APPENDIX

2018 IL App (4th) 150846-U

NO. 4-15-0846

FILED
November 27, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHAD M. CUTLER, Defendant-Appellant.	) Appeal from the) Circuit Court of) Macon County) No. 13CF1016)) Honorable) James R. Coryell,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) When all the evidence is regarded in a light most favorable to the prosecution, a rational trier of fact could find the elements of first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) to be proven beyond a reasonable doubt.

(2) Defendant has forfeited the issue of whether the prosecutor, in his closing argument, made misrepresentations about the trial evidence.

(3) Defendant has forfeited the issue of whether the State's expert witnesses had an adequate foundation for their testimony that the manner of Lisa Cutler's death was homicide, and absent a clear or obvious error, the doctrine of plain error does not avert the forfeiture.

(4) Defendant has forfeited the issue of whether section 115-10.2a of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.2a (West 2014)) authorized the admission of hearsay statements by Lisa Cutler, and the reason for this forfeiture is that the arguments that defendant now makes against the applicability of section 115-10.2a differ significantly from the argument he made in the trial court.

(5) We find no prejudice from the omission of a limiting instruction that would have forbidden the jury to regard Lisa Cutler's hearsay statements as propensity

evidence, and, thus, defendant's claim of ineffective assistance premised on defense counsel's failure to request such a limiting instruction lacks merit.

(6) Defendant has forfeited the issue of whether Lisa Cutler's hearsay statements satisfied the reliability requirement in section 115-10.2a(a) (725 ILCS 5/115-10.2a(a) (West 2014)).

(7) Defendant has forfeited the issue of whether the trial court admitted motive evidence that was irrelevant to the question of his motive.

(8) Defendant has forfeited the issue of whether the trial court admitted propensity evidence against him, and absent a clear or obvious error, the doctrine of plain error does not avert the forfeiture.

(9) Defendant has forfeited the issue of whether it was prosecutorial misconduct to question the State's medical experts on an ultimate issue in the case, namely, the manner of Lisa Cutler's death.

(10) Defendant has failed to show prejudice from an alleged discovery violation.

(11) The standard in *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923), for the admission of scientific evidence was inapplicable to opinion testimony by an investigator because the testimony did not make deductions from a scientific principle or clothe itself in an aura of scientific infallibility.

¶ 2 A jury found defendant, Chad M. Cutler, guilty of the first degree murder of his wife, Lisa Cutler (720 ILCS 5/9-1(a)(1) (West 2012)), and the trial court sentenced him to imprisonment for 45 years. He appeals on 11 grounds.

¶ 3 First, he challenges the sufficiency of the evidence. When we look at all the evidence, however, in the light most favorable to the prosecution, we conclude that a rational trier of fact could find the elements of first degree murder to be proven beyond a reasonable doubt.

¶ 4 Second, defendant argues that the prosecutor, in his closing argument, made misrepresentations about the trial evidence. We find this argument to be procedurally forfeited.

¶ 5 Third, defendant argues that the State's expert witnesses lacked an adequate foundation for their testimony that the manner of Lisa Cutler's death was homicide. This

argument is procedurally forfeited, and absent a clear or obvious error, the doctrine of plain error, invoked by defendant, does not avert the forfeiture.

¶ 6 Fourth, defendant argues the trial court erred by relying on section 115-10.2a of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.2a (West 2014)) as authority for admitting hearsay statements by Lisa Cutler. Because the arguments that defendant now makes against section 115-10.2a differ from the argument he made in the trial court, this issue is procedurally forfeited.

¶ 7 Fifth, defendant accuses his trial counsel of ineffective assistance by failing to request a limiting instruction that would have prevented the jury from regarding the hearsay statements by Lisa Cutler as propensity evidence. We find no prejudice from the omission of such an instruction.

¶ 8 Sixth, defendant argues that the hearsay statements failed to satisfy the reliability requirement in section 115-10.2a(a) of the Code (725 ILCS 5/115-10.2a(a) (West 2014)). This argument is procedurally forfeited.

¶ 9 Seventh, defendant argues that the trial court admitted evidence that was supposed to prove his motive to murder Lisa Cutler when, actually, the evidence was irrelevant in that respect. This argument is procedurally forfeited.

¶ 10 Eighth, defendant argues that the trial court admitted an abundance of propensity evidence. This argument is procedurally forfeited, and absent a clear or obvious error, the doctrine of plain error, invoked by defendant, does not avert the forfeiture.

¶ 11 Ninth, defendant alleges prosecutorial misconduct in that the prosecutor questioned the State's medical experts on an ultimate issue in the case, namely, the manner of Lisa Cutler's death. This argument is procedurally forfeited.

¶ 12 Tenth, defendant argues the trial court abused its discretion by declining to bar a forensic pathologist, Amanda Youmans, from testifying to a new opinion that the State waited until the fifth day of the trial to disclose to the defense. We hold that defendant has failed to show prejudice from this discovery violation.

¶ 13 Eleventh, defendant argues the trial court abused its discretion by allowing an investigator, Andrea Zaferes, to testify as an expert even though her testimony failed to satisfy the general-acceptance test in *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923). We conclude that *Frye* is inapplicable because the testimony by Zaferes did not purport to be scientific evidence within the meaning of *Frye*.

¶ 14 Therefore, we affirm the trial court's judgment.

¶ 15 I. BACKGROUND

¶ 16 A. The Testimony of Kenneth Burns

¶ 17 At about 1 a.m. on April 27, 2012, Kenneth Burns, a firefighter with the Long Creek Fire Department, was dispatched to the Cutler house. Two other firefighters went with him.

¶ 18 When they pulled up, defendant was standing on the sidewalk in front of the house. He expressed concern about the number of people who would be arriving, asking, " 'How many of you are there going to be?' " He also was "worried about the cats getting out and not waking the children." His demeanor was "[p]retty calm."

¶ 19 Burns and his fellow firefighters entered the house; went upstairs; and walked through the master bedroom, on their way to a bathroom. Burns remembered that the bed in the master bedroom "was made very nicely." He remembered refraining from setting his medical bag on the bed and setting it on the floor, instead, so as not to mess up the bed.

¶ 20 They entered the bathroom. Lisa Cutler was lying on the bathroom floor, about five feet away from the bathtub. The bathroom floor was dry except for some water underneath her, and there was no water in the bathtub. She was pale and unresponsive, and someone from the Mount Zion fire department was performing cardiopulmonary resuscitation (CPR) on her. Burns took over the CPR, and as he did the chest compressions, pink liquid welled up out of Lisa's mouth.

¶ 21 B. The Testimony of Brian Evans

¶ 22 At 1:03 a.m. on April 27, 2012, Brian Evans, a paramedic with Decatur Ambulance Service, was detailed to 2665 Southlake Parkway, in Decatur, for a "possible drowning." He and his partner arrived there in an ambulance. Firefighters from the Mount Zion fire department were already there.

¶ 23 Evans and his partner went upstairs to a bathroom. A naked woman was lying on the floor, and someone from the fire department was doing CPR. There was no water in the bathtub, the woman's "hair was slightly *** dry," and she was "not *** completely soaked." Her skin was pale and "slightly cool."

¶ 24 Evans took over the CPR, started his own heart monitor, put in an intravenous line, and intubated her. She had no heartbeat. As he was intubating her, he noticed her neck and jaw were stiff; rigor mortis had set in. Water was coming up out of her trachea. He gave her epinephrine and adrenalin in an attempt to stimulate her heart, but he could not get any electrical activity on the heart monitor.

¶ 25 Evans, who, in his 10 years of experience as a paramedic, "had *** intubated a lot of people," denied that any of the treatment he gave to Lisa could have inflicted bruises on her

head, elbows, hips, legs, or hands or that the treatment could have inflicted abrasions on any part of her body.

¶ 26 C. The Testimony of Dawn Williams

¶ 27 Dawn Williams had been a licensed practical nurse for 20 years, and on April 27, 2012, at 1:56 a.m., she was on duty in the emergency room of St. Mary's Hospital, in Decatur, when Decatur Ambulance Service brought in Lisa Cutler.

¶ 28 Someone was doing chest compressions on Lisa, an endotracheal tube was in place, and she was being bagged manually. She had no spontaneous respiration and no pulse. She was purple and cool to the touch. Her neck was stiff. The emergency-room physician, Dr. Gucci, "determined fairly quickly" that nothing could be done.

¶ 29 Defendant arrived at the emergency room, and Williams was present during a conversation between Gucci and defendant. Gucci asked him what happened that night. Williams remembered that defendant gave the following explanation:

> "A. Um—he said—I believe it was around 10:00—um—him and Lisa were in bed, and he was reading. Um—he said she started complaining of back pain, and she went up, got up to the bathroom to take a bath. He decided to check on her I believe it was around 1:00. Um—he said when he went in the bathroom at that time, he found her—um—underwater. She was not breathing. He said he gently took her out of the bathtub, and I believe at that time is when he said he called for 911."

Defendant mentioned to Gucci that Lisa had been under psychiatric care for several years and that she had been prescribed medications—by Dr. Kavuri, Williams believed defendant said.

¶ 30 Williams could not recall whether defendant said he performed CPR.

¶ 31 Gucci told defendant that when Lisa was brought in, she had no pulse and she was not breathing and that everything that could have been done had been done. The prosecutor asked Williams:

"Q. What did [defendant] say?

A. His response was, 'So, is she dead?' "

Gucci answered in the affirmative. According to Williams, defendant had a "[f]lat affect" as he was talking with Gucci; he showed no emotion at that time.

¶ 32 After Gucci left, Williams told defendant the coroner would come in and speak with him. At that time, defendant "broke down briefly and stated they had two—two kids." The prosecutor asked Williams:

"Q. And when you say he broke down, what in particular did you notice about that?

A. Um—he got a little emotional. Um—there was no crying, but he just got a little emotional and said they had two children.

Q. Did you see any tears or anything?

A. No."

¶ 33 D. The Testimony of Mindy Pilger

¶ 34 In the early morning of April 27, 2012, Mindy Pilger was on duty as a registered nurse in the emergency room of St. Mary's Hospital when Lisa Cutler was brought in, mottled, dusky, bluish-colored, and cold. After working on her for 5 to 10 minutes, the medical personnel in the emergency room decided that further efforts would be futile.

¶ 35 Pilger saw defendant in the emergency room. She noticed, at the time, that he was "very well put together," by which she meant he "had matching *** athletic wear on," all black

and red, with "matching red athletic shoes"—"not what you would assume to see at [two] in the morning." He had a "[f]lat affect," "lacking emotion."

¶ 36 E. The Stipulated Testimony of Clayton Woodard (People's Exhibit No. 63)

¶ 37 The parties stipulated that Clayton Woodard would testify he was a special agent for the Illinois State Police and that on April 28, 2012, with the assistance of other police officers, he removed a whirlpool bathtub (People's exhibit No. 4) from the master bedroom of the Cutler house and secured it in the evidence room, where it remained in the same or substantially the same condition as when it was removed from the house.

¶ 38 The bathtub was displayed in the courtroom during the trial.

¶ 39 F. The Testimony of Michael Gucci

¶ 40 Michael Gucci, a physician, testified that when Lisa Cutler arrived at the emergency room, she already was dead but that, nevertheless, for a few minutes, medical personnel in the emergency room continued trying to resuscitate her.

¶ 41 He noted, from her medical report, that she had been taking clonazepam, Prozac, and mirtazapine—medications typically prescribed for anxiety and mood disorders. Judging from her " 'Past Medical History,' " she never had any disease of the heart or lungs and never had a seizure disorder or any other neurological problem.

¶ 42 G. The Testimony of Brett Etnier

¶ 43 Brett Etnier, a patrol officer with the Mount Zion Police Department, arrived at the Cutler house at 1:18 a.m. on April 27, 2012. Firefighters and paramedics already were there, crowding around Lisa Cutler, who was lying on the floor of the master bathroom, upstairs.

¶ 44 Etnier asked to speak with defendant. They went downstairs to the kitchen. Defendant was emotionless. He "was wearing a red Under Armour hoodie, tan khaki shorts, and

white socks," and his clothing was dry. The first thing Etnier asked him was whether there still was an order of protection against him. He replied it had been dropped. Etnier asked him what had happened that night. Defendant said that after he and Lisa went to bed around 10 p.m., she complained of back pain and wanted to take a bath. He fell asleep and slept on and off until 1 a.m., when he got up to use the toilet. "When he came out of the bathroom, he noticed the lights were dim in the bathroom." (The toilet was in its own walled-off enclosure, separate from where the bathtub was.) He said he asked Lisa, " 'Hey, you all right?' " Receiving no answer, he looked around the corner and saw her in the bathtub. She was submerged and blue. He said he pulled her head out of the water, pulled the plug out of the drain, picked her up out of the bathtub, "placed her gently on the [floor], and started CPR." Then he called 911 and resumed CPR.

¶ 45 Defendant told Etnier "that the medication that Lisa takes for pain, it knocks her out." A paramedic came downstairs to the kitchen and asked what medications Lisa had been taking. Defendant took three medications out of a cupboard and placed them on the counter for the paramedic. They were flouxetine, mirtazapine, and clonazepam (People's exhibit No. 3). Defendant stated that Lisa "ha[d] a history of depression" and that he lost his job in February 2012 and stopped making payments on the house, which was for sale. "He said that Lisa was a worrier and depressed."

¶ 46 In St. Mary's Hospital, as the coroner was performing her examination, Etnier took photographs of the injuries to Lisa's body: a laceration on the center top of the forehead and purple and red abrasions on her elbows.

¶ 47 H. The Testimony of Paul Hartwig (Called Early, as a Defense Witness, Because He Was About to Go on Vacation)

¶ 48 Paul Hartwig was a paramedic and battalion chief of the Mount Zion fire department. In the early morning hours of April 27, 2012, he and another firefighter, Mark

Wright, went to the Cutler house. They were the first ones there. Defendant met them on the street. Hartwig went upstairs and found Lisa Cutler lying on the bathroom floor. She had a blanket and towel over her. She was semi-warm, but her skin was gray, and she showed no signs of life. The skin on her hands was pruned as if she had been in water. Although she was a little damp, she was not very wet: Hartwig had no trouble getting the defibrillator patches to adhere to her skin. Foam came up out of her mouth as he did chest compressions. He administered cardiac drugs through an intravenous tube.

¶ 49 As Hartwig was working on her, defendant asked him, " 'Are you getting anything yet?' " Hartwig answered, " ['[N]ot at this time, no.['] " Defendant told Hartwig he had tried CPR on Lisa but that he was not very good at it. Hartwig asked him about her medical history. He told Hartwig "she was taking medication and had been worried about losing the house because the mortgage hadn't been paid." Then defendant suggested, " 'Maybe that's why she did it.' "

¶ 50 I. The Testimony of James Hermann

¶ 51 James Hermann, a Macon County deputy sheriff, arrived at the Cutler house as several rescue personnel were trying to revive Lisa Cutler in the upstairs bathroom. The bed in the master bedroom "appeared to [him] not to have been slept in." A nightstand by the bed had some books neatly stacked on it according to size, with a child's book on top. Those were the only books he saw in the master bedroom. A white charging cord also was on the nightstand, next to defendant's wristwatch.

¶ 52 Hermann told Deputy Sheriff Wayne to stay in the master bedroom, observe what happened, and take photographs. Then Hermann went downstairs to join in the conversation between defendant and Etnier.

¶ 53 Hermann took note of defendant's clothing. He had on a red Under Armour sweatshirt hoodie, tan cargo shorts, white ankle socks, and red jogging shoes, the laces of which were tied. He seemed to be "very calm." He did not look upset. "He wasn't showing any emotion at the time." When reaching into the refrigerator for a Monster Energy drink, he asked Etnier and Hermann if they wanted anything to drink. They declined.

¶ 54 Defendant stated that he and his wife went to bed around 10 p.m. He was sitting up in bed, reading, and his wife said her back was hurting and that she was going to take a bath. He thought nothing of it and kept on reading. "He said he must have [fallen] asleep." He awoke at 1 a.m. and had to use the bathroom, which was just a few feet from the bed. Then he saw his wife underwater in the bathtub, and she looked terrible.

¶ 55 The prosecutor asked Hermann:

"Q. During that part of the conversation, did he mention anything about medication that Lisa took?

A. He had indicated to me that his wife took medication, and he assumed she took—she took it prior to going to bed.

Q. And did he say any effect that he said this medication had on her?

A. He told me that some of the medication really knocked her out."

¶ 56 The prosecutor further asked Herman:

"Q. Did you ask him about medication she was taking?

A. Yes.

Q. And what did he tell you?

A. He advised that his wife was bipolar, and she took several different types of medication for that disorder and a couple of them, in his words, really knocked her out.

Q. And those were the words that he used, 'really knocks her out'?

A. Yes.

* * *

Q. So[,] then did you ask him, because of this medication, would it have been wise for her to have taken a bath?

A. Yes.

Q. And what was his response?

A. He said it wouldn't be wise for her to take a bath after taking that medication."

¶ 57 Defendant said that upon finding his wife submerged in the bathtub, the first thing he did was hit the lever to let the water out. Then he picked up a Bible that was floating in the water and set it on the edge of the tub. Then "he picked up his wife and took her out of the tub and set her on the floor as gently as he could." He performed CPR on her for two to three minutes before calling 911.

¶ 58 The prosecutor asked Hermann:

"Q. Did you ask him anything about how he had been dressed when he was in bed?

A. I did.

Q. And why did you ask him that?

A. I asked him about his clothing because he seemed to be well put together. I asked him if he had went to bed wearing his clothing.

Q. And what did he say?

A. He said he did not. He was wearing a T-shirt and undershorts when he fell asleep in the bed.

Q. And did he tell you how he was positioned in or on the bed?

A. He just indicated he fell asleep on the bed.

Q. Did he say where he was in relation to under the covers, on top of the covers?

A. Well, he indicated that he was on top of the covers.

Q. Did he tell you anything about what happened when he—his clothing when he got—found his wife in the tub?

A. He indicated that after he got his wife out of the tub that his T-shirt and undershorts were wet. He knew he was going to be outside, so it was going to be cold, so he got dressed.

Q. And did he make any statements about whether his clothing—any part of his clothing was still wet?

A. He did say that his T-shirt and undershorts were still wet.

Q. Did you see any signs of wetness on his outer clothing?

A. I did not."

¶ 59 Hermann asked defendant if his wife likewise had fallen asleep on top of the covers. "He said she slept underneath the covers. When she got out of the bed to take a bath, it was common practice for her to pull the covers back up."

¶ 60 Hermann asked defendant about his relationship with his wife. Defendant answered they had been married for about 14 years and that everything in the marriage was fine at the time. Recently, though, he was laid off from ADM, and he had stopped making payments on the house. It was going to be foreclosed, and it was for sale. Lisa "had been stressed over the money issues because she was the only one working at the time, making about $50,000. The money was tight."

¶ 61 J. The Testimony of Darrell Stafford

¶ 62 On April 28, 2012, Darrell Stafford, a crime scene investigator with the Illinois State Police, executed a warrant to search the Cutler house.

¶ 63 In a closet, there was a purse, which, judging from documents inside the purse, belonged to Lisa Cutler. One of the documents was a cash receipt, dated February 13, 2012, for a retainer fee of $1600 that she had paid to a law firm.

¶ 64 In a bedroom that evidently was used as an office, there was a laptop computer and two life insurance policies in the filing cabinet, one for defendant and the other for Lisa. On a shelf in a closet in the office was a "Domestic Litigation Fee Agreement for Dissolution of Marriage," which Lisa and a lawyer, Jonathan Erickson, signed on February 16, 2012.

¶ 65 On the kitchen counter was an application to Fort Dearborn Life Insurance Company for insurance. Stapled to the application was a handwritten note from Lisa to someone named Connie.

¶ 66 Stafford took measurements of the bathtub. It was 5 feet 5 inches long, 2 feet 3 inches wide, and 1 foot 6 inches deep from the bottom center of the bathtub to its top rim.

¶ 67 K. The Testimony of Michael Foster

¶ 68 Michael Foster was a police officer with the Mount Zion police department. In his search of the Cutler house, he collected a Bible and a cell phone as well as clothing that was on the vanity in the bathroom. The Bible was on a ledge by the bathtub. The cell phone was in the bathtub.

¶ 69 L. The Testimony of Andrea Zaferes

¶ 70 Andrea Zaferes testified she was an investigator with the medical examiner's office of Dutchess County, New York, and that she had taught aquatic death investigation at more than 70 conferences around the country. In her career as an investigator, she had reviewed over 350 cases in which people had died in a bathtub.

¶ 71 On the basis of her experience with hundreds of bathtub cases and the over 50 reenactments she had staged of people being pulled out of a bathtub (using live subjects as volunteers), Zaferes opined that Lisa Cutler's injuries were inconsistent with her having suffered a seizure in the bathtub and accidentally drowned. If Lisa had died from accidentally falling in the bathtub, she would have sustained injuries on only one plane of her body. But she had scrapes (abrasions) and bruises (contusions) on several different planes of her body. She had five injuries to her head, and they were on the front and both sides of her head. Likewise, there were multiple bruises and scrapes on her arms and elbows, and they were not all on the same plane of the body. If Lisa had been felled by a seizure, she would not have bounced; any injury would have been on only one side of her body. But she had injuries on at least three planes of her body: the front, the left side, and the right side.

¶ 72 On cross-examination, Zaferes admitted she did not know exactly how the abrasions and bruises were caused. All she could say was that the abrasions were caused by friction and that the bruises were caused by blunt-force trauma.

¶ 73 M. Three Stipulations

¶ 74 The parties entered into the following three stipulations.

¶ 75 People's exhibit No. 41 was a stipulation that in 2012 the Decatur Athletic Club was a customer of Hanson Information Systems, Incorporated, which had assigned Decatur Athletic Club the Internet protocol (IP) address of 216.90.69.133.

¶ 76 People's exhibit No. 47 was a stipulation that People's exhibit No. 12 consisted of business records from Yahoo, Inc. These records set forth subscriber information and login times from December 31, 2011, to May 6, 2012, for two e-mail addresses: chad.cutler@ymail.com and lisa.cutler@ymail.com. These records included the contents of the communications to and from the two e-mail addresses during that period of time.

¶ 77 People's exhibit No. 49 was a stipulation that Comcast had dynamically assigned the following IP addresses. (Dynamic IP addresses are those that the Internet service provider assigns to different subscribers at different times. In a manner of speaking, they are recyclable or reusable IP addresses, but they are never used by more than one subscriber at the same time. Decatur Athletic Club had a static IP address, one that remained assigned to the club.)

¶ 78 On April 21, 2012, from 7 to 7:15 p.m., Comcast assigned the IP address of 98.215.18.72 to the Cutler residence, at 2665 South Lake Parkway, Decatur.

¶ 79 On April 23, 2012, between 4:50 and 11:42 a.m., Comcast assigned the IP address of 98.215.18.72 to the Cutler residence.

¶ 80 On April 26, 2012, at 9:37 p.m., Comcast assigned the IP address of 24.1.74.38 to the Cutler residence.

¶ 81 On April 27, 2012, between 1:08 and 1:57 p.m., Comcast assigned the IP address of 24.1.74.38 to the Cutler residence.

¶ 82 On April 28, 2012, at 6:58 p.m., Comcast assigned the IP address of 98.214.226.163 to Debra Conte of 3259 Green Lake Drive, Decatur. (Conte was defendant's aunt.)

¶ 83 On May 3, 2012, between 12:24 and 1 a.m., Comcast assigned the IP address of 24.1.74.99 to the Cutler residence.

¶ 84 On May 4, 2012, at 10:52 p.m., Comcast assigned the IP address of 24.1.74.99 to the Cutler residence.

¶ 85 On May 6, 2012, at 5:30 p.m., Comcast assigned the IP address of 98.214.226.163 to Conte at 3259 Green Lake Drive.

¶ 86 N. The Testimony of Doug Pool

¶ 87 1. *A General Introduction to E-Mail Addresses and IP Addresses*

¶ 88 Doug Pool was a trooper with the Illinois State Police, and his assignment was to do technical investigations. He was familiar with the Internet and how to collect information from it.

¶ 89 Pool explained that there was a multitude of providers of free e-mail addresses, including Google, Yahoo, and Hotmail. One could go onto their websites, create whatever user name one wished (if it was available), and then use that e-mail address. It was possible to have multiple e-mail addresses, using any name that was not already taken. Each e-mail account would have a password that the account holder likewise had created.

¶ 90 An IP address was "several octets of numbers which were assigned to computers or modems on the Internet." IP addresses could be either static or dynamic. A static IP address never changed. A dynamic IP address "change[d] at certain intervals which would be determined by the Internet service provider." Because the Internet was in worldwide use, there were not

enough IP addresses to go around, so IP addresses got passed around and reused. "[W]hen one is available, and you're requesting Internet at your house at that time, they can assign your house that address, that IP address. If they need that one again, they can recycle it and use it over." Thus, "two different houses sitting side by side, both with Internet service, at any given point in time are going to have different IP addresses."

¶ 91 Comcast and Yahoo were able to tell which IP addresses they assigned to physical addresses at any given point in time. "So[,] if [the Illinois State Police was] able to identify an IP address through whatever means, [it could] go to that Internet service provider with legal process, and they would [provide] the subscriber information of that IP address at the date and time *** requested."

¶ 92 It was possible to access the Internet not only through a personal computer but also through a cell phone. Unlike Comcast and Yahoo, however, AT&T Wireless was not able to determine where a subscriber was when he or she logged onto the Internet through a cell phone. AT&T did not retain subscriber information.

¶ 93 On cross-examination, Pool explained that "within your home, you may have multiple devices connected to the Internet, but they're going to have their own local IP addresses assigned to them." But "to get to the outside world of the Internet, that's where the IP address from Comcast comes into play." In other words, there were internal IP addresses for the separate computers within the home and an external IP address from the Internet service provider. Defense counsel asked Pool:

> "Q. Do you know if the Comcast IP address at the Cutler home was to a modem?

A. I don't know how they were getting their Internet. I would assume a cable modem because that's typically how Comcast provides Internet service."

¶ 94 Pool agreed that "[t]he fact that Comcast says that something came from an IP address assigned to the Cutler home doesn't tell you which device sent it or who sent it." The AT&T logins provided even less information because AT&T "didn't retain subscriber information for AT&T wireless accounts."

¶ 95 2. *Logins*

¶ 96 Through legal process, Pool obtained the business records of Comcast and Yahoo for the e-mail accounts of lisa.cutler@ymail.com and chad.cutler@ymail.com.

¶ 97 The e-mail account of lisa.cutler@ymail.com was created on April 18, 2012, eight days before Lisa Cutler's death (April 27, 2012). Here are the dates, times, and locations of the logins to lisa.cutler@ymail.com:

Date and Time	Location
April 19, 2012, at 8:24 p.m.	AT&T (location unknown)
April 23, 2012, at 4:50 a.m.	Cutler residence
April 23, 2012, at 7:58 p.m.	Cutler residence
April 23, 2012, at 8:36 a.m.	Cutler residence
April 23, 2012, at 11:42 a.m.	Cutler residence
April 23, 2012, at 9:28 p.m.	AT&T
April 24, 2012, at 12:07 p.m.	Decatur Athletic Club
April 24, 2012, at 7:55 p.m.	AT&T
April 25, 2012, at 5:28 a.m.	AT&T
April 25, 2012, at 8:16 a.m.	AT&T

April 25, 2012, at 10:53 a.m.	Decatur Athletic Club
April 25, 2012, at 1:52 p.m.	AT&T
April 25, 2012, at 5:42 p.m.	AT&T
April 25, 2012, at 5:57 p.m.	AT&T
April 25, 2012, at 9:27 p.m.	AT&T
April 25, 2012, at 9:45 p.m.	AT&T
April 26, 2012, at 3:56 a.m.	AT&T
April 26, 2012, at 6:23 a.m.	AT&T
April 26, 2012, at 8:32 a.m.	AT&T
April 26, 2012, at 9:29 a.m.	Decatur Athletic Club
April 26, 2012, at 2:43 p.m.	AT&T
April 26, 2012, at 4:17 p.m.	AT&T
April 26, 2012, at 9:37 p.m.	Cutler residence
April 26, 2012, at 11:56 p.m.	AT&T
April 27, 2012, at 1:08 p.m.	Cutler residence
April 27, 2012, at 1:40 p.m.	Cutler residence
April 27, 2012, at 1:57 p.m.	Cutler residence
April 28, 2012, at 6:58 p.m.	Debra Conte's residence
May 3, 2012, at 1 a.m.	Cutler residence
May 4, 2012, at 8:17 a.m.	AT&T
May 4, 2012, at 10:52 p.m.	Cutler residence
May 6, 2012, at 5:30 p.m.	Debbie Conte's residence.

¶ 98 Here are the dates, times, and locations of the logins to chad.cutler@ymail.com:

Date and Time	Location
April 23, 2012, at 8:22 a.m.	Cutler residence
April 23, 2012, at 11:41 a.m.	Cutler residence
April 24, 2012, at 12:07 p.m.	Decatur Athletic Club
April 25, 2012, at 5:29 a.m.	AT&T
April 25, 2012, at 8:17 a.m.	AT&T
April 26, 2012, at 5:56 a.m.	Cutler residence
May 3, 2012, at 12:24 a.m.	Cutler residence.

¶ 99 3. *Some E-Mails to and From lisa.cutler@ymail.com*

¶ 100 On April 20, 2012, at 12:05 p.m., Janine Troy, an agent of MetLife, e-mailed her telephone number to lisa.cutler@ymail.com.

¶ 101 On April 21, 2012, at 10:55 a.m., Omaha Insurance Company sent an e-mail to lisa.cutler@ymail.com, stating: " 'Thank you for applying for Mutual of Omaha Accidental Death Insurance. In about [7 to 10] business days, you will receive your coverage through the mail."

¶ 102 On April 21, 2012, at 7:06 p.m., Robert O'Leary of ChoiceQuote Insurance Services sent lisa.cutler@ymail.com an e-mail, which stated: "Thank you for your order. Your credit card has been charged for $418.00. Your certificate number is HLA1200769." The e-mail included links, which one could click to view or print the declarations page and the certificate terms and conditions.

¶ 103 On April 21, 2012, at 11:34 p.m., EchoSign sent lisa.cutler@ymail.com an e-mail, which stated: "We require you to confirm your e-mail address before sending any agreements from EchoSign." The e-mail then stated: "Click the following link to activate the account."

¶ 104 On April 23, 2012, at 4:47 a.m., Iolo Software Licensing sent lisa.cutler@ymail.com an e-mail regarding the purchase of some software called "DriveScrubber."

¶ 105 On April 23, 2012, at 9:09 a.m., Jimmy Peterson of Peterson International Underwriters (Jimmy@piu.org) sent lisa.cutler@ymail.com the following e-mail:

" 'Hi[,] Lisa.

Based on the coverage in force, we are not able to offer any additional benefits. Please let me know if you have any questions.

Sincerely,

Jimmy Peterson.' "

On April 23, 2012, at 11:49 a.m., the following reply was sent to Jimmy@piu.org from lisa.cutler@ymail.com:

" 'Mr. Peterson,

I believe I mistakenly filled out the application with your company twice. I assume that your message is referring to the second application, and that my original application which was approved with certification number HLA1200769 is still in good standing. Can you please confirm this?

Thank you for the correction and for your additional assistance.

Best regards,

Lisa Cutler.' "

¶ 106 On April 24, 2012, at 7:26 p.m., Advanced Insurance Consulting sent to lisa.cutler@ymail.com the following e-mail:

" 'Hi[,] Lisa.

I was sorry to hear about the other company not giving you the insurance. Here is a plan with Mutual of Omaha. Please call or e-mail me if you are interested, and I can help you get signed up. It is a little bit new, so I have to do it on-line for you until they release i[t] completely so that anyone can do the application. Thanks, Lisa, and have a good evening.' "

¶ 107 On May 3, 2012, at 1 a.m., Allstate Insurance Company (Allstate) sent lisa.cutler@ymail.com an e-mail confirming that Allstate had received a request to reset a password. At 1:24 a.m., Allstate sent an e-mail confirming that the password had been reset.

¶ 108 4. *Some E-Mails to and From chad.cutler@ymail.com*

¶ 109 On February 15, 2012, at 11:15 a.m., Marci Ingle of maricaingle@comcast.net sent an email to chad.cutler@ymail.com, in which she stated that " 'it was great seeing you last weekend' " and that " 'I really do still have fond memories of you and our friendship and really enjoyed visiting you again.' "

¶ 110 On February 15, 2012, " 'CC' " of chad.cutler@ymail.com replied to her that " '[i]t was great seeing you last weekend too.' " He told her she was " 'one of the two closest best friends [he had] ever had,' " " '[t]he kind you would die for.' " He gave her his personal cell phone number of (217) 358-9811 and said that he " 'would like to get together sometime to catch up a little more.' "

¶ 111 On April 26, 2012, at 1:38 p.m., Marci sent an email to chad.cutler@ymail.com, in which she thanked him for the visit that day, remarked that his " 'eyes [were] so kind . . . and amazingly blue,' " and suggested that they meet the following week at Scovill Park.

¶ 112 On April 26, 2012, at 2:17 p.m., defendant e-mailed Marci back saying " '[t]oday was the happiest day [he] had for ages,' " declaring that " '[her] outer beauty [was] only matched

by [her] inner beauty,' " and stating that " 'Wednesday or Thursday at Scovill [Park] sounds great.' "

¶ 113 On April 27, 2012, at 7:02 a.m., defendant sent Marci the following e-mail:

" 'My wife died last night, drowned in the [J]acuzzi bathtub (maybe with assistance of too many anxiety meds). I would really like to talk to you soon, although I have arrangements to make right now. I will need a friend.' "

¶ 114 About 20 minutes later, Marci e-mailed defendant her phone number and stated: " 'I'll be available after 10 today to help with whatever I can!' "

¶ 115 Defendant e-mailed her back, asking if they could meet between 10 and 11 a.m. The e-mail concluded: " 'I don't have anybody : (.' "

¶ 116 On April 27, at 9:37 a.m., Marci e-mailed him: " 'You got me until 2 [p.m.], but will make myself available for whatever you need.' "

¶ 117 On April 27, at 12:39 p.m., defendant informed Marci, by e-mail, where the funeral service would be, and the e-mail concluded:

" 'Love ya too,

Your boy.' "

¶ 118 On April 27, 2012, at 12:52 p.m., Marci sent an e-mail to defendant. It read in part:

" 'You were not the cause of anything, but[,] yes, the shit has hit the fan. He told me to stop all contact with other men, be devoted and trustworthy, or pack my shit.

I will attend the visitation, but he insists on being my chaperone. He will not cause a problem, but [I] would rather we not come.' "

¶ 119 On April 27, 2012, at 4:12 p.m., defendant responded by e-mail:

" 'I'm so sorry your shit has hit the fan. It shouldn't be my fault[,] but I still feel guilty. You can't be happy without good friends, and I don't think either of us are.

Don't sweat the visitation, it will be awkward. I would rather see you alone ***. His statement about devotion is bullshit. I'm sorry. Would you rather be happy or sad? ***

Marci, I would never want to cause friction for your happy marriage . . . But is it?' "

¶ 120 On April 27, 2012, at 4:16 p.m., Marci e-mailed defendant that because her husband was checking her e-mails, she had to be brief. She wrote: " 'We'll plan another visit soon, but need to lay low on that for a while.' " She concluded with: " 'Love ya, Chumbley.' "

¶ 121 On April 27, 2012, at 4:25 p.m., defendant sent Marci an e-mail with the subject line " '[I]rony.' " He wrote:

" 'Oops[,] I wasn't done. I would be heartbroken not to see you again. And look at me . . . Single *** (widowed). I am going to speak from the heart[,] regardless of the outcome. *** I never felt about my ex or any other woman the way I feel about you. I could make you happy. Please don't hate me for saying that. I'm lucky to have you as a friend.

Look on the bright side, if you have to pack your shit[,] you could bring all four kids and stay here. [Five] bedrooms, [five] full baths. And with the secret life insurance Lisa *** had I could pay off the house and be debt free. Not bragging, just saying. You are not trapped.

I love you like a friend, and then some.' "

¶ 122 On April 30, 2012, Sheila Madden of Traveller's Insurance Company e-mailed defendant, expressing her condolences on the death of his wife and informing him that, unfortunately, his homeowner's liability policy did not cover members of the household.

¶ 123 On May 1, 2012, at 8:25 a.m., defendant sent Marci an e-mail that began: " 'Good morning[,] my alluring young friend.' " The e-mail stated, among other things: " 'You must not sleep much. I don't either. I get the kids in bed around [9 or 10 p.m.] and I'm up at 2 or 3 [a.m.] I noticed you read my e-card at 1:58 a.m. on whichever day it was.' " He asked her how her little girl had been. He wrote:

> " 'She is so precious, and I hope to see her again soon. If I were to bring her a treat at the park next time, please provide any limitations that you might have, or possible allergies. I want to stay in the good graces of the parents of my little buddy. Besides, I've unsuccessfully performed CPR once already this week, and I have no plans to do it again in case of an allergic reaction. ***
>
> How are those sensual legs healing up? *** You've always had the most beautiful set of legs [of] anyone I've actually seen in person, and I mean outside of the media[,] who are airbrushed anyway, so I'm quite concerned about them. If you don't mind me asking (and I may have already with my concussion addled brain) does insurance cover those procedures?' "

¶ 124 On May 3, 2012, at 3:03 a.m., Marci Ingle's husband, Jeff Ingle, used his wife's e-mail account to request that defendant never contact her again.

¶ 125 On May 3, 2012, at 6:25 a.m., defendant replied with an e-mail beginning with " 'Mr. and Mrs. Ingle.' " He wrote:

" 'I will respect your request not to contact Marci again[,] assuming that she shares the same wishes. *** I would like to hear from her, in person, that these are her wishes as well as yours. At some point in the future, as health permits, I would like to meet her in person to hear these sentiments from her without you standing next to her, telling her what to say. In regards to what has gone wrong in your marriage, I have done nothing that I'm ashamed of.

I wish you the best of luck in healing your marriage and saving your family. You'll be in my prayers.

Sincerely,

Chad Cutler.' "

¶ 126 On May 6, 2012, at 5:14 p.m., match.com, an online dating website, sent an e-mail to chad.cutler@ymail.com, listing various people as potential dates.

¶ 127 On May 6, at 5:12 p.m., chemistry.com sent an e-mail to chad.cutler@ymail.com, " 'Introducing Michelle' " and " 'a girl named Melissa from Brandenburg, Kentucky.' "

¶ 128 O. The Testimony of Jerry Douglas

¶ 129 Jerry Douglas had been a therapist at Decatur Psychiatry for five and a half years. He first met Lisa Cutler in October 2011. The occasion for their meeting was his being the therapist of her 10-year-old son, C., who was "having some problems at school."

¶ 130 In February 2012, before C.'s counseling session began, Lisa told Douglas: " '[Defendant] called me a fuckin' bitch.' " She said she had obtained a restraining order against him. The prosecutor asked Douglas:

"Q. And what specifically was she fearful of, according to her statements?

A. She had voiced concern regarding a verbal aggression, temper outbursts.

Q. Did she make any statements regarding what she feared [defendant] may do to her?

A. Yeah. She did make a statement that she feared that [defendant] was going to kill her.

Q. What was Lisa's demeanor like when she made the statement that she feared he was going to kill her?

A. She had some anxiety, matter of fact, hyper-talkative at times.

Q. Other than February of 2012, did Lisa ever make a similar statement to you?

A. She made a very similar statement in December[,] right after Christmas.

* * *

Q. And what did she say at that time?

A. She had also mentioned that [defendant] had pushed her down, and she voiced, once again, that she feared that [he] was going to kill her."

¶ 131 On cross-examination, Douglas admitted that (1) Lisa had asked him "to take good notes" of what she had to say; (2) C. had only one appointment in 2012, the one in February of 2012, which was the last time Douglas ever saw him; and (3) there was no mention, in his office notes for the February 2012 appointment, that Lisa told him she was afraid her husband was going to kill her. Likewise, in his office notes for three appointments in December 2011, there was no mention of her telling him that.

¶ 132 On November 3, 2012, Lisa Cutler came in with a black eye and told Douglas that her son had hit her with a glow stick. Defense counsel asked Douglas:

"Q. Am I also correct that you didn't believe her?

A. Yes.

* * *

Q. [Y]ou concluded that she was lying to you?

A. I had a difficult time understanding that him throwing a glow stick at her would cause that kind of contusion on her eye."

¶ 133 Douglas further admitted, on cross-examination, that during the intake interview, with both Lisa and C. present, Lisa told Douglas that defendant was an alcoholic, he was on medications, and he had been sober five months.

¶ 134 P. The Testimony of Julia Miller

¶ 135 Julia Miller had worked for the Illinois Department of Children and Family Services for 26 1/2 years. On April 24, 2012, when she was "the intact manager for the Champaign subregion," she received a message to call Lisa Cutler at a certain telephone number. Miller returned the call, and a woman answered who identified herself as Lisa Cutler.

¶ 136 The prosecutor asked Miller:

"Q. And what, if anything, did she ask of you?

A. She asked me for copies of records from a closed file.

Q. What were those records?

A. She had asked for a copy of a service plan and witness statements from an administrative appeal hearing.

Q. Did she say why she wanted those records?

A. She said that she had wanted the records because he had burned them, and she was filing for a divorce.

Q. When she said 'he had burned them,' did she identify who she was speaking about?

A. She didn't say. She referred to [']him.['] "

¶ 137 Q. The Testimony of Gabriel Munoz

¶ 138 Gabriel Munoz, a physician at Decatur Memorial Hospital, testified that he had developed a friendship with Lisa Cutler. Defendant called Munoz and left a message on his telephone. Afterward, Lisa texted Munoz from a different telephone number and continued to communicate with him until she died.

¶ 139 R. The Testimony of Craig Nelson

¶ 140 Craig Nelson was a forensic pathologist and an associate chief medical examiner for the state of North Carolina. He was licensed to practice medicine in North Carolina and California (where for five and a half years he practiced as a deputy medical examiner before moving to North Carolina in 2014 to be near his family). He was board certified in anatomic pathology, clinical pathology, and forensic pathology. A forensic pathologist "use[d] autopsy and body examination to determine the cause and manner of death[,]" whether from "trauma from a car accident, a homicide, a suicide, from drug overdose, or simply from natural causes." He had done over 1800 autopsies, including "around 75 water deaths or drownings as autopsies," approximately 5 of which "were determined to be forcible drownings." He had testified about 40 times as an expert in forensic pathology.

¶ 141 Nelson had reviewed the death of Lisa Cutler, specifically "the autopsy report, the autopsy and later reexamination photographs, the photographs of the crime scene, the

photographs of the suspect, and the other documents provided to [him] by [the Mount] Zion Police Department that included a timeline and what they titled as 'Synopsis of Events.' " He also had reviewed "a toxicology report and medical records as well as a report prepared by a defense expert."

¶ 142 He concluded that the cause of Lisa's death was drowning. He arrived at that conclusion for two reasons. First, "her lungs [were] heavy, congested, [and] adenomatous" and there was "frothy fluid in the airways." Second, there appeared to be no other potential cause of death.

¶ 143 Nelson further opined that the manner of Lisa's death was homicide. His basic reason for that opinion was that "neurologically intact[,] sober adults [did not] drown in bathtubs." By "neurologically intact" adults, he meant adults who were not paralyzed, did not have a movement disorder, did not have a stroke, were not unconscious, and did not have a seizure disorder. By "sober" adults, he meant adults who were not so impaired by alcohol or drugs as to be unable to save themselves if they slipped underwater in a bathtub.

¶ 144 In Lisa's case, the autopsy established that she was free of any natural disease; she was "a fairly young, healthy woman." Her brain was perfectly normal. There were no brain lesions or "internal head injuries sufficient to say that she would have been rendered unconscious and then drowned." Although she had "several small bruises in her scalp," she had sustained no "major head injuries that would have rendered her unconscious." According to the toxicology results, she "didn't have sufficient drugs or anything in her system that would [have] render[ed] her unconscious." By exclusion, then, someone must have forcibly drowned her in the bathtub, by Nelson's reasoning.

¶ 145 He testified that the bruises tended to strengthen this inference. The "large bruises on each elbow and abrasions as well" were "consistent with a struggle"—a struggle against someone who was holding her underwater. She also had a bruise on her left hip and on her left ankle, all caused by blunt-force trauma.

¶ 146 The bruises and abrasions appeared to have been inflicted around the time of her death, because they were fresh hemorrhages. There was no discoloration that would have occurred with the passage of time and the onset of healing. Nelson explained:

> "As we all know from having bruises ourselves, a fresh bruise, pink, purple, blue, and then, as it ages, it starts to turn yellow or green, maybe brown. Lisa did have one injury documented at autopsy, a yellow-colored bruise of her right—of one of her breasts, and that did appear to be an older injury, and it serves as a comparison for the other injuries that all look around the same age."

¶ 147 Nelson testified that, typically, resuscitation efforts did not inflict bruises on the head, elbows, or hips. If any bruise had been inflicted at all by resuscitation efforts, it would have been on the breastbone, on which the hands were pushing as chest compressions were administered.

¶ 148 Nor were the injuries on the head and elbow consistent with a single fall. "In a fall, you might expect one large contusion in only one location," whereas Lisa's head injuries were "on different sides of the head": one on her left frontal scalp, another on her left parietal scalp (on the side, toward the top), another on her right frontal scalp, and an abrasion on her forehead. The bruises on the elbows did not fit with a fall, either. When people fell, their elbows did not jut back. When they had seizures, they did not flail their limbs; the arms might draw up or extend, and the person might shake, too, but the person would not "wildly [flail] around."

¶ 149 The toxicology results showed that Lisa had taken two antidepressants, fluoxetine and mirtazapine, as well as clonazepam, which commonly was used to treat anxiety. She had no alcohol in her system. The fluoxetine was within a therapeutic range. The mirtazapine was "slightly high but certainly nowhere near a range that would have led to her death or caused her to be *** impaired in any way." The clonazepam level was more difficult to interpret because even after someone died, clonazepam continued to break down; therefore, the amount of clonazepam in her system at the time of her death necessarily was higher than the amount stated in the toxicology report, 5.9 nanograms per milliliter. Nelson testified: "What we can know, though[—]and this is from my experience in my regular work[—]is that if she had so much [c]lonazepam in her system as to impair her, it would have been many multitudes higher than was actually detected at 5.9 [nanograms per milliliter]."

¶ 150 It was unlikely that Lisa had been suffering any withdrawal symptoms from clonazepam, considering that it was a "very long-acting drug" and "stay[ed] in your system for days." Because it took a long time to metabolize the drug away, the body was "much more likely to adjust to that slowly decreasing amount." In any event, the first withdrawal symptom would not have been a seizure. "The symptoms that we might expect to see could be just feeling lousy, nausea, vomiting, headache, insomnia, anxiety, possibly even a little bit of shakiness, but we certainly don't expect a seizure to be the first thing that would happen to someone who's withdrawing from [c]lonazepam[,]" and back pain would not be a withdrawal symptom at any point.

¶ 151 It was unlikely that Lisa felt even the withdrawal symptom of nausea, considering that, according to the autopsy report, "[her] stomach contents [were] described as about a thousand milliliters of abundant tan, yellow, and white, soft, partly digested, unidentifiable food

fragments"—the equivalent of "your standard two[-]liter soda bottle *** [that was] half full." If she had been nauseated and vomiting, she would not have had that amount of food in her stomach; she would not have felt like eating in the first place.

¶ 152 Next, the prosecutor showed Nelson (and the jury) a close-up photograph of an injury on defendant's right arm. Nelson testified that these were "abrasions or scrapes on the skin" and that they were "consistent with fingernail scratches." Because they were somewhat scabbed over, however, it did not appear they had been inflicted "within minutes or an hour of that photograph"; it "could be consistent with about a day."

¶ 153 On cross-examination, Nelson admitted that the bruises on Lisa's body were not as exact as a clock; it was impossible to look at a bruise and determine the precise time when it was sustained. The chronological inference was rougher, more approximate. Because the bruises "appear[ed] to be fresh with hemorrhage" and "appear[ed] around the same age," they "[m]ost likely *** occurred at the time or within the few minutes before she died." It was "possible" they were inflicted as much as 20 to 30 minutes before her death, but "[t]he farther away we get from death, the less likely that is to have occurred." When her heart stopped, she would have lost the capacity to receive any new bruises, because "[f]or bruising to occur, we really expect there to be a heartbeat *** that is forcing the blood out of the tissues." After death—after the heart stopped beating—more blood could seep into preexisting bruises, inflicted before death, causing them to redden. But to have sustained a bruise in the first place, one had to have a heartbeat at the time of the blunt-force trauma.

¶ 154 Nelson admitted he could not "tell you *** exactly where [Lisa] was or where an assailant would have been"—"in other words, what method was used" to drown her—but he could "tell you that this woman had no other reason to drown in a bathtub other than application

of some external force." He denied that she could have bruised her elbows "by simply pushing her arm against the side of the tub."

¶ 155 Defense counsel asked Nelson:

"Q. Did you check [The Physician's Desk Reference] to see that it says that rapid withdrawal from [c]lonazepam can cause seizures?

A. That part, yes."

¶ 156 On redirect examination, Nelson testified that the bruises on Lisa's elbows were "consistent with [her] striking her elbows forcefully against the bathtub in an attempt to bring her head above water."

¶ 157 On recross-examination, Nelson agreed it was possible that a person trying to use his or her whole arm to brace a fall could suffer bruises to the elbows. Also, "[a] person who's having a seizure may not be able to manifest that response of, [']I got to catch myself,[']because they are having a seizure."

¶ 158 S. The Testimony of Sonia Wenndt

¶ 159 Sonia Wenndt and her family lived next door to the Cutler house. She used to watch over the Cutler children in the morning, feed them breakfast, and put them on the school bus. In February 2012, when defendant was laid off from his job at ADM, he took over the task of watching his children in the morning and putting them on the school bus.

¶ 160 On about five or six occasions, Lisa Cutler and the children spent the night at the Wenndt house. On such occasions, Lisa was "distraught."

¶ 161 On Friday, April 27, 2012, a friend telephoned Wenndt from the grade school and told her that defendant had called in to say that something had happened to Lisa and that the Cutler children would not attend school that day. Around 8 a.m., after sending her own son off to

school, Wenndt walked over to the Cutler house, entered through the open doorway of the garage, knocked at the door of the house, and then opened the door and stuck her head in. She was greeted by defendant, who was sitting in the computer room. He had on a pair of earphones and was doing something on the computer. She asked him what had happened.

¶ 162 Wenndt testified:

"A. He said—um—he said that—that Lisa had said she had a bit of a backache the night before and that she thought she would sit in a hot bath, and was late, and he said he had decided to go on to bed, and then, it was around 1:00, and he got up and she wasn't in bed, and he got up to look for her, and he found her in the bathroom in the bathtub—um—and by that time, he said, 'I tried—I pulled her out, and I tried to revive her, but she had already turned blue.' That was his statement to me. She had already started turning color.

Q. And did he say what he did after that?

A. He said, at that time, he called for help—or, soon thereafter, he called for help.

Q. Meaning calling 911?

A. Right. Yes."

¶ 163 Upon hearing this news from defendant, Wenndt began weeping, but defendant "didn't seem to [her] distraught or upset." He merely remarked that he had let the children's grandmother take them that morning.

¶ 164 A couple of days after the funeral, Wenndt was at the Cutler house, checking on the children, with whom she was close ("still am"). Defendant "had some stuff out on the counter" and was "telling [Wenndt] some numbers." She testified:

"A. He said they had some insurance when they first got married. There was a $500,000.00 policy and maybe a $200,000.00 policy. And then, he said he had—might have some kind of rider on his home insurance. He wasn't sure about that yet, and then, he said there [were] two new insurance policies that—that—uh—the police seemed to be concerned about when he told them, but Lisa had taken—that Lisa had taken out.

Q. And did he tell you the amounts of those policies?

A. I think he said one was 500, and then, one was less than that.

Q. 500?

A. Thousand."

¶ 165 On April 30, 2012, a police officer from the Mount Zion police department, a Sergeant Foster, came over to her house to talk with her. He arrived in a squad car and had a uniform on. After Foster left, Wenndt received a telephone call from defendant. "[H]e asked if there's anything he should be concerned about, and [Wenndt] said[,] ['J]ust routine questioning.[']"

¶ 166 T. The Testimony of Becky Johnson

¶ 167 In 2012, Becky Johnson was the human resources manager at the Decatur corn plant of ADM. On April 27, 2012, at 7:30 or 8 a.m., she received a telephone message from defendant. "The message said he was Chad Cutler. He was calling to ask about life insurance *** and to see if the life insurance was still active. [H]is wife had died the previous night." She replied to him by e-mail to chad.cutler@ymail.com.

¶ 168 U. A Stipulation Regarding an Order of Protection and a Petition for Dissolution of Marriage

¶ 169 The parties stipulated that on February 2, 2012, Lisa Cutler applied for and was granted an emergency order of protection against defendant and that on February 21, 2012, the order was dismissed and stricken at her request.

¶ 170 The parties further stipulated that on February 16, 2012, by her attorney, Jonathon Erickson, Lisa filed a petition for dissolution of marriage. The petition, which was filed in the Macon County circuit court, sought custody of the children, child support, and maintenance.

¶ 171 V. The Stipulated Testimony of the Cutler Children

¶ 172 The Cutlers had two children: a son, C., who was 11 years old and in fourth grade, and a daughter, I., who was 8 years old and in second grade.

¶ 173 The parties stipulated that C. would testify as follows:

> "[O]n the evening of April 26th, 2012, [defendant] was present in [C.'s] bedroom[,] reading a book. [C.] was in bed reading a different book. During that time, Lisa Cutler entered [C.'s] bedroom, tucked him into bed, and told him good-night. [C.] recalls that Lisa was dressed in her pajamas: [a] gray sweatshirt and a [*sic*] black soft pants. Lisa Cutler did not have any visible injuries at that time. [C.] looked at his phone after his mother left, and the time was approximately 10:20 p.m.
>
> [C.] usually takes medicine before bed. This medicine makes him sleep. On April 26th, 2012, he was given his medication by [defendant] at about 8:00 p.m. [C.] went to sleep and did not hear sounds throughout the night[,] including the arrival of [e]mergency [m]edical [s]ervices.
>
> [C.] had not witnessed [defendant] speaking in a mean way to Lisa Cutler for a year. [Defendant] was not drinking alcohol any more."

¶ 174 The parties stipulated that I. would testify as follows:

"[O]n the afternoon of April 26, 2012, both [defendant] and Lisa Cutler were present in the home. No argument between her parents occurred in her presence. At approximately 6:00 p.m., following dinner, [I.] showered and then watched television with Lisa Cutler. They watched Dance Moms. [I.] went to bed when the television show was over. Lisa Cutler followed [I.] to bed and read her a book. [I.] recalls that Lisa was dressed in her pajamas: [a] gray sweatshirt and plaid pajama pants. Lisa Cutler did not have any visible injuries at that time. [I.] fell asleep while Lisa Cutler read to her and did not awaken until the next morning when it was time for school. [I.] did not hear sounds throughout the night[,] including the arrival of [e]mergency [m]edical [s]ervices. [I.] did not take any medicine that night.

Mom and Dad had once talked about getting a divorce but were getting along well at the time of her mother's death."

¶ 175 W. The Testimony of Connie Mathis

¶ 176 In April 2012, Connie Mathis worked in the payroll office of the Decatur Public School District. Her job was to take care of all the insurance in the school district.

¶ 177 On April 27, 2012, around 8 or 8:30 a.m., Mathis was at her desk and received a telephone call from defendant. He sounded "very calm and collected"—"[n]o emotion or anything." He told Mathis that "his wife had died, and he wanted information on the life insurance that the district carried for his wife, and the process to begin to claim that death benefit." As she was on the telephone with defendant, Mathis brought up Lisa Cutler's file on a

computer and verified that she was a teacher and that she qualified for life insurance in the amount of $20,000. She explained to defendant how to apply for the benefit.

¶ 178 Mathis identified People's exhibit No. 7 as a form from Blue Cross Blue Shield by which Lisa could have added dependents to her health insurance coverage with the school district. Although the form said " [']for the Dearborn Life Insurance Company['] on the top right corner," it actually had nothing to do with life insurance. The form pertained only to health insurance. At the top left, the form said " 'Blue Cross Blue Shield.' "

¶ 179 X. The Testimony of Heath Lane

¶ 180 Heath Lane was a boiler maintenance supervisor in the Cogen Plant of ADM. He had become acquainted with defendant at work, and their acquaintance had developed into a friendship.

¶ 181 On Saturday, April 28, 2012, at 3 p.m., having heard about the death of defendant's wife, Lane telephoned him to express his condolences. Defendant asked if he could come over so they could talk and visit. Lane said that would be fine.

¶ 182 Defendant came over and told Lane what had happened, how he had awakened and gotten out of bed to go to the bathroom and had found his wife submerged, and "look[ing] purple," in the bathtub. He told Lane he pulled the plug and lifted her out of the bathtub. "It was kind of tough getting her out of the tub"; she was "heavy and slippery." He "started doing CPR and called 911." Because his clothes were wet, he changed clothes. Then he went outside to await the arrival of emergency services.

¶ 183 While recounting what had happened to his wife, defendant "told [Lane] what he had told the police, that he had nothing to hide." He said he "had asked the police officer if[,] whenever he removed her from the tub[,] *** that would have caused any bruising." Lane

explained to defendant that if there were any bruises on his wife's body, "the way the science is and everything now, they will know *** when those bruises happened, that bruising does not happen after you have passed."

¶ 184 Defendant did not respond. The conversation pivoted to a different topic. The subject of life insurance came up.

¶ 185 Y. The Testimony of Ali Collins

¶ 186 Ali Collins was a child protection investigator for the Illinois Department of Children and Family Services, and her duties included "forensic interviews of children." On May 3, 2012, she interviewed C. and I. at the Macon County Children's Advocacy Center.

¶ 187 Shortly afterward, Collins had a "home contact" with defendant. She complimented him on "the very nice taste [that he and his late wife had] in furniture." He responded, in a matter-of-fact tone, "that he hated the furniture and hated Lisa Cutler."

¶ 188 Collins noticed a cat and said something about it. "[Defendant] said he hated the cat. It had belonged to Lisa."

¶ 189 The prosecutor asked Collins:

> "Q. And during another home visit, did a conversation occur about the defendant's feelings towards Lisa?
>
> A. He stated he hated her, but he never—he did not kill her."

¶ 190 Z. The Testimony of Anquenette Hicks

¶ 191 In 2012, Anquenette Hicks lived with her husband and five children in the same neighborhood as the Cutters, and she and Lisa Cutler became friends.

¶ 192 In February 2012, Hicks "ha[d] contact with Lisa during a time in which the defendant was not residing in their home." Lisa seemed happy during that time. A short time

later, after defendant moved back in, Lisa "seemed a little distraught like she was worried about things, whether or not it was going to work out, or just basically trying to put the pieces together."

¶ 193 Hicks attended Lisa's visitation. She introduced herself to defendant, in case he did not remember who she was. She testified that he responded in these words:

"A. *** 'I know who you are. You're the hot mom,' or something, and I just kind of thought that was kind of weird.

Q. So, he used the words, [']hot mom,[*'] to you?

A. Yes.

Q. What was his demeanor like at the visitation?

A. Nonchalant."

¶ 194 AA. The Testimony of Jennifer Michel

¶ 195 Jennifer Michel was the office manager at Dawson & Wikoff Funeral Home in Decatur. She testified that on May 1, 2012, defendant came to the funeral home to make arrangements for Lisa Cutler's funeral. He dropped off clothing for the visitation, which was scheduled for later that evening. The prosecutor asked Michel:

"Q. What did you notice about the clothing?

A. Um—I noticed that they were full of hair and that they weren't the best. When people come into the funeral home and they're bringing clothes for their loved one, they're usually very nice, you know, laundered clothes."

¶ 196 Michel and defendant engaged in some small talk. Defendant was "very dry" and never took his sunglasses off. Michel expressed her condolences, telling him she was very sorry

and that she understood he had small children. He replied, " 'Well, they're young. They'll get over it.' "

¶ 197 Defendant asked Michel if he could see Lisa. She declined to allow him to do so, because the funeral director was not there, Michel was the only one there, and Lisa's body was still unclothed.

¶ 198 After defendant exited the funeral home, Michel returned to her office, and the telephone rang. The man on the other end of the line said, " 'This is Chad. I was just there.' " The prosecutor asked Michel:

> "Q. And did he say anything to you at that point?
>
> A. He did. He said, 'I don't know if this is out of line or—um—unprofessional, but I just wanted to let you know that you are absolutely beautiful and that your husband is a lucky man—um—and if I need anything from here on out, I'll be calling you.
>
> Q. And what did you do as a result of that?
>
> A. I just said, 'Thank you,' and hung up the phone and then locked the doors to the funeral home."

¶ 199 BB. The Testimony of David Ransdell

¶ 200 The parties stipulated that defendant visited the Republic of Moldova from July 4 to 17, 2012.

¶ 201 After the parties entered into that stipulation, the State called David Ransdell to the stand.

¶ 202 Ransdell testified he was Lisa Cutler's brother and that the Cutler children, C. and I., stayed with him and his wife, Francine Ransdell, in Carlsbad, California, for 16 days in July 2012, while defendant was traveling.

¶ 203 During those 16 days, defendant sent e-mails from Moldova to C. and I. at Francine Ransdell's e-mail address. On July 5 and 6, 2012, in e-mails to I., defendant wrote about Galina, a woman he had met in Moldova, and he attached photographs of her. He gave I. permission to tell her aunt and uncle about Galina. He wrote:

> "Just tell them to understand that raising two, happy active[,] children with one parent is not the best way. You need two parents to have a healthy, happy family. I will always love your Momma, and I *** mean no disrespect to her family, and I hope *** Aunt and Uncle will understand that I look for another wife for the best of our family."

In an e-mail of July 9, 2012, defendant raised the possibility that Galina would come to live with them (defendant, C., and I.) "as a nanny."

¶ 204 CC. The Testimony of Ron Johnson

¶ 205 Ron Johnson was the funeral director at Dawson & Wickoff Funeral Homes. Lisa Cutler's funeral was held at the Mount Zion facility. Several months after the funeral, people commented to Johnson that "it was awful that there wasn't a stone out at the cemetery for Lisa," especially considering that the Cutler children had been to her gravesite. The grave had been seeded, the grass had grown up, and it was difficult to tell exactly where the grave was. Eventually, after defendant was arrested, Johnson persuaded a local monument company to donate a stone, and he "wrote a check *** to the cemetery for the setting fee of it and got the stone erected."

¶ 206 DD. The Testimony of Douglas Holeman

¶ 207 Douglas Holeman was the sexton or custodian of Mount Zion Township Cemetery. He testified that before August 2013, the gravesite of Lisa Cutler lacked a gravestone.

¶ 208 EE. John Russo's Stipulated Testimony

¶ 209 The parties stipulated that John Russo would testify as follows:

> "[I]n 2012, he was employed by Peterson International Underwriters. On April 27th, 2012, his company received a telephone call from [defendant] reporting the death of Lisa Cutler and inquiring about a claim on a $500,000.00 life insurance policy effective April 25th, 2012, listing [defendant] as the sole beneficiary."

¶ 210 FF. Stipulation Regarding the Cutlers' Financial Circumstances

¶ 211 The parties stipulated that, as of May 7, 2012, defendant and Lisa Cutler had the following assets and debts. They had a house appraised at $475,000, with a mortgage balance of $407,497. The monthly mortgage payment of $3120 was three months in arrears. They had a 2008 Chevrolet Silverado LT pickup truck, on which they owed nothing. They also had a 2011 Chevrolet Traverse, on which they owed $33,697, but payments were current on it. They owed $12,293 on their credit cards, and their payments on those accounts were current. They had a balance of $40,245.71 in a joint savings account.

¶ 212 The parties further stipulated that defendant was employed by ADM, as a maintenance supervisor, until February 12, 2012, when ADM laid him off along with 175 other employees. On March 29, 2012, he received from ADM a one-time severance payment of $40,228.17. Lisa was employed by Eisenhower High School, and in 2012 her annual salary was $44,161.56.

¶ 213 GG. The Testimony of Krista Edgecombe

¶ 214 Krista Edgecombe testified that she was a neighbor of the Cutlers. She recalled a conversation she had with Lisa Cutler on July 4, 2011. The Edgecombe children were outside, "doing the sparklers." Lisa walked by with her children, C. and I., and asked if they, too, could "do some sparklers." As the children played, Edgecombe and Lisa engaged in some "small talk."

¶ 215 The prosecutor asked Edgecombe:

> "Q. During the conversation, did Lisa make any statements to you regarding her husband, [defendant]?
>
> A. Yes. She stated that she was going to be moving—um—her and her kids back to California. Um—that's where her family was and that things were really bad at home—uh—that [defendant] had an explosive anger issue, and she was afraid that her kids were in a bad environment, and if she did not get them out of that situation, it was not going to be good, and she was afraid that if [defendant] did not kill her, he was going to seriously hurt her."

¶ 216 After Lisa's death, Edgecombe's daughter, Ca., felt bad for the Cutler children and asked if it would be all right to invite them over to the Edgecombe residence for a swim. Edgecombe said that would be all right. C. and I. came over, and eventually defendant came over as well.

¶ 217 While the children were swimming, defendant asked Edgecombe if she "had heard about Lisa's death and what were her opinions on it." Edgecombe did not respond. He then described to her how Lisa had died. He said they "had had a really nice dinner that night," the four of them, and after the children were put to bed, Lisa complained of back pain. "So, she took her prescription pain medication and had some wine," and after they went to bed, she was still complaining of back pain. "So, he suggested that she take a bath to make herself feel better."

Later, when he woke up, he noticed the light was still on in the bathroom. He got out of bed and went to check on her, "and she was blue."

¶ 218 Edgecombe told defendant:

> "A. I said, 'It must have been terrible for you to have to do CPR on your wife with all that pressure.'
>
> Q. And how did he respond?
>
> A. He said that he had military training and that he knew that she was dead from being blue. So, he just pulled her out and did not perform CPR.
>
> * * *
>
> Q. Did he tell you what he said to the police after they arrived?
>
> A. 'I suppose that you think that I did this to her.' "

¶ 219 A couple of days later, the Edgecombes had the Cutler children over again for a swim. Defendant came over, too. He "wanted to know what [Edgecombe] had heard" and "what people were saying." He "wanted to talk about what happened again." She told him, " 'I don't understand, you know, why you didn't do CPR[.]' " He responded that he really had not meant to tell her he had refrained from doing CPR and that "[h]e was confused at the time" they last spoke. This time, he told Edgecombe that "he did perform CPR on [Lisa]" but that when he pulled her out, "he knew that she was dead because she was blue, but he pulled her out really hard and it bruised her."

¶ 220 HH. The Testimony of Lisa Taylor

¶ 221 Lisa Taylor testified that she knew Lisa Cutler, having "taught with her at Eisenhower [High School] and supervised the high schools for several years as [d]eputy [s]uperintendent." (She currently was the superintendent of schools.)

¶ 222 She identified People's exhibit No. 16 as Lisa's schedule for the 2011 to 2012 school year. According to Lisa's attendance record, which was in this exhibit, the last sick day she used was February 16, 2012, and her last scheduled absence was February 24, 2012.

¶ 223 Taylor testified that all teachers reported to work at 8 a.m. The first period was Lisa's planning period, from 8:14 to 9:45 a.m. It was "basically a free period to prepare for instruction and grade papers and that sort of thing." Teachers had a contractual right to leave campus during their planning period, but they were expected to sign out in a book. The second period was from 9:50 to 11:20 a.m. The third period was from 11:25 a.m. to 1:25 p.m., with a lunch in the middle, from 11:55 a.m. to 12:25 p.m. Lisa's final class for the day was from 1:30 to 3 p.m.

¶ 224 The prosecutor asked Taylor:

"Q. Do you know whether or not Lisa usually ate lunch at school or if she went somewhere?

A. She ate in the cafeteria with the students.

Q. Okay. Um—did the teachers get free lunches if they ate with the students?

A. Yes, they did, and that's why most high school teachers do that.

Q. So, other than the planning period and the lunch time, Lisa would have been teaching class. Is that accurate?

A. That's correct."

¶ 225 On cross-examination, Taylor estimated that in April 2012 she was probably at Eisenhower High School once a week. Defense counsel asked her:

"Q. So, you don't know personally if Lisa ate lunch in April of 2012 every day at the cafeteria?

A. I do not know if she did every day, but I have seen her in the lunch.

Q. Once a week, you would see her? Would you go during the lunch hour?

A. Yes. Lunch is a very active time at the high school. So, as supervisor of the high school, we spend a lot of time there during the lunches."

¶ 226 II. The Stipulated Testimony of Charles W. Hoots

¶ 227 The parties stipulated that Charles W. Hoots would testify as follows:

"[H]e was the principal of Eisenhower High School in April of 2012. The policy of Eisenhower High School allowed teachers to leave campus during the school day but only during their planning period. Teachers were not allowed to leave campus during their lunch period. When teachers left campus, they were asked to sign out in a book; however, teachers did not always sign out because the labor contract did not require them to. The labor contract did require teachers to notify a school administrator when leaving campus. Lisa Cutler's name did not appear in the school's sign out book between March 1st, 2012, through April 27th, 2012. Further, Charles Hoots observed that Lisa always ate lunch in the school cafeteria. Eisenhower *** High School had no restrictions on teachers having or using their cellular telephones in the classroom. Teachers were not restrict[ed] from answering their cell phones during class. Charles Hoots observed Lisa Cutler at school on April 26, 2012, and had a conversation with her. He recalls that Lisa looked physically healthy."

¶ 228 JJ. The Testimony of Janice Frankovich

¶ 229 For the past 19 years, Janice Frankovich had been the membership director and marketing director of Decatur Athletic Club. She recognized defendant. He used to come to the club just about every day.

¶ 230 She testified that "[e]ach member ha[d] a key fob that they swipe[d] when they c[a]me in, and it open[ed] the door, and it [let] them in." (If they forgot their card, they could sign in manually.) When a member swiped his or her card, the entry was recorded in a computer database. In 2012, Decatur Athletic Club had a different computer system than it had now, and the server for the old system was not right on the time; it was 20 minutes off.

¶ 231 In addition to working out, members could use the club's free Wi-Fi Internet if they brought their own devices. In 2012, the club's Internet provider was Hanson Information Systems, Inc.

¶ 232 KK. The Testimony of Carol Hazenfield

¶ 233 In 2012, Carol Hazenfield was the officer manager of Decatur Athletic Club, where she had worked for 39 years. She identified People's exhibit No. 21 as a usage report from the club for the period of January 1, 2012, to May 1, 2012. She explained:

> "A. When a member enters the club, there is a barcode reader, and they slide a key tag through the barcode reader, and it registers in the computer, and then we're able to print out the usage of the members, and it allows them entry into the club with a red/green light."

The computer could generate a daily report, "or you could print out a report by name." People's exhibit No. 21 was a report of the entry times of Lisa Cutler and defendant.

¶ 234 According to the computer-generated report, the last time Lisa entered Decatur Athletic Club was on April 14, 2012, at 1:43 p.m. There were no further entries for her after that.

¶ 235 The prosecutor asked Hazenfield:

"Q. And then April 25th, 2012, at 10:47 a.m., does it indicate that [defendant] entered?

A. Yes, it does.

Q. And then on April 26th, 2012, does it indicate that [defendant] entered at 8:42 a.m.?

A. Yes, it does."

¶ 236 On cross-examination, Hazenfield testified that the server was about 20 minutes, too slow—meaning that "they actually came in 20 minutes earlier than is reflected on this exhibit."

¶ 237 LL. The Testimony of Melinda Stout

¶ 238 Melinda Stout was the principal secretary at Eisenhower High School. Approximately one month before Lisa Cutler's death, Stout had a conversation with her at the school. The conversation was in Stout's office, and only she and Lisa were present. Stout testified:

"A. She came in and closed the door to just let me be aware that she thought that her marriage was not going to last, and she just had told me a few other things that needed to be done in order for a divorce to actually take place.

Q. And what was that?

A. That she would need to be financially set in order to be able to live on her own and before she got a divorce."

Lisa mentioned that she was beginning to "see" a doctor.

¶ 239 MM. The Stipulated Testimony of Chris Stenger

¶ 240 The parties stipulated that Chris Stenger would testify as follows. On April 27, 2012, he was a lieutenant with the Mount Zion police department, and he attended an autopsy of Lisa Cutler. During the autopsy, medical personnel obtained left and right fingernail clippings from her body. Stenger took custody of the fingernail clippings (People's exhibit No. 27), tagged them as evidence, made no changes or alterations to them, and kept them in his custody.

¶ 241 NN. The Testimony of Karri Broaddus

¶ 242 Karri Broaddus was a forensic scientist at the Illinois State Police Forensic Science Laboratory. Her job was to analyze deoxyribonucleic acid (DNA).

¶ 243 She identified People's exhibit No. 11 as buccal swabs from defendant and People's exhibit No. 27 as fingernail clippings from Lisa Cutler.

¶ 244 DNA analysis revealed the presence of defendant's DNA on Lisa Cutler's fingernails. Broaddus testified: "[T]o get under the fingernails, you would expect there to be contact most likely."

¶ 245 OO. Stipulations Regarding Insurance

¶ 246 The parties made the following stipulations regarding insurance, and the following exhibits were admitted in evidence, without objection.

¶ 247 People's exhibit No. 30 was a collection of business records from Allstate. They showed that on November 17, 1999, two life insurance policies were issued, each in the amount of $500,000. One policy named Lisa R. Cutler as the insured party and defendant as the sole beneficiary. The other policy named defendant as the insured party and Lisa R. Cutler as the sole beneficiary. Both policies were in effect on April 27, 2012. On April 27, 2012, at 8:51 a.m., defendant made a death loss claim.

¶ 248 People's exhibit No. 31 was a collection of business records from Peterson International Underwriters. These records showed that an application for a life insurance policy in the amount of $500,000 was made, by computer, on April 21, 2012, at 7:06 p.m. and the computer application listed lisa.cutler@ymail.com as the e-mail address of the applicant. The policy was issued and went into effect on April 25, 2012, and defendant was named as the sole beneficiary.

¶ 249 The parties stipulated that Matt Ganderup would testify as follows. He formerly was employed by Peterson International Underwriters. On April 21, 2012, an insurance policy in the amount of $500,000 was purchased from Peterson via the Internet, listing defendant as the sole beneficiary. The purchase originated from the IP address of 98.215.18.72 (which, according to the stipulation labeled People's exhibit No. 49, Comcast assigned on that date to the Cutler residence, as we discussed earlier).

¶ 250 People's exhibit No. 32 was a collection of business records from Mutual of Omaha Insurance Company. These records showed that on April 21, 2012, a computer application was made for an accidental death insurance policy in the amount of $200,000, listing Lisa R. Cutler as the applicant; insuring the lives of herself, defendant, and their two children; and naming defendant as the sole beneficiary. The application was signed by an electronic signature with the name of Lisa R. Cutler. The telephone number of (217) 358-9811 was listed as the contact number of the applicant. (It also was the cell phone number that defendant gave to Marci Ingle, on February 15, 2012, as his personal number, as we likewise discussed earlier.) Mutual of Omaha Insurance Company accepted the application, and the policy went into effect on April 21, 2012, with defendant as the sole beneficiary.

¶ 251 People's exhibit No. 33 was a collection of business records from Matrix Direct Insurance. They showed that on April 19, 2012, at 6 p.m., a rate quote request was made for a life insurance policy in the amount of $250,000. The request listed lisa.cutler@ymail.com as the e-mail address of the applicant.

¶ 252 People's exhibit No. 34 was a collection of business records from AccuQuote Insurance. According to these records, Lisa Cutler was listed as a proposed insured in a quote request for a life insurance policy in the amount of $100,000. The e-mail address of lisa.cutler@ymail.com was listed as the applicant's home e-mail and primary e-mail address, and (217) 358-9811 (defendant's cell phone number) was listed as her work telephone number. On April 20, 2012, she was listed again as a proposed insured in a quote on a life insurance policy in the amount of $500,000. The e-mail address of lisa.cutler@ymail.com was listed as her home e-mail and primary e-mail address, and (217) 358-9811 was listed as her home telephone number. No insurance policies were issued as a result of those inquiries.

¶ 253 People's exhibit No. 35 was a collection of business records from Adobe Systems Incorporated concerning an EchoSign account associated with the e-mail address of lisa.cutler@ymail.com. EchoSign was a business that provided customers with the capability to electronically sign documents over the Internet. On April 21, 2012, an EchoSign account was created, in which Lisa Cutler was listed as the applicant, with a telephone number of (217) 358-9811 and an e-mail address of lisa.cutler@ymail.com.

¶ 254 PP. The Stipulated Testimony of Doug LeConte

¶ 255 The parties stipulated that Doug LeConte would testify that he was a special agent of the Illinois State Police and that on October 16, 2013, he accessed Lisa Cutler's e-mail

account, lcutler@DPS61.org and printed copies (People's exhibit No. 29) of e-mails sent to and from that account.

¶ 256 QQ. Defense Counsel's "Motion to Bar New Opinion of Dr. Youmans"

¶ 257 On June 22, 2015, defense counsel filed a motion to bar a forensic pathologist, Amanda Youmans, from testifying that the manner of Lisa Cutler's death was inconsistent with accidental drowning and was consistent with homicide. The motion stated the following grounds for this requested relief.

¶ 258 On September 23, 2013, the State served on defendant its initial discovery disclosure. According to that original disclosure, Youmans was expected to testify to the following:

> " ['The cause of death of this 37-year-old white female, Lisa Cutler, is drowning. The autopsy findings are consistent with drowning. Reportedly, she was found on her side[,] completely submerged in a water-filled bathtub. Although the autopsy findings are consistent with drowning, they are inconsistent with which [*sic*] she was found. Her hands and feet are without evidence of prolonged water immersion[,] and her feet show very dry skin; this is inconsistent with one found 'completely submerged' in water for a period of time. In addition, her livid[ity] pattern is posterior with anterior congestion of the face, neck, and shoulders[,] and this is not consistent with how she was reportedly found as well.
>
> She has blunt[-]force injuries to the head, upper extremities, and hips. Although these injuries did not cause her death, they appear to have occurred at or around the time of death and are of suspicious nature. The decedent has no evidence of natural disease[,] and toxicology shows no evidence of intoxication.

Because of these [facts], concerns arise when looking at her injuries and the circumstances as to why or how she drowned as a whole. Therefore, non-accidental drowning cannot be ruled out[,] and further investigation may be warranted.[']"

¶ 259 After completion of the fifth day of the jury trial, the prosecutor sent defense counsel the following e-mail:

"[']We just finished interviewing Dr. Youmans in preparation for her testimony on Monday. She stated that she only made a finding regarding cause of death (which she opined was drowning) for the coroner's review. Her opinion is the manner of death is inconsistent with an accidental drowning and consistent with a forced drowning."

¶ 260 The motion argued that to disclose this additional opinion five days into the trial violated Illinois Supreme Court Rule 412(a)(iv) (eff. Mar. 1, 2001), which required the State, upon written motion by defense counsel, to disclose to defense counsel "any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests." The motion added: "The prosecution has [two] other forensic pathologists who are going to render the same opinion[,] so there is no harm to their [*sic*] case in barring this testimony."

¶ 261 On June 22, 2015, the State filed a response to defendant's motion. The State explained that in May and June 2015, Youmans was unavailable to be interviewed, because she was on maternity leave during those months. Consequently, the State interviewed her after the trial started and before her testimony.

¶ 262 On June 22, 2015, the trial court heard arguments on the "Motion to Bar New Opinion of Dr. Youmans."

¶ 263 Defense counsel argued that "forensic science [was] a huge part of this case"; he had relied on the original disclosure of Youmans's opinion, and he had "truly believed that [Youmans] was unwilling to go beyond [her] suggestion of further investigation." The trial court asked defense counsel if he had ever interviewed Youmans; he answered he had not. Defense counsel continued that, in his opening statement, he had relied on the original disclosure by arguing to the jury: "The pathologist who *** is used in regular cases here says, 'I don't know how she drowned.' So, they go and they find a paid pathologist to come up with a theory ***."

¶ 264 The prosecutor responded that, due to maternity leave, Youmans had been unavailable for an interview and that "[a]s soon as we finished our telephone call with Dr. Youmans, I disclosed it to [defense counsel] via e-mail immediately after hanging up the phone with her." The jury would be instructed that opening statements were not evidence, and defense counsel would have "ample opportunity to cross-examine [Youmans] regarding the fact that this opinion was not included in her written report that she authored initially."

¶ 265 After hearing these arguments, the trial court denied the motion because the court "[could not] see that this [was] really a surprise," given the opinions by Youmans that the State originally disclosed, on September 23, 2013.

¶ 266 RR. The Testimony of Amanda Youmans

¶ 267 Amanda Youmans had been a coroner's forensic pathologist for four years. Her job was to perform autopsies to determine the cause of death. She was a licensed medical doctor and a board-certified forensic pathologist. She had performed about 2000 autopsies,

approximately 45 of which had been water deaths. She had testified about 25 times as an expert in forensic pathology, but this was the first time she had testified in a case of death by drowning.

¶ 268 It was apparent to Youmans that Lisa Cutler had drowned. Her lungs were overexpanded and filled with water. Water was in her sinus cavities.

¶ 269 On April 27, 2012, Youmans performed both an external and internal examination of Lisa's body. The deceased, 37 years old, was 5 feet 4 inches tall and weighed 120 pounds. The back of her head was wet. Her hands did not show any signs of water-induced wrinkling. The soles of her feet were very dry.

¶ 270 Youmans saw injuries on Lisa's body that she believed were inconsistent with medical intervention. She had an abrasion on her forehead and bruises and abrasions on her elbows. She had a bruise on her right forearm. She had a bruise on each hip and a bruise on her left ankle. The bruise on her left medial (inner side) elbow extended around to the back side of the elbow and was about three to four inches in size. There was one abrasion on the right elbow and two abrasions on the left elbow. Judging from the blue, purplish color of the injuries—suggestive of a fresh or recent hemorrhage under the skin that had not yet begun to heal—Lisa sustained the injuries at or around the time of death.

¶ 271 Also, Lisa had an abrasion on her forehead, near the hairline, and bruises on five different locations on her head. These bruises were evident when Youmans "reflected" (that is, incised and pulled back) the scalp from the skull, exposing the hemorrhages. She had a bruise on the left frontal scalp, another on the left parietal scalp (the upper side of the head), and another on the right temporal bone (near the right temple), and another on the left parietal bone. The color of the hemorrhages suggested to Youmans that they were inflicted at or around the time of death.

¶ 272 The vitreous and the blood were both negative for alcohol. The blood was positive for fluoxetine, mirtazapine, and clonazepam, according to the laboratory results from AIT Laboratories, in Indianapolis, Indiana.

¶ 273 In all, Youmans found on Lisa's body 15 contusions and abrasions, both internal and external, that were not attributable to medical lifesaving efforts, and they were on 6 different areas of her body: the head, both arms, both hips, and the left ankle. They all were inflicted at around the time of death, in Youmans's opinion.

¶ 274 The bruises resulted from blunt-force trauma, and because people did not flail or flip-flop around when having seizures, the bruises were inconsistent with an accident or a fall following a seizure. But they were consistent with a struggle, a struggle in which someone held Lisa's head underwater as she pushed her elbows against the sides of the bathtub in an effort to get above water and breathe. Youmans opined that the manner of Lisa's death was homicide by being forcibly held underwater.

¶ 275 On cross-examination, Youmans testified that bruises could be caused by either blunt-force trauma or by pressure. The bruises on Lisa's scalp could have been either impact wounds or pressure wounds. Youmans admitted she could not specify exactly how the assailant held Lisa underwater.

¶ 276 Defense counsel further asked Youmans:

"Q. You indicated to us that these bruises occur on or about the time of death. Do they occur two hours before death?

A. I don't know.

Q. Six hours before?

A. Likely no.

Q. Five minutes after death?

A. No.

* * *

Q. Well, I asked you when this bruise occurred. You said you didn't think it was six hours, but you don't know if it's two hours. Is there any scientific way of knowing when it occurred?

A. There are a lot of studies out there. My opinion is based on my experience that the color of the bruise and there's a lack of tissue reaction around it. What I mean by tissue reaction is, the body is not attempting to heal the bruise yet. That indicates to me that it happened within a couple of hours or at the time of death. Uh—once you get past the few hour marks, the body starts to react to the bruise and attempts to heal it. I did not see any evidence of healing on her bruises at the time of autopsy."

¶ 277 SS. The Testimony of Ryan Buehnerkemper

¶ 278 For 15 years, Ryan Buehnerkemper had been a special agent of the Illinois State Police. On April 27, 2012, at approximately 12:44 a.m., he was at the Mount Zion police department. Police officers who had been interviewing defendant requested Buehnerkemper to examine a cell phone, an iPhone, that defendant had produced during the interview. He had consented, in writing, to a search of the cell phone.

¶ 279 Buehnerkemper downloaded the contents of the cell phone and photographed the e-mails that were stored therein. Among the e-mails were the previously described ones to Marci Ingle.

¶ 280 Another e-mail that Buehnerkemper photographed was dated April 23, 2012, at 4:51 a.m. It was from lisa.cutler@ymail.com to chad.cutler@ymail.com and stated: " 'Has shared the accidental death policy with you.' " Further down in the e-mail was "EchoSign," and still further down was the message "Attached is your copy of accidental death policy.' " Other e-mails regarding insurance were on the iPhone, including the one in which Peterson declined to provide additional coverage " 'due to coverage in force.' "

¶ 281 TT. The Testimony of Scott Denton

¶ 282 Scott Denton was a coroner's forensic pathologist. He practiced in central Illinois, performing autopsies. He was a licensed medical doctor and a board-certified pathologist. He estimated he had performed about 7500 autopsies and had testified about 400 times as an expert in forensic pathology.

¶ 283 At 8 a.m. on April 30, 2012, at the McLean County morgue, Denton performed an additional examination of Lisa Cutler, whose date of death was April 27, 2012. Youmans already had performed and completed the autopsy. But the state police showed up that morning, requesting an additional examination of the body, and because Youmans was off that day and lived an hour and 15 minutes away, Denton performed the additional examination.

¶ 284 He noted bruises on Lisa's body: on the back of her right hand, on both of her elbows, on her right forearm, on her knees, beneath her knee, and on her hips. The bruises looked recent to him, inflicted "within hours of her death." Denton explained that bruises could become more visible after an autopsy because blood was removed from the body during an autopsy. Blood settled in the body after death, causing lividity that could mask bruises, but after the blood was removed, the skin became very pale, and red and purple bruises consequently became more conspicuous.

¶ 285 Denton incised the bruises on Lisa's elbows to expose the hemorrhages under the skin and get an idea of the extent and depth of the bruising. Photographs were taken in this second autopsy. In the trial, the prosecutor projected photographs onto a screen, and Denton identified and described the various bruises.

¶ 286 When asked if he had opinion as to what had caused the bruises, Denton answered:

"A. Sure. The bruises are from blunt trauma. So, it indicates either something hard and usually flat struck her elbows and her thighs and her hips, or those parts of her body struck something hard and flat, and it caused the bleeding and rupture of vessels beneath the skin and in the skin.

Q. And when did those injuries occur in relation to her death in your opinion?

A. Um—they all appeared fairly recent. So, I would say again within hours of her death.

Q. Are the injuries observable specifically to the elbows of Lisa Cutler's body consistent or inconsistent with Lisa forcibly striking against a bathtub service—surface in an attempt to get air while being forcibly held underwater?

A. I would describe them as consistent with that statement.

Q. And do you hold these opinions to a reasonable degree of medical certainty?

A. Yes, I do."

¶ 287 On cross-examination, Denton opined that the bruises on the elbows were too severe to have been caused by mere pressure. In his opinion, they were caused by blunt-force trauma.

¶ 288 Defense counsel asked Denton:

"Q. Well, do you know how this lady drowned?

A. No.

Q. So, you don't know, and you're not here to offer an opinion that she was trying to get air while striking her elbows. What you're saying is, the bruises are consistent with striking the elbows against the tub?

A. Yes."

¶ 289 UU. The Testimony of Jonathan Erickson

¶ 290 Lisa Cutler's divorce attorney, Jonathan Erickson, testified that on April 23 and 26, 2012, his staff at the law firm took telephone messages from Lisa Cutler that she "wanted to proceed with the divorce case *** against her husband, [defendant]." Because she was a teacher, it was difficult to reach her during the day, but Erickson called back on April 26, 2012, and left a message for her. She left a voice mail message for him on April 26, 2012, at 3:30 p.m., in which "[s]he again indicated that it was important to her to proceed with the divorce case." She died shortly afterward

¶ 291 VV. The Testimony of Tonya Melhorn

¶ 292 For six years, Tonya Melhorn had been a hair dresser at Bellissimo Salon. Lisa Cutler was one of her clients. Years earlier, in 2002 and 2003, Lisa was one of her high-school teachers.

¶ 293 Melhorn testified that as she was doing Lisa's hair, they would talk. Lisa's first hair appointment was on June 18, 2011. She told Melhorn that defendant " '[was] a drinker' " and that he would scream at her and " 'come at [her].' " According to Melhorn, Lisa "was scared that one of the times, he was going to go too far." Melhorn described Lisa's demeanor as "anxious, very nervous at all times." She would call and check up on her children every 30 minutes.

¶ 294 Lisa's last appointment was on August 20, 2011. Her demeanor was still "[n]ervous and shaky." The prosecutor asked Melhorn:

"Q. On that occasion, did she make any statements to you regarding any mental abuse?

A. Um—she did mention, especially when he drank, he would scream, call her names, and be violent."

¶ 295 On cross-examination, defense counsel asked Melhorn:

"Q. In your conversation with her on August 20th of 2011, did she indicate to you that her husband was still drinking?

A. Yes. She said that he had been to rehab a few times. Well, rehabilitated, tried to stop drinking, but he would just relapse within two to three weeks, and it would go right back to normal."

¶ 296 WW. The Testimony of Adrian Byrd

¶ 297 Adrian Byrd was a licensed clinical social worker employed by Decatur Psychiatry. Beginning in October 2011, the Cutlers' daughter, I., was a patient of his. The counseling sessions were every three to four weeks, and the last one was on February 9, 2012. In all, he had five sessions with I., and because Lisa Cutler was the parent who brought I. to the

sessions, Byrd became acquainted with her, too, and had conversations with her in his office. Another counselor, Jerry Douglas, would be a few feet away during the conversations.

¶ 298 Byrd testified:

"Q. [On January 12, 2012, Lisa Cutler] was discussing how the things at home had been getting worse. Um—she felt like [defendant] had been—uh—more angry, more volatile, more—uh—violent. She had told me about she had c[o]me home and he had thrown—uh—some of her belongings in a pond—uh—behind their house. Um—yeah.

Q. Did she state—uh—what her feelings were towards him at that point?

A. She indicated that she was really worried. She was fearful. Um—just very anxious. I remember that she made a statement that she was afraid he was going to snap and—uh—kill her."

¶ 299 On cross-examination, defense counsel requested Byrd to read aloud his progress notes for January 12, 2011:

"A. Okay. I wrote: 'Patient reporting no issues with mom or dad. Brother C., he's mean. Patient['s] mom reporting verbal, physical abuse, controlling, manipulating behaviors by [defendant]. Throwing her things in a pond. Very concerned about the effect on the children. Education and domestic violence information on DOVE."

Byrd admitted that his note lacked any mention of defendant's threatening to kill Lisa.

¶ 300 In his session notes for November 3, 2011, Byrd wrote down Lisa's statement to him that " '[defendant] was an alcoholic and had not drank [*sic*] for six months.' "

¶ 301 XX. The Testimony of Todd Hartman

¶ 302 Todd Hartman testified he was employed by the Illinois State Police Crime Scene Services. On April 27, 2012, at 11:58 p.m., Hartman executed a search warrant authorizing him to collect buccal swabs from defendant and to fingerprint and photograph him.

¶ 303 The prosecutor asked Hartman:

"Q. And during the processing of the defendant's body for injuries, what, if anything, did you observe on his right arm[,] between the elbow and the shoulder?

A. Um—I noticed that he had scratches in that area, linear scratches on his arm.

Q. And do you recall what reason he gave for those scratches?

A. I believe the reason that he gave was he said that he is itchy. He likes to scratch."

¶ 304 The prosecutor projected the photographs Hartman had taken of the scratches on defendant's arm. Hartman testified he saw no other scratches on defendant's body.

¶ 305 YY. The Testimony of Mary Case

¶ 306 Mary Case was the chief medical examiner for St. Louis, St. Charles, Jefferson, and Franklin Counties, Missouri. She was a professor of pathology at St. Louis University. She was board-certified in anatomical pathology, neuropathology, and forensic pathology. She served on editorial boards of forensic science journals and had published approximately 27 articles in that field, including an article on bathtub deaths. She had performed around 11,000 autopsies, several hundred of which involved water deaths. In her 38 years of experience as a forensic pathologist, she had testified as an expert witness several hundred times.

¶ 307 Case had reviewed materials relating to the death of Lisa Cutler, specifically, police reports; the autopsy report; sections of skin and other tissues from the autopsy; photographs taken before, during, and after the autopsy; an ambulance service report; Lisa's medical records; reports by Andrea Saferes, David Posey, Bruce Goldberger, and Craig Nelson; and a toxicology report.

¶ 308 Case testified it was possible that the abrasion on Lisa's forehead was inflicted by paramedics as they manipulated her and attempted to resuscitate her. She believed that a bruise on Lisa's left ankle could have been inflicted when she was removed from the bathtub. There was a bruise on Lisa's breast, but it was an old bruise. Otherwise, Case opined, the bruises and abrasions on Lisa's body were inflicted at or around the time of her death—they were "very fresh"—and they were not attributable to resuscitation, intubation, or other rescue efforts. Bruising occurred less readily after death.

¶ 309 Some of the bruises were undetectable before the autopsy, but after the autopsy—after the blood was drained out of the great vessels—the skin became paler, causing the bruises to be more conspicuous. (Blood that had leaked from broken capillaries into the soft tissue, forming bruises, remained after the larger blood vessels were drained.)

¶ 310 The most severe bruises were on the elbows, covering the entire surface of each elbow. To explore the severity of these and other bruises, Denton incised them in the second autopsy so as to expose the hemorrhaging under the skin. (This *had* to be done to find bruises on the scalp, Case explained. Unlike skin elsewhere on the body, the scalp did not show bruises on the outside and, thus, had to be "reflected," this is, peeled back off the skull, to see the hemorrhaging on the inner side of the scalp—as Case pointed out in photographs from Lisa's autopsy.) The hemorrhaging under the skin of the elbows was very deep, going all the way down

to the fascia, the tendons and materials that tied the muscles to the bone. It was as if the elbows had been ground, with significant force, against a flat surface. A mere fall in the bathtub could not have inflicted such severe bruises all over the elbows.

¶ 311 For that matter, falling in the tub could not have inflicted the bruises that were found, photographed, and documented on different sides of Lisa's body. In addition to the bruises and abrasions on her elbows, she had bruising on her right forearm, left hand, both sides of the hip, both knees, the right leg, and the scalp.

¶ 312 A fall might leave one bruise to the head, but Lisa had bruises on several different places on her scalp. She had a bruise on the left frontal scalp, another on the right frontal scalp, another on the right temporal scalp, and two bruises on the left parietal scalp. The bruising on the left parietal scalp was larger in area than the bruises elsewhere on the scalp, which, by contrast, measured about one centimeter in diameter. This pattern of bruising was consistent with someone's striking or pressing the left side of Lisa's head against the side of the tub, thereby inflicting the larger, parietal bruises, while inflicting the smaller, one-centimeter bruises by the pressure of the assailant's fingers on her head.

¶ 313 Case concluded that the cause of Lisa's death was drowning. She arrived at this diagnosis by exclusion. Gross autopsy and microscopic examination revealed no disease that could have caused her death. There was no evidence of heart disease, or lung disease other than pulmonary edema from inhalation of water. Toxicology revealed no medications that would have caused her to die. She was found in water. Her sinuses had fluid in them. She must have drowned.

¶ 314 Case further opined, from the bruises, that the manner of Lisa's death was homicide. The bruises were fresh—blue and purple. When Case looked at the sections of tissue

under a microscope, the inflammatory cells had not yet converged on the bruises, suggesting that the bruises were inflicted no more than 12 hours before death. Also, the bruises were a sign of a great struggle. Lisa's elbows would have had to strike the smooth, wet sides of the tub with significant force to inflict not only such deep bruises but also abrasions—friction sores—on the elbows.

¶ 315 It was true, Case testified, that people drowned in bathtubs by passing out from seizures, but falling down and having seizures did not give them bruises all over their body. Besides, in Case's opinion, it was implausible that Lisa suffered a seizure from clonazepam withdrawal. If she had been suffering from clonazepam withdrawal, she would have had earlier, preceding symptoms, such as insomnia, irritability, nausea, vomiting, and hallucinations. Seizures would have indicated a very advanced withdrawal.

¶ 316 ZZ. The Testimony of Drew Robertson

¶ 317 Drew Robertson was a teacher at Eisenhower High School. Through his employment, he knew Lisa Cutler. During her last year there, they had the same lunch hour and taught in the same hallway, and he talked with her once or twice a week, either at lunch or on their way to lunch.

¶ 318 On April 25, 2012, Robertson had a conversation with Lisa in a stairwell, as they were on their way back to their classrooms after lunch. The prosecutor asked him:

"Q. And what did she state to you that date?

A. It just kind of started off where she just wanted to kind of chat me up about my divorce. She was particularly interested in whether or not either one or me or my ex-wife cheated on the other one.

Q. Did she make any statements to you about her own marriage?

A. It seemed that she was generally unhappy with her marriage, and she did state to me that she was wanting to get a divorce.

Q. Did you have any conversation with her on this occasion regarding telephones?

A. Yes, I did.

Q. And what did Lisa say to you?

A. She said to me that her phone was hacked into by her husband and that he read some texts between her and another man, and that he accused her of cheating on him."

¶ 319 AAA. A Stipulation Regarding Telephone Records

¶ 320 The parties stipulated as follows.

¶ 321 Lisa Cutler had a Samsung I917 cell phone, and her number was (217) 972-6955. Defendant had an iPhone 4S, and his number was (217) 358-9811. Both numbers were listed on the same AT&T account.

¶ 322 From April 13 to April 26, 2012, Lisa Cutler and Gabriel Munoz called or texted one another 104 times. (The stipulation listed all the times, and the prosecutor read the list to the jury, item by item.) From April 23, 2012, onward, instead of using her Samsung telephone, Lisa communicated with Munoz *via* a TracFone (which, it was explained in other testimony, was a prepaid cell phone service, in which the customer bought a set number of minutes).

¶ 323 BBB. The Testimony of David Posey (Defendant's Expert)

¶ 324 David Posey was a medical doctor and was board-certified in pathology and forensic pathology. He owned a forensic medical consulting firm, the Glenoaks Pathology Medical Group.

¶ 325 He testified he had reviewed the autopsy report; microscopic slides of organs and skin; photographs of the first and second autopsies and of the scene; investigative records, Lisa's medical records dating back to 2008; the records from emergency medical services; the hospital record from the night and morning of the incident; and a report by a toxicologist, Bruce Goldberger.

¶ 326 Posey agreed that Lisa had drowned in the bathtub. He agreed with previous expert testimony that the abrasion on her forehead could have been inflicted during the drowning. He opined that, alternatively, it could have been a resuscitation artifact. He likewise agreed with previous expert testimony that the bruise on her ankle could have been sustained when she was removed from the bathtub. (He testified that some bruising could occur immediately after death. Although there would be no blood pressure, blood was still in the capillaries and would spill if they were ruptured.)

¶ 327 According to Posey, the large bruise on the back of Lisa's head and the abrasions and bruises on her elbows could have been caused by her having a seizure and falling backward in the bathtub. He opined that the other, smaller bruises on her scalp could have been inflicted by the fingers of the emergency medical technician when he manipulated her head so as to intubate her. The remaining bruises on her body could have been inflicted when she was removed from the bathtub.

¶ 328 Posey agreed that Lisa did not become unconscious by overdosing on medication. Even so, he noted that, according to the toxicology report, she had a lower level of clonazepam in her body than would normally be regarded as therapeutic, leading him to raise the possibility that she suffered a withdrawal seizure—which could happen with sudden withdrawals from clonazepam—and that, in her seizure, she lost consciousness and drowned. He disagreed with the

expert testimony that clonazepam continued to break down in the body after death. He insisted it was a reasonable possibility that the subtherapeutic level of clonazepam in Lisa's body caused her to have a seizure, lose consciousness, and strike her elbows on the bottom of the tub and the side of her head on the side of the bathtub when she fell back. Rendered unconscious from the seizure, she would have been unable to save herself from drowning. Because her bruises were mostly on the posterior of her body instead of on the anterior or front of her body and because Posey did not see any offensive injuries on her shoulders, neck, or arms, he could not visualize how an assailant could have forcibly drowned her. Nor could he understand why she would have scratched defendant on his upper arm instead of on the front of his body and his face if he were bending over her and holding her head underwater in the bathtub.

¶ 329 On cross-examination, Posey agreed that Lisa had no natural disease and no history of a seizure disorder. He agreed that seizures from clonazepam withdrawal were rare. (But they were possible, he added.) He agreed that if Lisa had scratched defendant, his DNA would be under her fingernails. He agreed that she had five separate bruises on her head and that those bruises were consistent with pressure from someone's fingers. He agreed that the hemorrhaging inside her right elbow was massive, as shown by the autopsy incision. He agreed there were three additional, less severe bruises on the right elbow. He agreed there was a bruise on the forearm extending around the arm. He agreed there were abrasions and "pretty extensive" bruising on the left elbow. He agreed there were 22 injuries on Lisa, on both the front and back of her body.

¶ 330 When asked whether Lisa would have been standing or sitting in the bathtub when she had the seizure and fell backward, Posey answered that she probably would have been sitting, since, if she had been standing, he would have expected a laceration of the scalp and,

probably, a skull fracture. In a sitting position, she would have fallen back a distance of six inches to 1 1/2 feet, and Posey maintained that this fall backward from a sitting position, into a water-filled bathtub, could have caused the massive hemorrhaging and abrasions to her elbows and the large bruise on the upper left side of her head.

¶ 331 Posey admitted that if Lisa previously had suffered a seizure, she would have known it. He admitted that her medical records contained no indication that she ever suffered a seizure, but he countered that it did not necessarily follow, as a matter of fact, that she never had suffered a seizure—she might have chosen not to tell her doctors. He admitted that, in reviewing her medical records, he came across an entry from 2008 stating that she was admitted to St. Mary's Hospital and that, at the time of the admission, she had a prescription for clonazepam, her blood level of clonazepam was zero, and yet there was no indication she had suffered a seizure. He admitted finding another entry, for March 2011, stating that she had run out of medications, including clonazepam, because she had missed her appointment with Dr. Kavuri and that she was anxious, depressed, and not wanting to get out of bed—but not that she was having any seizures. Although Posey did not know what the therapeutic level of clonazepam was for Lisa, he inferred she was taking a lot of it, since, according to the medical records, she tended to run out of it early. He admitted, however, seeing a note by Dr. Kavuri that defendant had been stealing his wife's clonazepam.

¶ 332 CCC. The Testimony of Bruce Goldberger (Called by the State in Rebuttal)

¶ 333 For over 20 years, Bruce Goldberger had been the director of the forensic toxicology laboratory in the college of medicine at the University of Florida, which served six medical-examiner districts throughout Florida. He also was the medical director of the clinical

toxicology laboratory at the university. He was board-certified in forensic toxicology, in which he had master's and doctoral degrees.

¶ 334 Goldberger had reviewed the autopsy report, including the toxicology report, and he had reviewed records from Lisa Cutler's psychiatrist.

¶ 335 The toxicology report revealed that Lisa had the following medications or byproducts of medications in her body: 5.9 nanograms per milliliter of clonazepam; 258 nanograms per milliliter of flouxetine, otherwise known as Prozac; 166 nanograms per milliliter of norflouxetine, which was the breakdown product of Prozac; and 253 nanograms per milliliter of mirtazapine.

¶ 336 Goldberger opined that those prescription drugs, in such amounts, could not have contributed to Lisa's death. In short, she did not overdose.

¶ 337 The 5.9 nanograms per milliliter of clonazepam, an anti-panic medication, was slightly below the therapeutic level. Drawing any conclusions, however, from that post-mortem level was problematic because clonazepam broke down or degraded in the body after death. Thus, more likely than not, the amount of clonazepam that Lisa had in her body was higher at the time of her death than at the time of her autopsy. Not all drugs degraded, but clonazepam did. Thus, in Goldberger's opinion, the post-mortem concentration of 5.9 nanograms per milliliter could not validly serve as the basis of a theory that Lisa had suffered a clonazepam withdrawal seizure.

¶ 338 There was no evidence that Lisa was, in fact, abruptly withdrawing from clonazepam—she had it in her system; her blood level of clonazepam was not zero—and, besides, Goldberger testified, it would be "very rare" even for someone abruptly withdrawing from clonazepam to suffer a seizure. Because clonazepam persisted for a long time in the body,

withdrawing from it likely would have caused other, preceding symptoms—irritability, nausea, and vomiting—which, in the end, might lead to a seizure. Seizures from clonazepam withdrawal usually did not come out of nowhere, without warning.

¶ 339 In the psychiatric records from Dr. Kavuri, Goldberger found no evidence that Lisa had been overusing or abusing clonazepam or that Dr. Kavuri had overprescribed it.

¶ 340 II. ANALYSIS

¶ 341 A. The State's Motion to Strike Defendant's Brief

¶ 342 The jury trial took place in June 2015, and it lasted eight days. Even our lengthy summary of the trial evidence is not exhaustive, but we have recounted enough of the evidence to impart an understanding of the case. The statement of facts in defendant's brief is one page long. The State moves that we strike defendant's brief on the ground that his statement of facts does not "contain the facts necessary to an understanding of the case." Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018).

¶ 343 Defendant is representing himself in this appeal, as it is his right to do. Nevertheless, Rule 314(h)(6) contains no exemption for *pro se* litigants. See *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). We could strike defendant's brief. See *Gruby v. Department of Public Health*, 2015 IL App (2d) 140790, ¶ 12 ("A party's brief that fails to substantially conform to the pertinent supreme court rules may justifiably be stricken."). Because defendant cites the record in the argument in his brief, we choose not to do so.

¶ 344 B. The Sufficiency of the Evidence

¶ 345 Defendant argues that the evidence is insufficient to support his conviction because his conviction rests on speculation: speculation by the State's experts that the manner of Lisa's death was homicide and that the bruises on her body were consistent with a struggle

against an assailant who was holding her head underwater in the bathtub. Defendant cites *People v. Ehlert*, 211 Ill. 2d 192 (2004), for the proposition that "the relationship between the defendant's criminal agency and the cause of death [may not be] left *** to inference and speculation." *Id.* at 210.

¶ 346 That is indeed what the supreme court said at the cited page of *Ehlert*. A year later, however, the supreme court observed in *People v. Patterson*, 217 Ill. 2d 407, 435 (2005): "[T]his court has consistently held that a conviction may be based solely on circumstantial evidence." See also *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). Circumstantial evidence, by definition, invites the drawing of an inference. "Circumstantial evidence is proof of certain facts and circumstances from which the trier of fact may *infer* other connected facts that human experience dictates usually and reasonably follow." (Emphasis added.) *People v. White*, 2016 IL App (2d) 140479, ¶ 37.

¶ 347 A reasonable inference is different from speculation. To "speculate" is to "form a theory or conjecture about a subject *without firm evidence*." (Emphasis added.) New Oxford American Dictionary 1639 (2001). An inference, by contrast, is a *deduction from evidence*. *Id.* at 869 (definition of "infer").

¶ 348 On the basis of at least six evidentiary facts, the State's expert witnesses inferred that the manner of Lisa's death was homicide. First, she was healthy and had no medical reason to drown in 1 1/2 feet of water. Second, she had bruises on different sides of her body, whereas, if she had suffered a seizure or some other affliction suddenly and naturally depriving her of consciousness, she would have sustained bruises, if any, on only one side of her body when she fell. Third, the bruises on her elbows were extensive and deep, as if, in struggling to raise her head above the water, she had beaten and ground her elbows against the flat, inner surface of the

bathtub with great force. Fourth, the one-centimeter bruises on her scalp were consistent with marks left by fingers, and the larger bruise on the left side of her scalp was consistent with someone's jamming her head violently against the side of the bathtub. Fifth, the bruises on her body were fresh, inflicted 12 hours or less before her death. Sixth, there was no medical record of her seeking medical treatment for traumatic injury during those 12 hours, justifying an inference that she sustained the bruises in a struggle against an assailant who was holding her head underwater in the bathtub.

¶ 349 Thus, the expert opinions that Lisa Cutler died by homicide were not speculation or conjecture. Rather, the State's experts cited known facts and drew logical deductions from those facts. They drew reasonable inferences from the circumstantial evidence. As the supreme court has said:

> "In reviewing the sufficiency of the evidence in a criminal case, our inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. [Citation.] *All reasonable inferences from the evidence must be drawn in favor of the prosecution.* [Citation.] This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. [Citation.] [I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." (Emphasis added and internal quotation marks omitted.) *People v. Hardman*, 2017 IL 121453, ¶ 37.

¶ 350 Granted, defendant's expert, Posey, testified it was possible that Lisa suffered a clonazepam withdrawal seizure that caused her to lose consciousness in the bathtub and drown. But a jury "is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." (Internal quotation marks omitted.) *Wheeler*, 226 Ill. 2d at 117. Just because a defendant can come up with an innocent explanation for what reasonably could be regarded as incriminating physical evidence, it does not follow that the trier of fact has to accept that explanation. When we look at all the evidence in the light most favorable to the prosecution, as we are required to do (*id.* at 114), we accept all the considerations that go against the possibility of a clonazepam withdrawal seizure. As far as the medical records reveal, Lisa never before had a seizure, even when her prescription for clonazepam ran out and she had zero clonazepam in her system. Apparently, she experienced no withdrawal symptoms the night of her death—and most notably in this respect, she had a full stomach and, therefore, one might infer, no nausea. Clonazepam withdrawal seizures are rare, as defendant's own expert, Posey, admitted. A rational trier of fact could reject the clonazepam withdrawal theory as far-fetched for the additional reason that someone in the throes of a seizure who fell backward from a sitting position in the bathtub would not have sustained bruises, some of them quite severe, on different planes of the body.

¶ 351 C. The Alleged Misrepresentations by the Prosecutor That Defendant Lied to, or Misled, the Police

¶ 352 Defendant complains that the prosecutor, in his closing and rebuttal argument, falsely represented to the jury that defendant had lied to the police.

¶ 353 Defense counsel never objected while the prosecutor was making his arguments to the jury; nor did defense counsel raise this issue in his motion for a new trial. To preserve an

issue for appeal, the defense must do two things in the trial court: (1) make a contemporaneous objection and (2) include the issue in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). This issue is forfeited.

¶ 354 D. The Foundation of Expert Testimony

¶ 355 Defendant argues that Nelson, Youmans, Case, and Denton lacked a foundation for their testimony that the manner of Lisa Cutler's death was homicide.

¶ 356 Defendant admits that "defense counsel did not specifically object to the lack of foundation supporting the State's experts' opinions of the manner of death." He states, however, that "these issues should be addressed under the plain error rule" because "[t]his case would not have existed without those tremendously prejudicial opinions."

¶ 357 As we said, to preserve an issue for appeal, a defendant must do two things in the trial court: (1) make a contemporaneous objection and (2) include the issue in a written posttrial motion. *Id.* The doctrine of plain error, however, will avert a forfeiture in either of two circumstances:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

Defendant seems to argue that the evidence was closely balanced and that the expert opinions tipped the scales in the State's favor.

¶ 358 The first step in our plain-error analysis is to decide whether it is clear or obvious that Nelson, Youmans, Case, and Denton lacked a foundation for their testimony that the manner of Lisa's death was homicide. See *id.* Illinois Rule of Evidence 703 provides:

> "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Ill. R. Evid. 703 (eff. Jan. 1, 2011).

¶ 359 In part A of our analysis, we recounted the factual bases for the expert opinions that Lisa died by homicide. Is it clear or obvious that those "facts or data" are *not* "of a type reasonably relied upon by" forensic pathologists "in forming opinions or inferences upon the subject"? *Id.* The answer is no. Therefore, the doctrine of plain error does not avert the forfeiture of this issue. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 360 E. The Use of Section 115-10.2a to Admit Hearsay Statements by Lisa Cutler

¶ 361 The trial court held that section 115-10.2a of the Code (725 ILCS 5/115-10.2a (West 2014) (admissibility of prior statements in domestic violence prosecutions when the witness is unavailable to testify)) authorized the admission of numerous hearsay statements by Lisa Cutler—*e.g.*, that defendant had pushed her and had cursed at her, she was afraid he was going to kill her, he was mean when drunk, and she wanted to divorce him right away and move with the children to California.

¶ 362 On appeal, defendant argues that, for three reasons, section 115-10.2a was invalid authority for the admission of the hearsay statements by Lisa. First, he argues that the Illinois Rules of Evidence have preempted section 115-10.2a. Second, he argues that section 115-10.2a

conflicts with section 115-10.4 (725 ILCS 5/115-10.4 (West 2014)), which, in his view, is the more specifically applicable section of the Code. Third, he argues that section 115-10.2a applies only to living witnesses.

¶ 363 The State contends that those three arguments are forfeited, and we agree. Defendant never made contemporaneous objections on those three grounds, and in his motion for a new trial, his only argument against the use of section 115-10.2a was that "[t]he court improperly determined that this case was a domestic violence prosecution under section 115-10.2a"—a different argument from the arguments he makes now, on appeal. See *Enoch*, 122 Ill. 2d at 186.

¶ 364 F. Alleged Ineffective Assistance in Omitting to Request a Limiting Instruction

¶ 365 Defendant argues that even if Lisa's hearsay statements were admissible, defense counsel rendered ineffective assistance by failing to request a jury instruction limiting the jury's consideration of this evidence to matters other than defendant's propensity to commit crimes or to perform bad acts.

¶ 366 To prevail on a claim of ineffective assistance by counsel, a defendant must establish that (1) counsel's performance fell below an objective standard of professional reasonableness and (2) there is a reasonable probability that, but for counsel's substandard performance, the result of the proceeding would have been different. *People v. Makiel*, 358 Ill. App. 3d 102, 105-06 (2005). "A reasonable probability is a probability sufficient to undermine confidence in the outcome, namely, that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair." (Internal quotation marks omitted.) *Id.* at 106.

¶ 367 Courts "may dispose of an ineffective assistance of counsel claim by proceeding directly to the prejudice prong without addressing counsel's performance." *People v. Hale*, 2013 IL 113140, ¶ 17. Defendant quotes *People v. Lindgren*, 79 Ill. 2d 129, 140 (1980), in which the supreme court held that the erroneous admission of propensity evidence "carries a high risk of prejudice and ordinarily calls for reversal." *Lindgren*, however, is inapposite because the evidence at issue in that case had no purpose other than as propensity evidence. In the present case, by contrast, the State presented Lisa Cutler's hearsay statements not as propensity evidence but as evidence of defendant's animosity toward her and, hence, of his motive to murder her. See Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). The proof of defendant's malice specifically toward Lisa would have eclipsed any consideration of his supposed propensity to commit crime. A generalized propensity theory would have been superfluous; more germanely, he hated Lisa and had threatened to kill her. Therefore, we find no prejudice from the omission of a limiting instruction.

¶ 368 G. The Reliability of Lisa Cutler's Hearsay Statements

¶ 369 Alternatively, defendant argues the trial court should have refused to admit Lisa's hearsay statements because they failed to satisfy the reliability requirement in section 115-10.2a(a) (725 ILCS 5/115-10.2a(a) (West 2014) (the hearsay statement must have "equivalent circumstantial guarantees of trustworthiness")). This argument is forfeited because, in the jury trial, defendant never made contemporaneous objections that the hearsay statements were unreliable, nor did he raise the issue in his motion for a new trial. He had to do both to preserve the issue. See *Enoch*, 122 Ill. 2d at 186.

¶ 370 H. Defendant's Claim That the Trial Court Admitted Irrelevant Evidence on the Issue of Motive

¶ 371 Defendant claims the trial court "erred in admitting as motive evidence a variety of issues of which [his] awareness was not shown, including life insurance policies, alleged infidelity on the part of [his] late wife, and statements by the deceased during the last day of her life indicating a renewed desire to proceed with a divorce." By raising both theories of plain error, *i.e.*, closely balanced evidence and a serious injustice threatening the integrity of the judicial process (*Piatkowski*, 225 Ill. 2d at 565), defendant apparently concedes that he failed to take the steps that normally are necessary to preserve an issue for review (see *Enoch*, 122 Ill. 2d at 186).

¶ 372 We will consider the items of "motive evidence" one at a time, asking the threshold question in plain-error analysis: where there was a clear or obvious error (*Piatkowski*, 225 Ill. 2d at 565).

¶ 373 1. *Life Insurance Policies*

¶ 374 "[A] life insurance policy on the life of the victim payable to a defendant is admissible to show motive only if it first be proved that the defendant knew of the existence of the policy and of his relationship to it." *People v. Parra*, 35 Ill. App. 3d 240, 266 (1975). "[T]he admission of evidence of a life insurance policy must be predicated upon evidence of the defendant's knowledge of its existence, its validity, or believed validity, and that he will benefit therefrom." *People v. Mitchell*, 105 Ill. 2d 1, 10 (1984). Defendant does not contest that, at the time of Lisa's death, he was aware of the life insurance from Allstate, a policy that had been in force for 13 years. He argues, however, there was no evidence that he was aware of the two additional life insurance policies purchased online a few days before Lisa's death, namely, the policy in the amount of $500,000 from Peterson International Underwriters and the policy in the

amount of $200,000 from Mutual of Omaha Insurance Company, both of which named him as the sole beneficiary.

¶ 375 "Knowledge may be, and ordinarily is, proven circumstantially" (*People v. Ortiz*, 196 Ill. 2d 236, 260 (2001)); the defendant's knowledge is "inferred from the surrounding facts and circumstances" (*People v. Monteleone*, 2018 IL App (2d) 170150, ¶ 26). The threshold question in our plain-error review is whether it is clear or obvious (see *Piatkowski*, 225 Ill. 2d at 565) that the State failed to prove any "surrounding facts and circumstances" from which defendant's knowledge of the $700,000 of additional life insurance from Peterson International Underwriters and Mutual of Omaha Insurance Company could be reasonably inferred (*Monteleone*, 2018 IL App (2d) 170150, ¶ 26).

¶ 376 The answer is no. It would be reasonable to infer that defendant was, in fact, the person who created the e-mail account of lisa.cutler@ymail.com and, a few days before drowning Lisa in the bathtub, used the account to impersonate her in applying for the additional $700,000 of insurance on her life. The following facts and circumstances permit such an inference.

¶ 377 The e-mail account of lisa.cutler@ymail.com was created on April 18, 2012, eight days before Lisa's death.

¶ 378 Pool testified that, according to subpoenaed records from Comcast and Yahoo, someone logged in to lisa.cutler@ymail.com on Monday, April 23, 2012, at 11:42 a.m., at the Cutler residence. We learn from Taylor's testimony that this would have been while Lisa was teaching her third-period class at Eisenhower High School. According to school records, Lisa's final day of absence was in February 2012, so she would have been at the school, teaching class, when, on Monday, April 23, 2012, at 11:42 a.m., someone logged in to lisa.cutler@ymail.com at

the Cutler residence. It would be reasonable to infer that defendant, who had been laid off from ADM, was the one who did so.

¶ 379 At 11:49 a.m. on April 23, 2012—seven minutes after the login from the Cutler residence—someone claiming to be "Lisa Cutler" used lisa.cutler@ymail.com to tell Peterson International Underwriters: "I mistakenly filled out the application with your company twice," and requesting confirmation that "my original application which was approved with certification number HLA1200769 is still in good standing."

¶ 380 The applications to Mutual of Omaha Insurance Company, AccuQuote, and Adobe Systems Incorporated (for an EchoSign account) all listed defendant's personal cell phone number as the applicant's telephone number, even though Lisa Cutler had a cell phone of her own.

¶ 381 On Thursday, April 26, 2012, at 9:29 a.m., the day before Lisa's death, someone at Decatur Athletic Club logged in to lisa.cutler@ymail.com. Evidently, this person was not Lisa, considering that, according to the records of Decatur Athletic Club, the last time she entered the club was on April 14, 2012, at 1:43 p.m. Defendant, however, entered the club on April 26, 2012, at 8:42 a.m. (give or take 20 minutes), and, therefore, it would be reasonable to infer that he was the one who logged in to lisa.cutler@ymail.com while at the club.

¶ 382 After Lisa's death, someone, evidently defendant, continued to log in to lisa.cutler@ymail.com from the Cutler residence and Conte's residence.

¶ 383 The day of Lisa's death, defendant texted Marci Ingle about "the secret life insurance Lisa *** had" and invited her to leave her husband and move in with him. Secret to whom? Evidently, not to defendant. Correspondence about the life insurance was in his cell phone. Then it must have been secret to Lisa.

¶ 384 The day of Lisa's death, defendant was in a hurry to cash in. He speedily and avidly filed claims for insurance benefits.

¶ 385 From those facts and circumstances, a trier of fact could reasonably infer that not only did defendant, before Lisa's death, have knowledge of the $700,000 of new, additional insurance on her life, insurance of which he was the sole beneficiary, but a trier of fact could reasonably infer that defendant was, in fact, the "Lisa Cutler" who created and used the e-mail account of lisa.cutler@ymail.com to apply for and buy the insurance.

¶ 386 We acknowledge the innocent explanations that defendant offers in his brief, *e.g.*, Lisa wanted to buy additional insurance on her life because, with defendant's loss of his job, she had become the sole breadwinner; since he, being unemployed, had more free time than she had, she wanted him to obtain the quotes for additional insurance; she gave the insurance companies his cell phone number so they would not interrupt her at school; and depending on how an e-mail account was set up, anyone could access it without entering a password. Nevertheless, the relevance of evidence offered against a defendant in a criminal case does not depend on the impossibility of formulating an innocent explanation for the evidence. Rather, evidence is relevant if it has "*any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." (Emphasis added.) Ill. R. Evid. 401 (eff. Jan. 1, 2011). We are unconvinced it is clear or obvious (see *Piatkowski*, 225 Ill. 2d at 565) that the facts and circumstances we have recounted from the trial are devoid of "any tendency" to make defendant's knowledge of the additional insurance policies more probable than it otherwise would be (Ill. R. Evid. 401 (eff. Jan. 1, 2011)). Therefore, we honor the forfeiture of his challenge to the probative value of the insurance. See *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 387 2. *Lisa's Relationship With Munoz*

¶ 388 Defendant argues that in the absence of evidence that he believed that his wife and Munoz were having an affair, the relationship between her and Munoz—which Munoz himself testified was merely a friendship—lacked relevance.

¶ 389 But when "hacking" into Lisa Cutler's cell phone, defendant would have discovered that they had communicated with one another many times. He was concerned enough to hack her cell phone. He was concerned enough to telephone Munoz. Lisa told Robertson that after hacking her cell phone and reading some texts between her and another man, defendant accused her of cheating on him. So, we cannot say it is clear or obvious (see *Piatkowski*, 225 Ill. 2d at 565) that defendant's discovery of the relationship between Munoz and his wife lacked "*any* tendency" to make it more likely than it otherwise would have been that he had a motive to murder her (emphasis added) (Ill. R. Evid. 401 (eff. Jan. 1, 2011)). Murders have been, and will continue to be, committed out of jealousy, and, again, the relevance of evidence offered against the defendant does not depend on the impossibility of putting a benign construction on the evidence. Defendant's knowledge of the relationship between his wife and Munoz is not obviously irrelevant to the question of motive. Therefore, the doctrine of plain error does not avert the forfeiture of defendant's challenge to this evidence. See *Eppinger*, 2013 IL 114121, ¶ 19.

¶ 390 3. *Statements by Lisa During the Last Day of Her Life Indicating a Renewed Desire to Proceed With a Divorce*

¶ 391 On the day of her death, Lisa Cutler left a telephone message with her attorney, Erickson, telling him she wanted to proceed immediately with the divorce. Defendant argues that this evidence was irrelevant in the absence of evidence that he was aware Lisa wanted to proceed

with the divorce. A fact could have motivated a defendant to commit a crime only if the defendant was aware of the fact. *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 392 Arguably, though, regardless of whether defendant was aware of Lisa's renewed resolve to divorce him, that renewed resolve had some tendency to make it less likely than it otherwise would be that Lisa was the one who bought the additional life insurance. See Ill. R. Evid. 401 (eff. Jan. 1, 2011). It could strike a reasonable trier of fact as implausible that, having resolved to divorce defendant and to move to California and take the children with her, Lisa purchased $700,000 of additional insurance on her life and named defendant as the sole beneficiary. That would have made no sense. Her eagerness to divorce him makes it more likely that he was the one who, posing as her, purchased the additional life insurance—with the intent of murdering her and collecting the proceeds. See *id.* Because the irrelevance of this evidence is not clear or obvious (see *Piatkowski*, 225 Ill. 2d at 565), we honor the forfeiture of defendant's challenge to this evidence (see *Eppinger*, 2013 IL 114121, ¶ 19).

¶ 393 I. Evidence of Uncharged Bad Conduct

¶ 394 Defendant claims it was plain error to admit bad-conduct evidence against him in the form of testimony by six witnesses: Ali Collins, Anquenette Hicks, Jennifer Michel, David Ransdell, Ron Johnson, and Douglas Holeman.

¶ 395 "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith except as provided by sections 115-7.3, 115-7.4, and 115-20 of the Code of Criminal Procedure (725 ILCS 5/115-7.3, 115-7.4, and 115-20 [(West 2014)]). Such evidence may also be admissible for other purposes, such as proof of motive ***." Ill. R. Evid. 404(3)(b) (eff. Jan. 1, 2011).

¶ 396 1. *Ali Collins*

¶ 397 Ali Collins testified that after Lisa Cutler's death, defendant stated to her, Collins, that he hated Lisa. This testimony was relevant to the question of motive. See *id.* Defendant's expressed hatred of Lisa had some tendency to make it more probable than it otherwise would have been that he murdered her. See Ill. R. Evid. 401 (eff. Jan. 1, 2011) (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Thus, it is not clear or obvious that this testimony was inadmissible on the question of motive. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 398 2. *Anquenette Hicks*

¶ 399 Anquenette Hicks testified that, at Lisa's visitation, defendant remarked to Hicks that she was the "hot mom." During visitation for a deceased family member, it is customary to be scrupulously respectful toward the deceased. Flirting with someone during visitation for one's deceased wife could be interpreted as disrespecting the memory of the deceased and, hence, as displaying animosity toward the deceased. So, again, it is not clear or obvious that this testimony was inadmissible on the question of motive. See *id.*

¶ 400 3. *Jennifer Michel*

¶ 401 Jennifer Michel, the office manager at the funeral home, testified that defendant dropped off shabby, unlaundered clothing for his wife to be dressed in for her funeral and that, immediately afterward, he telephoned Michel at the funeral home and told her she was " 'absolutely beautiful and that [her] husband [was] a lucky man.' " Again, it is not clear or obvious that this testimony was inadmissible on the question of motive. See *id.* Custom and morality require respect toward the deceased when making funeral arrangements. These acts of disrespect by defendant toward his deceased wife arguably reveal his animosity toward her.

¶ 402 4. *David Ransdell*

¶ 403 According to David Ransdell's testimony, defendant went to the Republic of Moldova to look for a wife. It is not clear or obvious that this was, in itself, a bad act.

¶ 404 5. *Douglas Holeman and Ron Johnson*

¶ 405 Douglas Holeman testified that before August 2013, the grave site of Lisa Cutler lacked a gravestone. Ron Johnson testified that he arranged for a gravestone to be erected at his own expense. Burying Lisa without a gravestone could be interpreted as disrespect and animosity toward her. Again, it is not clear or obvious that such testimony was inadmissible on the question of motive. See *id.*

¶ 406 Therefore, the doctrine of plain error does not avert the forfeiture of these issues, and we enforce the forfeiture. See *Eppinger*, 2013 IL 114121, ¶ 19.

¶ 407 J. Alleged Prosecutorial Misconduct

¶ 408 Defendant complains that the prosecutor "engage[d] in improper lines of questioning of the medical experts on the ultimate issue in this case, Lisa's Cutler's manner of death." But see Ill. R. Evid. 704 (eff. Jan. 1, 2011) ("Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."). Defendant also complains that in his closing argument, the prosecutor misrepresented evidence, stated his own personal beliefs, and appealed to the jurors' passions.

¶ 409 The State argues these issues are forfeited because defendant never made contemporaneous objections and never reiterated the objections in a posttrial motion. We agree. Both things are necessary to preserve an issue for review (*Enoch*, 122 Ill. 2d at 186), and, with respect to these issues, defendant did neither.

¶ 410 K. The Denial of Defendant's Motion to Bar the New Opinion by Youmans

¶ 411 According to the State's disclosure of September 23, 2013, Youmans would testify to the following effect: " '[C]oncerns arise when looking at [Lisa Cutler's] injuries and the circumstances as to why or how she drowned as a whole. Therefore, non-accidental drowning cannot be ruled out[,] and further investigation may be warranted.[']" On or about June 22, 2015, after the fifth day of the trial, the State made the following amendment to its disclosure: "[Youman's] opinion is the manner of death is inconsistent with an accidental drowning and consistent with a forced drowning." Defendant argues that the State violated Illinois Supreme Court Rule 412(a)(iv) (eff. Mar. 1, 2001) and that the trial court abused its discretion by denying the motion to bar the new opinion by Youmans. See *People v. Chavez*, 327 Ill. App. 3d 18, 32-33 (2001).

¶ 412 "Provided that a defendant can show a violation of the discovery rules, the relevant question becomes whether the defendant was surprised and prejudiced by the violation. [Citation.] Absent a showing by the defendant of resulting surprise and prejudice, the discovery violation does not constitute reversible error." *Id.* Defense counsel argued to the trial court that he was prejudiced by the late disclosure of Youmans's new opinion because in making his opening statement to the jury, he relied on the original disclosure. Specifically, he told the jury: "The pathologist who *** is used in regular cases here," *i.e.*, Youmans, "says, 'I don't know how she drowned.' So, they go and they find a paid pathologist to come up with a theory ***."

¶ 413 But Denton's testimony would have discredited that part of defense counsel's opening statement, anyway. Denton was not a pathologist whom the State "went and found." Rather, he testified he was "a coroner's forensic pathologist *** practicing in [c]entral [I]llinois" and that he "perform[ed] autopsies in Bloomington and Peoria." When the prosecutor asked him

why, on April 27, 2012, he "performed the additional examination [of Lisa Cutler's body] rather than Dr. Youmans," he answered:

> "A. Uh—well, first of all—um—Dr. Youmans was not on that day. It was her day off. Uh—she lives about an hour and 15 minutes away from the facility—um—and the [s]tate [p]olice showed up that morning at that time requesting an additional examination of her body. So, I was the pathologist or doctor there."

The prosecutor asked Denton:

> "Q. Are the injuries observable specifically to the elbows of Lisa Cutler's body consistent or inconsistent with Lisa's forcibly striking against a bathtub *** surface in an attempt to get air while being forcibly held underwater?
>
> A. I would describe them as consistent with that statement.
>
> Q. And do you hold these opinions to a reasonable degree of medical certainty?
>
> A. Yes, I do."

¶ 414 As a practical matter, that opinion is not significantly different from Youmans's opinion that Lisa Cutler's "manner of death [was] consistent with a forced drowning." Granted, Denton did not explicitly opine that the elbow injuries were inconsistent with accidental drowning. Nevertheless, such an additional opinion was all but implied in his opinion that the elbow injuries were "[consistent] with Lisa's forcibly striking against a bathtub *** surface in an attempt to get air while being forcibly held underwater." Therefore, even if the State committed a discovery violation, defense counsel failed to show resulting prejudice. See *id.*

¶ 415 L. *Frye* and Zaferes's Testimony

¶ 416 Defendant argues that the trial court erred by allowing Andrea Zaferes to testify without first determining that her expected testimony was admissible under *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

¶ 417 In Illinois, scientific evidence is admissible only if it satisfies the standard in *Frye*. *In re Commitment of Simons*, 213 Ill. 2d 523, 529 (2004); *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 76-77 (2002) (abrogated on other grounds by *Simons*, 213 Ill. 2d at 530-31). "The *Frye* standard, commonly called the 'general acceptance' test, dictates that scientific evidence is only admissible at trial if the methodology or scientific principle upon which the opinion is based is 'sufficiently established to have gained general acceptance in the particular field in which it belongs.' " *Donaldson*, 199 Ill. 2d at 77 (quoting *Frye*, 293 F. at 1014). Illinois has codified the *Frye* test in the second sentence of Illinois Rule of Evidence 702 (eff. Jan. 1, 2011):

> "Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs."

¶ 418 We review *de novo* the trial court's decision of whether a *Frye* hearing was necessary. *People v. Schuit*, 2016 IL App (1st) 150312, ¶ 78. When a party challenges the admissibility of evidence under the *Frye* test, the threshold question is whether the challenged evidence really is "scientific evidence" within the contemplation of *Frye*. (Internal quotation marks omitted.) *Id.* If an expert's opinion is based solely on the expert's observations and experiences, the opinion is not scientific evidence. *Id.* ¶ 95. "Since opinion testimony does not

have the same aura of infallibility as does testimony which is based on a scientific principle or test, pure opinion testimony does not have the same potential for misleading the jury as does testimony based on a novel scientific methodology." (Internal quotation marks omitted.) *Id.*

¶ 419 Zaferes's testimony was opinion testimony within the meaning of *Schuit*, not testimony that made a deduction from a purportedly scientific principle or test. Her testimony did not project an aura of infallibility. Rather, she had done reenactments of people being removed from bathtubs, and she had investigated, and reviewed documentation regarding, hundreds of drownings. In the trial, she offered opinions on the basis of her own observations, reading, and experience. She "did not rely on a scientific theory [and] then apply [her] observations to that theory." *Id.* ¶ 96. Therefore, *Frye* was inapplicable. See *id.* ¶ 95.

¶ 420 III. CONCLUSION

¶ 421 For the foregoing reasons, we affirm the trial court's judgment, and we award $50 in costs against defendant.

¶ 422 Affirmed.

In the Circuit Court of the 6th Judicial Circuit
Macon County, Illinois

FILED
OCT 16 2015
LOIS A. DURBIN
CIRCUIT CLERK

The People of the State of Illinois,

v.
Chad M Cutler

No 2013-CF-1016

Notice of Appeal
Joining Prior Appeal/ Separate Appeal/ Cross Appeal
(Circle one)

RECEIVED
OCT 21 2015
Office of the State Appellate Defender
Fourth Judicial District

An appeal is taken from an order or judgment described below.

(1) Court to which appeal is taken: 4th Judicial District

1. Name of appellant and address to which notices shall be sent.

2. Name: Chad M Cutler S16948

Address: Menard Correctional Center 711 Kaskaskia St Menard, Illinois 62259

Email:

3. Name and address of appellant's attorney on appeal.

Name: The State Appellate Defender

Address: 400 West Monroe Suite 303 Springfield, Illinois 62705-5240

Email:

If appellant is indigent and has no attorney, does he want one appointed? Yes

4. Date of judgment or order: 10/13/2015
5. Offense of which convicted: CT I Murder/Intent To Kill/Injure
6. Sentence: CT I 45 Years
7. If appeal is not from a conviction, nature of order appealed from: Conviction/Sentence
8. If the appeal is from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state, a copy of the court's findings made in compliance with rule 18 shall be appended to the notice of appeal

(Signed) Lois A Durbin

(May be signed by appellant, attorney for appellant, or clerk of circuit court)

SUPREME COURT OF ILLINOIS

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March 20, 2019

In re: People State of Illinois, respondent, v. Chad M. Cutler, petitioner.
Leave to appeal, Appellate Court, Fourth District.
124512

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 04/24/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

APP-C

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
201 W. MONROE STREET
SPRINGFIELD, IL 62704

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
(217) 782-3528

January 7, 2019

RE: People v. Cutler, Chad M.
General No.: 4-15-0846
Macon County
Case No.: 13CF1016

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Carla Bender
Clerk of the Appellate Court

c: Chad Cutler
David Joseph Robinson
Rosario David Escalera, Jr.

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

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February 04, 2019

FIRST DISTRICT OFFICE
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Chad Cutler
Reg. No. S16948
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Menard, IL 62259

In re: People v. Cutler
124512

Dear Chad Cutler:

This office has timely filed your Petition for Leave to Appeal, styled as set forth above. You are being permitted to proceed as a poor person.

Your motion will be presented to the Court for its consideration, and you will be advised of the Court's action thereon.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
State's Attorney Macon County
State's Attorney's Appellate Prosecutor, Fourth District

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;

The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment 13 - Slavery Abolished. Ratified 12/6/1865.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

Amendment 14 - Citizenship Rights. Ratified 7/9/1868.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment 15 - Race No Bar to Vote. Ratified 2/3/1870.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 2 - Right to Bear Arms. Ratified 12/15/1791.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment 3 - Quartering of Soldiers. Ratified 12/15/1791.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4 - Search and Seizure. Ratified 12/15/1791.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6 - Right to Speedy Trial, Confrontation of Witnesses. Ratified 12/15/1791.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 7 - Trial by Jury in Civil Cases. Ratified 12/15/1791.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 8 - Cruel and Unusual Punishment. Ratified 12/15/1791.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9 - Construction of Constitution. Ratified 12/15/1791.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10 - Powers of the States and People. Ratified 12/15/1791.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 11 - Judicial Limits. Ratified 2/7/1795.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment 12 - Choosing the President, Vice-President. Ratified 6/15/1804.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Held Unconstitutional as Applied by People v. Aikens, Ill.App. 1 Dist., Sep. 12, 2016

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 720. Criminal Offenses
Criminal Code
Act 5. Criminal Code of 2012 (Refs & Annos)
Title III. Specific Offenses
Part B. Offenses Directed Against the Person
Article 9. Homicide (Refs & Annos)

720 ILCS 5/9-1
Formerly cited as IL ST CH 38 ¶ 9-1

5/9-1. First degree murder; death penalties; exceptions; separate hearings; proof; findings; appellate procedures; reversals

Effective: August 14, 2018
Currentness

§ 9-1. First degree murder; death penalties; exceptions; separate hearings; proof; findings; appellate procedures; reversals.

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he 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; or

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or

(3) he is attempting or committing a forcible felony other than second degree murder.

(b) Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if:

(1) the murdered individual was a peace officer or fireman killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was a peace officer or fireman; or

(2) the murdered individual was an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, or the murdered individual was an inmate at such

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institution or facility and was killed on the grounds thereof, or the murdered individual was otherwise present in such institution or facility with the knowledge and approval of the chief administrative officer thereof; or

(3) the defendant has been convicted of murdering two or more individuals under subsection (a) of this Section or under any law of the United States or of any state which is substantially similar to subsection (a) of this Section regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts so long as the deaths were the result of either an intent to kill more than one person or of separate acts which the defendant knew would cause death or create a strong probability of death or great bodily harm to the murdered individual or another; or

(4) the murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance; or

(5) the defendant committed the murder pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder or procured another to commit the murder for money or anything of value; or

(6) the murdered individual was killed in the course of another felony if:

(a) the murdered individual:

(i) was actually killed by the defendant, or

(ii) received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this Code, and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and

(b) in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subdivision (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another; and

(c) the other felony was an inherently violent crime or the attempt to commit an inherently violent crime. In this subparagraph (c), "inherently violent crime" includes, but is not limited to, armed robbery, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, aggravated arson, aggravated stalking, residential burglary, and home invasion; or

(7) the murdered individual was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or

(8) the defendant committed the murder with intent to prevent the murdered individual from testifying or participating in any criminal investigation or prosecution or giving material assistance to the State in any investigation or prosecution, either against the defendant or another; or the defendant committed the murder because the murdered individual was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another; for purposes of this paragraph (8), "participating in any criminal investigation or prosecution" is intended to include those appearing in the proceedings in any capacity such as trial judges, prosecutors, defense attorneys, investigators, witnesses, or jurors; or

(9) the defendant, while committing an offense punishable under Sections 401, 401.1, 401.2, 405, 405.2, 407 or 407.1 or subsection (b) of Section 404 of the Illinois Controlled Substances Act, [1] or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or

(10) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while committing an offense punishable as a felony under Illinois law, or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or

(11) the murder was committed in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom; or

(12) the murdered individual was an emergency medical technician--ambulance, emergency medical technician--intermediate, emergency medical technician--paramedic, ambulance driver, or other medical assistance or first aid personnel, employed by a municipality or other governmental unit, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was an emergency medical technician--ambulance, emergency medical technician--intermediate, emergency medical technician--paramedic, ambulance driver, or other medical assistance or first aid personnel; or

(13) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant counseled, commanded, induced, procured, or caused the intentional killing of the murdered person; or

(14) the murder was intentional and involved the infliction of torture. For the purpose of this Section torture means the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering or agony of the victim; or

(15) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle; or

(16) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or

(17) the murdered individual was a person with a disability and the defendant knew or should have known that the murdered individual was a person with a disability. For purposes of this paragraph (17), "person with a disability" means a person who suffers from a permanent physical or mental impairment resulting from disease, an injury, a functional disorder, or a congenital condition that renders the person incapable of adequately providing for his or her own health or personal care; or

(18) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer; or

(19) the murdered individual was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act of 1986;[2] or

(20) the murdered individual was known by the defendant to be a teacher or other person employed in any school and the teacher or other employee is upon the grounds of a school or grounds adjacent to a school, or is in any part of a building used for school purposes; or

(21) the murder was committed by the defendant in connection with or as a result of the offense of terrorism as defined in Section 29D-14.9 of this Code.

(b-5) Aggravating Factor; Natural Life Imprisonment. A defendant who has been found guilty of first degree murder and who at the time of the commission of the offense had attained the age of 18 years or more may be sentenced to natural life imprisonment if (i) the murdered individual was a physician, physician assistant, psychologist, nurse, or advanced practice registered nurse, (ii) the defendant knew or should have known that the murdered individual was a physician, physician assistant, psychologist, nurse, or advanced practice registered nurse, and (iii) the murdered individual was killed in the course of acting in his or her capacity as a physician, physician assistant, psychologist, nurse, or advanced practice registered nurse, or to prevent him or her from acting in that capacity, or in retaliation for his or her acting in that capacity.

(c) Consideration of factors in Aggravation and Mitigation.

The court shall consider, or shall instruct the jury to consider any aggravating and any mitigating factors which are relevant to the imposition of the death penalty. Aggravating factors may include but need not be limited to those factors set forth in subsection (b). Mitigating factors may include but need not be limited to the following:

(1) the defendant has no significant history of prior criminal activity;

(2) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution;

(3) the murdered individual was a participant in the defendant's homicidal conduct or consented to the homicidal act;

(4) the defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm;

(5) the defendant was not personally present during commission of the act or acts causing death;

(6) the defendant's background includes a history of extreme emotional or physical abuse;

(7) the defendant suffers from a reduced mental capacity.

Provided, however, that an action that does not otherwise mitigate first degree murder cannot qualify as a mitigating factor for first degree murder because of the discovery, knowledge, or disclosure of the victim's sexual orientation as defined in Section 1-103 of the Illinois Human Rights Act.

(d) Separate sentencing hearing.

Where requested by the State, the court shall conduct a separate sentencing proceeding to determine the existence of factors set forth in subsection (b) and to consider any aggravating or mitigating factors as indicated in subsection (c). The proceeding shall be conducted:

(1) before the jury that determined the defendant's guilt; or

(2) before a jury impanelled for the purpose of the proceeding if:

A. the defendant was convicted upon a plea of guilty; or

B. the defendant was convicted after a trial before the court sitting without a jury; or

C. the court for good cause shown discharges the jury that determined the defendant's guilt; or

(3) before the court alone if the defendant waives a jury for the separate proceeding.

(e) Evidence and Argument.

During the proceeding any information relevant to any of the factors set forth in subsection (b) may be presented by either the State or the defendant under the rules governing the admission of evidence at criminal trials. Any information relevant to any additional aggravating factors or any mitigating factors indicated in subsection (c) may be presented by the State or defendant regardless of its admissibility under the rules governing the admission of evidence at criminal trials. The State and the defendant shall be given fair opportunity to rebut any information received at the hearing.

(f) Proof.

The burden of proof of establishing the existence of any of the factors set forth in subsection (b) is on the State and shall not be satisfied unless established beyond a reasonable doubt.

(g) Procedure--Jury.

If at the separate sentencing proceeding the jury finds that none of the factors set forth in subsection (b) exists, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections. [3] If there is a unanimous finding by the jury that one or more of the factors set forth in subsection (b) exist, the jury shall consider aggravating and mitigating factors as instructed by the court and shall determine whether the sentence of death shall be imposed. If the jury determines unanimously, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence, the court shall sentence the defendant to death. If the court does not concur with the jury determination that death is the appropriate sentence, the court shall set forth reasons in writing including what facts or circumstances the court relied upon, along with any relevant documents, that compelled the court to non-concur with the sentence. This document and any attachments shall be part of the record for appellate review. The court shall be bound by the jury's sentencing determination.

If after weighing the factors in aggravation and mitigation, one or more jurors determines that death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

(h) Procedure--No Jury.

In a proceeding before the court alone, if the court finds that none of the factors found in subsection (b) exists, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

If the Court determines that one or more of the factors set forth in subsection (b) exists, the Court shall consider any aggravating and mitigating factors as indicated in subsection (c). If the Court determines, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence, the Court shall sentence the defendant to death.

If the court finds that death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

(h-5) Decertification as a capital case.

In a case in which the defendant has been found guilty of first degree murder by a judge or jury, or a case on remand for resentencing, and the State seeks the death penalty as an appropriate sentence, on the court's own motion or the written motion of the defendant, the court may decertify the case as a death penalty case if the court finds that the only evidence supporting the defendant's conviction is the uncorroborated testimony of an informant witness, as defined in Section 115-21 of the Code of Criminal Procedure of 1963, concerning the confession or admission of the defendant or that the sole evidence against the defendant is a single eyewitness or single accomplice without any other corroborating evidence. If the court decertifies the case as a capital case under either of the grounds set forth above, the court shall issue a written finding. The State may pursue its right to appeal the decertification pursuant to Supreme Court Rule

604(a)(1). If the court does not decertify the case as a capital case, the matter shall proceed to the eligibility phase of the sentencing hearing.

(i) Appellate Procedure.

The conviction and sentence of death shall be subject to automatic review by the Supreme Court. Such review shall be in accordance with rules promulgated by the Supreme Court. The Illinois Supreme Court may overturn the death sentence, and order the imposition of imprisonment under Chapter V of the Unified Code of Corrections if the court finds that the death sentence is fundamentally unjust as applied to the particular case. If the Illinois Supreme Court finds that the death sentence is fundamentally unjust as applied to the particular case, independent of any procedural grounds for relief, the Illinois Supreme Court shall issue a written opinion explaining this finding.

(j) Disposition of reversed death sentence.

In the event that the death penalty in this Act is held to be unconstitutional by the Supreme Court of the United States or of the State of Illinois, any person convicted of first degree murder shall be sentenced by the court to a term of imprisonment under Chapter V of the Unified Code of Corrections.

In the event that any death sentence pursuant to the sentencing provisions of this Section is declared unconstitutional by the Supreme Court of the United States or of the State of Illinois, the court having jurisdiction over a person previously sentenced to death shall cause the defendant to be brought before the court, and the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

(k) Guidelines for seeking the death penalty.

The Attorney General and State's Attorneys Association shall consult on voluntary guidelines for procedures governing whether or not to seek the death penalty. The guidelines do not have the force of law and are only advisory in nature.

Credits

Laws 1961, p. 1983, § 9-1, eff. Jan. 1, 1962. Amended by P.A. 77-2638, § 1, eff. Jan. 1, 1973; P.A. 78-921, § 1, eff. July 1, 1974; P.A. 80-26, § 1, eff. June 21, 1977; P.A. 80-1495, § 17, eff. Jan. 8, 1979; P.A. 82-677, § 1, eff. July 1, 1982; P.A. 82-1025, § 1, eff. Dec. 15, 1982; P.A. 83-1067, § 2, eff. July 1, 1984; P.A. 84-1450, § 2, eff. July 1, 1987; P.A. 85-404, § 1, eff. Jan. 1, 1988; P.A. 86-806, § 1, eff. Jan. 1, 1990; P.A. 86-834, § 1, eff. Sept. 7, 1989; P.A. 86-1012, § 3, eff. July 1, 1990; P.A. 86-1475, Art. 2, § 2-12, eff. Jan. 10, 1991; P.A. 87-525, § 1, eff. Jan. 1, 1992; P.A. 87-921, § 1, eff. Jan. 1, 1993; P.A. 88-176, § 5, eff. Jan. 1, 1994; P.A. 88-433, § 5, eff. Jan. 1, 1994; P.A. 88-670, Art. 2, § 2-64, eff. Dec. 2, 1994; P.A. 88-677, § 20, eff. Dec. 15, 1994; P.A. 88-678, § 10, eff. July 1, 1995; P.A. 89-235, Art. 2, § 2-130, eff. Aug. 4, 1995; P.A. 89-428, Art. 2, § 260, eff. Dec. 13, 1995; P.A. 89-462, Art. 2, § 260, eff. May 29, 1996; P.A. 89-498, Art. 5, § 5-130, eff. June 27, 1996; P.A. 90-213, § 5, eff. Jan. 1, 1998; P.A. 90-651, § 5, eff. Jan. 1, 1999; P.A. 90-668, § 5, eff. Jan. 1, 1999; P.A. 91-357, § 237, eff. July 29, 1999; P.A. 91-434, § 5, eff. Jan. 1, 2000; P.A. 92-854, § 15, eff. Dec. 5, 2002; P.A. 93-605, § 10, eff. Nov. 19, 2003; P.A. 96-710, § 25, eff. Jan. 1, 2010; P.A. 96-1475, § 5, eff. Jan. 1, 2011; P.A. 99-143, § 880, eff. July 27, 2015; P.A. 100-460, § 5, eff. Jan. 1, 2018; P.A. 100-513, § 315, eff. Jan. 1, 2018; P.A. 100-863, § 565, eff. Aug. 14, 2018.

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 9-1.

VALIDITY

<Retroactive application of amendment by P.A. 84-1450, which was effective July 1, 1987, to acts occurring on or after January 1, 1987 has been held unconstitutional as a violation against ex post facto laws by the Illinois Supreme Court in the case of People v. Shumpert, 126 Ill.2d 344, 533 N.E.2d 1106, 128 Ill.Dec. 18 (1989).>

Notes of Decisions (2996)

Footnotes

1 720 ILCS 570/401, 570/401.1, 570/401.2 (repealed), 570/405, 570/405.2, 570/407, 570/407.1 or 570/404.

2 750 ILCS 60/101 et seq.

3 730 ILCS 5/5-1-1 et seq.

720 I.L.C.S. 5/9-1, IL ST CH 720 § 5/9-1

Current through P.A. 101-6 of the 2019 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 725. Criminal Procedure
Act 5. Code of Criminal Procedure of 1963 (Refs & Annos)
Title VI. Proceedings at Trial
Article 115. Trial (Refs & Annos)

725 ILCS 5/115-10.2a

5/115-10.2a. Admissibility of prior statements in domestic violence prosecutions when the witness is unavailable to testify

Effective: January 25, 2013
Currentness

§ 115-10.2a. Admissibility of prior statements in domestic violence prosecutions when the witness is unavailable to testify.

(a) In a domestic violence prosecution, a statement, made by an individual identified in Section 201 of the Illinois Domestic Violence Act of 1986 as a person protected by that Act, that is not specifically covered by any other hearsay exception but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the declarant is identified as unavailable as defined in subsection (c) and if the court determines that:

(1) the statement is offered as evidence of a material fact; and

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of this Section and the interests of justice will best be served by admission of the statement into evidence.

(b) A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement, and the particulars of the statement, including the name and address of the declarant.

(c) Unavailability as a witness includes circumstances in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

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(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of health or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance by process or other reasonable means; or

(6) is a crime victim as defined in Section 3 of the Rights of Crime Victims and Witnesses Act and the failure of the declarant to testify is caused by the defendant's intimidation of the declarant as defined in Section 12-6 of the Criminal Code of 2012.

(d) A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for purpose of preventing the witness from attending or testifying.

(e) Nothing in this Section shall render a prior statement inadmissible for purposes of impeachment because the statement was not recorded or otherwise fails to meet the criteria set forth in this Section.

Credits

Laws 1963, p. 2836, § 115-10.2a, added by P.A. 93-443, § 10, eff. Aug. 5, 2003. Amended by P.A. 97-1150, § 635, eff. Jan. 25, 2013.

Notes of Decisions (9)

725 I.L.C.S. 5/115-10.2a, IL ST CH 725 § 5/115-10.2a
Current through P.A. 101-6 of the 2019 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 725. Criminal Procedure
Act 5. Code of Criminal Procedure of 1963 (Refs & Annos)
Title VI. Proceedings at Trial
Article 115. Trial (Refs & Annos)

725 ILCS 5/115-10.4

5/115-10.4. Admissibility of prior statements when witness is deceased

Effective: June 17, 2005
Currentness

§ 115-10.4. Admissibility of prior statements when witness is deceased.

(a) A statement not specifically covered by any other hearsay exception but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule if the declarant is deceased and if the court determines that:

(1) the statement is offered as evidence of a material fact; and

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of this Section and the interests of justice will best be served by admission of the statement into evidence.

(b) A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement, and the particulars of the statement, including the name of the declarant.

(c) Unavailability as a witness under this Section is limited to the situation in which the declarant is deceased.

(d) Any prior statement that is sought to be admitted under this Section must have been made by the declarant under oath at a trial, hearing, or other proceeding and been subject to cross-examination by the adverse party.

(e) Nothing in this Section shall render a prior statement inadmissible for purposes of impeachment because the statement was not recorded or otherwise fails to meet the criteria set forth in this Section.

Credits

Laws 1963, p. 2836, § 115-10.4, added by P.A. 91-363, § 5, eff. July 30, 1999. Amended by P.A. 94-53, § 5, eff. June 17, 2005.

Notes of Decisions (18)

725 I.L.C.S. 5/115-10.4, IL ST CH 725 § 5/115-10.4
Current through P.A. 101-4 of the 2019 Reg. Sess.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Court Rules
Illinois Rules of Evidence (Refs & Annos)
Article VIII. Hearsay

Evid. Rule 803
Formerly cited as IL ST Evid. Rule 803

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

Currentness

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Reserved. [Present Sense Impressions]

(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including:

(A) a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will; or

(B) a statement of declarant's then existing state of mind, emotion, sensation, or physical condition to prove the state of mind, emotion, sensation, or physical condition of another declarant at that time or at any other time when such state of the other declarant is an issue in the action.

(4) Statements for Purposes of Medical Diagnosis or Treatment. (A) Statements made for purposes of medical treatment, or medical diagnosis in contemplation of treatment, and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment but, subject to Rule 703, not including statements made to a health care provider consulted solely for the purpose of preparing for litigation or obtaining testimony for trial, or (B) in a prosecution for violation of sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of the Criminal Code of 1961 (720 ILCS 5/11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60), or for a violation of the Article 12 statutes in the Criminal Code of 1961 that previously defined the same offenses, statements made by the victim to medical personnel for purposes of medical diagnoses or treatment including descriptions of the cause of symptom, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Records of Regularly Conducted Activity. Except for medical records in criminal cases, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the opposing party shows that the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the opposing party shows that the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, police accident reports and in criminal cases medical records and matters observed by police officers and other law enforcement personnel, or (C) in a civil case or against the State in a criminal case, factual findings from a legally authorized investigation, but not findings containing expressions of opinions or the drawing of conclusions, unless the opposing party shows that the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of Vital Statistics. Facts contained in records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person

West's Smith-Hurd Illinois Compiled Statutes Annotated
Court Rules
Illinois Rules of Evidence (Refs & Annos)
Article VIII. Hearsay

Evid. Rule 804
Formerly cited as IL ST Evid. Rule 804

Rule 804. Hearsay Exceptions; Declarant Unavailable

Currentness

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant-

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony given as a witness (A) at another hearing of the same or a different proceeding, or in an evidence deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, or (B) in a discovery deposition as provided for in Supreme Court Rule 212(a)(5).

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(2) *Statement Under Belief of Impending Death.* In a prosecution for homicide, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of Personal or Family History.*

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Forfeiture by Wrongdoing.* A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Credits

Adopted September 27, 2010, eff. January 1, 2011.

Notes of Decisions (18)

I.L.C.S. Evid. Rule 804, IL R EVID Rule 804
Current with amendments received through 4/1/19

End of Document

United States Code Annotated
Federal Rules of Evidence (Refs & Annos)
Article VIII. Hearsay (Refs & Annos)

Federal Rules of Evidence Rule 803, 28 U.S.C.A.

Rule 803. Exceptions to the Rule Against Hearsay--Regardless of Whether the Declarant Is Available as a Witness

Currentness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) Statement Made for Medical Diagnosis or Treatment. A statement that:

(A) is made for--and is reasonably pertinent to--medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) Recorded Recollection. A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

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(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

POINTS AND AUTHORITIES