2018 IL App (1st) 160125-U

SIXTH DIVISION
November 2, 2018

No. 1-16-0125

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
	)	Circuit Court of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	13 CR 08757 (03)
	)	
AMBER CANNELLA,	)	
	)	
	)	Honorable Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to quash arrest and suppress evidence where officers' warrantless entry and search of defendant's apartment was justified by exigent circumstances; the State met its burden to prove defendant guilty beyond a reasonable doubt of aggravated kidnapping because the evidence showed that defendant secretly confined all three victims against their will while she, or one for whom she was legally accountable, was armed with a firearm; and defendant's trial counsel was not ineffective because none of the purported errors, individually or cumulatively, created a reasonable probability that the jury's decision would have been different; affirmed.

¶ 2 Defendant, Amber Cannella, was charged with, *inter alia*, aggravated kidnapping as a result of an unusual series of incidents that occurred on April 6, 2013, wherein defendant and her then-boyfriend/codefendant, Antonio Perry[1], believed that men who were hired to help them move out of their apartment had stolen money from them, and engaged in self-help to get the money back. Jerry Collins[2], another codefendant and defendant's cousin, also participated in the crimes. After simultaneous, severed jury trials with codefendant Perry, defendant was convicted of three counts of aggravated kidnapping and sentenced to 21 years' imprisonment. Defendant appeals, arguing as follows: (1) the trial court erred in denying defendant's motion to suppress evidence of a handgun where the officers' warrantless search and subsequent discovery of a handgun was not justified by exigent circumstances or any other exception to the warrant requirement; (2) the State failed to prove beyond a reasonable doubt that defendant, or a person for whom she was legally accountable, secretly confined any of the victims or asported one of the victims while armed for the purposes of the offense of aggravated kidnapping; and (3) defendant was denied her constitutional right to effective assistance of counsel and the cumulative effect of counsel's errors substantially prejudiced her defense to the charges. For the reasons that follow, we affirm defendant's convictions.

¶ 3 BACKGROUND

¶ 4 On April 6, 2013, defendant and Perry were moving out of their apartment located at 6120 South Eberhart in Chicago. They hired Ray Scott to help them move and he brought his two nephews, Pierre Scott and Steven Scott, to assist. After Ray, Pierre, and Steven (collectively, the Scotts) moved a few items out of the apartment, some money allegedly went missing. Defendant, Perry, and Collins attempted to get the money back in a variety of ways,

[1] Perry is not a party to this appeal but has his own appeal (No. 1-15-3630) pending in this court. Most of the facts and portions of the analysis are the same for both appeals.

[2] Collins is not a party to this appeal but has his own appeal (No. 1-18-0526) pending in this court.

such as threatening the Scotts with a gun and strip-searching them. On May 3, 2013, defendant, Perry, and Collins were charged by information with, *inter alia*, four counts of aggravated kidnapping, three counts of attempted armed robbery, and three counts of unlawful restraint.

¶ 5 Motion to Quash Arrest, Search, and Seizure

¶ 6 At the outset of this case, defendant and Perry were represented by the same private counsel, Patrick McClurkin. On October 28, 2013, defendant and Perry filed a motion to quash arrest, search, and seizure without a warrant or probable cause, arguing that the 911 call that prompted the officers to arrive at the Eberhart apartment was based on false and deceptive information. The motion stated that the evidence suggested that Ray's wife, Samantha Scott, had made the 911 call at issue, and that she informed the emergency operator that Ray called her and stated that he was being held hostage and was being forced to withdraw money from the bank, but this information was not true because surveillance photos from the bank showed that Perry was not near Ray while they were at the bank. Further, the motion asserted that defendant and Perry were arrested without probable cause and without a showing of exigent circumstances that would have justified the officers' warrantless search of the premises and seizure of a .45-caliber handgun, which the officers found underneath the bathroom rug in defendant's apartment. Collins, who was represented by separate counsel, also filed a motion to quash.

¶ 7 The trial court conducted a hearing on both motions to quash on July 2, 2014. Numerous witnesses testified at the hearing—some of whom were called by McClurkin and some of whom were called by Collins's counsel. McClurkin first called Michael Coley, who testified that on April 6, 2013, he was employed as a branch manager at Chase Bank at 6701 South Stony Island in Chicago. Coley identified several still photos of Perry and Ray in the bank lobby that were taken by the bank's surveillance cameras. Coley estimated that Perry and Ray were 20 to 25 feet

away from one another. McClurkin asked Coley, "[I]s it your opinion that you had no knowledge of anybody in the bank at that time under duress[?]" and Coley responded, "Correct."

¶ 8 Collins's counsel next called Kevon Dobbins, who was 12 years old at the time of the incident. Dobbins testified that on the date at issue, he and Kyou Myles, who was also 12 years old, were with Collins "[t]o help [Perry] move." Collins was the boyfriend of Dobbins's mother. Dobbins testified that he and Myles stayed in the vehicle while Collins went into Perry's apartment. He never went into the apartment. Dobbins further testified that during the 10 minutes that he was sitting outside Perry's apartment, he did not see anything. Dobbins stated that after the police arrived, a female officer spoke to him.

¶ 9 McClurkin then called Barry Savage, who testified that he was an investigator/process server who had worked for McClurkin's firm on approximately 10 previous occasions. Savage stated that he was hired by McClurkin in this case to investigate the layout of defendant's apartment and take photos. Savage testified that he took the photos of the apartment in June 2014, which was the first time he had ever been in that apartment. Savage stated that he did not know what the apartment looked like on April 6, 2013, and thus could not say whether the photos he had taken accurately represented the layout of the apartment on the date at issue. However, Savage did not see any signs of recent remodeling at the apartment. McClurkin then briefly called defendant to testify and she confirmed that the layout described by Savage was the exact same floor plan that existed in her apartment on the date of the incident. Defendant also testified that she had not been to the apartment since then.

¶ 10 Collins's counsel next called Officer Dale Caridine, Jr., and he was adopted as a witness by McClurkin. Officer Caridine testified that on April 6, 2013, he and his partner received a call over the radio that there was a kidnapping in progress at an address on Eberhart Avenue. Officer

Caridine stated that he was told that there were people being held at the Eberhart address while two other men went to the bank to get some money. Officer Caridine testified that while en route to the Eberhart address, he learned that the person who had initially called 911 was the significant other of one of the victims. Officer Caridine stated, "When the phone call came out, it came out that he was being taken to the bank against his will to get out some money, and that there were two people in the house that were being held hostage until they got back." Officer Caridine further acknowledged that at some point he was told that "the victim that was being taken to the bank had in fact, relayed to the 911 caller that he was in no danger and no fear for his safety at that time."

¶ 11 Officer Caridine testified that he and other officers entered the Eberhart property through the rear basement door. The officer stated that all of the officers present entered the home at the same time and through the same door. Officer Caridine testified that they knocked on the door and defendant answered. Then, all the officers "proceeded in through the rear" and "went to the front where everybody else was *** in the main, common area *** to try to find out what was going on." Officer Caridine testified that prior to entering the house, he did not see anyone inside or outside the house who had a weapon or was pointing a weapon at anyone else. When the officers went to the front of the apartment, they found four people, including defendant. Officer Caridine testified that when he first saw these four people, no one was being restrained and there were no weapons or guns pointed at anyone. He stated that no one appeared to be in danger when he first observed them. However, Officer Caridine testified that he could tell something was wrong upon entering the apartment because two of the victims, Pierre and Steven, "refused to make any eye contact with [the officers], and then they were acting as if they were afraid." The officers did not initially place anyone under arrest, but detained everybody until

they found out what was going on. Pierre and Steven would not answer any of the officers' questions. Defendant and Collins told the officers that there was nothing going on and that they were just waiting for their friends to return. Officer Caridine testified that once Perry and Ray returned from the bank, Ray told the officers that Perry and defendant were in the process of moving and that some money went missing. Ray also stated that Collins held the victims at gunpoint while he was ordered to go to the bank with Perry to get money from the ATM. Officer Caridine testified that, at this point, the officers were getting information "a little bit here and a little bit there" and that the officers waited until everyone returned to the apartment "to try and get clarification on what happened." Officer Caridine testified that he came to learn that defendant and Collins stayed at the apartment to hold Pierre and Steven at gunpoint while Perry and Ray went to the bank to retrieve money. Officer Caridine explained that he received this information from the Office of Emergency Management and Communications (OEMC) and from Ray after he returned to the apartment.

¶ 12 Officer Caridine testified that upon entering the apartment, he did not see any guns, knives, or other weapons in anyone's possession. Officer Caridine did not see any guns or other weapons within the reach of the suspects in the apartment, but he and his partner "observe[d], on the table, which was maybe [5] feet from where everyone was standing, [2] clips with [6] rounds each, a box of Remington bullets, live Remington bullets containing 12 bullets, and [3] bags of marijuana." Officer Caridine testified that he first observed the gun parts on the table after everyone returned from the bank. Officer Caridine testified that when Ray returned from the bank, he was "adamant that there was a gun in the house." Officer Caridine testified that Ray had stated that prior to the officers' entry, Collins had been in and out of the bathroom and that that was a place the officers might want to check. Thereafter, Officer Russell "retrieved the weapon

from inside of the bathroom, and then that's when everybody was placed into custody." Officer Caridine clarified that it was not until after the officers spoke with Ray, after the gun was found and the ammunition and cannabis were recovered, that defendant, Perry, and Collins were placed under arrest. Prior to that, everyone had just been detained so that the officers could determine what was going on, but no one was yet placed in handcuffs. When asked if he believed there were exigent circumstances at the time the officers entered the apartment, Officer Caridine responded, "Yes, based on the 911 call. There was someone held at gunpoint, so, yes, there was exigent circumstances." Officer Caridine also testified that the officers entered the apartment with their guns drawn, but holstered their weapons once they believed the area was secure.

¶ 13 Next, Collins's counsel called Sergeant Yolanda Irvin, who testified that on April 6, 2013, she responded to a call at the Eberhart apartment. Sergeant Irvin testified that no one was arrested until 20 to 30 minutes after she arrived on the scene. Sergeant Irvin also testified that she spoke with a "kid" that was sitting in a van parked outside the Eberhart apartment who told her that "he was just waiting on his dad."

¶ 14 Collins's counsel also called Officer Clifford Russell, who stated that on the date at issue he first responded to the apartment on Eberhart, but as he pulled up, he "monitored a flash message and then went to the Chase bank." Upon arriving at the bank, he observed a white work van with two occupants inside. While still at the bank, the two occupants were ordered out of the van by Officer Russell and Officer Paul Major. Officer Russell stated that based on information received from dispatch through OEMC, he knew one of the occupants was the alleged victim and the other was the alleged offender, but he did not know who was who. Officer Russell further testified that "because there were implications that a gun could be involved, both individuals were immediately patted down." The two van occupants were detained, placed in handcuffs, and

taken from the bank to the Eberhart apartment. Officer Russell searched the van, but did not find a gun, restraints, rope, duct tape, or anything that would insinuate a hostage or kidnapping situation. Officer Russell denied seeing defendant outside the apartment when they arrived back there.

¶ 15 Officer Russell testified that once inside the apartment he went into the bathroom while everyone else was in the front living room area. He estimated that the bathroom was approximately 8 to 10 feet from the living room area. Officer Russell testified that while in the bathroom, "after noticing a bulge in the rug that was on the floor, I pulled the rug back and observed a semiautomatic handgun[,]" which he determined was "a .45-caliber Chief's Special, loaded with three live .45-caliber rounds in the magazine." Officer Russell stated that the gun was found before defendant, Perry, and Collins were placed under arrest.

¶ 16 The defense then recalled defendant, who testified that she never opened the backdoor for the officers because she was outside when they arrived. Defendant also testified that the two doors at the rear of the apartment were both open because they were in the process of moving.

¶ 17 In closing, the State argued that exigent circumstances existed because the officers were responding to a call of a person with a gun and hostages and that the officers had probable cause to make the arrests after speaking with everyone involved. Defendant's counsel argued that there were no exigent circumstances because there was no indication that anyone was held against their will.

¶ 18 In its ruling, the court noted that there was no doubt that entry here was made without a warrant, and that it was unclear whether defendant consented to the officers' entry. The court also acknowledged that the 911 caller was not truly anonymous because she was identified as a victim's wife or girlfriend. The court stated that there were two scenes involved here—one at

the Eberhart apartment and one at the Chase Bank parking lot. The court found that the officers properly stopped the van in the parking lot because the information that the officers had received regarding a person held hostage at gunpoint was corroborated. The court also stated that the officers received conflicting information and were investigating a serious crime, and thus a limited investigative detention was justified. Specifically, the court found that Perry's stop in the bank parking lot was "justified based on the anonymous tip, based on corroborative information and predictive information." The court ruled that this was a *Terry* stop and that further investigation was mandated. Turning to the scene at the Eberhart apartment, the court stated that at the time the officers entered the apartment, "this was a limited investigative detention" and there was no doubt that the individuals inside were "seized." The court further stated that the individuals in the apartment were not put under arrest right away and that the investigative detention may have lasted 10 or 15 minutes, which was not unreasonable. The court explained that perhaps a 20 or 25 minute stop of a car might be unreasonable, but that when officers are investigating a potential hostage situation, 15 minutes is not unreasonable. The court further stated that although one of the officers initially had the subjective belief that something was not right when Pierre and Steven would not make eye contact, once Ray was brought to the Eberhart apartment and laid out exactly what occurred, the officers had probable cause to place the individuals under arrest. The court acknowledged that:

> "While there is some inconsistent testimony with regard to whether the gun or a gun was found either before or after the individuals were placed under arrest, I don't believe it's relevant to my determination[] [b]ecause one way or another, I believe once the officers sorted through the information and had reason to believe that the three

> victims were, in fact, held against their presence and one of them was taken from one location to another, I believe there is probable cause to arrest."

The court ultimately denied the motions to quash, stating that it found the stops were reasonable, the seizures were reasonable, and the probable cause was clear at the time that the offenders were actually placed under arrest.

¶ 19 Jury Trial

¶ 20 Defendant's and Perry's cases proceeded to simultaneous trials before two separate juries on August 21, 2015. The State nol-prossed the charges of attempt armed robbery and aggravated unlawful restraint. The State first called Ray Scott, who testified that he was married to Samantha Scott. Ray stated that he was a contractor who rehabbed houses, a landlord, and someone who did side jobs, such as moving. Ray had a white cargo van that he used for work. Ray stated that prior to April 6, 2013, he had moved defendant a couple times and that his nephews Pierre and Steven also helped then as they did on that date. On the date at issue, Ray arrived at the apartment around 8:30 a.m., parked his van in the alley behind defendant's apartment, and he and his nephews entered through a door in a gangway on the side of the building. Ray did not see anyone else in the apartment at that time. Ray and his nephews then took two pieces of a sectional sofa outside to his van and when they returned inside, defendant said that there was some money missing. Ray testified that Perry then came down the hall holding a gun, which he "clicked" or chambered the bullet. Ray stated that defendant then locked the door. Ray further testified that Perry held the gun with a straight outstretched arm and moved it horizontally from side to side while pointing it at Ray and his nephews. Ray stated that Perry told him and his nephews to move into the corner and they complied. Ray testified that defendant stated, "well, they got the money what you do is just search them down [and] strip

them." Ray stated, "He told us to strip and we stripped." No money was found on Ray or his nephews.

¶ 21 Ray testified that Perry then told defendant to call someone, and he could hear defendant saying things like "how long [are you] going to be, where you at, where are you at now, how long are you going to take, what's going on?" Ray testified that Perry told them that he had someone coming over there who knew how to search people and take care of business. Ray stated that defendant suggested that maybe he and his nephews had put the money in the van, so she and Ray went out to the van and searched it. Perry stayed in the basement holding the gun on Ray's nephews. Ray testified that he and defendant searched the van but did not find any money. Then, defendant went back to the basement and Ray stayed outside and called his wife. Ray told his wife that there was a lot going on, that they were "acting strange over here," and that if she did not hear back from him to call the police to the apartment. Ray then went back into the apartment where his nephews still were, but there had been a change in the atmosphere. Ray explained that the situation seemed to have cooled down, but was not totally diffused because Perry still had the gun and would not let his nephews leave. Ray testified that things escalated again when Collins[3] arrived and the door to the apartment was re-locked. Ray stated that Perry gave Collins the gun and Collins tried to click the gun to chamber the bullet, but because a bullet was already chambered, the gun jammed. Collins then handed the gun back to Perry, who unjammed it, and gave it back to Collins. Ray testified that while holding the gun, Collins stated that "somebody is going to tell something up in here." Ray also testified that he heard Collins ask Perry to get him some hangers and some rope. Then, Ray told Perry that if this is just about money that Ray would take Perry to the bank to get some of Ray's money. Ray testified that Perry accepted this offer and they walked out the back door. Ray then drove Perry

[3] Ray did not know Collins's name, but identified him from a photograph.

to the bank in the back of his van. At this point, defendant and Collins remained at the apartment with his nephews. Ray stated that when he and Perry left for the bank, Collins still had the gun.

¶ 22 As Ray and Perry were driving to the bank, Ray hit redial on his phone and called his wife. Ray did not actually talk to his wife during this call but kept his phone in his pocket so that his wife could hear Perry give him directions to the bank. Ray testified that when they got to the Chase Bank that was about one mile from the apartment, he parked the van and walked into the bank, with Perry stalling behind him. Ray testified that he was just buying time and went up to the counter like he was getting money out, even though he was not. Ray stated that his phone was on the call with his wife the whole time, and that once he observed Perry stalling while inside the bank, Ray took his phone out of his pocket and started talking directly to his wife. Ray told his wife that he was at the bank, but to "make sure you get the police over [to] the house." Ray's wife had already called the police. Ray testified that he did not ever intend to give Perry money and that he was just trying to get out of the apartment so that he could get help. At trial, Ray identified numerous photos of him and Perry at the bank.

¶ 23 Ray further stated that he then saw the police coming around the corner, so he and Perry left the bank and entered the van. As they were pulling out of the parking spot, the police arrived and Ray drove straight towards the police. Ray stated that he jumped out of the van at the same time one of the officers exited his vehicle, and the officer pointed his gun at Ray and Perry. Ray testified that he and Perry were detained and taken to the Eberhart apartment. When they got to the apartment, Ray saw his nephews in the corner and observed that they were not talking to the police, so Ray told them to tell the police what was going on. Ray testified that defendant told the police that there was not a gun in the apartment, but another officer found a gun as she was saying this. Ray recognized the recovered gun as the one that had been pointed at him earlier.

¶ 24 On cross-examination, Ray denied that he ever told the officers where to look for the gun and specifically denied telling them to look in the bathroom. Ray testified that he did not see the gun during either of the two prior moves and he never saw defendant handle the gun. Ray also testified that he never asked how much money was missing and he never intended to withdraw money from the bank. Ray confirmed that although he had his cell phone on his person the entire time, he never called 911. He also testified that he never told anyone in the bank that there was illegal activity or unlawful restraint occurring. Ray testified that after he went to the police station, defendant's couch was still in his van and when he asked the officers what to do with it, they told him to do whatever he wanted, so he put the couch in the alley by the police station.

¶ 25 The State next called Officer Caridine, who testified that on April 6, 2013, he and his partner, Officer Gregory Petit, were on routine patrol when they received a call over the radio stating that some people were being held hostage at gunpoint in the basement apartment at 6120 South Eberhart. When the officers arrived at the apartment, there were several other officers already there. Officer Caridine stated that due to the nature of the call, *i.e.*, a person with a gun, the officers drew their weapons and knocked on the basement door. Defendant answered the door and the officers entered the basement unit. Officer Caridine testified that the officers entered through the rear of the apartment and moved down a long hallway, which had bedrooms on one side, until they got to the living room/common area, which was in the front of the apartment. In addition to defendant, Officer Caridine observed three males in the common area—Pierre and Steven were sitting on stools and Collins was standing. Officer Caridine testified that he did not ask any of the individuals any questions, but overheard some of the questions his fellow officers asked and heard some of the responses given by defendant and Collins. Officer Caridine stated that he did not hear Pierre or Steven respond to any questions

and described them as "a little startled" and not making eye contact with the officers. Officer Caridine stated that while at the apartment, Sergeant Gray, who was one of his sergeants in the Third District, arrived with Perry and Ray. Officer Caridine further stated that Ray "was very adamant that there was a weapon in the house," which prompted the officers to search for it. Officer Caridine started his search toward the back bedroom and Officer Petit drew his attention to the coffee table in the common area at the front of the apartment, where there was a box of 10 Remington .45-caliber bullets and 2 magazine clips, with 6 live rounds in each. The bullets and the clips were then recovered by Officer Petit and inventoried. Officer Caridine testified that Officer Russell also recovered a handgun.

¶ 26 On cross-examination, Officer Caridine testified that the officers entered the apartment with their guns drawn but subsequently put their weapons back in their holsters. Officer Caridine further stated that Ray told the officers that they might want to check the bathroom for the gun because "they were coming in and out of the bathroom." Officer Caridine estimated that the distance between where Collins was standing and the bathroom was no more than seven or eight feet. Officer Caridine testified that the gun was not in plain view. When asked if defendant consented to the officers' entry, Officer Caridine stated, "Because of the circumstances of people being held at gunpoint, we had to enter into the unit."

¶ 27 Next, the State called Steven Scott, one of Ray's nephews. Steven testified that he was currently 30 years old and incarcerated in the Illinois Department of Corrections. He was serving time for a 2013 burglary, a 2014 escape from electronic monitoring, and a 2014 possession of a controlled substance. Steven also had a prior felony conviction for manufacture or delivery of a controlled substance. Steven confirmed that Ray was his uncle and that he and his younger brother, Pierre, helped Ray with moving and contracting work. Steven had helped

Ray move defendant before, but Pierre had not. Steven testified that at the beginning of the move, everything was normal until Perry said that some money went missing, went to the back of the apartment, and came out with a "chrome" gun. Steven testified that defendant locked the doors. Steven also stated that it was Ray's idea for them to be strip-searched. Steven, Pierre, and Ray all took their clothes off but no money was found. Steven testified that it was also Ray's suggestion to search the van but that no search was done. Steven stated that no one left the apartment until Ray and Perry went to the bank. Collins came to the apartment, pointed the gun at them, and then Ray and Perry left for the bank. Steven testified that Collins said "if the money [doesn't] come up somebody is going to have to go" and "he liked hurting people." Steven testified that while his uncle and Perry went to the bank, he and Pierre stayed in the apartment while Collins continued to point the gun at them. When asked if they stayed there voluntarily, Steven responded, "They told us we couldn't go nowhere." When asked what happened when the police arrived at the apartment, Steven stated, "she ran to the back and put the gun up, put the gun in the bathroom somewhere, came back out, and she opened the door for the police and the police came in." Steven also testified that there was "cocaine, scale, weed, and everything on the table, baggies."

¶ 28 The State next called Jennifer Barrett, an employee of the Illinois State Police at the Forensic Science Center in Chicago, who testified that she was a forensic scientist specializing in latent finger prints. Defendant's counsel stipulated to Barrett testifying as an expert in the field of latent print examinations. Barrett stated that after examining one pistol, three live cartridges, and one magazine, "There were not any latent prints suitable for comparison on any of these items." On cross-examination, Barrett stated that she could not say with scientific certainty whether defendant ever handled the gun.

¶ 29 Next, the State called Sergeant Charles Gray, who testified that on April 6, 2013, he received a dispatch around 11 a.m., which took him to the bank on 67th and Stony Island. Upon arrival, Sergeant Gray saw a white van with two men inside that was trying to leave the parking lot. He and officers in other squad cars pulled up on the van, drew their weapons, and ordered the men out of the van. Ray was in the driver seat and Perry in the passenger seat. Sergeant Gray testified that upon arriving at defendant's basement apartment, he entered through the back from the alley. He further stated that Pierre, Steven, Perry, defendant and multiple officers were already there. Sergeant Gray brought Ray into the apartment with him. Sergeant Gray testified that he was in the apartment during the officers' search. Sergeant Gray further testified that after speaking with Officer Russell, he went into the bathroom and saw the gun under a rug that Officer Russell had lifted. Sergeant Gray testified that the magazines that were recovered from the coffee table would have fit the gun that was recovered from the bathroom.

¶ 30 On cross-examination, Sergeant Gray stated that both Perry and Ray were searched, but that no weapons were found on their person or in the van. Sergeant Gray testified that he remembered Ray indicated that there was a weapon in the apartment, but he could not recall whether Ray directed Officer Russell to look in the bathroom. Sergeant Gray also could not recall how far away from the people in the common area of the apartment the gun was when it was recovered. Sergeant Gray stated that he did not participate in the search of the apartment because "[a]s a sergeant, I stood by to ensure their safety while they searched." Sergeant Gray confirmed that the gun was not in plain view in the bathroom and was under a rug. Sergeant Gray also stated that he never saw defendant touch or handle the gun.

¶ 31 The State next called Sergeant Yolanda Irvin[4] to testify in its case against codefendant Perry. Because the State did not call this witness in its case against defendant, defendant's jury was excused during this witness.

¶ 32 The next joint witness the State called was Ray's wife, Samantha Scott, who testified that on the morning of April 6, 2013, Ray dropped her off at work and his two nephews were in the car because they often worked with him. Samantha testified that Ray called her approximately 45 minutes later and they had a conversation in which Ray told her what was going on and where he was. Samantha further testified that after a few moments she called his phone but was unable to reach him. Samantha stated that she was very concerned so she called the police. After several attempts to reach him, Ray eventually called Samantha but did not speak to her when she answered the phone. Samantha testified that although Ray was not talking to her, she could hear him talking to somebody and could hear the revving of an engine. Samantha stated that shortly thereafter, Ray got on the phone and told her where he was. Samantha then called the police again immediately. Samantha testified that during these two phone calls to the police, she told them what Ray had told her.

¶ 33 During cross-examination, Samantha admitted that she only heard about, but did not observe, any of the events in question. Samantha stated that Ray indicated that he was at a bank during the second call to her. Samantha confirmed that Ray also indicated to her that he was under some kind of constraint or was doing something against his will and was being held against his will. Samantha testified that she identified herself both times she called the police.

¶ 34 Thereafter, the State rested its case-in-chief. Defendant moved for a directed verdict, which was denied. Defendant rested her case without presenting any evidence. At the State's request and over the defense's objection, the court ordered that the jury be given an instruction

[4] As more fully discussed later in this order, Sergeant Irvin's trial testimony appears in the record on appeal.

regarding the definition of "accountability." Defendant's counsel did not ask that the jury be given a lesser-included offense instruction. After deliberations, the jury found defendant guilty of the aggravated kidnapping of Ray, Pierre, and Steven.

¶ 35 Posttrial Motion and Sentencing

¶ 36 On September 18, 2015, defendant filed a motion for a judgment of acquittal, or in the alternative, a new trial, and filed a supplemental motion on October 22, 2015. Defendant's motions argued the following errors: (1) that a weapon found by an officer incident to an unlawful search and after an exigency dissipates must be suppressed as the fruit of the poisonous tree; (2) the State failed to prove beyond a reasonable doubt that defendant secretly confined the victims within the meaning of the aggravated kidnapping statute; (3) the court erred in denying the motion for a directed verdict; (4) the court erred in granting the State's motion *in limine* that barred defendant's use of Ray's prior felony convictions as impeachment; (5) the State did not prove that defendant had knowledge of the presence of an illegal weapon and that the weapon was in her immediate and exclusive control; (6) the evidence in this case was insufficient to support defendant's convictions under an accountability theory; (7) evidence of other crimes, *modus operandi*, and habit is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes; and (8) the cumulative effect of the errors created a pervasive pattern of unfair prejudice.

¶ 37 On November 10, 2015, the court heard argument on defendant's posttrial motion and ultimately denied the motion. At the hearing, defendant's counsel asserted that the officers conducted an illegal search and seizure after any existing exigent circumstances dissipated, as evidenced by the testimony that the officers re-holstered their guns once they determined that there was no threat to themselves or the victims. The State responded that the officers' conduct

was proper because they were allowed to conduct a protective sweep where they had received information that people were being held against their will at gunpoint.

¶ 38 The court rejected the defense's argument and stated that exigent circumstances justified the officers' actions. Specifically, the court determined that "reason to believe that someone may be in danger inside the premises" created an exigency. The court explained:

> "Not only do we have a *** call made that people are being held against their will, the officers also come across one of the victims in this matter with a co-defendant at a bank, and that offender as well as that victim were brought back to the scene. The officers were -- there were allegations not only through the interview with the witness, but also with the call that people were, as I said, were being held against their will at gunpoint. If that's not an exigent circumstance, I don't know what is."

The court opined that to require an individual officer to obtain a warrant at that point would be unreasonable. The court further stated that it found the officers had a right to sweep the premises to make sure that there were not any other people hiding, especially where there was conflicting information and the officers were not sure who played what role in the events. The court also rejected the defense's contention that there was no possibility that an individual was hiding under the rug in the bathroom and explained that the bathroom was "within one step and arm's reach" from the common area where everyone was located at that time.

¶ 39 The matter proceeded to a sentencing hearing, where the trial court heard evidence in aggravation and mitigation and defendant spoke in allocution. The court sentenced defendant to the statutory minimum of 21 years' incarceration for aggravated kidnapping, which included a 15-year firearm enhancement.

¶ 40 ANALYSIS

¶ 41 Defendant raises the following arguments on appeal: (1) the trial court erred in denying her motion to quash and suppress evidence of a handgun where the officer's search was not justified by exigent circumstances; (2) the State failed to prove beyond a reasonable doubt that defendant, or one for whom she was legally accountable, secretly confined any of the Scotts or asported Ray to the bank while armed for the purposes of aggravated kidnapping; and (3) defendant was denied her constitutional right to effective assistance of counsel and the cumulative effect of counsel's errors prejudiced her defense. We address each issue in turn.

¶ 42 Trial Court's Denial of Motion to Quash

¶ 43 Defendant first asserts that the trial court erred in denying her motion to quash arrest, search, and seizure because the officers' search of the bathroom and subsequent recovery of a handgun were not justified by exigent circumstances. Defendant, in part, argues that any exigency that existed dissipated prior to the officers' search and recovery of the gun. The State responds that defendant has waived this argument because she presented a different legal theory at the hearing on her motion to quash. For clarity, we note that waiver is the voluntary relinquishment of a known right, while forfeiture—which is likely what the State intended to assert—applies to issues that could have been raised but were not. See *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). In this case, defendant has not intentionally relinquished a known right, and thus we use the term "forfeiture." See, *e.g.*, *People v. Williams*, 2015 IL App (1st) 131359, ¶ 14.

¶ 44 Defendant contends that to the extent that the grounds articulated in her pretrial motion to quash and her posttrial motion differed from one another, we should still review this issue because it was substantially raised and addressed by counsel in defendant's posttrial motion. Defendant also points out that the State did not object to defendant arguing the dissipation of exigency at the hearing on her posttrial motion, thus forfeiting its forfeiture argument. "To

preserve an issue for review, a party ordinarily must raise it at trial and in a written posttrial motion." *People v. Cregan*, 2014 IL 113600, ¶ 15 (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). However, "[i]t is not necessary for the defendant's objection to state identical grounds for contesting the issue." *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 27.

¶ 45 We find that defendant did not forfeit this issue on appeal. In defendant's motion to quash, she asserted that she was arrested without probable cause and without exigent circumstances or a reasonable suspicion that a crime was being committed. Specifically, defendant's motion concluded "[t]hat no exigent circumstances existed that justified the warrantless arrest, search[,] and seizure of the [d]efendants." Similarly, in defendant's posttrial motion, she argued that no exigent circumstances existed. Defendant acknowledged that there may have initially been reasonable grounds to believe that there was an emergency, but argued that any exigency dissipated prior to the officers' search and seizure. In both motions, defendant's argument hinged on the assertion that exigent circumstances did not exist at the time the officers conducted a warrantless search of her apartment and recovered the gun. Defendant's argument in her posttrial motion was merely more detailed, and thus such an argument was not forfeited. We now turn to the merits of this issue.

¶ 46 We apply a two-part standard of review when reviewing a ruling on a motion to quash arrest and suppress evidence. *People v. Grant*, 2013 IL 112734, ¶ 12. "While we accord great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence, we review *de novo* the court's ultimate ruling on a motion suppress involving probable cause." *Id.* Further, we may consider evidence presented at defendant's trial and the suppression hearing. *People v. Almond*, 2015 IL 113817, ¶ 54. "Although a defendant initially bears the burden of proof on a motion to suppress, where a

defendant makes a *prima facie* case that the evidence was obtained by an illegal search or seizure, the burden shifts to the State to go forward with evidence countering the defendant's *prima facie* case." *People v. Kowalski*, 2011 IL App (2d) 100237, ¶ 9. A defendant presents a *prima facie* case when she shows that the search was conducted without a warrant. *Id.* Here, it is undisputed that the officers' search was conducted without a warrant, and thus the burden was on the State to present evidence that the search of defendant's bathroom was justified under a recognized exception to the warrant requirement.

¶ 47 The fourth amendment to the United States Constitution ensures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. In Illinois, it is well-recognized that a warrantless search or arrest is *per se* unconstitutional unless one of the following exceptions applies: (1) the search was based on consent; (2) probable cause existed but exigent circumstances made it impractical to obtain a warrant; or (3) the search was conducted incident to arrest. *People v. Franklin*, 2016 IL App (1st) 140059, ¶ 13.

¶ 48 Defendant argues that none of the exceptions to the warrant requirement apply to the officers' search of her bathroom and we address each in turn. First, the consent exception does not apply because the evidence did not establish that defendant consented to the officers' entry into the apartment or their search and seizure. At the hearing on the motion to suppress, Officer Caridine testified that defendant answered the door. Defendant contrarily testified that she was outside when the officers arrived. After the hearing on the motion to suppress, the trial court determined that it was unclear whether defendant consented to the officers' entry, but found that the officers' actions were justified. At trial, when asked if defendant consented to the officers' entry, Officer Caridine stated, "Because of the circumstances of people being held at gunpoint,

we had to enter into the unit." This testimony by Officer Caridine indicates that defendant did not consent to the officers' entry. Similarly, there is no evidence that defendant consented to the officers' subsequent search and seizure, and thus we find the consent exception to the warrant requirement does not apply.

¶ 49 Next, we turn to the exigent circumstances exception. "Factors which have been considered relevant to a determination of exigency include whether: (1) the crime under investigation was recently committed; (2) there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained; (3) a grave offense was involved, particularly a crime of violence; (4) there was reasonable belief that the suspect was armed; (5) the police officers were acting on a clear showing of probable cause; (6) there was a likelihood that the suspect would escape if he was not swiftly apprehended; (7) there was strong reason to believe the suspect was in the premises; and (8) the police entry was made peaceably, albeit nonconsensually." *People v. Williams*, 161 Ill. 2d 1, 26 (1994). Another consideration is whether the evidence would likely disappear without prompt action. *People v. Martin*, 2017 IL App (1st) 143255, ¶ 34. Our primary consideration in determining whether an exigency existed is whether the officers acted reasonably, which is a question we answer by considering the totality of the circumstances that confronted the officers when the entry was made. *Id.*

¶ 50 Defendant concedes that exigent circumstances may have justified the officers' entry into the apartment, but asserts that any exigency that was present did not exist when the officers searched the bathroom. Defendant points out that there were at least seven officers on the scene, and by the time the officer conducted the search of defendant's bathroom, any exigency had dissipated. The State contends that the factors weigh in favor of finding that exigent circumstances existed up until the point the firearm was recovered.

¶ 51 Applying the factors to this case and examining the totality of the officers' actions, we find that exigent circumstances existed at the time the officers entered defendants' apartment and were present until Officer Russell located the handgun from defendant's bathroom. First, the offense at issue had been very recently committed, and, in fact, was still on-going, when the officers received the OEMC dispatches. Second, there was no evidence that the officers deliberately or unjustifiably delayed their investigation. After the hearing on defendant's motion to quash, the trial court determined that the investigative detention of those in defendant's apartment was not unreasonable because it only lasted 10 or 15 minutes. We agree with this assessment where Officer Russell testified that he and the other officers did not know who played what role in the events that led to the 911 call. Officer Caridine similarly testified that everyone was initially detained so that the officers could determine what was going on. Third, kidnapping is certainly a grave crime that connotes violence, especially here, where officers received information that individuals were being held at gunpoint. Fourth, as already stated, the officers received information from dispatch that a suspect was holding individuals at gunpoint, and thus their belief that one of the offenders was armed was reasonable. Further, Officer Caridine testified that Ray was "adamant" that there was a gun present in the apartment. Fifth, the officers were acting on a clear showing of probable cause because Samantha's 911 call, wherein she identified herself, established that some individuals were being held at gunpoint at defendant's apartment and that two others went to a bank to get money. Samantha's call was corroborated when the officers arrived at the bank and found Ray and Perry about to leave the parking lot. Additionally, Officer Caridine testified that he learned that Samantha was the significant other of one of the victims while on the way to defendant's apartment. Sixth, although it is not entirely clear that a suspect might have escaped, it is reasonable to infer that an

escape was possible because defendant and Ray were in a van and could have driven anywhere. Seventh, based on Samantha's 911 call, the officers had strong reason to believe that at least one of the offenders was in defendant's apartment. Officer Caridine testified, "When the phone call came out, it came out that [a victim] was being taken to the bank against his will to get out some money, and that there were two people in the house that were being held hostage until they got back." Eighth, the police entry was made in a mostly peaceable manner, albeit without apparent consent. Officer Caridine testified that the officers knocked on the back door to the apartment and defendant answered. There was no evidence that the officers had to bust down the door or force their way in.

¶ 52 We further look to whether the evidence would likely disappear without prompt action and whether the officers acted reasonably based on the totality of the circumstances that confronted the officers when the entry was made. *Martin*, 2017 IL App (1st) 143255, ¶ 34. Here, we find the officers' actions reasonable in light of the circumstances that they faced. They responded to an OEMC dispatch that relayed the contents of a 911 call from Samantha, an identified individual with personal knowledge of the events in question. Officer Caridine testified that he was made aware that individuals were being held at gunpoint at the Eberhart address and that another individual was being taken to the bank against his will to withdraw money. Officer Caridine testified that when the officers arrived on the scene, Ray insisted that there was a gun in the apartment. Sergeant Gray corroborated this testimony at trial and testified that he recalled that Ray indicated that there was a gun in the apartment.

¶ 53 The trial court determined that the officers' actions were reasonable and that probable cause was clear at the time the offenders were placed under arrest, but stated that there was conflicting testimony regarding whether the gun was found before or after the offenders' arrests.

Officer Russell testified that Ray and Perry were placed in handcuffs when they were detained at the bank. Officer Russell also testified that he found the gun before the offenders were placed under arrest. Officer Caridine testified that defendant and Collins were placed under arrest after the gun was found. Thus, contrary to the trial court's reference to conflicting testimony, the testimony on this point is consistent.

¶ 54 Defendant also asserts that the officers had an opportunity to obtain a warrant before searching the bathroom. However, Officers Russell and Caridine testified consistently with one another that defendant, Perry, and Collins were not yet under arrest at the time the bathroom was searched. Therefore, if the gun had not been found, it is entirely possible that defendant or Collins might have had an opportunity to access the gun and either use or dispose of it. As a result, we find the officers' search of the bathroom was entirely reasonable. At the point they searched the bathroom, the officers had received information that there was a gun used to hold individuals in the apartment against their will. Without a prompt search of the scene, the gun could have been accessed and/or disposed of. As such, the officers' entry and eventual search were justified by exigent circumstances.

¶ 55 Defendant relies on this court's recent decision in *Martin*, 2017 IL App (1st) 143255, as support for her contention that any exigency that existed dissipated prior to the officers' search of the bathroom. The State contends that *Martin* does not support defendant's position. In fact, the State asserts that no case law supports defendant's exigency dissipation theory. In *Martin*, the defendant was convicted of possession of a controlled substance. 2017 IL App (1st) 143255, ¶ 1. On appeal, the defendant argued that the trial court had erroneously denied his motion to suppress the evidence seized during a warrantless search. *Id.* At the hearing on his motion to suppress, an officer testified that while conducting a narcotics surveillance mission, he observed

a man approach the defendant and make a gesture that the defendant acknowledged. *Id.* ¶ 4. The officer testified that the defendant then entered the main doorframe of an apartment building, where the door was slightly ajar. *Id.* The officer observed the defendant stand on the immediate threshold, reach into the door inside of the doorframe, retrieve a blue plastic bag, manipulate it, and then retrieve a smaller unknown item from the blue bag. *Id.* The defendant then placed the bag on top of the door and returned to the man who approached him, where the defendant received money and gave the man an unknown item. *Id.* The officer also observed the defendant give the money to an unknown man who was standing outside the defendant's apartment building. *Id.* At that point, the officer ceased his surveillance and approached the man who received the unknown item from the defendant. *Id.* ¶ 5. The man told the officer that he had only received "one blow" from the defendant and freely gave the officer a red-tinted Ziploc bag containing a white powdery substance. *Id.* The surveilling officer and another officer went to the defendant's apartment building, arrested the defendant, and recovered the blue bag from inside the doorframe. *Id.* The surveilling officer had indicated to the other officer where the blue bag could be found and the other officer "reached above the doorframe on the inside of the door and recovered the blue bag." *Id.*

¶ 56 On appeal, this court noted that the officers engaged in a warrantless entry into the defendant's apartment and sought to determine whether any exception to the warrant requirement applied. *Id.* ¶ 33. The State argued that probable cause and exigent circumstances excused the officers' conduct because the officers believed the unknown man outside of the apartment building knew of their presence and the officers did not know if that man had gone inside the defendant's apartment to destroy the evidence while the officers were speaking with the man to whom the defendant gave the small Ziploc containing the white powder. *Id.* This court rejected

the State's contention and found that no exigent circumstances existed to justify the warrantless entry because "the circumstances indicate that the officers could have obtained a warrant without risk that the evidence would be destroyed." *Id.* ¶ 35. The court explained, "[i]f the destruction of narcotics is the primary motivation for the warrantless entry, the police must have particular reasons to believe that the evidence will be destroyed for exigent circumstances to arise." *Id.* Additionally, the *Martin* court found that the officers could have secured a warrant where "there were already multiple officers on the scene to secure and monitor the residence, and defendant was already detained away from the suspected narcotics." *Id.* ¶ 36.

¶ 57 Here, defendant argues that like in *Martin*, there were multiple officers available to secure the scene, monitor the safety of others, and procure a search warrant. The State responds that *Martin* does not resemble this case because the exigent circumstances that were present here were not present there. Namely, the State points out that the exigency present in this case but not in *Martin*—a corroborated 911 call that individuals were being held against their will and at gunpoint—extended to the recovery of that gun or ensuring that it did not exist so as to quell a danger to the public. We agree with the State and find that *Martin* does not support defendant's contentions. The circumstances of this case differ greatly from *Martin*, where the purported exigency was based on the possible disposal of narcotics. Here, the exigency stemmed from the officers' response to a 911 call that individuals were being held at gunpoint at the Eberhart address. While it is true that multiple officers were on the scene when the search of defendant's bathroom was conducted, we find that this case is not sufficiently analogous to *Martin* because defendant, Perry, and Collins had not yet been placed under arrest at the time the gun was found. Further, *Martin*'s factual scenario, which involved the sale of narcotics and no weapons, simply does not align with the facts of this case, which involved individuals being held against their will

at gunpoint. Defendant asserts that because the officers re-holstered their weapons and did not immediately place anyone under arrest, there was no exigency. We disagree with this logic because an offender can more easily access or dispose of a weapon when he or she is not under arrest. Thus, the fact that the offenders were not yet under arrest or in handcuffs when the officers conducted their search further supports the existence of exigent circumstances.

¶ 58 Affording the requisite deference to the trial court's factual findings (*Grant*, 2013 IL 112734, ¶ 12), we find that the court's decision to deny defendant's motion to quash arrest, search, and seizure was not against the manifest weight of the evidence. We further find that the court's ultimate decision to deny suppression of the gun was proper. Because we determined that the exigent circumstances exception justified the officers' warrantless entry into defendant's apartment and search of the bathroom, we need not address defendant's alternative arguments regarding the search incident to arrest exception or the protective sweep exception.

¶ 59 Sufficiency of the Evidence

¶ 60 Defendant next argues that the State failed to prove beyond a reasonable doubt that defendant, or one for whom she was legally accountable, secretly confined any of the Scotts or asported Ray to the bank while armed for the purposes of aggravated kidnapping. The State prosecuted defendant on four counts of aggravated kidnapping. Three of the counts alleged that defendant knowingly and secretly confined Ray (count 1), Pierre (count 2), and Steven (count 3) against their will (secret confinement kidnapping) and that she committed the offense of kidnapping while armed with a firearm pursuant to section 10-2(a)(6) of the Criminal Code of 2012 (Code) (720 ILCS 5/10-2(a)(6) (West 2012)). The fourth count alleged that defendant "knowingly by force or threat of imminent force carried [Ray] from one place to another with intent secretly to confine [Ray] against his will" (asportation kidnapping) while armed with a

firearm pursuant to section 10-2(a)(6) of the Code. *Id.* The State proceeded with alternate theories of kidnapping as to Ray; thus, the jury convicted defendant of the secret confinement kidnapping of Ray or the asportation kidnapping of Ray, but not both. As a result, defendant was ultimately convicted of three counts of aggravated kidnapping.

¶ 61 "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *People v. Sumler*, 2015 IL App (1st) 123381, ¶ 54. The trier of fact determines witness credibility and the weight to be afforded their testimony, resolves any conflicts in the evidence, and draws reasonable inferences from the evidence. *Id.* As a court of review, we do not substitute our judgment for that of the trier of fact and we must construe all reasonable inferences from the evidence in favor of the prosecution. *Id.* "We will not set aside a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *Id.*

¶ 62 A person commits the offense of secret confinement kidnapping when she knowingly and secretly confines someone against his will (720 ILCS 5/10-1(a)(1) (West 2012)), and commits asportation kidnapping when she by force or threat of imminent force carries someone from one place to another with intent to secretly confine that other person against his will (720 ILCS 5/10-1(a)(2) (West 2012)). A person is guilty of aggravated kidnapping when she commits the felony of kidnapping while armed with a firearm. 720 ILCS 5/10-2(a)(6) (West 2012). To convict a person under an accountability theory, the State must prove beyond a reasonable doubt that the person, either before or during the commission of an offense, and with the intent to promote or facilitate that commission, solicited, aided, abetted, agreed or attempted to aid that other person

in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2012). "When [two] or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts." *Id.*

¶ 63 Defendant argues that the State did not prove that she, or one for whom she was legally accountable, secretly confined Ray, Pierre, and Steven in the apartment (count 1, count 2, and count 3, respectively), or forcibly carried Ray to the bank with the intent to secretly confine him (count 4). Although the statute does not define secret confinement, our supreme court has defined the term "secret" to mean "concealed, hidden, or not made public." *People v. Gonzalez*, 239 Ill. 2d 471, 479 (2011). The term "confinement" has been defined as "the act of imprisoning or restraining someone." *Id.* The secret confinement element of kidnapping may be shown by evidence of the secrecy of the confinement or the secrecy of the location of the confinement. *Id.*

¶ 64 At the outset of this issue, we find it pertinent to emphasize the unusual nature of this case. The facts before us do not represent what one would likely envision as a typical kidnapping. Nonetheless, a close review of the evidence presented at trial, viewed in a light most favorable to the State, results in our determination that a rational trier of fact could have found the State proved defendant guilty of the aggravated kidnapping of Ray, Pierre, and Steven. Additionally, it is worthwhile to note that "in 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." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 65 In order to meet its burden of proving defendant guilty of aggravated secret confinement kidnapping, the State needed only to show that defendant confined Ray, Pierre, and Steven against their will while armed with a firearm. 720 ILCS 5/10-(a)(6) (West 2012). The following evidence presented at trial was sufficient to meet the State's burden. Ray testified that on April 6, 2013, he and his nephews, Pierre and Steven, went to defendant's apartment to help her move, which he had done on previous occasions. Ray testified that after moving two pieces of defendant's sectional sofa out into his van, he and his nephews returned inside and defendant said there was some money missing. Ray stated that he asked what she was talking about, and "[t]hat's when this individual, I don't know his name, but he come down the hallway with a gun inside his hand. [Defendant] goes toward the door. When he come[s] out and clicks the gun, she locks the door." Ray subsequently identified this unnamed individual as codefendant Perry. Ray explained that the gun was loaded and when Perry clicked the gun, he was chambering a bullet. Ray testified that Perry held the gun in his hand, with an outstretched arm, while moving the gun horizontally from side to side and pointing it at Ray and his nephews. Ray testified that at Perry's direction, he and his nephews moved into the corner of the living room because "[Perry] had a gun on us." Ray further testified that when Perry told them to move to the corner, defendant was standing by the door and stated, "[W]ell, they got the money what you do is just search them down[,] strip them." Perry told Ray and his nephews to strip and they complied by taking off all of their clothes. Ray testified that defendant and Perry did not find any money on them besides Ray's own personal money. Ray also testified that after the strip search, Perry kept Ray and his nephews in the corner and directed defendant to call someone. Ray overheard defendant's side of the call and could hear her asking where this person was and when they were going to be at the apartment. Perry then told Ray and his nephews that this person who was

coming over "know[s] how to really search [] people down and take care of some business." Thereafter, defendant and Ray went outside to search his van.

¶ 66 Steven similarly testified that once he, Ray, and Pierre moved the couch out to the van, "[t]hey [said] some money came up missing, and the person in the room cocked the gun back." Steven later identified this person as Perry. Steven testified that Perry, while armed with a chrome gun, shut the door to the apartment and defendant locked the door. Steven testified that he, Ray and Pierre were searched. Contrary to Ray, Steven testified that it was Ray's idea to conduct the strip search. Steven testified that while he removed his clothes, Perry had the gun in his hand.

¶ 67 Defendant makes much of the fact that subsequent to the above events, Ray was able to call his wife on two occasions and eventually inform her that he was at the bank, that he was being held against his will, and that his nephews were being held at gunpoint at the apartment. Defendant asserts that as a result of Ray's ability to communicate with his wife, the State did not meet its burden of showing the element of secret confinement because the Scotts' location was not secret and the fact that they were being confined against their will was not secret. The State responds, and we agree, that a critical flaw in defendant's argument is that the Scotts' actual confinement was secret when the Scotts were first locked inside the apartment at gunpoint and strip-searched.

¶ 68 After review of the above testimony from Ray and Steven, we find that a rational trier of fact could have determined that the State proved the element of secret confinement beyond a reasonable doubt. Although Ray testified that it was defendant's idea for the strip search, and Steven testified that it was Ray's, it is well settled that "[c]onflicting testimony is to be resolved by the trier of fact." *People v. Quintana*, 332 Ill. App. 3d 96, 104 (2002). Further, although

Samantha knew from the outset that Ray, Pierre, and Steven were at defendant's apartment that morning to help move, she was unaware that after returning inside from moving the sectional couch, they were being confined and strip-searched at gunpoint, rendering secret the fact of their confinement. We reiterate that the secret confinement element of kidnapping may be shown by evidence of the secrecy of the confinement *or* the secrecy of the location of the confinement. (Emphasis added.) *Gonzalez*, 239 Ill. 2d at 479. The evidence established that Ray and his nephews were confined against their will, *i.e.* at gunpoint, inside defendant's apartment, specifically in the corner of the living room, and that their confinement was secret, which was sufficient to lead a rational trier of fact to convict defendant of aggravated kidnapping pursuant to section 10-2(a)(6) of the Code. 720 ILCS 5/10-2(a)(6) (West 2012). We note that the evidence also established that the Scotts' confinement against their will subsequently became known to Samantha and eventually the police. However, in Illinois, unlike a number of states[5], there is no durational threshold that the State must prove in order to meet its burden under the applicable kidnapping statute.

¶ 69 Although we have not found another case that factually mirrors the bizarre scenario in this case, "[a] determination of whether the victim has been confined necessarily depends on the circumstances of each case." *Gonzalez*, 239 Ill. 2d at 474. In *Gonzalez*, the defendant went to a hospital where she saw two acquaintances from her neighborhood with their baby. *Id.* at 481. The defendant claimed to be seven or eight months' pregnant but it was later revealed at trial that she could no longer have children. *Id.* at 476. The defendant offered to hold the baby while the

[5] The following states have kidnapping statutes that require that the confinement "interfere substantially" with the victim's freedom: Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Kentucky, Nebraska, North Dakota, Tennessee, Texas, and Washington. 3 W. La Fave, Substantive Criminal Law § 18.1(c), at 16 (2018). The following states require that the confinement be for a "substantial period": Maine, Montana, New Jersey, Pennsylvania, South Dakota, Utah, and Vermont. *Id.* New York's kidnapping statute takes the durational requirement a step further and provides that, "A person is guilty of kidnapping in the first degree when he abducts another person and when he restrains the person abducted for a period of more than twelve hours." N.Y. Penal Law § 135.25 (McKinney 2018).

baby's mother took a phone call and the father completed paperwork. *Id.* After completing the paperwork, the father could not find the defendant or the baby. *Id.* at 474. The father went outside to look and was informed by a stranger that they had seen a woman recently leave with a baby and pointed the father in that direction. *Id.* at 474-75. Upon finding out her baby was missing, the baby's mother called 911 and flagged down a police vehicle she saw on the street. *Id.* at 475. The mother got into a police vehicle to search for the defendant and the baby. *Id.* The police then received a dispatch that a possible suspect had been apprehended at a hospital two blocks away. *Id.* The police drove the mother to the hospital, where they found the defendant and the baby. *Id.* The appellate court reversed the defendant's conviction for kidnapping, finding that "because the baby was in constant public view or awareness the baby was not secretly confined within the meaning of the aggravated kidnapping statute." *Id.* at 478. However, our supreme court reversed the appellate court's finding and affirmed the defendant's conviction. *Id.* at 482. The court stated that "secret confinement can be shown through evidence that the defendant isolated the victim from meaningful contact with the public." *Id.* at 480. The court reasoned that a trier of fact could reasonably have found that the defendant's conduct isolated the baby from meaningful contact with the public because the baby was unable to escape, cry out, or call attention to her confinement. *Id.* at 481.

¶ 70 Here, the State's evidence showed that while the Scotts were held at gunpoint in the apartment and strip-searched, they were not able to escape or call attention to their confinement. Once Perry pulled the gun on the Scotts, it was reasonable to infer that any noncompliance with his directives could result in violence. Simply put, the Scotts were no longer free to act in a manner of their own choosing without risking being shot. It was not until after Ray and defendant went out to search his van that Ray was able to use his cell phone. While it is true, as

defendant points out, that Ray's cell phone was returned to him after he was searched, there is no evidence that defendant or Perry ever knew that Ray used his phone while outside the apartment to call Samantha. Further, there is no evidence that Perry was aware that Ray used his phone to again call Samantha while on their way to the bank. The fact that Ray stayed outside during the first call to Samantha and did not talk directly to her during the second call creates a reasonable inference that his ability to make meaningful contact was curtailed. Ray knew that any action he took risked the safety of his nephews, who were held at gunpoint in the apartment throughout the entirety of the day's events.

¶ 71 Further, we also contrast this case with *People v. Pasch*, 152 Ill. 2d 133 (1992), where the defendant was convicted of, *inter alia*, aggravated kidnapping after he held the victim in her own apartment for 36 hours in a hostage stand-off where the defendant was armed with weapons. *Id.* at 155-56. Prior to the stand-off, the defendant and his landlord got into a heated discussion, defendant chased his landlord into the yard, and then the defendant shot his landlord several times, killing him. *Id.* at 155. Immediately thereafter, the defendant ran next door and struggled with an older woman named Mary Wagner on the porch of her apartment that she shared with her sister, Jean Wiwatowski. *Id.* Wagner was able to escape but the defendant then ran into her and Wiwatowki's apartment carrying weapons while Wiwatowski was still inside. *Id.* After Wagner escaped, she told a neighbor what happened, and officers arrived shortly thereafter because they were responding to a call of shots fired. *Id.* The defendant issued a warning that no one should come into the apartment and shot and killed a plainclothes police officer, and a 36-hour stand-off ensued. *Id.* at 155-56. On appeal, the defendant argued that he was not proved guilty beyond a reasonable doubt of aggravated kidnapping because the State failed to show that he held Wiwatowski secretly throughout the 36-hour stand-off period. *Id.* at 187. The State

argued that Wiwatowski's confinement was secret because "(1) for the entire 36 hours, no one was allowed to rescue her; or (2) for the first 10 minutes of the ordeal, the authorities were not aware that she was inside the apartment with defendant." *Id.* at 188. The court rejected the State's argument, explaining that "the fact no one could rescue her because of the hostage situation did not convert that which was otherwise well known to something that was secretive" and "there is no authority to support the proposition that a confinement is secret until the 'authorities' are notified of it, as long as non-law-enforcement personnel are aware of it." *Id.* The court concluded that the State failed to meet its burden to present evidence beyond a reasonable doubt of secret confinement where the defendant never made an attempt to keep Wiwatowski's presence a secret during his discussions with the police. *Id.* The court also found pertinent that shortly after the defendant entered Wiwatowski's apartment, her sister told a neighbor that Wiwatowski was in the apartment with the defendant. *Id.* Overall, the court found that "many people were quite aware that Wiwatowski was restrained inside the apartment with [the] defendant since he made it well known that he was holding her as a hostage." *Id.* at 187-88.

¶ 72 We find this case distinguishable from *Pasch* because neither defendant nor her codefendants made any attempt to broadcast the fact that they were holding the Scotts at gunpoint in the apartment and the State presented evidence that defendant locked the door of the apartment, creating a reasonable inference that she intended to confine the Scotts and keep them cut off from the public. Additionally, unlike *Pasch* where Wagner saw the defendant enter the apartment that she knew Wiwatowski was inside of, no one in this case was initially aware of the Scotts' confinement in the apartment. Even more damaging to defendant's assertion that *Pasch* supports his position, is the lack of evidence that during the first phone call Ray told his wife that the Scotts were being held against their will. Ray never testified that he told his wife that he and

his nephews were being held against their will. Rather, Ray testified that he told his wife that defendant and Perry were "acting strange over here." We also find convincing the State's argument that this case differs from *Pasch* because it was Ray, *i.e.*, a victim, who eventually called someone who called the police, not defendant or her codefendants. Had defendant, Perry, or Collins contacted the authorities, like the defendant in *Pasch*, then a reasonable inference that the offenders lacked intent to secretly confine may have existed. Further, another important distinction from *Pasch* is that, here, when the officers first arrived at both the bank and the apartment, they were unaware what role each individual played. This case differs significantly from *Pasch*, where the defendant, by his own actions, made it well-known that he was holding Wiwatowski hostage in her own apartment.

¶ 73 In *People v. Calderon*, 393 Ill. App. 3d 1, 3 (2009), a case cited by the State, the victim testified that when he returned to his vehicle after purchasing cigarettes inside the gas station, the defendant, whom he did not know, was sitting in his passenger seat. When the victim told the defendant to get out of the car, the defendant refused and told the victim to get in the car or else the defendant's friends in a nearby car would beat him. *Id.* The victim testified that because he was scared of the defendant, he did as he was told, which included sitting in the car at the gas station for up to two hours and driving the defendant to an apartment because the defendant believed that the victim was in a gang that stole money from him. *Id.* at 4. The victim also testified that he did not try to reenter the gas station or flag anyone down because he was afraid of the defendant's friends in the nearby car. *Id.* On appeal, the defendant argued that the State failed to prove that he secretly confined the victim because they were in the public view while at the gas station and driving in the car, but this court affirmed the jury's finding of secret confinement. *Id.* at 11.

¶ 74 Here, Ray testified that he did not intend to withdraw money from the bank and was only trying to get out of the apartment so that he could get help. Ray's testimony creates a reasonable inference that he only went to the bank and offered to withdraw money because he was afraid for the safety of his nephews, and thus was confined without actually being physically restrained or held at gunpoint. This is similar to *Calderon*, where the victim testified that he did not reach out for help because he was afraid for his safety. Although Ray was able to drive his van to the bank, a public place, a trier of fact could have reasonably found that his decision to go to the bank and act like he was withdrawing money was motivated by a fear for his and his nephews' safety, and thus was evidence of his confinement. Ray's clandestine phone call to Samantha on the way to the bank is further evidence of his secret confinement. As in *Calderon*, merely because Ray was visible on public roadways and in a public place, like a bank, does not render his confinement known to the public.

¶ 75 After viewing the evidence in a light most favorable to the State, we find that a rational trier of fact could have found that the State proved defendant guilty of the aggravated secret confinement kidnapping of Ray, Pierre, and Steven. We note that having determined that the State met its burden to prove defendant guilty beyond a reasonable doubt of the secret confinement kidnapping of Ray, we need not determine whether the State met its burden of proving defendant guilty for the asportation kidnapping of Ray because the jury was presented with alternative theories of guilt, but defendant was only convicted of one count of aggravated kidnapping.

¶ 76 Alternatively, defendant argues that if this court finds that secret confinement or asportation occurred, we should nonetheless reverse because any such action was incidental to a robbery, specifically an attempted armed robbery, under the *Levy-Lombardi* doctrine. In general,

the *Levy-Lombardi* doctrine provides that "a defendant cannot be convicted of kidnapping where the asportation or confinement of the victim was merely incidental to another crime, such as robbery, rape[,] or murder." *People v. Eyler*, 133 Ill. 2d 173, 199 (1989). In this case, the only question is whether the confinement was incidental because we have already determined that the State met its burden to prove defendant guilty of aggravated secret confinement kidnapping. The State asserts the doctrine is inapplicable because the kidnapping here was not incidental to another offense where defendant and her codefendants secretly confined the Scotts and evidenced an intent to prolong the secret confinement.

¶ 77 "To determine whether [a] *** detention rises to the level of kidnapping as a separate offense, this court considers the following four factors: (1) the duration of the *** detention; (2) whether the *** detention occurred during the commission of a separate offense; (3) whether the *** detention that occurred is inherent in the separate offense; and (4) whether the *** detention caused a significant danger to the victim independent of that posed by the separate offense." *Sumler*, 2015 IL App (1st) 123381, ¶ 56. We make this determination based on the facts and circumstances of each case. *Id.*

¶ 78 Applying these factors to the present case, we conclude that the aggravated secret confinement kidnapping of Ray, Pierre, and Steven was not merely incidental to the offense of robbery. First, the Scotts were held at gunpoint and strip-searched in a locked apartment. No one testified to the exact length of time they were confined in the apartment, but Ray testified that he arrived at defendant's apartment around 8:30 a.m. Ray further testified that he and his nephews only moved two items out to the van before defendant informed them that some money was missing and locked them inside. Sergeant Gray testified that he received the dispatch that directed him to the Chase bank on 67th and Stony Island around 11 a.m. Thus, a number of

hours elapsed between when the Scotts first arrived at the apartment and when the police received dispatches to respond to the bank. Ray's testimony that they only moved two pieces of the couch before they were confined at gunpoint indicates that not much time had elapsed before the kidnapping began. We note that Ray's detention could be considered intermittent given that he was able to remain outside alone after searching the van. However, Ray was again confined in the apartment after Collins arrived when Collins motioned to him to come back inside and re-locked the door. Also, as previously explained, although Ray drove to the bank, he was confined by the threat of violence to his nephews who were being held at gunpoint throughout the time he went to the bank. Additionally, the evidence established that Pierre and Steven remained in the same corner at gunpoint throughout the entirety of events until police arrived. Thus, we do not consider the confinement here brief. Second, the detention or confinement was not part of a separate offense because, as we have already found, the State presented sufficient evidence to show that defendant secretly confined Ray, Pierre, and Steven. It is well-settled that secret confinement is the gist of kidnapping. *People v. Banks*, 344 Ill. App. 3d 590, 593 (2003). Defendant further evidenced an intent to prolong the secret confinement when she called Collins and asked when he would be arriving and how much longer he would be. Perry indicated the same intent to prolong when he informed Ray that defendant was calling someone who knew how to search people and take care of business. Once Collins arrived, he asked Perry for some hangers and rope. Although no hangers or rope were ever produced, Collins's request manifested his intent to continue the secret confinement of the Scotts. Third, secret confinement is not an element of attempted armed robbery. A person commits attempted armed robbery when, with the intent to commit armed robbery—*i.e.*, the knowing taking of property from the person or presence of another by the use of force or threat of imminent force—she takes a

substantial step toward the commission of that offense. 720 ILCS 5/8-4 (West 2012); 720 ILCS 5/18-2 (West 2012). Although some form of detention may arguably be inherent in some instances of attempted armed robbery, it is clear from the attempted armed robbery statute that secret confinement is not inherent in every instance of that crime, as it is in every kidnapping. Fourth, the secret confinement kidnapping at issue here exposed the Scotts to a firearm. Additionally, the circumstances of the kidnapping seemed to be escalating until Ray suggested going to the bank. Specifically, we find significant that defendant and Perry requested Collins's assistance to prolong the detention and further search the Scotts, and that Perry requested hangers and rope to presumably prolong the detention. Having considered all the necessary factors, we conclude that defendant's aggravated kidnapping conviction was not merely incidental to an attempted armed robbery.

¶ 79 Ineffective Assistance of Trial Counsel

¶ 80 Defendant argues that she was denied her constitutional right to the effective assistance of trial counsel in the following ways: (1) trial counsel failed to present crucial exculpatory and/or impeaching evidence in support of her defense, namely, Perry's statement to Sergeant Irvin; (2) trial counsel failed to move *in limine*, object, or seek to strike testimony evincing other crimes, specifically that drugs were found in the apartment; and (3) trial counsel failed to request a lesser-included offense instruction, which would have been proper given that defendant never handled the gun and played a limited role in the crime. Defendant further argues that the cumulative effect of trial counsel's errors warrants a new trial. The State contends that each of these examples amounted to trial tactics and defendant's counsel provided a vigorous defense.

¶ 81 In order to prevail on an ineffective assistance of counsel claim, defendant must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under the

Strickland test, a defendant must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. *Id*.; *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 52. A claim of ineffective assistance cannot be established if either of the two prongs is not met. *Johnson*, 2015 IL App (1st) 123249, ¶ 52. "Counsel's decision whether to call certain witnesses on a defendant's behalf is a matter of trial strategy and is generally immune from claims of ineffective assistance unless counsel abandoned his role as an adversary." *Id.*

¶ 82 First, we address defendant's contention that counsel was ineffective by failing to call Sergeant Yolanda Irvin and Kevon Dobbins at trial. Sergeant Irvin was not called as a witness in defendant's trial but her testimony in codefendant Perry's trial appears in the record before us because defendant and codefendant Perry were tried simultaneously by separate juries. During Perry's trial, Sergeant Irvin testified that on April 6, 2013, she walked by Perry while he was being processed at the Third District police station and he called out, " 'White shirt[,]' " which is used by people when referring to a higher ranking member of the police force because all supervisors above the rank of police officer wear white shirts. Sergeant Irvin further testified that Perry asked her if he could get a break or if they could make a deal. Sergeant Irvin testified that in reference to defendant, Perry stated, "he would take the whole blame, that she did nothing, she's the mother of his son and basically that everything -- we could put everything on him instead of her because she didn't do anything." It is this specific statement that defendant contends should have been presented to her jury.

¶ 83 In order to show that counsel's performance prejudiced defendant, she must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (Internal quotation marks omitted). *People v. Williams*,

2017 IL App (1st) 152021, ¶ 36. We find that defendant's ineffective assistance claim fails on this issue because defendant cannot show that she was prejudiced by her counsel's decision not to call Sergeant Irvin. "If an ineffective assistance claim can be disposed of on the ground of insufficient prejudice, then that course should be taken, and the court does not need to consider the quality of the attorney's performance." *Id.* Based on the contents of Sergeant Irvin's testimony and because the evidence presented at trial clearly established that defendant locked the door and participated in the strip-search of the Scotts while they were being held at gunpoint, we find the omission of Sergeant Irvin's testimony would not have changed the outcome. We agree with the State's contention that Sergeant Irvin's testimony did not exculpate defendant. When viewed in context, it is clear that Perry made the statement to Sergeant Irvin that defendant was not involved in the crime while attempting to secure a deal from Sergeant Irvin. Additionally, Perry's willingness to take the whole blame merely indicates that he was willing to be punished for both his and defendant's involvement. Further, as already stated, the evidence at trial clearly established defendant's participation in the kidnapping because there was uncontroverted testimony that she locked the door and participated in the strip-search of the Scotts. As a result, we find that counsel's decision not to call Sergeant Irvin did not prejudice defendant.

¶ 84 We similarly find that counsel's decision not to call Dobbins did not prejudice defendant because his testimony would not have changed the outcome of the trial. Dobbins testified that he was 12 years old on April 6, 2013, and on that date, he and Kyou Myles, who was also 12 years old, were with Collins "[t]o help [Perry] move." Dobbins testified that he and Myles stayed in the vehicle while Collins went into Perry's apartment. Dobbins further testified that he did not see anything during the 10 minutes that he was sitting outside Perry's apartment. Dobbins stated

that after the police arrived, a female officer spoke to him. On cross-examination, Dobbins testified that he never went into the apartment and that Collins was his mother's boyfriend.

¶ 85 Defendant argues that Dobbins's testimony that he was there to help move corroborates defendant's defense that she had no plan to confine or rob the Scotts and refuted the State's theory that there was a premeditated plan by defendant and her codefendants. We find this argument unconvincing for the same reasons we rejected defendant's argument regarding Sergeant Irvin—the evidence presented by the State proved defendant guilty of secret confinement kidnapping beyond a reasonable doubt. The State's evidence showed that defendant locked the door and participated in the strip search while the Scotts were held at gunpoint. Additionally, Dobbins's testimony merely established that he did not see anything while parked outside defendant's apartment. He did not witness the events inside the apartment and did not indicate that he had any personal knowledge of whether defendant and her codefendants planned any part of this crime. Further, we note that in order to hold defendant liable under an accountability theory, the State must prove beyond a reasonable doubt that the person, *either before or during the commission of an offense*, and with the intent to promote or facilitate that commission, solicited, aided, abetted, agreed or attempted to aid that other person in the planning or commission of the offense. (Emphasis added.) 720 ILCS 5/5-2(c) (West 2012). Thus, the State could have met (and, in fact, did meet) its burden under accountability theory by showing that defendant acted *during* the commission of the kidnapping. The State was not required to prove an element of premeditation, and thus we do not find that defendant was prejudiced by the omission of Dobbins from her trial because there is not a reasonable probability that the jury's decision would have changed had they heard from Dobbins.

¶ 86 Defendant's second claim of ineffective assistance of counsel stems from her trial counsel's failure to move *in limine*, or otherwise properly object to or strike other crimes evidence. Specifically, defendant argues that although the trial court sustained defense counsel's objection to Sergeant Gray's testimony that he learned there were narcotics found in defendant's apartment, trial counsel nonetheless erred because the jury was not instructed to disregard Gray's testimony. Again, we find that even assuming that counsel erred by not seeking to have the jury so instructed, defendant did not suffer prejudice because there is no reasonable probability that the jury's decision would have changed. We agree with the State that defendant's contention that the jury found defendant guilty because drugs and paraphernalia were found in her apartment is pure speculation. The record does not indicate any reason why the jury would have convicted defendant of kidnapping due to the presence of drugs in her apartment. Additionally, there was no evidence presented that the drugs were, in fact, defendant's because the State's evidence established that both defendant and Perry lived in the Eberhart apartment and no one testified as to the drugs' ownership. As a result, we find that defendant's second claim of ineffective assistance fails.

¶ 87 Third, defendant argues that her trial counsel was ineffective for failing to request that the court provide the lesser-included offense jury instructions for aggravated unlawful restraint and unlawful restraint. The State acknowledges that aggravated unlawful restraint and unlawful restraint are lesser-included offenses of aggravated kidnapping (*People v. Frampton*, 248 Ill. App. 3d 238, 247 (1993)), but argues that a lesser-included offense instruction would have been inconsistent with the defense's all-or-nothing theory of the case that defendant was innocent and that Ray invented the kidnapping to cover his theft of Perry's money.

¶ 88 It is well-settled that "the decision to pursue an all-or-nothing defense is a 'valid trial strategy.' " *People v. Jackson*, 2018 IL App (1st) 150487, ¶ 29 (quoting *People v. Walton*, 378 Ill. App. 3d 580, 589 (2007)). Merely because an all-or-nothing strategy was not successful does not mean that counsel performed unreasonably and rendered ineffective assistance. *Id.* An all-or-nothing strategy will be deemed unreasonable only if: (1) it was based on counsel's misapprehension of the law, or (2) it was the functional equivalent of withdrawing a lesser-included offense instruction. *Id.*

¶ 89 Here, in closing argument, defense counsel told the jury that defendant was innocent and that the Scotts, primarily Ray, actually intended to rob Perry on the date at issue because they had moved defendant on previous occasions and knew that she or Perry would have money. We find that neither of the two criteria for finding an all-or-nothing strategy unreasonable apply here. As to the first, defendant has not argued that trial counsel's strategy resulted from a misunderstanding of the law. As to the second, defendant also has not argued that counsel abandoned the lesser-included offense instruction and there is no evidence that defendant or her counsel ever contemplated seeking a lesser-included offense instruction. It appears that the defense's theory of the case was always defendant's innocence. The defense's strategy to pursue an all-or-nothing defense was entirely reasonable given that "if a defendant chooses to submit a lesser-included offense instruction, [s]he is acknowledging, indeed arguing, that the evidence is such that a rational jury could convict [her] of the lesser-included offense, and [s]he is exposing [herself] to potential criminal liability, which [s]he otherwise might avoid if neither the trial judge nor the prosecutor seeks the pertinent instruction." *People v. Medina*, 221 Ill. 2d 394, 405 (2006). We find, therefore, that the defense's decision to only seek acquittal was not unreasonable and did not amount to ineffective assistance of counsel.

¶ 90 Finally, defendant contends that the cumulative effect of counsel's errors warrants a new trial. In addition to finding that none of the foregoing three bases individually created a reasonable probability that the jury's decision would have been different, we find that when viewed together these possible errors did not cumulatively prejudice defendant. The State's evidence showed that defendant secretly confined Ray, Pierre, and Steven against their will while she, or one for whom she was legally accountable, was armed with a firearm. We find that the State's evidence would not have been overcome or cast in a light of reasonable doubt had all three alleged errors not occurred. As a result, we find that defendant was not denied her right to effective assistance of counsel.

¶ 91 CONCLUSION

¶ 92 Based on the foregoing, we find that the trial court properly denied defendant's motion to quash arrest, search, and seizure, that the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of three counts of aggravated kidnapping, and that defendant's trial counsel did not render ineffective assistance.

¶ 93 Affirmed.