed the DVD's and transcripts from defendant's interrogation, and it considered Langloss's testimony from the suppression hearings. The court noted that, up until the interrogation of September 17, 2009, which defendant requested and which was conducted after he had been arraigned on first-degree murder charges, he had steadfastly maintained his innocence through more than 18 hours of interrogation. "There is no indication either by body language, statements

made, or in any other manner, that the will of the defendant was overborne by any of the questioning by either chief Langloss, deputy Glessner, or any other member of the team."

¶ 48 After summarizing the final interrogation session, the trial court found that it was clear that defendant's decision to make incriminating statements was based solely on his own terms and conditions, *not* as a *quid pro quo* for any statements or inducements made to him by law enforcement. The court found, viewing the totality of the circumstances, that defendant's incriminating statements were "voluntarily made and not the result of any deception, trickery, coercion or undue influence and that they were not made as a result of any promises made to him. The incriminating statements were freely and voluntarily made by [defendant]."

¶ 49 B. Trial

¶ 50 Defendant's jury trial commenced on October 1, 2012, and lasted nine days. In sum, the evidence reflected that, on September 11, 2009, at around 10:50 a.m., Ryan Atherton spoke with his wife, Margaret, by telephone. Around noon, in the dumpster behind the Dollar Tree store in Dixon, which is located next to a Walmart store, an employee found Margaret's purse, with its contents inside, and a red, white, and blue towel. The employee contacted the police. Around 1:15 p.m., Ryan Atherton authorized police to perform a welfare check at the Atherton residence.

¶ 51 When police arrived at the residence, all doors were closed, except for the front door, which was partly open. They entered the house and found Margaret Atherton's body in an upstairs bedroom. She was face down on the bed; her hands were tied behind her back with a black necktie. A pillowcase was tightly twisted and knotted over her head, and an investigator used a scalpel to cut it off. Once the pillowcase was removed, a white object was visible in Atherton's mouth. The white object was later determined to be a pair of rolled-up socks. The forensic pathologist testified that the cause of death was asphyxia resulting from strangulation by

a combination of the socks in Atherton's mouth and the pillowcase over her head. The pathologist testified that, if the strangulation Atherton had suffered was constant, unconsciousness could occur within seconds and non-recoverable brain death within three or four minutes.

¶ 52 A DNA expert testified that the DNA profile obtained from the pillowcase was a mixture of that from two males. Ryan Atherton's DNA profile was the major contributor. Defendant's DNA profile was consistent with that of the minor contributor. Defendant could not be excluded as a source of the DNA found on the pillowcase. The elements of defendant's DNA profile that matched the minor contributor's profile would be expected to occur in approximately: (1) 1 in 72 unrelated African-American males; (2) 1 in 60 unrelated Hispanic males; and (3) 1 in 44 unrelated white males. Similarly, neither Ryan Atherton nor defendant could be excluded as possible sources of DNA found on the necktie. Likewise, 52% of unrelated African-American males, 41% of unrelated Hispanic males, and 30% of unrelated white males could not be excluded as possible sources of that DNA.

¶ 53 A witness who lived on Atherton's street testified that, on September 11, 2009, when he took out his garbage between 12:15 and 12:30 p.m., he noticed a white car bearing a license plate that started with "H2O." When he came outside later, around 1 or 1:15 p.m., the car was gone. A second neighbor testified that, around 12:30 p.m. on September 11, 2009, he saw a white car parked outside of his house with the license plate that started with "H2O." The neighbor recognized the car as defendant's car, and he was familiar with defendant because they both delivered newspapers for a Dixon circulation. The car was gone when the neighbor went back outside around 1:30 or 2 p.m. A third neighbor testified that, in the early afternoon on September 11, 2009, he was on his porch. He saw an African-American man walk down the

Athertons' driveway wearing a black jogging suit with a white stripe on the arm and leg. The man appeared to be holding something in his arm.

¶ 54 Sandra Blankenship testified that she had known defendant for 23 years and he was the father of her children (twins, now age 23). Blankenship resided in Dixon and, in April or May 2008, defendant lived with her. However, one year later, defendant moved out and, in May or June 2009, Blankenship loaned defendant her white Pontiac Grand Am, with the license plate "H2O 4970." Despite requests that he do so, defendant did not return the vehicle and, so, in late August 2009, Blankenship reported the vehicle as stolen. Blankenship was shown photographs and recognized the man depicted in them as defendant. The photographs, taken from security cameras in the Dixon Walmart, showed a person walking in and out of the Walmart bathroom, but they did not show clear images of the person's face. However, Blankenship testified that she recognized defendant's profile, general body shape, and, in the images where he was walking, his gait. Further, Blankenship recognized in the photographs the clothing the person wore, *i.e.*, a black jogging suit with white stripes and the word "Raiders" on it, as an outfit defendant owned and wore frequently. Blankenship was 99.9% to 100% positive in her identification of defendant.

¶ 55 A police officer testified that defendant told him that he was the only one who drove and had control over the vehicle and that everything found in the car and trunk belonged to him.

¶ 56 Additional photographic evidence at trial included a still photograph obtained from a security surveillance video positioned so as to include views of the dumpster behind the Dollar Tree store where Atherton's purse was recovered. The photo showed a white car resembling a Pontiac Grand Am pulling into the parking lot behind the Dollar Tree store. In addition, photos of violations taken by the Illinois Tollway Authority on September 11, 2009, depicted a white

car, license plate "H2O 4970" and with features distinctive to Blankenship's vehicle, violating tolls: (1) in a westbound direction from Chicago at 10:18 a.m. (York toll plaza), 10:30 a.m. (Aurora toll plaza), 11:05 a.m. (De Kalb toll plaza) and 11:30 a.m. (Dixon toll plaza); and then (2) in an eastbound direction at 12:49 p.m. (Dixon toll plaza), 1:14 p.m. (De Kalb toll plaza), 1:42 p.m. (Aurora toll plaza), and 1:58 p.m. (Meyer toll plaza).

¶ 57 On September 13, 2009, at around 8 a.m., federal marshalls located defendant inside the stolen car, license plate "H2O 4970." When searched, investigators found several items, including a black and white "Raiders" shirt and sweatpants.

¶ 58 Langloss testified to his interrogation of defendant. He explained that he used an interrogation technique that was open-ended and theme-based, which focused on building a rapport with defendant, as opposed to a direct, confrontational technique. With respect to the fourth interrogation that occurred upon defendant's request, Langloss testified that he had reviewed a flash drive and transcript that depicted redacted versions (agreed upon by the parties) of that session. He testified that they truly and accurately reflected what happened, and they were both admitted into evidence without objection. The transcripts were distributed to the jury, and the interrogation on the flash drive was played for the jury.

¶ 59 The assistant State's Attorney stopped the recording at various points in order to ask Langloss questions about the significance of the interrogation scene just played. For example, he asked Langloss whether he had found significant defendant's statement "I'm going to talk to you all about everything." Langloss agreed that he had found defendant's comment significant because it was in contrast to defendant's prior denials that he had even been in Dixon on the day of Atherton's death. Langloss was asked, "Is it fair to say that—that you believe he was going to be truthful with you now?" and Langloss replied, "That's correct."

¶ 60 Langloss agreed that defendant's question, "you honestly believe I'm good" was significant because it reflected they had developed a rapport and relationship, which was extremely important. Langloss next agreed that it was significant when defendant admitted to being in Dixon because it tied together the other evidence and reflected that he was going to give police "insight and the truth about what happened that led to [Atherton's] death."

¶ 61 Langloss agreed with the prosecutor that it was significant that, when Whelan said to defendant, "Maybe I was wrong about you," defendant replied, "Oh no, you ain't wrong." Langloss explained that, over the course of an interrogation, as trust and a relationship develop, there are times when the interviewee can let down his or her guard. He explained that defendant's answer was very significant because he let down his guard and:

> "LANGLOSS: Lieutenant Whelan ran about the first seven or eight hours of the interrogation and he was very direct with [defendant], confronting him with different pieces of evidence, coming at him very solid and there was no mistake about how the lieutenant felt. Very professional in nature but—but it was obvious that the lieutenant felt like he was a liar and that he was a cold-blooded person and so when he said that, in that frame of context, and when [defendant] said, ['']oh no, you ain't wrong,['] that—that showed the insight in his mind and later was confirmed by his—you know his final confession."

Defense counsel objected to any conclusions Langloss made as to what the "significance of the statement is or was, that's a matter for the jury." The objection was overruled.

¶ 62 Langloss was asked whether he viewed defendant's statement on the telephone to Brown—that he was going to be going away for a long time—as significant. Langloss testified that he did view it as significant because it showed that defendant had come to a realization and

"knows the facts of the case and knows he is going to go away for a long time for what he did." Defense counsel objected, arguing that the testimony was pure speculation and asserting that Langloss could not be inside defendant's mind. The court overruled the objection. Langloss next agreed that the statement implied defendant was admitting some culpability in Atherton's death.

¶ 63 Langloss was questioned about defendant's statement in the interrogation that it "was truly an accident." The prosecutor first confirmed with Langloss the state in which Atherton was found. He then asked Langloss whether it appeared to be an accident. Langloss replied, "There's no way this is an accident." Langloss confirmed that defendant was attempting to minimize his involvement.

¶ 64 Langloss also confirmed that, prior to defendant admitting that he slipped a pillowcase over Atherton's head, no one had told defendant that there was a pillowcase over her head. He stated, "the only people who knew that were the police, [Atherton], and the killer." Similarly, prior to defendant telling the police that he put socks in Atherton's mouth, no one had informed defendant that: (1) socks were found in her mouth; or (2) that one sock was rolled inside another sock, as defendant accurately described them. Moreover, no one told defendant that Atherton's hands were tied behind her back with a long, black piece of cloth, information defendant accurately provided. Langloss also explained that, in contrast to handcuffs, which bind the wrists tightly, defendant "described specifically how [Atherton's hands were tied] looser and then he showed how he wrapped and did the knots. That's very specific. That's something that only the killer would know." Further, Langloss testified that, when, in the video, defendant showed police how he twisted the pillowcase, defendant's actions were consistent with the way the pillowcase was twisted around Atherton's head. Finally, Langloss testified that no one had

told defendant that the towel taken from Atherton's house was red, white, and blue; rather, defendant correctly supplied that information.

¶ 65 Brandy Stern testified that she works at the Lee County jail as a correctional officer. On October 20, 2009, at around 6:30 p.m. while working in the jail, she overheard defendant and an inmate arguing. The inmate said, "Fuck you, nigger. I ain't that white girl you choked. I'm a convict. You ain't choking me." Stern heard defendant reply, "Well, nigger. I'm going to do to you what I did to that white bitch." Stern testified that defendant had filed "seven-and-a-half pounds" of grievances against her.

¶ 66 In his case, defendant presented evidence that: (1) at the time of Atherton's murder, there were burglaries being committed during the day in a neighboring county; (2) a witness who lived across the street from Atherton saw, on September 11, 2009, between 11 a.m. and 1 p.m., an African-American man walk out of the Atherton's front door who appeared to be in his mid-30's (in contrast to defendant, who is in his 50's); (3) two women who lived on Atherton's street in 2009 noticed, prior to September 11, 2009, an African-American man in his 20's or 30's pacing in front of their homes while talking on a cell phone and staring at houses in the area.

¶ 67 The jury began its deliberations at 12:12 p.m. Two hours later, at 2:20 p.m., the jury found defendant guilty on all three counts of first-degree murder. Defendant was sentenced to 60 years' imprisonment. His posttrial and postsentencing motions, which included argument that his motion to suppress was improperly denied, but not argument concerning Langloss's trial testimony, were denied.[1]

¶ 68 II. ANALYSIS

[1] Further, on June 26, 2014, upon motion by appellate counsel, this court determined that we have jurisdiction over this appeal.

¶ 69 A. Motion to Suppress

¶ 70 Defendant argues first that the trial court erred in denying his motion to suppress. He asserts that he only confessed after several hours of assurances that, if he admitted to having caused Atherton's death in a manner consistent with the scenario presented by Langloss, involuntary manslaughter would be the only proper charge under the law. Defendant contends that this critical misrepresentation of applicable law rendered his confession unknowing and involuntary. Specifically, Langloss said that, if defendant admitted to the "affair-gone-bad" scenario, first-degree murder charges would be inappropriate because first-degree murder required proof that the killing was intentional and premeditated, an element lacking from the proposed scenario. This constitutes a misrepresentation of law, defendant argues, because Langloss "failed to mention" that the proposed scenario, which included stuffing something into Atherton's mouth and putting something over her head, could *also* support a first-degree murder conviction under section 9-1(a)(2) (720 ILCS 5/9-1(a)(2) (West 2008)) (actions committed with knowledge that they created a strong possibility of death)). Defendant argues that his confession was, therefore, induced, unknowing, and involuntary because "[t]here was nothing in the story that Langloss urged [defendant] to confess to that precluded his conviction for first[-]degree murder." As summarized in his reply brief:

> "[Defendant] does not assert that he was browbeat into confessing, nor does he say that he merely was tricked by false reports that evidence had been found establishing his guilt; rather, the defendant contends that he made what he thought was a rational decision to confess based on critical misinformation he received from the police regarding our homicide statutes. That he appeared calm during most of the interrogations and actually requested the session at which he confessed did not indicate that his

> confession was knowing and voluntary. It indicated that Langloss' misinformation regarding the law placed him at ease and caused him to decide to do something that he would not have chosen to do, had he not been grossly misinformed."

For the following reasons, we conclude that the trial court properly found that the State met its burden of proving voluntariness by a preponderance of the evidence (*People v. Slater*, 228 Ill. 2d 137, 149 (2008)), and that the court did not err in denying defendant's motion to suppress his confession. As explained below, regardless of what he was *not* told, defendant *was* told before he confessed that, if the confession reflected an accident, involuntary manslaughter would be an appropriate charge (not inaccurate), but that, if his actions reflected an intent to kill, first-degree murder charges would be appropriate (not inaccurate). Defendant's confession and the questioning thereafter reflected the latter.

¶ 71 We consider the admissibility of defendant's statements using a bifurcated standard of review. Under bifurcated review of the admissibility of an incriminating statement, the reviewing court should "accord great deference to the trial court's factual findings, and *** reverse those findings only if they are against the manifest weight of the evidence," but should "review *de novo* the ultimate question of whether the confession was voluntary." *In re G.O.*, 191 Ill. 2d 37, 50 (2000). Further, it is proper for us to consider the testimony adduced at trial, as well as at the suppression hearing. *Slater*, 228 Ill. 2d at 149.

¶ 72 The fourteenth amendment's due process clause guarantees that no state may deprive an individual of liberty without due process of law. U.S. Const., amend. XIV, § 1. Further, the fifth amendment (which applies to the states through the fourteenth amendment) provides that no person shall be compelled in a criminal case to act as a witness against himself or herself. U.S. Const., amend. V. Certain interrogation techniques may violate due process and the fifth

amendment by rendering a confession involuntary and, accordingly, inadmissible. See *Dickerson v. United States*, 530 U.S. 428, 434 (2000); *Miller v. Fenton*, 474 U.S. 104, 109-10 (1985). To determine whether a statement was given voluntarily, we consider whether it was made "without compulsion or inducement of any sort" (*People v. Gilliam*, 172 Ill. 2d 484, 500 (1996)), or whether the defendant's will was overborne by the circumstances surrounding the confession (*Dickerson*, 530 U.S. at 434). This requires consideration of the totality of the circumstances (*Dickerson*, 530 U.S. at 434), including, for example:

> "the age, education and intelligence of the accused; the length of the detention and the duration of the questioning; previous experience with the criminal justice system; falsely aroused sympathy; *offers of leniency or other promises* to induce a confession; whether the accused was advised of his constitutional rights; and whether the accused was subjected to any physical mistreatment." (Emphasis added.) *People v. Ball*, 322 Ill. App. 3d 521, 531-32 (2001).

¶ 73 Here, defendant's arguments concern offers of leniency and other promises. Defendant is correct that confessions induced by promises of leniency have been held involuntary. See, *e.g.*, *People v. Heide*, 302 Ill. 624, 627-28 (1922); *People v. Ruegger*, 32 Ill. App. 3d 765, 769 (1975); see also *People v. Peck*, 18 Ill. App. 3d 112, 115 (1974). "However, even where promises or suggestions of leniency have been made, the confession is not necessarily inadmissible. The ultimate question is whether, considering the totality of the attendant circumstances, defendant's will was overcome at the time he confessed." *People v. Veal*, 149 Ill. App. 3d 619, 623 (1986); see also *People v. Robinson*, 286 Ill. App. 3d 903, 906 (1997) (offers of leniency are a factor to be considered, but a confession is not rendered involuntary simply because an offer of leniency has been made).

¶ 74 Defendant focuses his challenge on Langloss's "lies" pertaining to the charges defendant could face if he admitted to the "affair-gone-bad" scenario. Defendant acknowledges that, generally, "police trickery" alone is insufficient to invalidate a confession. See, *e.g.*, *People v. Kashney*, 111 Ill. 2d 454, 466-67 (1986) (deliberate misrepresentations by police are one factor to consider in the totality of the circumstances). However, he alleges that caselaw treats differently trickery or lies that relate to a suspect's connection to the crime (such as inflating the strength of the evidence against a witness), which can be permissible, from trickery that is extrinsic to the crime itself, which can be impermissible. Here, defendant argues that Langloss's "lies" were impermissible because they concerned misrepresentations of applicable law, extrinsic to his connection to the crime. In our view, there are several flaws in defendant's argument as it pertains to the facts here.

¶ 75 We first disagree that Langloss's representation of the possible charges, even if arguably erroneous, introduced extrinsic concerns similar to those found inappropriate in other cases. In *Holland v. McGinnis*, 963 F.3d 1044, 1051-52 (7th Cir. 1992), the court distinguished between police trickery that relates to a suspect's connection to a crime, "the least likely to render a confession involuntary," and deceptive practices that introduce extrinsic considerations that distort a suspect's rational, free choice. The court in *Holland* determined that the tactics used in the case before it fell in the former category and that the confession was voluntary, but cited other cases where tactics introducing extrinsic considerations rendered the confessions involuntary. *Id.* (citing, *e.g.*, *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963) (police falsely told suspect she was in jeopardy of losing custody of her children and her welfare benefits but, if she confessed, they would recommend leniency); *Rogers v. Richmond*, 365 U.S. 534 (1961) (police threatened to take suspect's wife into custody if he did not confess); and *Spano v. New York*, 360

U.S. 315, 320-24 (1959) (officer, who was a close friend of the defendant's, told the defendant that, if he did not confess, the officer would get in trouble and lose his job, which would be disastrous to the officer, his wife, his children, and his unborn child)).

¶ 76 An Illinois appellate court case defendant cites, *People v. Bowman*, 335 Ill. App. 3d 1142, 1153 (2002), also concerned tactics introducing extrinsic considerations. Specifically, in *Bowman*, police collaborated with the defendant's jail cellmate to induce his confession by exploiting his intense fear of returning to prison. There, the cellmate told the defendant that, after bonding out, the cellmate would return to jail to help the defendant escape and that, to ensure that the defendant was still there, as opposed to being transferred (to Menard, a place to which he was "terrified of returning"), the defendant should make a statement concerning some murders being investigated. The defendant could then remain in jail while police investigated his statement. The cellmate and the defendant then used information from newspaper articles and police reports to concoct "a believable story," and the defendant provided an incriminating statement to police. The appellate court later upheld the trial court's suppression of the defendant's confession as the product of an orchestrated scheme and agency relationship that was calculated to overcome the defendant's free will and that resulted in a confession that could not be "deemed to be the product of a rational intellect." *Bowman*, 335 Ill. App. 3d at 1154.

¶ 77 Here, unlike the foregoing cases, Langloss did not interject into the interrogation promises that defendant's confession would prevent harm or negative consequences to defendant's children, friends, or others. Langloss did not conspire with others to convince defendant a confession would help him escape from custody. And, while we realize that defendant is analogizing those cases to his, we simply disagree that Langloss's repeated representations that, under a specific scenario, a different charge would be appropriate, is

analogous to the aforementioned situations. Further, the analysis remains one of the *totality* of the circumstances. *Veal*, 149 Ill. App. 3d at 623.

¶ 78 In addition, two other cases defendant cites, *People v. Travis*, 2013 IL App (3d) 110170 (2013), and *Light v. Florida*, 20 So. 3d 939 (Fla. Dist. Ct. App. 2009), are readily distinguishable. For one thing, unlike here, *Travis* concerned a juvenile interrogation, which, to a degree, inherently requires enhanced scrutiny. See *People v. Murdock*, 2012 IL 112362, ¶ 32 (taking of a juvenile confession is a "sensitive concern"); see also *In re Gault*, 387 U.S. 1, 55 (1967) (when obtaining a juvenile confession in the absence of counsel, the "greatest care" should be taken to ensure it was not coerced or suggested and "that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."); *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948) (reflecting that the propriety of interrogation methods might depend on whether the subject of the interrogation is a juvenile or adult). In *Travis*, the interrogating officer told the 15-year-old suspect that, in juvenile court "[e]verybody gets a clean slate when they turn 17. You're lucky that you're less than 17, okay," but that, to get those "breaks" he had to take responsibility for his actions. The court determined that the officer provided this misinformation to the juvenile in an effort to assure him that, no matter the charge, he would stay in juvenile court, when, in reality, 15-year-olds charged with murder (the crime being investigated) must, by statute, be tried as an adult. *Travis*, 2013 IL App (3d) 110170, ¶¶ 66-67. The court found that this misleading promise of leniency weighed in favor of finding the confession involuntary. *Id.* ¶ 67. However, the court found other factors also contributed to such a finding, *i.e.*, physical discomfort, duration and nature of the detention, and the absence of a juvenile officer during the interview. *Id*. ¶¶ 62-64, 72. As such, although the court concluded that the confession was involuntarily given, "most importantly" based on the misleading promises of leniency, it

ultimately did so based upon the "unique combination of factors that, in the aggregate" weighed in favor of finding the confession involuntary. *Id.* ¶ 74.

¶ 79 Similarly, in *Light*, a case from another jurisdiction, the interrogating officer's misstatement of law was not the only factor that weighed in favor of a finding that the confession was involuntary. There, the defendant was being interrogated concerning unlawful sexual activity with certain minors. The officers told the defendant that the age of consent was 16, when, in fact, the age of consent was 16 *only* if the defendant was younger than age 23. The investigator knew that the defendant was older than 23. The court agreed that the investigator's misstatement of law was meant to cause the defendant to think his actions were lawful and, therefore, that confessing could not lead to arrest or prosecution. *Light*, 20 So. 3d at 941. Ultimately, however, the court held that suppression was warranted based on that misstatement "coupled with" the interrogator's false promise to the defendant that, even if he admitted to having sexual relations with a 16-year-old girl, he could go home that day. *Id.* at 940-41.

¶ 80 Here, the blatantly incorrect legal information provided in *Travis* and *Light* is not, in our opinion, comparable to Langloss's tactics. Specifically, we do not agree with defendant's blanket statement that Langloss "lied" about how the law applied to the scenario to which he was urged to admit. Rather, the *omission* of information is more similar to that in *People v. Prude*, 66 Ill. 2d 470 (1977). There, two juveniles signed *Miranda* forms stating that a juvenile court could send them to correctional schools, place them with guardians, or put them on probation, but they were not informed that their shooting victim had died and that they could be charged as adults for murder. As here, however, the juvenile-defendants had experience with law enforcement, neither testified that they would not have confessed had they known the potential for adult prosecution, and, as both were aware that at issue was a "grave crime," not a "minor

violation," the court concluded that the *totality* of the circumstances reflected that the potential for criminal responsibility could properly be imputed to them. *Id.* at 477. The court held that, although the defendants were not fully informed about the facts surrounding the incident or their potential adult prosecution, the confessions were voluntarily given and suppression was unwarranted. *Id.* at 475-77. The court noted that there was no requirement that "the police advise the accused of the nature of the charge, or the possible punishment, or of all the material facts known to them[,]" in order for a confession to be deemed voluntary and admissible. *Id.* at 475-76.

¶ 81 Here, we face a situation less egregious than that in *Prude*, both in terms of tactics employed and the criminal experience and age of this defendant. We note that we have no testimony from defendant that, in fact, promises of leniency motivated him to confess. In any event, as *Prude* instructs, an omission of information is but one consideration in the totality of circumstances, and defendant here knew, at all times, the possible charges he faced: involuntary manslaughter or first-degree murder. Further, when the interrogation is viewed in its totality, Langloss repeatedly informed defendant that the possibility of involuntary-manslaughter charges depended on whether the scenario that he presented was true. Langloss repeatedly conditioned his comments with "if" the scenario was accurate, then it could or would be an involuntary-manslaughter situation. Theoretically, Langloss's representations that the scenario he presented *could* constitute involuntary manslaughter were not necessarily inaccurate—a point defendant *concedes*. See, *e.g.*, *People v. McDaniel*, 249 Ill. App. 3d 621, 635 (1993) (rejecting the defendant's argument that the assistant State's Attorney's comments to him—that, if he walked out of the interview, he *could* be charged with first-degree murder—were coercive; the representation was not inaccurate).

¶ 82 Defendant's complaint is that Langloss "failed to mention" that the scenario could *also*, depending on the jury's findings, constitute first-degree murder under section 9-1(a)(2) (720 ILCS 5/9-1(a)(2) (West 2008)). To be clear, Langloss certainly (and admittedly) used trickery and deception. However, the "trick" here does not really concern section 9-1(a)(2). The "trick" was that, when Langloss told defendant that, if he had no intent to kill and if it was an accident, he could be charged with involuntary manslaughter, he did so apparently not believing Atherton's death was an accident. Langloss *did* tell defendant that, if the scenario presented was *not the truth*, and, in particular, if defendant gave information that reflected an intent to harm, first-degree murder charges would be appropriate. This, too, was accurate. Thus, although defendant's argument is premised on the notion that Langloss did not mention that he could be prosecuted for first-degree murder based on section 9-1(a)(2),[2] he misses the point that the facts that came out through his confession and the questions posed thereafter were adequate to show an intentional killing, which Langloss *did* tell defendant would result in first-degree murder, not involuntary-manslaughter charges. Although defendant tried to cast his confession as fitting into the involuntary, accidental, spur-of-the moment scenario Langloss posed, the details reflected evidence (particularly the tight twisting of the pillowcase) of an intent to kill. Therefore, defendant's argument is weakened by the fact that, even if he was not fully informed about section 9-1(a)(2), he was fully informed on the law with respect to section 9-1(a)(1), and his confession ultimately fit within the "intent," not "accident," scenario.[3]

[2] Defendant acknowledges that Langloss brought in and reviewed with him the entire first-degree murder statute, but he contends that the reference to section 9-1(a)(2) was fleeting and the remainder of the interrogation left him with an inaccurate view of the homicide statutes.

[3] As Langloss testified at the suppression hearing: "if [defendant's explanation] wasn't

¶ 83 Moreover, even if the omission of information pertaining to section 9-1(a)(2) constituted a legal misrepresentation, we are not compelled to conclude that the misrepresentation caused defendant's will to be overborne. See, *e.g.*, *Prude*, 66 Ill. 2d at 4776-77 (considering omission of information as one factor to be considered in a totality of circumstances). In reviewing the totality of the circumstances, we find *critical* here a point defendant minimizes: defendant had *already* been charged with first-degree murder when he decided to confess. The police were finished with their interrogation. After more than 18 hours of interrogation, Langloss's challenged tactics had not worked: he had not "coerced" or "tricked" defendant into confessing. Accordingly, defendant was charged with first-degree murder and appointed an attorney. Only *then* did defendant *decide* to speak with Langloss. He *requested* another session. He "bartered" with Langloss, offering information only in exchange for a telephone call to Brown and a return to the general population. Defendant's argument that this decision was unknowing because it was based upon the preceding misrepresentations of law misses the point. Even if defendant's decision was based on a misapprehension of the law, it was a gamble he chose to take *only* after he had already been charged with the most serious offense possible. Accordingly, while defendant might have chosen to confess in an attempt to obtain involuntary-manslaughter charges, that remained a calculated decision and gamble on his part. See *Robinson*, 286 Ill. App. 3d at 906 (finding confession made voluntarily where there was no improper offer of leniency and where the defendant initiated and controlled the bargaining prior to his statement).

¶ 84 As noted in one of defendant's cited cases, certain misrepresentations "may cause a

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the theory, then there's no possibility of involuntary manslaughter and by his own words he killed her and she was dead when he left so he knew it wasn't the truth and he tried to convince us that it was, sir. He made that conscious decision, he decided that."

suspect to confess, but causation alone does not constitute coercion; if it did, all confessions following interrogations would be involuntary because 'it can almost always be said that the interrogation caused the confession.' [Citation.] Thus, the issue is not causation, but the degree of *improper coercion*[.]" (Emphasis added.) *Holland*, 963 F.2d at 1051. Given the foregoing, and considering the totality of the circumstances, we agree with the trial court that any degree of improper coercion here was, if anything, slight. At the time of his interrogation, defendant was not of vulnerable age nor inexperienced with law enforcement. He was not beaten or abused in any way. Although, in total, the interrogation process was lengthy, within and between sessions defendant was provided with food, drink, rest, bathroom breaks, and medical attention. The interrogation reflects that he was familiar with legal proceedings, even asking to see statutes, challenging bond amounts and procedures, and discussing the probable need for a change of trial venue. Langloss reminded defendant that the State's Attorney's office was responsible for filing charges and that he was not "the boss" of the State's Attorney's office. Langloss told defendant that prosecutors were not interested in Langloss's unsubstantiated theory that Atherton's death could have been accidental. Langloss told defendant that the State's Attorney's office, which had already filed first-degree murder charges, believed that the evidence against defendant on those charges was overwhelming, and that it did not care if Langloss spoke with defendant any longer. Nevertheless, defendant chose to speak with Langloss and confess, hoping for a reduction in charges. That gamble that did not pay off because, as warned, when defendant's confession did not fit the accident scenario Langloss had posed, involuntary-manslaughter charges did not follow. In sum, the trial court's finding that defendant's will was not overborne by the interrogation techniques was not contrary to the manifest weight of the evidence, and it properly denied the suppression motion.

¶ 85 B. Langloss's Trial Testimony

¶ 86 Defendant next argues that, even if his inculpatory statement was admissible as evidence, reversible error occurred when it was presented to the jury. Specifically, defendant asserts that Langloss's testimony that accompanied the playing of the statement to the jury was improper, where he commented on the alleged significance and veracity of defendant's statements. Defendant argues Langloss's testimony usurped the province of the jury by commenting on the credibility of defendant's statement.

¶ 87 Defendant objected to portions of Langloss's testimony at trial, but he concedes that he did not raise this contention of error in his posttrial motion, rendering it forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (failure to object at trial *and* in a posttrial motion generally results in forfeiture of the issue for review). Defendant requests that we review this issue for plain error. Plain-error review permits us to consider a forfeited claim of clear error where the evidence is so closely balanced that the error alone might have resulted in the defendant's conviction, or where, regardless of the closeness of the evidence, the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); see also Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) (any error which does not affect substantial rights shall be disregarded. Plain errors affecting substantial rights may be noticed even if not brought to the trial court's attention). Plain-error review first requires consideration of whether error occurred. *People v. Herron*, 215 Ill. 2d 167, 184 (2005); see also *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 88 Here, defendant's argument rests on the premise that Langloss's testimony did not merely recount what happened in the interrogation room but, rather, it expressed his present opinion about the reliability of defendant's confession and how and why his methods for eliciting reliable

confessions allegedly worked on defendant. Defendant relies heavily on *People v. Henderson*, 394 Ill. App. 3d 747, 750-51 (2009), where the interrogating officer commented extensively on a video of the defendant's interrogation as it was played for the jury, and he noted therein the defendant's body language, vague responses, and profuse sweating. There, also reviewing the issue for plain error, the court, relying on another case involving a "human lie detector," found that the officer's testimony about how the defendant's body language reflected deception constituted inadmissible opinion testimony. *Id.* at 752-53. The court further noted that, rather than using the witness as a "human lie detector," the investigator's testimony "should be presented only to communicate what was said during an interrogation." *Id.* at 753. Still, despite the error, the court held that reversal was not warranted because the evidence was not closely balanced, nor was the error so serious that it affected the fairness of the trial or the integrity of the judicial process. *Id.* at 753-54.

¶ 89 Here, we agree with defendant that the State improperly elicited from Langloss testimony similar to that found improper in *Henderson*. The State's practice of pausing the interrogation recording and asking Langloss for his impressions broached that of improper commentary on the credibility of defendant's confession. However, *like in Henderson*, the error does not warrant reversal. First, the evidence was not so closely-balanced that Langloss's opinion testimony alone tipped the scales and resulted in defendant's conviction, given: the admissibility of the confession; the DNA evidence, which could not exclude defendant from the DNA found at the scene; defendant's possession of the vehicle that was seen outside of Atherton's house the day and time of her death; that defendant had exclusive control over that vehicle and the contents therein; witness testimony that he saw an African-American man wearing a black jogging suit with a white stripe on the arm and leg walking down Atherton's driveway; surveillance videos

placing a white vehicle at the location where the items taken from Atherton's home were discarded, and then showing a person, whom Blankenship identified as defendant, at the Walmart next door, wearing black "Raiders" clothes that had a white stripe, clothes which were found in the white car that defendant possessed; photographs from the tollway showing the vehicle with the "H2O" license plate heading westbound from Chicago, then back again, during the relevant time frame; and an officer's testimony that she overheard defendant saying that he would do to the inmate what he had done to "that white bitch."

¶ 90 Second, any error was not so serious that it affected the fairness of the trial or the integrity of the judicial process. Frankly, that Langloss found defendant's confession credible was not a surprising revelation to the jury. See *e.g.*, *People v. DeGorski*, 2013 IL App (1st) 100580, ¶ 88. In that sense, the allegedly improper testimony was not particularly probative or prejudicial. Moreover, regardless of Langloss's testimony, the jury was instructed that the job of assessing credibility belonged exclusively to it. See *Henderson*, 394 Ill. App. 3d at 753. In light of the foregoing, we honor the forfeiture.

¶ 91 III. CONCLUSION

¶ 92 For the foregoing reasons, we affirm the judgment of the circuit court of Lee County. Further, as part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 93 Affirmed.