2019 IL App (2d) 180252-U
No. 2-18-0252
Order filed August 5, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of DeKalb County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-CR-330
	)	
CAELYN KIDD,	)	Honorable
	)	William P. Brady,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion regarding amount of other-crimes evidence admitted, particularly where defendant's theory of case was based on allegations of abuse being part of an ongoing scheme in custody dispute, limiting instruction was not necessary; nurse practitioner specializing in child abuse was qualified to opine on nature of marks on the victim's neck; defendant showed no *Brady* violation where one item of undisclosed evidence pertained to material otherwise available to defendant and no reasonable probability existed that outcome of trial would have been different regarding the second; trial counsel was not ineffective, though two of defendant's arguments were better suited to a postconviction petition; and cumulative effect of alleged errors did not warrant a new trial.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Caelyn Kidd, was convicted of aggravated domestic battery (720 ILCS 5/12-3.2, 3.3(a-5) (West 2014)). On appeal, she raises a number of issues. First, she argues that it was "substantive and procedural" error for the trial court to allow the admission of certain other alleged acts of domestic violence. Second, she contends that the trial court erred by allowing certain expert testimony and that this error was compounded by the State's use of it in closing argument. Third, she alleges two *Brady* violations. Fourth, she asserts that she received ineffective assistance of counsel. Fifth, she contends that the cumulative effect of these errors was to render her trial unfair. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 On September 17, 2015, the State moved to introduce evidence of prior acts of domestic violence pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2014)). The State filed a second such motion on January 25, 2017. No response was filed on defendant's behalf, and oral argument was not had on these motions.

¶ 6 A hearing in accordance with section 115-10 of the Code (725 ILCS 5/115-10 (West 2014)) was held on July 6, 2016. The State sought admission of certain statements made by the minor victim, K.D., which she made to four individuals, who all subsequently testified at trial.

¶ 7 Additionally, during pretrial proceedings, the issue of a "victim sensitive interview" of K.D. arose. The interview had been conducted on March 18, 2014. It was recorded; however, the recording was not tendered to defense counsel until the trial was underway and after K.D. and another witness (Monique Heilemeier) had testified.

¶ 8 A jury trial was conducted. It commenced with the State calling K.D., the victim. K.D. testified that at the time of the trial, she was nine years old and at the time of the incident at issue in the trial, she was six years old. K.D.'s mother's name is Kaylee. At the time of the incident,

her father (Bryce) was dating defendant. K.D. identified defendant in court. K.D. had not seen defendant for two or three years.

¶ 9 K.D. testified that the last time she saw defendant, defendant had choked her. On that day, she had visitation with her father. Her great-grandmother, Judy, dropped K.D. off at defendant's mother's house. Defendant's mother is named Jami. There was a birthday party going on. Other family members were present. When K.D. first arrived, she played with one of defendant's daughters. Defendant asked K.D. and her daughter to come into Jami's room. Her daughter left, and defendant and K.D. spoke. Defendant called K.D. a liar and started to choke her. K.D. was on the bed. Defendant placed both hands around K.D.'s neck. K.D. testified that she was unable to breathe or say anything. This continued for "[m]ore than a few seconds." K.D. added that she did not scream or cry because she was afraid of defendant. Eventually, K.D. left the room and went back to playing with defendant's daughter. K.D. went to the bathroom and saw that there "red marks all over [her] neck." No one at the party saw the marks.

¶ 10 Later, K.D. was at her other grandmother's house (Amber, Kaylee's mother). They were playing. K.D. told her mom not to look at her neck. However, her mom did so and called the police. They went to the police station the next day, and an officer took pictures of her neck.

¶ 11 K.D. was then asked if defendant had ever hurt her on other occasions. She replied affirmatively: "She burnt me with a hair straightener, and then when I would take a bath, she would drown me under the water." She testified that at one point, for a period of two or three years, she lived with her father and defendant. During this period, defendant "would drown me under water" and burned her with a hair straightener. The drownings happened on more than one occasion.

¶ 12 K.D. testified that it hurt when defendant burned her. Defendant burned her on the left hand. It made a mark, which K.D. still had at the time of the trial. K.D. told her mother, and her mother took her to the hospital. K.D. spoke with a police officer. She explained that she was afraid defendant would hurt her again, so she told the officer that she had burned herself. Defendant told K.D. not to tell anybody.

¶ 13 On cross-examination, K.D. agreed that she told the police officer that she was brushing her teeth and burned herself by touching a curling iron. She also told the officer that she was alone in the bathroom at the time. When asked how defendant could have burned her if defendant was not in the room, K.D. replied, "I was scared to tell the truth because I was scared that I would get in trouble by [defendant]." K.D. did not recall talking to any one besides her mother regarding the drowning incidents. K.D. testified that she could not recall speaking with defendant's sister Alissa and telling her that she was upset because her mother gets her to lie. K.D. could not remember whether being choked made her cry, but she did recall being choked. She could not recall how long she was in the bedroom with defendant. She did not speak to her father "because he never believed [her]."

¶ 14 On redirect-examination, K.D. testified that her mother Kaylee had never made her "lie to people about what was going on." Kaylee never told her to make up the things she had just testified about. Kaylee had never hurt her or choked her.

¶ 15 The State next called Monique Heilemeier. She described herself as "a part-time forensic interviewer as well as a part-time mental health counselor for the Family Service Agency." As a forensic interviewer, Heilemeier provides "forensic interviewing for children involved in child abuse investigations." These interviews are designed for children. Heilemeier stated that she has conducted 703 such interviews. She conducted an interview of K.D. on April 30, 2014.

Jonathon Miller, a detective from the Sycamore police department, assistant State's Attorney David Weichel, Christine Gardner of the Department of Children and Family Services (DCFS), and Holly Pfeiffer, the director of the Children's Advocacy Center observed the interview from behind a one-way mirror. Heilemeier had interviewed K.D. on a previous occasion. The April 30, 2014, interview was recorded. The recording was played for the jury. Heilemeier testified that she observed "choke marks" on K.D.'s neck during the interview. Heilemeier indentified a number of documents on which she made notes about the interview.

¶ 16 On cross-examination, when asked if K.D. appeared "coached," Heilemeier replied, "She seemed like a normal child telling a normal story about what had happened." She stated she was not surprised when K.D. said that her mother was nice and does not lie. Heilemeier was aware that K.D. had undergone counseling at the Family Service Agency, but she did not know for how long or what the "subject matter" of the counseling was. Heilemeier recalled that K.D. stated that her mother did not like defendant. When asked whether, as part of an interview, she tried to discern whether a child had been coached, Heilemeier answered, "[T]hat's not my job." That was a role for law enforcement and DCFS.

¶ 17 On redirect-examination, Heilemeier stated that information she develops in an interview can be followed up on by investigators. For example, K.D. described details about the room where the incident occurred.

¶ 18 The State's next witness was Sara Hoecherl. She is a caseworker for DCFS. On April 29, 2014, DCFS received a report regarding K.D. and defendant. Hoecherl was assigned as the investigator the next day. Hoecherl first interviewed defendant on May 2, 2014. Hoecherl also interviewed Kaylee's mother that day. She later interviewed Bryce, Jami Kidd, and K.D. At one

point, K.D. told Hoecherl that defendant had "choked her and hit her with the palm of her hand." K.D. demonstrated how she had been choked.

¶ 19 On cross-examination, Hoecherl testified that K.D. also stated that she had been hit in the face with the palm of defendant's hand. It did not seem unusual to Hoecherl that Kaylee had taken K.D. to the courthouse to acclimate her to it. She acknowledged, however, that she had never heard of a mother doing this before. By the time the case was assigned to Hoecherl, K.D. had already undergone the victim-sensitive interview. Hoecherl acknowledged that K.D. was not seen by medical personnel until she was referred to the MERIT program in Rockford about a week after the incident. This was the earliest they could get an appointment. Hoecherl explained that she had determined that this was not an emergency situation. At the time Hoecherl conducted her investigation, there were no other open investigations underway concerning K.D. She was aware of a closed investigation, though. The earlier allegation was determined to be unfounded. Hoecherl did not remove defendant's two children from her care.

¶ 20 On redirect-examination, Hoecherl explained that the other two children had not made disclosures of abuse or neglect. They appeared clean, well-groomed, and happy. Regarding K.D., if there had been a concern about her health, they would have sought emergency care at the time of the victim-sensitive interview. Hoecherl explained that "MERIT is a doctor and nurse practitioner that work for MERIT, and they specialize in abuse and neglect." No such medical specialist is available at Kishwaukee Hospital. The MERIT examination of K.D. found "no physical evidence on her body at the time of the exam." However, Hoecherl stated that it was nevertheless acceptable to not have K.D. examined sooner, as her injuries were documented in photographs taken on April 29 and April 30.

¶ 21 Judy D. next testified for the State. She is K.D.'s great-grandmother. On April 29, 2014, Judy took K.D. to a scheduled visitation with Bryce. As she drove K.D. to meet her father, Judy noted no injuries or marks on K.D. K.D. did not complain of any such things. Judy later picked K.D. up. They stopped to pick up some ice cream on the way home. When they got home, they placed the ice cream on the coffee table. Judy, K.D., and Kaylee were present. K.D. pulled up her shirt and said that she was not supposed to show anyone her neck. Kaylee examined K.D. and then called the police. Judy examined K.D. and noted bruising around her neck. The bruises were not there when she dropped K.D. off for visitation.

¶ 22 On cross-examination, Judy testified that the bruises faded and disappeared over four or five days. Kaylee took pictures of the bruises. Judy explained that when she took K.D. for visitation, K.D.'s hair was up, so she would have been able to see the bruises if they had been there. K.D. was "quiet" when Judy picked her up after visitation. Judy testified that she had witnessed the "animosity" between Kaylee and Bryce over K.D. While K.D. was living with Bryce and defendant, Kaylee had supervised visitation with K.D. Judy supervised the visitation. On one occasion, K.D. arrived with a scratch on her arm that had broken the skin. Judy asked her what happened, and K.D. stated that defendant had pinched her.

¶ 23 Judy stated that when they took K.D. to the hospital after she was burned by the straitening iron, K.D. told a nurse about the incident and it was the nurse who called the police. A policeman came to speak to K.D. He was tall and dressed in uniform. Judy believed that K.D. was afraid of the policeman. K.D. told a different story to the policeman than she told to the nurse. Judy acknowledged that when K.D. first told them about getting burned, she stated that it was an accident.

¶ 24 On redirect-examination, Judy clarified that when she picked up K.D. after visitation, K.D. was uncharacteristically quiet. On the way to visitation, K.D. cried the whole way because she did not want to go. Judy testified that she learned of the burn from the straightening iron when either Bryce or defendant informed her that K.D. had been burned when Judy was picking K.D. up. The burn was bandaged. After they got home, K.D. complained of pain, and they removed the bandage. Due to the severity of the burn, they took K.D. to the emergency room. At some point, K.D. told a nurse that defendant had burned her. The nurse informed them that the police had been contacted. A large police officer arrived and spoke with K.D. Judy testified that K.D. still had a scar at the time of the trial.

¶ 25 On redirect-examination, Judy acknowledged that though they took K.D. to the hospital after discovering the burn, they did not do so following the alleged strangulation.

¶ 26 The State next called Jonathon Miller, a detective with the Sycamore police department. Miller testified that on April 29, 2014, at about 9 p.m., he was called in to assist with an investigation. He was informed that Kaylee had brought K.D. to the Genoa police department and reported that K.D. had been abused by defendant while K.D. had a visitation with her father. That night, Miller observed K.D. and noted "a scratch on the middle of her neck and then by her left ear, and marks on the back of her neck that appeared to be consistent with fingerprint impressions." He identified photographs of the marks that he took that night.

¶ 27 Miller set up a victim-sensitive interview for K.D. the next day. He observed the interview from behind a one-way mirror. The marks Miller observed the night before were still present. After the interview, he took more photographs (which he identified in court as well). Miller described the marks as being lighter than they had been the night before.

¶ 28 Miller then spoke with K.D.'s father, Bryce. Bryce had also taken photographs of K.D.'s neck. Miller described these photographs as also showing the marks he observed. Miller also identified similar photographs taken by the Genoa police department. Miller observed that in the pictures taken first (by Bryce), the marks were lighter, the next two sets showed them as having gotten darker, and in the set taken the next day, they are lighter.

¶ 29 On cross-examination, Miller testified that he had received "hours" of training in indentifying signs of abuse. He stated that he had training in distinguishing signs of abuse from things like marks caused by tickling (which he also stated would be obvious even without training), hives, or other such things. Miller agreed that when he spoke to Bryce, Bryce stated that "he had been tickling his daughter on the neck." Miller did not think the marks were consistent with tickling.

¶ 30 When Miller first observed K.D., she was not "struggling for air," so he did not "see any immediate cause to go to the emergency room." He never searched the residence where the incident allegedly occurred, as he did not expect to find any physical evidence there. He acknowledged that Jami Kidd came to the Sycamore police station to relate her version of what had transpired. Miller was aware that an earlier investigation concerning defendant and K.D. had occurred; however, he could not recall the details or result of that investigation. Miller acknowledged that Bryce, Jami, and defendant spoke with him voluntarily.

¶ 31 On redirect-examination, Miller testified that Jami described K.D.'s marks as being "blotchy." Bryce and Jami also told Miller that K.D. had a fever. Defendant stated that she did not see the marks.

¶ 32 The State's final witness was Shannon Krueger, a pediatric nurse practitioner. She is employed in the MERIT program. She explained that MERIT stands for Medical Evaluation

Response Initiative Team. It was started by a board-certified "child abuse physician" in the Rockford area. She has had to attend specialized child-abuse training on an annual basis to allow her to be a part of the program. She had previously been qualified as an expert in the field of child abuse.

¶ 33 Generally, children are referred to the MERIT program by law enforcement or DCFS. K.D. came to MERIT on May 7, 2014. K.D. told Krueger about the incident, including that defendant had choked her and hit her in the face. K.D. stated that defendant did this because she said that K.D. had been lying. A physical examination did not find any indications that K.D. had been strangled or choked. Krueger was shown the pictures of the marks on K.D.'s neck. She had reviewed them previously. She opined that the marks were consistent with what K.D. had described to her.

¶ 34 On cross-examination, Krueger agreed that if K.D. had been seen sooner after the incident, she might have been in a better position to diagnose her. She clarified that K.D. reported that she had been "hit" in the face and made a hand gesture consistent with being slapped. Krueger acknowledged that she wrote in her report that K.D. had a history of eczema. However, she opined that the marks on K.D.'s neck were not consistent with eczema. She agreed that dermatology was a distinct field of medicine. Krueger testified that as a nurse practitioner, her training encompassed more than child abuse and included "common childhood illnesses," one of which is eczema. As such, she continued, she was qualified to have an opinion on this issue.

¶ 35 On redirect-examination, Krueger testified that she received information from the family concerning K.D. when they brought her in for the examination. K.D. was breathing normally, her heart rate was good, and she was not in any pain. Krueger testified that she had previously

diagnosed and prescribed treatment for eczema. She noted no signs of eczema when she examined K.D. or in the pictures taken in connection with this case. Rather, the picture showed what appeared to be broken capillaries, which is consistent with "[p]ressure applied to the skin."

¶ 36 On recross-examination, Shannon Krueger acknowledged that Kaylee had made her aware of the earlier unfounded DCFS investigation.

¶ 37 Defendant first called Jami Kidd. Jami testified that she is a speech-language therapist who works in schools and day care centers. She works with children with disabilities and performs early interventions. She is a mandatory reporter.

¶ 38 On April 29, 2014, she returned home at about 4:30 p.m. They were having a birthday party for Alissa—one of her daughters. When she arrived home, she saw K.D. sitting on Bryce's lap. K.D. looked upset. She asked Bryce what the marks were on K.D.'s neck, as she "thought they looked like they were blotchy from a fever." She told Bryce to look to see if they had any children's Tylenol, but they did not. Jami took K.D. back to her bedroom so she could talk to her about why she was upset. They "talked about how her mother makes her lie and say that Caelyn does bad things to her." Jami continued:

> "I said to her [K.D.], what is wrong? And she said—she called me grandma Jami. She says grandma Jami, I don't want to lie anymore. And she goes my mom makes me say Caelyn does bad things. And I said [K.D.], does Caelyn do bad things to you? And she said Caelyn has never done anything bad to me. And then I said okay. And then she said grandma Jami, if I don't say Caelyn does bad things to me, my mom locks me in my room and hits me in my stomach."

Jami testified that they were in the bedroom 5 to 10 minutes. They left the bedroom, and K.D. went to play with other kids.

¶ 39 Sometime later, K.D., defendant, Bryce, Alissa, and two other children went into the bedroom to have what Jami described as a "family meeting" to try to ascertain why K.D. had been so upset. When they came out, K.D. "seemed a lot better." K.D. sat through dinner and then they had a dance party. K.D. left about 7:15 and "was a lot happier than when she came."

¶ 40 Jami testified that Bryce took pictures of the blotchiness "to protect himself and everybody else from false allegations that have happened in the past." By this she meant false allegations against defendant involving K.D.

¶ 41 Jami never saw K.D. again after that night. She learned that Kaylee had taken K.D. to the police station after the party and made allegations. Jami called the police station a few days after the party because she wanted to make a statement. She was interviewed by Detective Miller. The police never contacted Jami. Miller gave Jami a pencil and some paper to write out a statement. While she was doing so, he left the room they were in and told Jami to give the statement to a woman who was sitting behind a window.

¶ 42 On cross-examination, Jami testified that during the dance portion of the birthday party, K.D. was sitting on a couch with Bryce. He was tickling her. Jami acknowledged that she saw the marks on the front of K.D.'s neck when she first got home, though she did not notice the marks on the back of her neck until Bryce pointed them out later. Jami testified that defendant was never alone with K.D. on the day of the birthday party.

¶ 43 On redirect-examination, she reiterated that defendant and K.D. were never alone together. She observed the blotchiness prior to the time of the family meeting. Miller was the only police officer that talked to her in reference to this case.

¶ 44 Alissa Kidd next testified for defendant. She is defendant's sister and is employed as a civil engineer. Her birthday is April 29, and on that day in 2014, they were having a birthday

party for her at her mother's house. Alissa was there when K.D. arrived. K.D. appeared upset, but she came to Alissa and sat on her lap, addressing her as "Aunt Alissa." K.D. was "crying and seemed a little withdrawn and upset." Alissa "tried to find out what was bothering her." K.D. "said that her mom made her lie and that she would lock her in her bedroom upstairs." She did not participate in the family meeting. During the dance party, K.D. "was better than how she had came in, but she was still pretty withdrawn and a little emotional." She remained sitting on the couch with Bryce. Alissa testified that she has not seen K.D. since that day. Alissa stated that the police never attempted to contact her or interview her about the incident.

¶ 45 On cross-examination, Alissa stated that she did not attempt to give her statement to the police because they never contacted her and already assumed her sister was guilty. When she sat on Alissa's lap when she first arrived, K.D. never said that she was upset about being there or that she did not want to be there. At this time, Alissa did not note the marks on K.D.'s neck, though, she added, she was not "looking for anything." Though K.D. had her hair up, Alissa did not notice any marks on the back of her neck. Later, she briefly observed the marks on K.D.'s neck. Alissa did not think they looked like a rash from a fever; rather, the sort of thing a child might get from scratching or during play. She only noticed the blotchiness later when someone pointed it out to her.

¶ 46 On redirect-examination, Alissa testified that during the party defendant received a call from DCFS. Defendant put Alissa on the phone so that she could relate what K.D. had told her when K.D. first arrived. She spoke with a woman named Christine and told her that K.D. said her mother tells her to lie and locks her in the bedroom. On recross-examination, Alissa stated that she did not know why DCFS had called.

¶ 47 Defendant next called Christine Gardner, a child protection investigator from DCFS. On April 29, 2014, she "completed an unfounded investigation" involving defendant and Bryce. "Unfounded" means she found "no credible evidence of abuse or neglect." Gardner stated that she could not recall if K.D. ever told her that her mother instructs her to lie. She also could not recall relating such information to Bryce.

¶ 48 On cross-examination, Gardner clarified that "unfounded" does not mean that abuse or neglect did not occur, just that she could not "find the evidence to support that." She then further clarified that she could not find *credible* evidence to support the allegation of abuse or neglect. Gardner observed the victim-sensitive interview in the present case. The investigation in this case was "indicated," meaning there was evidence of abuse. Gardner stated she had the "barest of recollections" of the conversation she had with defendant on April 29, 2014. She recalled telling defendant not to be alone with K.D. anymore. On redirect-examination, Gardner agreed that she told defendant not to be alone with K.D. in order "to protect defendant from the false accusations of Kaylee."

¶ 49 Defendant then called Bryce Evans, K.D.'s father. He and Kaylee dated for about one year. Bryce testified that he wanted to have a family, but Kaylee did not, so she broke up with him. They never lived together. Initially, he had visitation with his daughter sporadically, only when Kaylee allowed it. In 2009, he filed an action for visitation and custody. In March 2010, a visitation schedule was established. He was supposed to have visitation on Tuesdays for three hours and alternating weekends. Kaylee would often disrupt the schedule, and visitation remained sporadic. This continued until 2012, when he received temporary custody of K.D. He had custody for a year-and-a-half, during which time he also resided with defendant and another daughter. During the time K.D. resided with Bryce, Kaylee had supervised visitation with K.D.

It was supervised by Judy D., Kaylee's grandmother and K.D.'s great-grandmother. Also during this time, an investigation concerning harm to K.D. was determined to be unfounded by DCFS. He never saw defendant harm K.D.

¶ 50 Eventually, K.D. was permitted to live with Kaylee again, pursuant to a court sanctioned agreement between Bryce and Kaylee. After K.D. resumed living with Kaylee, "allegations came in." Initially, Kaylee alleged that defendant was drowning K.D. Bryce did not believe this to be true. Subsequently, an order of protection was entered against defendant, and Bryce had to have visitation with K.D. at his mother's house. The order of protection was "dropped" by Kaylee in March 2014, and normal visitation resumed.

¶ 51 April 29, 2014, was the last time Bryce had visitation with K.D. Pursuant to a court order, Bryce had visitation from 4:30 to 7:30. He, along with defendant and their two other daughters, picked up K.D. at a grocery store in Sycamore. They went to Jami's house, as it was Alissa's birthday. When they walked into the house, K.D. started crying. Alissa "grabbed [K.D.] and proceeded to comfort her." K.D. was sitting on Alissa's lap, facing her.

¶ 52 It was about this time that Christine Gardner called. Gardner told Bryce that the allegations she was investigating were deemed to be unfounded. She also advised Bryce "not to let [defendant] alone with [K.D.] out of fear that more allegations would arise from that." Gardner then spoke to defendant. Subsequently, defendant passed the phone to Alissa. Following the phone call, Bryce and K.D. went to the dining room table and sat down. K.D. was on his lap. Bryce noted "pinkish blotchiness" on K.D.'s neck. He described K.D.'s demeanor as "dim" and said that she was "not as energetic" as she typically was. Jami arrived about this time. Jami came over to talk to Bryce. She noted the K.D. did not look well and said something to the effect of "Look, she's all blotchy on her neck."

¶ 53 Bryce decided to talk to K.D., along with defendant and their two other daughters, about the allegation that had been determined to be unfounded. He thought that K.D.'s demeanor was "somehow related to the difficulty over the last few months," including the existence of an order of protection. They had a conversation about "how dishonesty can affect a family and how being brave and truthful could keep us together." At no time during this family meeting was defendant alone with K.D., nor did she put her hands on K.D. After the meeting, they returned to the birthday party.

¶ 54 After dinner, Bryce put on a children's music channel on the television. His other two daughters danced as did Alissa. Bryce was sitting on the couch with K.D. on his lap. During this time, Bryce tickled K.D. on the shoulder and neck. He noted the marks on K.D.'s neck and thought about the conversation he had with Gardner earlier that day. He took three pictures of K.D.'s neck. The marks appeared "rashy" to him. He explained, "I honestly took the photos to protect myself and everyone else associated with me from any allegations."

¶ 55 When visitation ended, Bryce, along with defendant and their other two daughters, drove K.D. back to the grocery store, where they met Kaylee. During the ride back, K.D.'s demeanor had changed and she was now "lively" and "engaging." The next time he saw K.D. was shortly before the trial; she was nine years old.

¶ 56 Bryce testified that he had a conversation with Gardner in March 2014. In the course of that conversation, Gardner told Bryce that K.D. told her that her mother was "telling her to lie about the allegations that led to the order of protection." The State objected on hearsay grounds, and the trial court allowed the admission of this testimony solely on the issue of Gardner's credibility (Gardner denied recalling this during her testimony).

¶ 57 On cross-examination, Bryce acknowledged that the incident where K.D. burned her hand occurred while he had custody of her. Bryce was at work. K.D. went in the bathroom to brush her teeth and "placed her hand by the straightener and burned her hand." He was not present when this actually happened, and defendant was at home with K.D. He was aware that at some point K.D. made statements indicating that defendant had burned her.

¶ 58 Bryce acknowledged that at the time that the children were dancing, he "saw more redness [on K.D.'s neck] than [he] did when she was sitting on [his] lap" earlier at the dining room table. Furthermore, he did not see three distinct marks on the back of her neck; rather, he "saw it as a whole."

¶ 59 Bryce agreed that he told Miller that at the start of visitations, it typically "takes K.D. a while to warm up." He denied that he told Miller that defendant took one daughter and K.D. "into a bedroom to help calm her down and let her warm up" Subsequently, the following exchange occurred:

> "Q. And isn't it true that while you walked into the room you saw [K.D.] sitting on this defendant's lap in the middle of that bed?
>
> A. [K.D. and T.F.] were both sitting on her lap."

Bryce testified that he did not believe he caused the marks on K.D.'s neck by tickling her, and he never told this to Miller.

¶ 60 On redirect-examination, Bryce stated that K.D. never told him the defendant had choked her. When Miller first spoke with Bryce at his place of employment, he did not take notes or record the conversation. He was not asked to come to the police station. Bryce sent Miller the photographs he took via email.

¶ 61 Curt Biarnesen was then called by defendant. Biarnesen testified that he is a retired police officer. He worked for the DeKalb police department for the final 20 years of his career. In November 2012, he was still so employed. At that time, he responded to Kishwaukee Hospital regarding the burn on K.D.'s hand. He had a conversation with K.D. K.D. told him that she was brushing her teeth and "hit the curling iron with her hand and that's how she got the burn." Biarnesen also asked K.D. about a head injury, and K.D. stated that she was running, fell, and "bumped her head on the floor."

¶ 62 On cross-examination, Biarnesen stated he could not recall whether he spoke to another family member before he spoke to K.D. He is six feet, five inches tall. He could not actually recall, but he did not think that he would have spoken to a child without a parent being present.

¶ 63 Defendant next called Rudy Contreras. He was married to Kaylee in 2013 and 2014. In November 2012, K.D. was coming for a visit. They were at Judy's house. Bryce dropped her off and told them that K.D. had a small burn "from a curling iron straightener." The burn was bandaged. They removed the bandage to examine the burn. Contreras testified that "[it] was just a small little redness with a small blister." Kaylee took K.D. to a back room. Contreras could not hear what they were saying. Kaylee, Judy, and Amber (Kaylee's mother) determined that the burn was intentional, and they called DCFS. He did not recall them taking K.D. to the hospital.

¶ 64 On cross-examination, Contreras agreed that the first time he spoke to anyone about this incident was when he talked to Bryce two weeks before the trial. He denied that Bryce was a friend of his. The burn was "[n]ot even the size of a dime." On redirect-examination, Contreras stated that he was a friend of defendant. He characterized their relationship as "Facebook friends." He does not socialize with defendant or Bryce.

¶ 65 Dotrissa Smith, Bryce's mother, next testified for defendant. K.D. is her granddaughter. She has known defendant for about five years. K.D. came to Dotrissa's house during the spring break of 2014 for an overnight visit. K.D. told Dotrissa that she did not want to lie anymore and that her mother wants her to lie. The trial court instructed the jury that this was admitted for the limited purpose of assessing K.D.'s credibility.

¶ 66 Defendant then called Mark Nachman, a DeKalb police officer. Nachman is a detective. In March 2014, he was involved in the investigation of "the drowning of a small child," that is, K.D. A report had been made to DCFS. He participated in victim-sensitive interviews in connection with this allegation. It was also alleged that K.D. had been burned with a straightening iron. He interviewed Kaylee. In the course of the interview, Kaylee said that defendant held K.D. "down by her neck while she tore the blister off." Kaylee claimed to have pictures of K.D.'s neck showing bruising. Nachman asked her to transmit them to him; however, Kaylee said she could not find them. She also accused defendant of burning K.D. with a hair straightener. Further, she stated that defendant holds K.D.'s head underwater while she is giving K.D. a bath.

¶ 67 On cross-examination, Nachman stated that he never spoke with defendant in the course of this investigation. Regarding the incidents of alleged abuse, Kaylee told Nachman that K.D. told her that they occurred. He observed a victim-sensitive interview of K.D. on March 18, 2014. It was conducted by Heilemeier, and Gardner was also present. He never personally examined K.D.'s hand or the burn mark.

¶ 68 Defendant next called Kaylee (she is identified as Kaylee Greco in this portion of the trial transcript). She agreed that she and Bryce have had "a lot of difficulties" regarding K.D.,

including litigation and "coming to court a lot over the years." This included '[a] lot of allegations back and forth."

¶ 69 In November 2012, K.D. told Kaylee that defendant had burned her. She learned about this from K.D. and not from Bryce. As a result, she took K.D. to the emergency room at Kishwaukee Hospital. She stated she was not in the room when K.D. was interviewed by a DeKalb police officer. Kaylee was aware that her daughter said, at some point, that the burn was caused accidentally. She nevertheless continued to believe that it was caused by defendant. She was not aware of K.D. ever saying that Kaylee had choked her. She recalled picking up K.D. after the birthday party; she did not recall Bryce trying to speak with her at that time. Later that evening, she took K.D. to the Sycamore police station. She did not take K.D. to the emergency room after they left the police station that day. She could not recall where she took K.D. the next day.

¶ 70 Kaylee acknowledged that she accused defendant of attempting to drown K.D. in March 2014. She obtained an order of protection against defendant in February 2014. She filed the petition to protect her daughter from defendant. She asserted that Bryce could have seen K.D. despite the order of protection. K.D. told Kaylee that defendant cut a blister off her, tried to drown her, and burned her. Kaylee personally saw the injuries caused by these acts. In February 2014, there were marks on K.D.'s neck, though not as bad as the one's on K.D.'s neck in April 2014.

¶ 71 On cross-examination, Kaylee testified that after she met with the police on April 29, 2014, she just followed their directions regarding where to take K.D. on the next day.

¶ 72 Kimberly Staffey was defendant's next witness. She works for the Children's Home & Aid Society in DeKalb. She is a teacher and previously was employed by the Montessori school

in Sycamore. She is a mandated reporter. She was employed at Montessori in May 2013, where K.D. was a student at the time. K.D. told a teacher that her "mommy" strangled or choked her and ripped her dress. The teacher brought K.D. to Staffey, and K.D. repeated the story. She later repeated it to another staff member. K.D. had a "red mark" on her. She called DCFS.

¶ 73 On cross-examination, Staffey clarified that K.D. had "a slight red mark on her neck." She could not recall exactly where on the neck the mark was. Finally, Staffey explained that her duties as a mandated reporter are not limited to her professional life.

¶ 74 Defendant next called Janie Kampf, who was working at Montessori in May 2013. She was a mandated reporter. She knew K.D. when K.D. was at Montessori. Kampf contacted DCFS regarding K.D. K.D. had shown her some marks on her (Kampf could not recall exactly where). K.D. told Kampf that she was at her mom's house and her mom was mad because she wanted K.D. to sit on her lap, which K.D. did not want to do. Her mother choked her and ripped her dress. Kampf told Staffey, and Staffey called DCFS. A representative from DCFS came to the school and spoke with K.D.

¶ 75 Kampf was defendant's final witness. Defendant elected not to testify. The State then presented witnesses in rebuttal.

¶ 76 The State first called Sue Zarlenga. She is a child protection investigator for DCFS. She conducted an investigation involving Kaylee. She explained that the investigation was unfounded, so the related records were destroyed. She was therefore relying solely on her memory. The investigation involved an allegation by K.D. that her mother had choked her. She did not recall how the investigation started, but she did recall going to the Montessori school. The investigation was unfounded. To the best of her recollection, K.D. was wearing "a little

yellow halter top that had a strap in the back like a strap around the neck and * * * she might have been running and Mom might have grabbed her shirt which made a little mark here."

¶ 77 On cross-examination, she conceded that based on her recollection, she was "not able to give any sort of insight or detail into that particular investigation." When asked how often small children come to school and accuse their mothers of choking them, she answered, "Not too often, but it does happen."

¶ 78 The State then recalled Detective Miller. Miller testified that Bryce told him that K.D. is shy at the beginning of visitation; defendant took K.D. and one of her daughters into Jami's bedroom to try to get her comfortable; Bryce observed defendant sitting in the middle of Jami's bed with K.D. on her lap; they returned to the birthday party; Bryce stated that he had tickled K.D. around the neck; the tickling left marks on K.D.'s neck; and this is why he took photographs. On cross-examination, Miller acknowledged the utility of a tape recorder in documenting an interview.

¶ 79 This concluded the evidence presented at trial. Defendant then made two offers of proof. Jami testified that she spoke with a DCFS caseworker in the hallway of the courthouse, though she did not know the person's name. That person told Jami that K.D. was "really messed up," "very manipulative," and "would say anything to get what she wanted." The person cited an example where K.D. lied about something because she wanted to watch a cartoon show on television. Jami added that it was one of the DCFS personnel who testified during the trial. On cross-examination, Jami stated that the "two women from the school" were also present when these statements were made.

¶ 80 Defendant then recalled Zarlenga. Zarlenga acknowledged having a conversation with "Kim Staffey and then a blonde lady came over." During this conversation, Zarlenga described K.D. as manipulative. Regarding the alleged cartoon incident, Zarlenga stated:

> "What—what happened was when I—when I had a contact with her was at the Montessori school and I think I had to—I think, I'm not sure, but I think I had to go back because she kept making accusations and she told me, "'Well, why wouldn't I? I can watch a Winnie the Pooh video and get out of class.' "

¶ 81 Defendant was convicted of one count of aggravated domestic battery (720 ILCS 5/12-3.2, 3.3(a-5) (West 2014)). This appeal followed. Additional aspects of the record will be discussed as they pertain to the issues raised by the parties.

¶ 82 III. ANALYSIS

¶ 83 On appeal, defendant raises five main issues. First, she asserts that it was error for the trial court to allow the admission of certain other alleged acts of domestic violence. Second, she argues that the trial court erred when it allowed the admission of certain expert testimony and that this error was compounded by the State's use of it in closing argument. Third, she alleges that the State violated the rule set forth in *Brady v. Maryland*, 373 U.S. 83 (1963). Fourth, she contends that trial counsel was constitutionally ineffective. Fifth, she claims that the cumulative effect of these errors was to render her trial unfair. Many arguments contain a number of subarguments. We will address them in the order they are presented in defendant's opening brief.

¶ 84 A. OTHER CRIMES EVIDENCE

¶ 85 Defendant alleges error in the trial court's decision to allow evidence of certain other acts of domestic violence to be admitted at trial. A trial court's decision to admit other-crimes

evidence is reviewed using the abuse-of-discretion standard. *People v. Cardamone*, 381 Ill. App. 3d 462, 489 (2008). An abuse of discretion occurs only where no reasonable person could agree with the trial court. *People v. Hall*, 195 Ill. 2d 1, 20 (2000). It is axiomatic that we review the result at which the trial court arrived rather than its reasoning. *People v. Johnson*, 208 Ill. 2d 118, 128 (2003). Further, as the appellant, it is defendant's burden to affirmatively establish that error occurred in the proceedings below. See *McGann v. Illinois Hospital Ass'n, Inc.*, 172 Ill. App. 3d 560, 565 (1988).

¶ 86 Moreover, as defendant recognizes, as this issue was not properly preserved, it is only amenable to review using the plain-error standard. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). Under such cases, we may reverse based on an unpreserved error only if the evidence is so serious as to deprive a defendant of a fair trial or where the evidence is so closely balanced that the outcome of the trial may have resulted from the error rather than the evidence. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Here, defendant contends the evidence was closely balanced. However before we can find plain error, we must find error. *People v. Smith*, 372 Ill. App. 3d 179, 181 (2007). Hence, we first turn to the question of whether an error occurred.

¶ 87 In this case, evidence of prior acts of abuse was admitted in accordance with section 115-7.4 (725 ILCS 5/115-7.4 (West 2014)) and section 115-10 of the Code (725 ILCS 5/115-10 (West 2014)). Pursuant to the latter, certain statements of K.D. were entered into evidence concerning acts allegedly committed against her by defendant, including those made in a victim-sensitive interview. Additional evidence came in under the former statute. As noted, defendant neither objected to the admission of such evidence, filed a motion *in limine* to that effect, nor otherwise sought a hearing on this issue.

¶ 88 Defendant correctly points out that section 115-7.4 largely mirrors and has been interpreted consistently with section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2014)). See *People v. Dabbs*, 396 Ill. App. 3d 622, 625 (2009). Defendant also notes that our supreme court has held section 115-7.3 (which concerns the admission of similar evidence in sexual assault cases) constitutional because it requires a court to weigh "the probative value of the evidence against undue prejudice to the defendant" (725 ILCS 5/115-7.4(b) (West 2014)). See *People v. Donoho*, 204 Ill. 2d 159, 181-82 (2008).

¶ 89 Defendant divides this argument into a procedural and a substantive prong. Turning first to the procedural prong, defendant asserts that the trial court erred because it did not actually balance probative value against undue prejudice. This argument is misplaced; as noted, we review the holdings or findings of a trial court, not the reasoning that produces them. *Johnson*, 208 Ill. 2d at 128. Hence, defendant must establish substantive error. If defendant were to establish that the trial court's reasoning was lacking in some way (here, as alleged by defendant, incomplete) but that the evidence in question was nevertheless properly admitted, any error would be harmless. Thus, to prevail on this point, defendant must show that the undue prejudice accruing to defendant by the admission of this evidence substantially outweighed its probative value. See *People v. Nixon*, 2016 IL App (2d) 130514, ¶ 36.

¶ 90 Defendant makes two main arguments as to why the undue prejudice he suffered from this evidence substantially outweighed its probative value. She contends that the evidence of other crimes was not credible. She notes that DCFS found the earlier allegations unfounded. However, as Gardner testified, such a finding simply means she found "no credible evidence of abuse or neglect." It does not mean the abuse did not occur. Moreover, as defendant points out in her next argument, it is for the fact finder to determine whether defendant engaged in the

conduct at issue. *People v. Heller*, 2017 IL app (4th) 140658, ¶ 63 (quoting IPI Criminal 4th No. 3.14). Thus, the credibility of the allegations was a question for the jury, not for the trial court to rule on in addressing admissibility.

¶ 91 Defendant also contends that the trial court permitted too much evidence of other acts of abuse to be admitted. Defendant points out that "other-crimes evidence must not become a 'focal point' of the trial, nor should the trial become a 'mini-trial' of the uncharged offense." *Heller*, 2017 IL app (4th) 140658, ¶ 54 (quoting *People v. Smith*, 406 Ill. App. 3d 747, 755 (2010)). Defendant contends that the State forfeited this argument by failing to respond to it. However, we note that as the appellee, even if the State were to fail to file a brief, defendant would not be entitled to automatically prevail. See *People v. Dovgan*, 2011 IL App (3d) 100664, ¶ 10 (citing *First Capitol Mortgage Corp. v. Talandis*, 63 Ill. 2d 128 (1976)). In other words, defendant is not excused from his burden of establishing error.

¶ 92 Moreover, we do not believe that no reasonable person could agree with the quantum of such evidence permitted by the trial court. Defendant summarizes the evidence allowed as follows. First, defendant notes that after a "quick recitation of the details of the charged conduct," the balance of K.D.'s testimony on direct examination concerned allegations of previous acts of abuse by defendant. Heilemeier then provided the foundation for the victim-sensitive interview of K.D., where "she again spent countless minutes discussing the other crimes evidence." Defendant adds, "The evidence remained a theme, and indeed a 'focal point' throughout the rest of the state's case."

¶ 93 We have no quarrel with defendant's characterization of this evidence; however, we do not believe that no reasonable person could conclude that it was appropriate. There was indeed a significant amount of other-crimes evidence presented. However, as noted, DCFS conducted an

investigation that was not able to find credible evidence to substantiate the allegations. Similarly, defendant was able to introduce testimony from Biarnesen that called into question the veracity of the allegations regarding the straightening iron. Further, Jami and Alissa testified that Kaylee coerced K.D. into making the allegations. As such, a reasonable person could conclude that a more full presentation of evidence surrounding these alleged acts was necessary for the trier of fact to properly evaluate the allegations.

¶ 94 Finally and most problematically for defendant is the State's observation that her theory of the case was that K.D.'s allegations of abuse were part of a plan, orchestrated by Kaylee, to limit Bryce's access to K.D. At the beginning of his opening statement, defense counsel raised the specter of such a plan by asserting that Bryce photographed his daughter's neck "because he was concerned that the redness on her neck would arise [*sic*] some sort of accusation against either himself or against [defendant]." Shortly thereafter, counsel stated there was an ongoing "contested family battle that's been going on for years" and that Kaylee and Bryce both wanted more time with K.D. He then assets that "accusations had been made before." From the beginning, clearly, it was defense counsel's plan to paint the allegations at issue in the present case as being part of a broader scheme.

¶ 95 At trial, defense counsel elicited testimony in support of this theory. As noted, Biarnesen testified that when he interviewed K.D. at the hospital after she was allegedly burned by the straightening iron, K.D. stated that she touched the iron while brushing her teeth. Jami and Alissa both testified that K.D. told them that Kaylee locks K.D. in her room to coerce her to lie. Jami added that K.D. told her the Kaylee hits her in the stomach. Dotrissa testified that K.D. told her that she did not want to lie anymore and that her mother wants her to lie. Defendant called Nachman, whose entire testimony concerned prior allegations of abuse. From Kaylee herself,

defense counsel elicited that she and Bryce have had "a lot of difficulties" regarding K.D., which included "coming to court a lot over the years" and '[a] lot of allegations back and forth."

¶ 96 In closing argument, defense counsel first questioned Kaylee's credibility, pointing out her inability to remember details about supposed injuries and that she claimed to have lost photographs that would have documented some of her claims after telling a police officer that she had taken them. He then asserted that Kaylee "has made extensive allegations over the years about [defendant]." Counsel pointed to Kaylee's lack of memory of earlier allegations and intimated that they were fabricated. He added, "I submit to you she's a liar." Regarding Biarnesen's testimony, counsel argued, "So do we believe a career retired police officer on that point, or do we believe Kaylee." Later, he stated, "Of course that completely leaves out the manipulation of this child by her mother for two years." Counsel noted that Gardner warned Bryce and defendant about the possibility of false accusations. He referred to Kaylee as "an accusation machine." Counsel concluded closing argument by stating, "Ladies and gentlemen don't let Kaylee do this anymore."

¶ 97 Defendant could not have presented a significant portion of this evidence and argument if evidence of the prior allegations of abuse were not admitted. For example, Biarnesen's testimony, which was perhaps one of the most compelling contradictions of K.D.'s accusations, would not have been relevant to anything at issue in the trial. Defendant could not have attacked Kaylee's credibility concerning her memory or handling of the earlier allegations. It would not have made sense for counsel to refer to Kaylee as an "accusation machine" or to implore the jury to not let her "do this anymore." In short, defendant's trial strategy was at least as dependent on the existence of the earlier allegations as was the State's theory of the case.

¶ 98 Of course, "an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error." *People v. Carter*, 208 Ill. 2d 309, 319 (2003). This is known as the doctrine of invited error. *Id*. It applies where a party acquiesces in a course of conduct. *People v. Cox*, 2017 IL App (1st) 151536, ¶ 73. In other words, "a party cannot complain of error that it brought about or participated in." *People v. Hughes*, 2015 IL 117242, ¶ 33. Therefore, "when a defendant procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, she cannot contest the admission on appeal." *People v. Bush*, 314 Ill. 2d 318, 332 (2005). Where an alleged error is invited, plain-error review is forfeited as well. *People v. Patrick*, 233 Ill. 2d 62, 77 (2009); *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17.

¶ 99 Here, defendant built her entire theory of the case around the prior allegations of abuse. She not only failed to object to them, but used them to introduce certain items of evidence and make certain arguments she otherwise would not have been able to. This is a clear example of invited error; thus, defendant cannot now raise this issue on appeal. Moreover, given the benefits defendant derived from pursuing this course in terms of the evidence that could be presented and arguments that could be advanced, we cannot see this as anything other than a matter of trial strategy. As such, defense counsel's handling of these issues cannot be used to support a claim of ineffective assistance of counsel. See *People v. Manning*, 241 Ill. 2d 319, 326 (2011).

¶ 100 Defendant also claims that the trial court erred by not giving a limiting instruction regarding the evidence of other crimes. The manner in which a trial court instructs the jury is a matter within the discretion of the trial court. *People v. Castillo*, 188 Ill. 2d 536, 540 (1999). Thus, we review this issue using the abuse-of-discretion standard. *People v. Chambers*, 219 Ill.

App. 3d 470, 475 (1991). An abuse of discretion occurs only if no reasonable person could agree with the trial court. *Hall*, 195 Ill. 2d at 20.

¶ 101 Defendant argues that the trial court erred by not instructing the jury that it could only consider the other-crimes evidence on the issue of defendant's propensity to commit a crime or, alternatively, K.D.'s credibility. Defendant contends that these are limited purposes, and, implicitly, the jury should not have been allowed to consider this evidence for any other purpose.

¶ 102 Defendant ignores the plain language of section 115-7.4 (725 ILCS 5/115-7.4 (West 2014)). That section provides, *inter alia*:

> "In a criminal prosecution in which the defendant is accused of an offense of domestic violence * * *, evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing *on any matter to which it is relevant*." (Emphasis added.) 725 ILCS 5/115-7.4(a) (West 2014).

Contrary to defendant's position, such evidence is not admissible for a limited purpose. Indeed, one of the cases defendant relies on makes this explicit: "In the interest of edification, we reiterate that other-crimes evidence admitted pursuant to section 115-7.4 of the Code (725 ILCS 5/115-7.4 (West 2014)) may be considered by the jury for any relevant matter, including the defendant's propensity to commit the charged crime." *Heller*, 2017 IL App (4th) 140658, ¶ 65.

¶ 103 In arguing otherwise, defendant relies on *People v. Banks*, 2016 IL App (1st) 131009, and *Heller*, 2017 IL App (4th) 140658. *Heller* is inapposite. In *Heller*, the instruction given was plainly improper, stating that the jury could consider the other-crimes evidence in that case on the issues of "factual similarity and proximity in time." *Id.* ¶ 62. Those considerations are actually part of the inquiry the trial court is to make in assessing the evidence's relevance and potential for undue prejudice. See 725 ILCS 5/115-7.4(b) (West 2014). Moreover, the trial

court declined to review the issue as invited error. *Heller*, 2017 IL App (4th) 140658, ¶ 68. Nowhere does *Heller* hold that the trial court should have instructed the jury that it could only consider the other-crimes evidence on the issue of propensity. *Heller* does, however, cite a passage from *Banks* that is of potential relevance here, so we now turn to that case.

¶ 104 In *Banks*, the trial court provided the jury with two limiting instructions. One concerned the use of a prior conviction solely for impeachment purposes and the other concerned other-crimes evidence admitted to show "propensity to commit sexual acts" (apparently in accordance with section 7.3 of the Code (725 ILCS 5/115-7.3 (West 2014)). Defendant argued that, as the jury instructions did not specify which prior act they pertained to, the jury could have used the prior conviction admitted solely for impeachment on the issue of propensity. *Banks*, 2016 IL App (1st) 131009, ¶ 109. The *Banks* court found the potential for confusion insignificant, as the jury had been instructed on propensity immediately before that evidence was presented. Specifically, the trial court instructed the jury:

> "Ladies and gentlemen, in a moment evidence will be received that the Defendant has been involved in an incident other than those charged in the indictment before you. This evidence will be received on the issue of Defendant's propensity. And may be considered by you only for that limited purpose." *Id.* ¶ 114.

Thus, the issue before the reviewing court was whether the giving of this instruction caused or mitigated any potential confusion regarding how the defendant's prior criminal conviction could be used. It was not whether this instruction was proper *per se*.

¶ 105 Indeed, it is unclear to us why the *Banks* courts (trial and reviewing) deemed it necessary to instruct the jury on the issue of propensity. The need for such an instruction is not consistent with the plain language of section 7.3, which, like section 7.4, states that such evidence may be

considered for "any matter on which it is relevant." 725 ILCS 5/115-7.3(b) (West 2014). Nor is such a requirement supported by case law. See, *e.g.*, *Heller*, 2017 IL App (4th) 140658, ¶ 65. Thus, we find *Banks* to be of little guidance on this point.

¶ 106 Moreover, defendant does not identify what improper purpose the jury could have used the other-crimes evidence for. We note that the erroneous admission of evidence pursuant to section 115-7.3 has been subjected to a harmless error analysis. *E.g.*, *People v. Reber*, 2019 IL App (5th) 150439, ¶ 85. Absent some tangible improper purpose, we could not find that this alleged error prejudiced defendant in any way.

¶ 107 To conclude, we do not find any of defendant's arguments on these issues persuasive. As we find no error, the question of whether plain error occurred is moot.

¶ 108 B. EXPERT TESTIMONY

¶ 109 Defendant next complains of certain opinion testimony by Shannon Krueger. Defendant states that though "trial counsel made comments that could be interpreted as an objection" and that this issue was raised in her second amended motion for a new trial, the issue is "properly before this court because the evidence is closely balanced." Actually, we find counsel's comments sufficient to preserve this issue and will review it as such.

¶ 110 Defendant contends that Krueger, the pediatric nurse practitioner employed in the MERIT program, should not have been permitted to testify as to the nature of the marks on K.D.'s neck or whether they could be diagnosed as eczema. Specifically, Krueger testified that the marks on K.D.'s neck, which Krueger observed in a photograph, "were consistent with her disclosure of being choked, and therefore, consistent with child physical abuse." Later, she opined that the marks were not consistent with eczema, explaining:

> "Eczema is an erythemic raised dry patch of skin that can a lot of times have scratches around it, sometimes it doesn't. It's very itchy. What I observed in the pictures would be flat, red, more consistent with broken capillaries under the skin. There was also a small abrasion in the neck area and some bruising to the front of the neck. All of those would not be consistent with a description of eczema."

Defendant argues that Krueger was not qualified to offer these opinions.

¶ 111 Krueger's qualifications, in so far as they appear in the record, are as follows. She is a pediatric nurse practitioner. Her medical career, at the time of the trial, spanned 17 years. She is employed in the MERIT program. The MERIT program was started by a board-certified child-abuse physician. She attends specialized child-abuse training on an annual basis. She had previously been qualified as an expert in the field of child abuse. As a pediatric nurse practitioner, she has "been trained in common childhood diseases, and one of them is eczema." She has practiced as a pediatric nurse practitioner for nine years, and she has diagnosed and prescribed treatment for eczema (contrary to defendant's assertion in her reply brief, this provides a nexus between Krueger's expertise and the opinion she was asked to render). Parenthetically, we note that by identifying the marks as being consistent with child abuse (something she was clearly qualified to do), she would be ruling out eczema as a cause as well.

¶ 112 Generally, "[e]xpert testimony is admissible if the proffered expert is qualified as an expert by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence." *Reed v. Jackson Park Hospital Foundation*, 325 Ill. App. 3d 835, 842 (2001). Formal or specialized training is not required. *People v. Hernandez*, 313 Ill. App. 3d 780, 784 (2000). A trial court's decision to admit expert testimony is reviewed

using the abuse-of-discretion standard. *Id*. Hence, such a decision will stand unless no reasonable person could agree with the trial court. *Hall*, 195 Ill. 2d at 20.

¶ 113 It strains credulity to suggest that an expert in the field of child abuse would not be qualified to identify bruising, marks on the skin consistent with strangulation, or other such indicia of child abuse. Defendant argues, in essence, that no doctor short of a dermatologist would be qualified to identify a bruise. Defendant cites nothing to credibly support this extreme position, and we find it unpersuasive.

¶ 114 The cases defendant cites do not support this argument. Initially, we note that these cases concern testimony regarding the standard of care of a given medical subspecialty. See *Petryshyn v. Slotky*, 387 Ill. App. 3d 1112, 1119 (2008); *Dolan v. Galluzo* 77 Ill. 2d 279, 283 (1979); *Alm v. Loyola University Medical Center*, 373 Ill. App. 3d 1, 6 (2007). At issue here is the much simpler issue of identifying the marks on K.D.'s skin. Hence, these cases provide tangential guidance at best.

¶ 115 Defendant first cites *Petryshyn*, 387 Ill. App. 3d at 1118-19. It is true that in that case, the court stated, "even though they are all physicians, orthopedic surgeons are not qualified to testify regarding the standard of care (and any alleged breach thereof) applicable to pediatricians; nor are radiologists qualified to testify regarding those subjects applicable to dermatologists." *Id*. at 1119. We find nothing analogous between the sorts of differences described in this portion of *Petryshyn* with defendant's proposed distinction between an expert on child abuse and someone who can recognize a bruise. Moreover, the ultimate holding in that case was that a physician certified in obstetrics and gynecology was qualified to testify to the standard of care (and associated breach thereof) of nurses operating as part of a surgical team. *Id.* at 1121. The court reasoned that the responsibilities of doctors and nurses in such circumstances are

"intertwined." *Id*. Thus, the scope of an expert's qualification is not as narrow as defendant implies.

¶ 116 Defendant also relied on *Alm*, 373 Ill. App. 3d at 5-6, for the proposition that pathologists are not qualified to opine on subject matter pertaining to the actions of anesthesiologists. Again, we fail to see how the distinction between pathology and anesthesiology is instructive on the issue before us. Furthermore, in *Alm*, the court stated, "While it is true that a plaintiff's medical expert need not have the same specialty or subspecialty as the defendant doctors [citation], he must nonetheless be familiar with the methods, procedures, and treatments ordinarily observed by other physicians in the specialty about which he is testifying." *Id*. Pertinent here, regardless of the exact medical field one might determine Krueger belongs to, it is clear that her experiences treating patients as a pediatric nurse practitioner, which include treating eczema, as well as her experience working with the victims of child abuse, render her qualified to offer the opinions permitted by the trial court. See also *Jones v. O'Young*, 154 Ill. 2d 39, 43 (1992) ("Whether the expert is qualified to testify is not dependent on whether he is a member of the same specialty or subspecialty as the defendant but, rather, whether the allegations of negligence concern matters within his knowledge and observation.").

¶ 117 As no error occurred here, defendant's argument that the State exacerbated it during closing argument is moot. The State could properly rely on this testimony. Defendant also complains of the following portion of the State's closing argument:

> "[State's Attorney:] Now, let's talk about these marks. These marks are the big elephant in the room, the elephant in the room that the defendant wants to explain away as to how these marks got there.

> There's been a lot of discussion about eczema. Now he's you know, counsel is saying that yes, it's not eczema. I think it's pretty evident that this is not eczema. But remember the other stories that were talked about and what—the other witnesses talked about regarding fevers and blotchiness or hives. That's not even plausible. We see the marks. They are not blotchy, they are not hives, there's no raised skin on that child's neck. They are flat.
>
> [Defense Counsel]: Judge, I would object to the it's [*sic*] not possible comment. That again assumes facts not in evidence.
>
> THE COURT: The jury will determine what the evidence is, and anything that is not—any statement made not consistent with that evidence will be disregarded by the jury."

The State then went on to hypothesize that the marks were caused by "applying a certain amount of pressure to somebody's, in this instance, neck." Defendant objected and the court admonished the State that "we're not putting in expert testimony in front of the jury from attorneys."

¶ 118 Defendant complains that the trial court neither "formally sustained" this objection nor instructed the jury, *sua sponte*, at this point. Defendant cites no authority in support of this argument, thus forfeiting the issue (particularly the proposition that the trial court was required to actually use the word "sustained" or something similar instead of simply commenting favorably on defendant's objection). *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 205. Moreover, although the trial court did not expressly state that defendant's objection was sustained, the clear import of the trial court's admonition was that defendant's objection was well founded. We have no reason to believe, and defendant does not offer any, that this would have been lost on the jury.

¶ 119 In short, defendant's arguments on this point are ill taken.

¶ 120 C. *BRADY* VIOLATIONS

¶ 121 Defendant next argues that the State violated the rule established in *Brady v. Maryland*, 373 U.S. 83 (1963). Generally, *Brady* "provides that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to the guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' " *People v. Simpson*, 204 Ill. 2d 536, 555 (2001). To prevail, a defendant must show that the evidence in question is both material and favorable to the defense. *Id.* Impeachment evidence falls within the ambit of *Brady*. *People v. Carballido*, 2015 IL App (2d) 1140760, ¶ 72. To be material, there must be a reasonable probability that the outcome of the proceeding would have been different had the evidence been disclosed. *Simpson*, 204 Ill. 2d at 555-56. A reasonable probability is one sufficient to undermine confidence in the outcome of the proceeding. *Id.* at 556. Thus, to establish a *Brady* violation by the State, a defendant must establish the following three elements: "(1) the evidence, whether exculpatory or impeaching, was favorable to him; (2) the State failed to disclose the evidence in response to a specific request; and (3) the defendant was prejudiced by the State's failure to disclose the evidence, as the evidence was material." *People v. Cielak*, 2016 IL App (2d) 150944, ¶ 22. The question of whether the State committed a *Brady* violation is subject to *de novo* review. *Id.*

¶ 122 Defendant also relied on Illinois Supreme Court Rule 412(a) (eff. March 1, 2001) in support of this argument. That rule provides for, *inter alia*, the disclosure of "relevant written or recorded statements" of "persons whom the State intends to call as witnesses." *Id.* Defendant asks, alternatively, that she be granted a new trial as a sanction for the State's alleged violation of this rule.

¶ 123 At issue here are recordings of two victim-sensitive interviews, one of K.D. on March 18, 2014 and one of T.F. (defendant's daughter, with whom defendant resides) on April 1, 2018. These earlier victim-sensitive interviews were in relation to the earlier allegations of abuse that DCFS determined to be unfounded. The victim-sensitive interview of K.D. pertaining to the charges at issue here, which occurred on April 30, 2014, and is discussed above, was properly disclosed.

¶ 124 The March 18, 2014, victim-sensitive interview of K.D. was not disclosed to defendant until the trial was underway, specifically, at lunchtime after the testimony of K.D. and Heilemeier had concluded. The late disclosure of *Brady* material may give rise to a due process violation. *People v. Bivins*, 97 Ill. App. 3d 386, 391 (1981). The victim-sensitive interview of T.F. was not made available until after trial when defendant procured it via a Freedom of Information Act request.

¶ 125 As it presents a more-straightforward issue, we will first address the victim-sensitive interview of T.F. As noted, to prevail, a defendant must show a reasonable probability that the outcome of the proceedings would have been different. *Simpson*, 204 Ill. 2d at 555-56. The implication of defendant's argument here is that if she had known what T.F. would testify to, she would have used that information at trial. For example, defendant points to T.F.'s statements that she never saw K.D. get spanked by defendant and that, despite remembering playing with K.D. during bath time, neither herself nor K.D. was ever drowned by defendant. Obviously, however, defendant was present in the household and had access to T.F. It defies credulity to suggest that defendant was not aware of the sorts of things T.F. could have testified to or that defendant would have only been aware of such things if she had access to the recording of the victim-sensitive interview of T.F. Nevertheless, defendant made no attempt to present such

information from T.F. at trial. In other words, we perceive no reasonable probability that defendant would have proceeded in a different manner if the recording had been made available. As such, there is also not a reasonable probability that the outcome of the proceeding would have been different.

¶ 126 Defendant contends that regardless of what she may have known, "*Brady* places an *affirmative* obligation on the state." (Emphasis in original.) While it is true that the burden *to disclose* pertinent material is on the State, to successfully make out a *Brady* violation, the burden is on defendant to show a reasonable probability that the outcome of the proceeding would have been different. *Simpson*, 204 Ill. 2d at 555-56. Defendant has failed to do so here.

¶ 127 The March 2014 victim-sensitive interview of K.D. presents a closer case. Initially, we note that many of the so-called inconsistencies between K.D.'s victim-sensitive interviews of March 2014 and April 2014 identified by defendant involve instances where K.D. reported something in one of the interviews that she did not report in the other. For example, defendant states, "K.D. claims in the 3/18/14 VSI that [defendant] gave Bryce Evans a black eye, but omits this claim from her 4/30/14 VSI." The mere fact that an incident is only mentioned in one of the two victim-sensitive interviews does not establish a contradiction. Generally, an omission may be used to impeach a witness only if "(1) it is shown that the witness had an opportunity to make a statement, and (2) under the circumstances, a person normally would have made the statement." *People v. Williams*, 329 Ill. App. 3d 846, 854 (2002). Defendant makes no attempt to establish that a person in K.D.'s position would have normally made such statements in *both* victim-sensitive interviews. As such, the fact that she did not is not impeaching.

¶ 128 Indeed, it is not even surprising. The March 2014 victim-sensitive interview concerned the earlier allegations determined to be unfounded; the April 2014 victim-sensitive interview

involved the allegations at issue in this case. Two separate things were being investigated. It is not surprising, therefore, that more detail was related about the earlier allegations in the March 2014 victim-sensitive interview—when the earlier allegations were at issue—than the one done in April 2014 (and the converse is true as well). Hence, assertions like "K.D. claims in the 3/18/2014 VSI that she put her hand behind her back and in her pocket in an attempt to prevent the burning, but omits this claim during her 4/30/2014 VSI" have no meaningful impeachment value. Further, as the State points out, some of the so-called inconsistencies result from K.D. reporting behavior in the second victim-sensitive interview that occurred subsequent to the first victim-sensitive interview. Also unpersuasive are various collateral matters defendant relies on here (*e.g.*, "K.D. claims in the 3/18/2014 VSI that she was eating pancakes prior to the alleged burning, but omits reference to such activities in the 4/30/2014 VSI."). See *People v. Sandoval*, 135 Ill. 2d 159, 181 (1990) ("Impeachment of a witness is restricted to relevant matters; a witness may not be impeached on collateral or irrelevant matters.").

¶ 129 Only a handful of the alleged inconsistencies identified by defendant remain, specifically: (1) In the March interview K.D. stated that defendant also drowned T.F. and in the April interview, she said that she alone was drowned; (2) "In the 3/18/2014 VSI, K.D. contradicts her previous claim made in the same interview that [defendant] burned her for not eating her pancakes fast enough by stating that she did not know why [defendant] wanted to burn her"; (3) "K.D. claims in the 3/18/2014 VSI that T.F. was not present for the drowning; or alternatively a separate drowning, which contradicts her earlier claim that [defendant] also drowned T.F."; and (4) K.D. specifically claims in the 3/18/2014 VSI that she saw [defendant] drown T.F. whereas in the 4/30/2014 VSI, K.D. states that [defendant] never drowns her biological children, and later, that K.D. has never seen her 'do stuff in the bathtub to anyone else.' " The first, third, and

fourth allegations seem to be based on the same conduct. Thus, two basic points of possible impeachment are at issue: K.D.'s inconsistent reporting of whether defendant also drowned T.F. and K.D.'s statement regarding the reason defendant burned her contrasted with her denial of knowing why defendant burned her.

¶ 130 Defendant argues that "[h]ad this video been timely disclosed, as the state was duty bound to, trial counsel could have elicited this mountain of impeachment evidence to rebut the state's imperfect attempt to bolster K.D.'s credibility." After examining the alleged inconsistencies in detail, the amount of impeachment evidence available hardly appears to be a "mountain." Defendant cites no case where such a paltry amount of such evidence was held to undermine confidence in the outcome of the proceedings. Indeed, we note that defense counsel received this recording during trial, yet did not request a continuance to assess it or incorporate it into her case. As our supreme court observed in *People v. Foster*, 76 Ill. 2d 365, 384 (1979), a defendant's failure to request a continuance in such circumstances "is persuasive evidence that the prejudice here alleged was in fact trivial."

¶ 131 Finally, defendant asserts that we "should give strong consideration to nonetheless ordering a new trial based on the state's failure to comply with [Illinois Supreme Court Rule 412's] 'serious' requirements." Defendant recognizes that the abuse-of-discretion standard applies here. *People v. Manzo*, 183 Ill. App. 3d 552, 558 (1989). Thus, defendant needed to do more here than urge us to "give strong consideration" to the issue; she needed to explain to us why no reasonable person could agree that the only appropriate sanction was a new trial. This issue has been forfeited. *People v. Trimble,* 181 Ill. App. 3d 355, 356 (1989) ("A court of review is entitled to have the issues clearly defined and to be cited pertinent authority.").

¶ 132 In sum, no *Brady* violation occurred here.

¶ 133 D. INEFFECTIVE ASSISTANCE

¶ 134 Defendant next argues that trial court rendered constitutionally ineffective assistance. When a defendant contends he received ineffective assistance of counsel, the well-known standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), control. To prevail on such a claim, a defendant must establish that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceedings would have been different. *People v. Houston*, 226 Ill. 2d 135, 144 (2007). Regarding the first prong, a defendant must overcome the presumption that counsel's actions constituted trial strategy. *Id*. For the purposes of the second prong, a reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. *Id*.

¶ 135 Defendant raises five instances of alleged ineffectiveness: (1) failing to object and request a limiting instruction regarding the other-crimes evidence discussed above; (2) the handling of expert testimony regarding the nature of the marks on K.D.'s neck; (3) the handling of the alleged *Brady* violations; (4) the failure to attempt to rebut statement made by K.D. about domestic violence directed against Bryce by defendant; and (5) failing to object to the admission of the DCFS finding that the allegations at issue in this case were "indicated." Defendant also contends that she was prejudiced by the cumulative effect of these errors. We will address these contentions *seriatim*.

¶ 136 1. Other-Crimes Evidence

¶ 137 Defendant first points to counsel's failure to object to and request a limiting instruction for the other-crimes evidence. As we explain above, defendant's theory of the case was that K.D.'s allegations of abuse were part of a plan, orchestrated by Kaylee, to limit Bryce's access to

K.D. In other words, this was a strategic decision. It is axiomatic that a claim of ineffectiveness cannot be premised on a matter of trial strategy. See *Manning*, 241 Ill. 2d at 326. As such, this claim necessarily fails.

¶ 138 Defendant also complains that trial counsel failed to request a limiting instruction. As noted above, defendant does not identify an improper purpose that the jury could have used the other-crimes evidence for. Here, that makes a showing of prejudice impossible. The failure to establish prejudice forecloses a claim of ineffective assistance of counsel. *People v. Cherry*, 2016 IL 118728, ¶ 31.

¶ 139 2. Expert Testimony

¶ 140 Defendant makes two subarguments here—that counsel should have sought to prevent Krueger from offering the opinions she did at trial and that counsel should have introduced expert testimony to rebut Krueger's opinions. The failure to file a futile motion cannot establish deficient representation. *People v. Holmes*, 397 Ill. App. 3d 1179, 1184 (2010). For the reasons explained above, Krueger was qualified to opine in the manner she did and any attempt to prevent her from doing so would have been futile.

¶ 141 Regarding attempting to rebut Krueger's testimony, we note that defendant has submitted an affidavit from a dermatologist, Dr. Samantha Conrad. She avers that she has reviewed the photographs of K.D.'s neck, which she deems to be of "poor to medium quality." She notes "evidence of erythema on the posterior lateral aspect of the right neck as well as erythema and subtle scale on the anterior portion of the right neck." She saw "no conclusive evidence of broken capillaries, purpura, or other definitive signs of trauma." She states that it would have been helpful to have reviewed K.D.'s medical records, in light of K.D.'s history of "eczematous skin processes."

¶ 142 Generally, when an issue is dependent on matters lying outside the record, it is more suitably addressed in a postconviction petition. *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990). Such is the case here. It would be better for defendant to further develop this argument rather than to have us address it prematurely based on the affidavit of a witness who conceded that the source of her information is photographs of poor to medium quality and that she would have found it helpful to review K.D.'s medical records.

¶ 143 3. *Brady* Violations

¶ 144 Defendant next contends that the State's failure to tender the *Brady* material, which was the subject of defendant's earlier argument asserting a *Brady* violation, resulted in her receiving ineffective assistance. We disagree. As noted, much of what defendant relies on simply was not *Brady* material. Further, what was arguably *Brady* material was not sufficient to establish that the outcome of the proceeding would have been different. That was fatal to defendant's earlier argument. See *Simpson*, 204 Ill. 2d at 555-56. As the ineffectiveness inquiry relies on a similar standard, it is also fatal here. See *Houston*, 226 Ill. 2d at 144.

¶ 145 4. Allegations Of Domestic Violence By Defendant Against Bryce

¶ 146 Defendant next argues that trial counsel should have elicited evidence from Bryce that defendant never hit, punched, or slapped him; never gave him a black eye; and never otherwise became physically violent with him. He submitted an affidavit to this effect. Defendant contends that this testimony would have served to rebut a statement made by K.D. that defendant hit and punched Bryce. The State contends that his statement was not in need of rebuttal, as K.D. immediately retracted it.

¶ 147 In any event, this issue relies on matters *dehors* record and is thus better suited to postconviction proceedings. *Kunze*, 193 Ill. App. 3d at 725-26.

¶ 148 5. The DCFS Finding

¶ 149 Defendant next argues that trial counsel was ineffective for allowing into evidence the DCFS finding that it had found the allegations that form the basis of the instant case to be indicated. Defendant notes that trial counsel elicited from Gardner that the earlier allegations of abuse against defendant were determined to be unfounded. Gardner explained that "unfounded" meant that "[t]here was no credible evidence of abuse or neglect." During cross-examination, the State then elicited that the allegations in the present case were "indicated." She explained that this meant "there was evidence of abuse." Defendant contends that defense counsel should have objected to this testimony.

¶ 150 Defendant contends that this evidence was improper because the elements of a DCFS abuse finding are not the same as those necessary for a conviction and the burdens of proof are different. Without citation to authority, defendant claims the danger of unfair prejudice substantially outweighs the "marginal relevance" of the evidence in accordance with Illinois Rule of Evidence 403 (eff. Jan. 1, 2011). Finally, defendant asserts that this evidence invaded the province of the jury. See *People v. Lidgren*, 79 Ill. 2d 129, 142-43 (1980).

¶ 151 We perceive two problems with defendant's argument here. First, it appears to us that defendant elicited Gardner's testimony regarding the earlier allegations being unfounded in furtherance of her theory that the current allegations were part of a larger scheme orchestrated by Kaylee. Trial strategy is generally immune from charges of ineffective assistance. See *Manning*, 241 Ill. 2d at 326. In turn, having sought the admission of this evidence, it is difficult to see on what basis defense counsel could have successfully objected to similar evidence elicited by the State. *People v. Williams*, 192 Ill. 2d 548, 571 (2000) ("A criminal defendant cannot complain on appeal of the introduction of evidence which he procures or invites."); *cf.*

People v. Mandarino, 2013 IL App (1st) 111772, ¶ 28 ("There is no error in allowing inadmissible evidence where the opposing party opens the door to its admission.").

¶ 152 Second, and perhaps more fundamentally, defendant cannot show prejudice here. Initially, we note that Gardner explained what "indicated" meant, *i.e.*, that it meant evidence exists not that abuse occurred. Further, the jurors were instructed that "[o]nly you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them." They were also instructed, "It is your duty to determine the facts and to determine them only from the evidence in this case." Given that the jury was properly instructed as to its role and further given that the term "indicated" was defined for the jury in the manner that it was, we perceive no reasonable probability that the outcome of the proceedings would have been different had the evidence to which defendant now objects been excluded from the trial.

¶ 153 6. Cumulative Prejudice—Ineffective Assistance

¶ 154 Finally, defendant argues that the cumulative effect of all these alleged instances of ineffective assistance of counsel prejudiced her. We disagree. We have determined that a number of the arguments raised by defendant concerned matters of trial strategy, so any question of prejudice resulting from them is beside the point. We found two claims more appropriate for a postconviction petition, so they cannot be considered here. The claims that we rejected because they did not result in prejudice sufficient to undermine confidence in the outcome of the trial individually are also insufficient, cumulatively, to do so.

¶ 155 Defendant also suggests that we consider certain purported errors raised by the trial court during the proceedings below; however, defendant does not develop any of these points or explain why the trial court's observations were correct. We will therefore not consider them here.

¶ 156 In sum, defendant has not established that the representation she received during the proceedings below was constitutionally deficient.

¶ 157 E. CUMULATIVE ERROR—ALL ERRORS

¶ 158 Finally, defendant argues that the cumulative effect of all the alleged errors discussed above resulted in her trial being unfair. See *People v. Blue*, 189 Ill. 2d 99, 139 (2000) ("Each of the errors detailed above, in and of itself, casts doubt upon the reliability of the judicial process. Cumulatively, we find that the errors created a pervasive pattern of unfair prejudice to defendant's case."). However, we have rejected outright a number of defendant's claims of error. To the extent that we have found some of them harmless, we find them no more a basis for reversal in the aggregate. We further note that defendant's argument of this point is exceedingly brief, and she makes no attempt to analyze the purported synergistic effect of these errors.

¶ 159 IV. CONCLUSION

¶ 160 In light of the foregoing, the judgment of the circuit court of DeKalb County is affirmed.

¶ 161 Affirmed.