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2016 IL App (3d) 140289-U

Order filed October 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
	)	Kankakee County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0289
v.	)	Circuit No. 13-CF-1
	)	
KIMBERLY L. NOWLAN-MCCUE,	)	Honorable
	)	Clark Erickson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant was guilty of first degree murder and did not act in self-defense when she stabbed the victim seven times. Defendant did not receive ineffective assistance of counsel nor was she deprived of a fair trial.

¶ 2 Following a jury trial, defendant, Kimberly L. Nowlan-McCue, was convicted of first degree murder (720 ILCS 5/9-1(a) (West 2012)). Defendant filed a motion for new trial, which the trial court denied. The trial court sentenced defendant to 28 years of imprisonment. Defendant filed a motion to reconsider sentence, which the trial court denied. Defendant

appealed, arguing: (1) the State failed to prove her guilty of first degree murder beyond a reasonable doubt because the State failed to show that she did not act in self-defense; and (2) her counsel was ineffective for failing to object to a portion of her recorded police interview and she was denied a fair trial when the prosecutor referred to that portion of the video in closing arguments.

¶ 3 FACTS

¶ 4 Defendant was charged with two counts of first degree murder. In Count I, the State alleged that on January 1, 2013, defendant committed first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) in that she, without lawful justification and with the intent to do great bodily harm to Elizabeth Jamison (Liz), stabbed Liz with a sharp object causing her death. In Count II, the State alleged defendant committed first degree murder (720 ILCS 5/9-1(a)(2) (West 2012)) in that she, without lawful justification, stabbed Liz with a sharp object, knowing such act created a strong probability of death or great bodily harm to Liz, thereby causing her death.

¶ 5 At the jury trial, Teon Claypool testified that he was Liz's boyfriend and lived with Liz and her two children in Kankakee, Illinois. Some time before Liz moved in with Teon, she lived around the corner, at 161 West Chestnut Street, with Barbara Summers (Barb), Barb's brother Michael Summers (Mike), and Richard Silva (Richard). Liz moved out of Barb's home, and defendant eventually moved in with Barb after she became separated from her husband. Defendant was estranged from her husband, Corey McCue, with whom she had a son. Teon (Liz's boyfriend) and Corey (defendant's estranged husband) worked together.

¶ 6 Teon testified that at 1:00 p.m. on January 1, 2013, while he was at home with Liz and Liz's seven-year-old son, Teon heard someone honking a car horn outside. Teon looked out the window and saw a green Jeep that he thought was owned by Corey McCue and defendant. Teon

assumed Corey was coming by to ask him to go into work, so Teon asked Liz to go outside and tell Corey that he was asleep or not home. Liz went outside and, less than a minute later, Liz came back inside and said, "Kim stabbed me." Liz was holding her neck, and blood was gushing from a neck wound. After Liz had gone outside, Teon had looked outside again and saw a woman quickly get into the green Jeep and drive away. Teon called 911 and applied pressure to Liz's neck with towels. Police arrived a few minutes later. Liz did not have a knife in her hands when she went outside and there were no knives missing from their home after the incident.

The week prior to the incident, Teon and Corey had some problems with each other at work, and Liz had called Corey.

¶ 7 Richard Silva testified that on January 1, 2013, he was residing at 161 West Chestnut with Barb, Mike and defendant. Richard had lived at that address for three years, and defendant had moved in during 2012. On January 1, 2013, Richard was home with Mike, defendant, and a four-year-old girl named Angel, who Barb had been babysitting. Defendant was upset because she wanted to see her son but he was with her estranged husband, Corey. Richard left the house with defendant after she asked him to help her fill her tires with air and run some errands. They went to the gas station and then to the bar where defendant worked so defendant could pick up her pay. They only stayed at the bar a few moments. When they got back into the Jeep, defendant said she wanted to go see her son. Richard said, "let's go see your son."

¶ 8 When defendant and Richard arrived at Corey's house, defendant knocked on the door and, after a few minutes, knocked on the window. Defendant was becoming agitated that no one was answering the door and returned to the vehicle. Defendant told Richard that "her man" was at Liz's house. Richard told defendant, "no, he's not" and that Liz had her own man. Richard told defendant to take him home, but defendant drove to Liz's house. It had taken about two

minutes to get to Liz and Teon's home. Richard told defendant to "let it go." Richard did not recall later telling Officer Randy Hartman that in response to him asking defendant to take him home, defendant had said, "No, I need a witness."

¶ 9 When they arrived at Liz's house, defendant could not directly approach the door because there was a locked gate in front of the home. Defendant was honking and was becoming "angry." Defendant got out of the Jeep when Liz came out of her house. The only thing Liz had in her hands were keys. Defendant got out of the car and walked around the back of the Jeep. Defendant took off her jacket, threw it at Richard through the car window, and walked toward the gate. Defendant starting saying words to Liz. Liz unlocked the gate with the keys. Defendant and Liz "got into it." They were saying words back and forth. Richard saw "fighting." He said, "it happened so quickly." The whole incident happened in seconds. "[Liz] barely made it out of the gate." Richard was about 17 feet away in the passenger seat of the Jeep. Richard could see Liz's front but could only see defendant's back. He could not see defendant's hands the whole time. Richard never saw a knife or weapon in Liz's hands. When defendant and Liz first started throwing their fists in the air, Richard did not see anything in either person's hands. The incident ended when he saw Liz "grab her neck and jerk her body back and run into the house." Defendant turned around and ran back to the Jeep with something in her hand. When defendant got into the Jeep, she had a four or five inch, fixed-blade knife in her left hand. There was blood on defendant's left hand. Richard did not recall the knife having a string or whistle. Richard asked defendant what she had done, and defendant said, "I think I cut her."

¶ 10 Richard testified it took about a second for defendant to drive them home and she did not say anything else. Defendant did not tell Richard that Liz had a knife in her hand or that she had

to disarm Liz. Defendant did not complain of any injuries. Other than blood on her hand, Richard did not see any other injuries to defendant. When they arrived home, Richard jumped out of the car as they were pulling into the driveway and went into the house. Mike and Barb's boyfriend were at the house. Richard called Barb to tell her what happened and then started getting Angel ready to go home. Defendant entered the house, just looked at Richard, and then went upstairs. Richard walked Angel home and then went to the police station. Richard did not call an ambulance or police because Angel was with him and he did not want to worry her. Richard gave a statement at the police station and indicated that Liz was his best friend.

¶ 11 Barb testified that she was very good friends with Liz. Barb had known Richard for 15 years at the time of the incident. She knew defendant for six months, and defendant had lived with her for three months. Defendant was estranged from her husband, and defendant's son lived primarily with defendant's husband. Barb had known Liz for two years prior to the incident, and Liz had previously lived with Barb.

¶ 12 On New Year's Eve, the evening before the incident, Barb, her boyfriend, and Mike were at the bar where defendant worked. They were at the bar until 2:00 a.m., and Barb did not see any injuries on defendant's hands. On the day of the incident, Barb left for work at 12:45 p.m. Shortly after 1:00 p.m., Barb was contacted by Richard. He was acting crazy and was very upset. Richard told Barb that Kim had stabbed Liz. Barb heard sirens in the background and Richard said that Kim was in the house, so Barb told Richard to take Angel home immediately.

¶ 13 The week before the incident, Barb, Mike, and Barb's boyfriend went to a flea market with defendant. Defendant purchased a black rope chain necklace with a whistle and a sheath containing a knife with a four inch blade. Defendant put the necklace knife around her neck that

day. Barb did not see the necklace knife since that day. Barb also testified that defendant carried a knife in her purse.

¶ 14 Police Officer Gearhart testified that at 1:16 p.m. on January 1, 2013, she responded to a stabbing at 225 North Washington street. Gearhart saw Teon holding Liz. When Gearhart asked if Teon knew who had stabbed Liz, Teon shouted, "Yes, Kim McCue." Teon indicated that defendant left in a green Jeep and lived somewhere on Chestnut. Gearhart went in search of defendant and saw a green Jeep parked in the yard at 161 Chestnut street. Gearhart ran the license plate number on the Jeep and it came back as being registered to Kimberly McCue at 161 Chestnut street. Gearhart and Detective Aurelio Garcia knocked on the door of 161 Chestnut street. Barb's boyfriend answered the door and indicated that defendant was upstairs. Gearhart found defendant in an upstairs bathroom combing her hair. Gearhart described defendant as "very calm." Gearhart placed defendant in handcuffs and radioed for a tow truck to tow the green Jeep to the police station. Garcia testified that when defendant was being searched defendant asked, "What is this about?" Gearhart told defendant that they wanted to speak with her and that defendant knew what it was about. Defendant was "very cooperative."

¶ 15 Patrolman Lonnie Sturkey responded to Liz's residence on the day of the incident, where he found Teon assisting Liz. Liz could not communicate when Sturkey arrived. When Sturkey asked Teon what had happened, Teon said that Liz had yelled out that she had been stabbed by "Kim." Sturkey searched the exterior of the home for a weapon but did not recover any weapons.

¶ 16 Officer Jeffery Martin testified he and his canine, Remy, were trained in "article detection" to locate items that have been newly introduced to an environment. Remy and Martin

searched around the surrounding area of where the incident occurred. Remy did not alert during the article search, and Martin did not collect any evidence.

¶ 17 Investigator Randy Hartman testified that he conducted a search of Liz's home, the yard, the neighboring yards, the alley and the inside of Liz's home. In Liz's home, Hartman saw several different brands and styles of knives and photographed those knives. There was no blood on those knives and there were no knives that seemed out of place. He was unable to locate any knife that may have been used in the stabbing. Hartman did not go upstairs in Liz's home. He found sunglasses just outside the gate. Hartman went to defendant's residence and found a green towel in the bathroom that appeared to have a blood-like substance on it. Police searched defendant's home but did not find a knife of evidential value.

¶ 18 Officer Scott Monferdini processed defendant's Jeep. He found blood stains above the driver's door handle, on the front seat, and on the steering wheel. He also found blood on a coat and scarf in the Jeep. The coat was found with the arm sleeves turned inside out. Monferdini found a knife in a purse on the backseat of defendant's Jeep. There was no blood on the backseat, purse, or the knife.

¶ 19 Detective Avery Ivey testified that he interviewed defendant on the day of the incident and the interview was video recorded. The recording of defendant's interview was entered into evidence and played for the jury. The video showed that at 2:09 p.m., on January 1, 2013, defendant was in an interview room at the police station. She was wearing pink sweatpants with no pockets and a black zip-up hooded sweatshirt with two front pockets. Detective Ivey photographed defendant and swabbed blood stains that were on defendant's hands and clothes for the blood to be processed for DNA.

¶ 20 After defendant was read her *Miranda* rights, defendant indicated that she did not know what was going on but that she would be cooperative. Defendant confirmed that she owned a green Jeep. Defendant indicated that she and her husband had been married for two years, but they were separated. Defendant was currently residing with Barb Summers, Barb's brother Michael, and a person named Richard. Defendant gave her consent for police to search her Jeep and indicated a knife would be found in her purse on the back seat of the Jeep. Defendant indicated that she kept knife in her purse for protection because she worked in a biker bar and left the bar late at night. Defendant described her knife as a jack knife (a folding blade) and indicated with her hands that her knife was 5 or 6 inches long when closed and about 10 or 12 inches long when opened.

¶ 21 Ivey asked defendant what she had done that day. Defendant indicated that she woke up at 12:30 p.m. and left the house at 1:30 p.m. to run some errands. Defendant said she was alone and had gone to the Shell gas station to get coffee at 1:35 p.m. She then went to the bar where she worked to pick up her pay. Defendant indicated that she stayed at the bar for a while "chit-chatting" with her manager and some customers. Defendant said she picked up her pay and went home "and that was it." At some point after 2:00 p.m., police arrived at defendant's home. Defendant indicated, "I don't know what the hell is going on; I'm just a little confused."

¶ 22 Ivey asked if anyone was with defendant when she left the house to run errands. Defendant replied, "No, I was by myself; I like to be by myself." The following conversation transpired:

> "[DETECTIVE]: Ok, so just to make sure, you didn't take nobody with you; nobody was in the Jeep with you at all today?

[DEFENDANT]: No, not at all. I usually don't take people with me when I go get my shit done, especially when I go to the bar 'cause I know I'm going to be there talking and BSing for awhile.

***

[DETECTIVE]: And you were by yourself? Nobody was in the truck?

[DEFENDANT]: No one was with me, sir.

***

[DETECTIVE]: Alright, so if I were to go to the Washington Street Shell [gas station] right now and pull their video, which they have outside, it'd show you pulling up?

[DEFENDANT]: Oh yeah.

[DETECTIVE]: Will it show anybody else in that truck?

[DEFENDANT]: I don't think so. Well, it shouldn't cause I'm by myself. I mean, how could it if I was by myself?

[DETECTIVE]: You don't think so, or no?

[DEFENDANT]: No. It won't. ***

* * *

[DETECTIVE]: Do you know Teon?

[DEFENDANT]: Teon? Teon? Yeah, that's some girl's boyfriend, or something. Some of Barb's friends.

[DETECTIVE]: Some girl? Do you know what that girl's name is?

[DEFENDANT]: I think her name is Liz.

* * *

[DETECTIVE]: Have you seen Teon and Liz today?

[DEFENDANT]: No. Not at all. I haven't seen them in a while.

[DETECTIVE]: You didn't stop by their house at all?

[DEFENDANT]: No. Nuh-uh. Why did something happen?"

¶ 23 Detective Ivey explained that Liz had been beat up and was in the hospital. Defendant responded by saying, "damn." Ivey asked if there would be any reason why more than two people would tell police that defendant was at Teon and Liz's home that day. Defendant said, "No." Ivey explained that he was required to do a report and would be asked if he thought defendant was a good person. Ivey said he could say that defendant was good person, stuff happened, defendant went to Liz's home, and they got into a fight, or he could say that defendant was denying everything but police had all this other evidence indicating she was lying.

¶ 24 Defendant asked Ivey whether he thought she was lying, and Ivey responded, "Yes." Defendant asked Ivey why he thought she was lying. The following conversation ensued:

"[DETECTIVE]: For a couple reasons. I mean, like I said before, we took all the DNA off your hands and we're going to take your pants and stuff—

[DEFENDANT]: That's fine. You can take my stuff. I'm telling ya, this is my blood.

[DETECTIVE]: —ya know, that's going to, that's going to paint a picture there, just by itself.

[DEFENDANT]: And I understand that. But, I mean, like, I broke a glass last night. This is all my blood. I'm going to promise you that.

[DETECTIVE]: And just like, just like the question I asked you, would there be any reason why more than two people would tell me that you were over there today?

[DEFENDANT]: But how would they know if I was over there? I was by myself.

[DETECTIVE]: Because they've seen you.

[DEFENDANT]: Who's seen me? That's the thing, who is it that's seen me? That's the thing.

* * *

[DETECTIVE]: *** [W]hat's going to happen is when this gets to court you are going to have to paint a different picture than what you are painting right now.

[DEFENDANT]: Well, I mean I've been very calm and I've been very willing to do anything that you have asked. I have nothing to hide.

[DETECTIVE]: Well, and like I said, I'm getting a different picture. I'm getting a different story from a lot of different people.

[DEFENDANT]: Yeah, well, I can also let you know my husband is Teon's boss, so I don't know if something is going on between them at work, ya know what I'm saying? ***

[DETECTIVE]: *** Are you trying to tell me all these people are lying on you?

[DEFENDANT]: Yeah. Hell yeah. I didn't do nothing. Nothing.

[DETECTIVE]: None of this stuff I find on you is going to come back to Liz?

[DEFENDANT]: Nothing. Nothing. I promise you that. Yes. That's why I am like take it all. I mean, I'm more than willing to cooperate in any way, shape, or form. I will prove my innocence, ya know what I'm saying?

* * *

*** I haven't done anything wrong and I will prove my innocence. I'm not going to sit here and say I did something that I did not do. I mean, if I did it, that would be one thing, but I have not done anything wrong and I'm not going to take responsibility for something that I have not done. That's just the person that I am.

[DETECTIVE]: *** If it comes to the point where I can prove that you did something are you going to take responsibility for it then?

[DEFENDANT]: Hmm-hmm. Of course I would.

[DETECTIVE]: *** [W]e have enough now to arrest you, just to let you know that.

[DEFENDANT]: You have enough hearsay to arrest me?

[DETECTIVE]: It's not hearsay.

[DEFENDANT]: It is hearsay, honey."

¶ 25 Ivey told defendant that the police had eyewitness testimony and probably would also have DNA evidence. Defendant asked Ivey if she could sue the county for defamation of her character if the police were wrong. Ivey asked defendant again whether she had seen Liz or Teon that day and whether Richard was in the Jeep with her earlier that day. Defendant

responded "no." Ivey asked defendant if she was the owner of black and pink sunglasses, to which defendant responded, "No."

¶ 26 Ivey left the room for seven or eight minutes. When Ivey returned he suggested that certain things happen when people are mad and some people carry knives. Ivey asked, "So, [Liz] probably carries knives, right?" Defendant responded, "I don't know, probably." Ivey told defendant that if she and Liz had gotten into a fight and Liz had pulled a knife on defendant so that defendant had no choice but to protect herself, then "that's something that [defendant] need[ed] to tell [police]." Defendant responded, "that fucking bitch" took my baby away. Defendant indicated that she had gone to Liz's home to confront her, and Liz pulled a knife on defendant. Defendant said she was not a "weak bitch" and she was "trained," so she was able to get the knife away from Liz. Defendant said, "I don't know if I hurt her; I hope she's okay."

¶ 27 Ivey asked defendant what had led up to the confrontation. Defendant said she did not know if Liz was sleeping with her husband, but defendant and her husband had been trying to "work stuff out." Defendant said, "She f[']d with my family" in reference to Liz. Defendant explained that she was "pissed" because she hadn't seen her two-year-old son for over a week because of "that bitch." Defendant indicated that Liz had called defendant's husband but defendant did not know exactly what Liz had said to him. Defendant thought Liz told defendant's husband that defendant was cheating on him.

¶ 28 Defendant said that when she went to Liz's home to verbally confront Liz, "shit got out of control" and Liz hit defendant in the side of the head, defendant hit Liz back, Liz pulled out a knife, defendant got the knife away from Liz, and defendant did not know what happened from there. Defendant just left. Defendant said that she did not take the knife with her and that she had just "tossed" the knife. Defendant admitted to going to her husband's house before going to

Liz's home and that Richard was in the truck with her. She also admitted that the pink and black sunglasses belonged to her.

¶ 29 Defendant indicated that she did not know the type or color of the knife because she had just "disarmed" Liz without really looking at it. Defendant said that her brother was a trained martial arts instructor who had taught her how to disarm someone. Defendant indicated to the cuts on her hands and said, "looks like I got myself pretty good" and said, "she came at me with the knife and this is what happened to me." Defendant told Ivey that she got the knife from Liz and after that she "did not know what the hell happened."

¶ 30 Ivey told defendant that usually when people disarm people with knives they have defensive wounds on the inside of the hand and pointed to defendant's palms. Ivey noted defendant had wounds on her fingers more toward the outer part of her hands, which looked to Ivey like "the knife might have slipped and cut [defendant's] fingers" when defendant was hitting Liz with the knife in her hands. Defendant said she did not know what type of knife was involved and she did not know where the knife could be found.

¶ 31 When Ivey asked defendant how many times she hit Liz with the knife, defendant responded, "Man, I don't know. I seen red. I was scared as hell." Defendant explained that she just went there to speak to Liz, and Liz hit her. The next thing defendant knew she was disarming Liz and did not know what happened. Defendant said, "It was either me in that hospital or her, and I made sure it wasn't me." Defendant was adamant that she did not have a knife on her person when she walked up to Liz's home and that her sole intent for going to Liz's home was to verbally confront Liz. She wanted to talk to Liz "woman to woman."

¶ 32 Defendant described the knife as a "little-ass" knife and indicated with her hands that the knife was four to six inches long. Ivey asked defendant if she had ever known Liz to carry a

knife. Defendant responded, "Oh, yeah," but also indicated that she did not think Liz would pull the knife on her. Defendant said she was scared to death when Liz pulled out the knife and that she had never before had to use her martial arts skills. Defendant reiterated that she had only wanted to talk to Liz and did not go to Liz's home wanting to fight. Ivey left the interview room.

¶ 33 Investigator Randy Hartman entered the room and informed defendant that Liz had died. Hartman asked defendant whether she was wearing the same clothes during the incident as the clothes she was currently wearing—pink sweatpants with no pockets and a black hooded sweatshirt with front pockets. Defendant confirmed that she was wearing the same clothes.

¶ 34 Hartman also confirmed with defendant that Richard rode in the front passenger seat of defendant's Jeep that day and that defendant and Richard had gone to defendant's husband's home and then to Liz's home. Defendant indicated that Liz was the reason that her husband would not let her see their son so she had gone over to speak with Liz. Defendant reiterated that Liz had hit her first and pulled out the knife. Defendant indicated that after she disarmed Liz then she "must have hit [Liz] with it" but did not know how many times. Defendant confirmed that her brother was a martial arts instructor and said, "He's taught me my whole life." Defendant confirmed that she could defend herself and take knives from people. Defendant denied returning to the Jeep with the knife in her hand. Defendant indicated that after she disarmed Liz she "tossed" the knife to her right.

¶ 35 Detective Ivey testified at trial that he suggested that Liz had pulled the knife on defendant to give defendant "an out." Ivey recognized that defendant was not admitting to being at the scene of the incident, even though witnesses had placed her there. By suggesting that Liz was the person who introduced the knife into the fight, Ivey was "givin' [defendant] an out"—something defendant could "latch on to" so she would feel comfortable discussing the incident.

¶ 36 Dr. Michael Humilier conducted an autopsy on Liz's body. He found seven keys in Liz's pocket but did not find a knife. A knife or blade was not attached to the keys. He observed seven wounds on her body, one of which severed her carotid artery. The other wounds were to Liz's left scalp, right scalp, left forehead, left shoulder, and left upper arm. Humilier could not tell the size or type of knife that caused the wounds. Humilier testified that "any knife, no matter how small, actually could provide all these injuries." He was able to conclude that a very wide knife was not used. According to Humilier, the carotid artery is near the surface of the skin, so even a small knife could have caused the wound. Humilier opined that the cause of death was "multiple stab and incise wounds."

¶ 37 In the prosecutor's initial closing argument, the prosecutor did not refer to the wounds on defendant's hands, other than to argue that defendant had lied about the cuts being from a broken glass. In response, defendant's counsel referred to Ivey's statements about the wounds on defendant's hands, arguing:

> "Kimberly received numerous defensive wounds, and that is what they are. Regardless of Ivey trying to tell her oh, no, no, no, no, no—because Ivey's going to tell her anything to try to get her to say what he wants her to say. So, he makes it out to be, oh, those aren't defense wounds. Really? Her hands are cut up because Liz has a knife and Kimberly is trying to defend herself from that knife and remove that knife from Liz's hands."

¶ 38 In reply in final closing argument, the prosecutor argued, in relevant part, as follows:

> "What does she say about the knife? *** So if she's going to be grabbing a wrist and then grabbing the knife with the [left] hand—and it never hits the ground, remember—wouldn't you expect to see injury? This is the palm of her

left hand. There's not a mark on it. Not a mark on it. That's the palm of her right hand. Again, nothing there. No injury. And why is that? Because it didn't happen. Isn't it more likely that it occurred as Sergeant Ivey suggested, that the defendant slashed herself while she was attacking the victim? Of course, it is."

¶ 39 The jury found defendant guilty of first degree murder. The trial court denied defendant's motion for new trial and sentenced defendant to 28 years of imprisonment. The trial court also denied defendant's motion to reconsider sentence. Defendant appealed.

¶ 40 ANALYSIS

¶ 41 I. Proof Beyond a Reasonable Doubt

¶ 42 First on appeal, defendant argues the State failed to prove her guilty of first degree murder beyond a reasonable doubt because the State failed to show that she did not act in self-defense. The State argues that defendant did not stab Liz in self-defense and, therefore, was guilty of first degree murder.

¶ 43 A reviewing court faced with a challenge to the sufficiency of the evidence must view all the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the elements of the crime were proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Holman*, 2014 IL App (3d) 120905, ¶ 56. The reviewing court must allow all reasonable inferences that could be drawn from the record to favor the prosecution. *Holman*, 2014 IL App (3d) 120905, ¶ 56. A witness's credibility, the weight given to testimony and evidence, and the reasonable inferences to be drawn from the evidence are the responsibility of the trier of fact. *Id.* The trier of fact resolves the conflicts in testimony. *Id.* A reviewing court will not reverse a conviction unless the

evidence is so improbable, unsatisfactory, or inconclusive that it leaves reasonable doubt of defendant's guilt. *Id.*

¶ 44 Section 9-1(a)(1) of the Criminal Code of 2012, under which defendant was convicted, provides that a person commits first degree murder when that person kills an individual without lawful justification if, in performing the acts which cause the death, the person either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another. 720 ILCS 5/9-1(a)(1) (West 2012). In this case, there is no question that defendant stabbed the victim and caused her death. As defendant stated in her brief on appeal, "defendant essentially admitted stabbing [Liz] Jamison, but claimed that she acted in self-defense."

¶ 45 Self-defense is an affirmative defense, and once it has been sufficiently raised, the State bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense. 720 ILCS 5/7-14 (West 2012); *Holman*, 2014 IL App (3d) 120905, ¶ 57. "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2012). However, deadly force—the use of force intended or likely to cause death or great bodily harm—is only justified if the person using the deadly force reasonably believes that deadly force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the commission of a forcible felony. *Id.* To raise self-defense, a defendant must show: (1) a threat of force against defendant; (2) defendant was not the aggressor; (3) the danger of harm was imminent; (4) the force threatened was unlawful; (5) defendant actually and subjectively believed that a danger existed, force was necessary to avert the danger, and the

amount of force used was necessary; and (6) defendant's beliefs were objectively reasonable. 720 ILCS 5/7-1 (West 2012); *Holman*, 2014 IL App (3d) 120905, ¶ 57. The affirmative defense of self-defense is not available to a person who: (1) is attempting to commit or is committing or escaping after the commission of a forcible felony; (2) provokes the use of force against himself, with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or (3) otherwise initially provokes the use of force against himself, unless the force is so great he believes he is in imminent danger of death or great bodily harm and he exhausted every reasonable means to escape, or he withdraws in good faith and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues the use of force. 720 ILCS 5/7-4 (West 2012). If the defendant responds to a confrontation with such excessive force that he is no longer acting in defense of himself but is acting in retaliation, the defendant's excessive use of force transforms him into the aggressor even though the other person actually started the confrontation. *Holman*, 2014 IL App (3d) 120905, ¶ 58.

¶ 46 Here, the evidence, viewed in the light most favorable to the State, showed that defendant blamed Liz for the fact that defendant's husband would not let defendant see their son. Defendant was upset when she went to confront Liz about a phone call Liz had made to defendant's husband. The evidence, by way of Richard and Teon's testimony, indicated that Liz was not armed when she went out to meet defendant. Therefore, the jury could have reasonably concluded that defendant brought the knife to the altercation and was the aggressor. While Richard did not see defendant get out of the car with a knife in her hand, a reasonable inference could be made that defendant either pulled a small knife from her coat as she walked around the back of the Jeep or she pulled a small knife from her sweatshirt pocket or from the necklace sheath that she had purchased a few days prior. Defendant argues in her brief on appeal that she

could not conceal a knife on her person because her sweatpants had no pockets and the video of her interview "does not show that [her] pullover/sweater/sweatshirt had pockets." However, our review of the video shows that the sweatshirt defendant wore during the altercation had pockets in which she could have concealed a small knife. Additionally, the fact that defendant tore her coat off and threw it to Richard as she approached Liz's home further supports the State's theory that defendant anticipated an altercation and was the aggressor.

¶ 47 The only evidence that defendant was acting in self-defense came from defendant's own statement. The jury, however, was not obligated to accept defendant's claim that she needed to use deadly force. See *Holman*, 2014 IL App (3d) 120905, ¶ 58. The jury could have found defendant's credibility to be questionable and may have resolved conflicts in the evidence against her, especially in light of the numerous lies she told throughout her interview. Viewing the evidence in the light most favorable to the State, defendant was the aggressor and pulled the knife on Liz.

¶ 48 Even if Liz had pulled the knife on defendant, defendant's claim of self-defense fails when we view the evidence in the light most favorable to the State. According to defendant, she was trained her "whole life" in martial arts and was easily able to disarm Liz. In fact, defendant indicated that she disarmed Liz within the first few seconds of the altercation. Therefore, even if Liz was the aggressor and defendant was "scared as hell" and was seeing "red," defendant stabbing Liz seven times—using deadly force against Liz—was not justified because defendant was not in danger of imminent death or great bodily harm after she disarmed Liz.

¶ 49 Additionally, according to Richard, defendant had the knife in her hand when she drove home. If defendant left with the knife, then it would be reasonable to infer that she knew the location of the knife. There would be no reason for defendant to conceal the location of the knife

that supposedly belonged to Liz when finding the knife would have possibly exonerated defendant. Furthermore, contrary to her claim of self-defense, when defendant returned to the Jeep after the altercation, she indicated that she cut Liz but made no indication that Liz had pulled a knife on her or she was scared for her life. Thus, when viewing the evidence in the light most favorable to the prosecution, we conclude the State provided sufficient evidence to prove beyond a reasonable doubt that defendant committed first degree murder and was not acting in self-defense.

¶ 50 II. Ineffective Assistance of Counsel

¶ 51 Defendant also argues that her counsel was ineffective for failing to object to the portion of the video wherein Detective Ivey suggested that the cuts on her fingers were slip wounds rather than defensive wounds. Defendant further claims that Ivey's suggestion that defendant's cuts were not defense wounds was evidence that could only be provided by an expert witness and she was denied a fair trial when the prosecutor argued Ivey's suggestion undermined her claim of self-defense. The State argues that defendant's counsel was not ineffective and the prosecutor did not err in referring to Ivey's suggestion that defendant's wounds were slippage wounds.

¶ 52 Ineffective assistance of counsel is shown where counsel's representation falls below an objective standard of reasonableness and defendant was prejudiced by counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 686-693 (1984); *People v. Albanese*, 125 Ill. 2d 100, 106 (1988). There is a strong presumption that counsel's decisions regarding pretrial motions to suppress are trial strategy. *People v. Henderson*, 2013 IL App (1st) 114040, ¶ 15. To overcome a presumption that counsel's decisions regarding pretrial motions were trial strategy, defendant must show the unargued motion is meritorious and a reasonable probability exists that the trial outcome would have been different. *Id.*

¶ 53 In this case, Ivey's suggestion that the wounds on defendant's hand appeared to be slippage wounds as opposed to defense wounds was said in the context of the interview after defendant indicated that Liz had pulled a knife on her. Ivey's observation during defendant's interview of defendant's hand was not trial testimony that necessitated him to be qualified as an expert witness. See Ill. R. Evid. 701(eff. Jan. 1, 2011) (if the witness is not testifying as an expert, the witness' opinion testimony or inferences are limited to those opinions or inferences rationally based on the perception of the witness, helpful to a clear understanding of the witness's testimony or in determining a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702); Ill. R. Evid. 702 (eff. Jan. 1, 2011) (if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise).

¶ 54 Furthermore, the evidence was overwhelming and defendant was not prejudiced by her counsel's failure to exclude evidence of Ivey's supposition that her hand wounds appeared to be slippage wounds. There is no question defendant stabbed Liz to death. Ivey's suggestion that defendant incurred cuts on her hands while doing so did not prejudice defendant where defendant had admitted that she had the knife in her hand and the evidence showed that defendant stabbed Liz seven times.

¶ 55 Defendant also contends that she was denied a fair trial by the prosecutor's reference to Ivey's suggestion that defendant's wounds were slippage wounds. Defendant did not raise the issue of the prosecutor's argument regarding slippage wounds in the trial court and, thus, defendant has forfeited the issue for review. See *People v. Enoch*, 122 Ill. 2d 176 (1988) (to preserve an issue for review, there must be an objection at trial). However, under the plain error

doctrine, a court of review may consider an unpreserved error when: (1) the evidence was closely balanced, regardless of the seriousness of the error; or (2) the error was so serious that it affected the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 56 We conclude there was no error by the prosecutor's argument and, even if the prosecutor's argument was considered to be erroneous, it did not amount to plain error. The prosecutor's argument regarding the cuts on defendant's hands being a slip wound was a reasonable inference that could have been drawn from the evidence and was made in response to defense counsel's arguments that the wounds on defendant's hands were defense wounds. See *People v. Williams,* 147 Ill. 2d 173 (1991). Thus, we find no error in the prosecutor's argument.

¶ 57 CONCLUSION

¶ 58 The judgment of the circuit court of Kankakee County is affirmed.

¶ 59 Affirmed.