No. 130988

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, First District,
Plaintiff-Appellee,	)	No. 1-21-1175
	)	
	)	There on Appeal from the Circuit
	)	Court of Cook County, Illinois,
v.	)	Criminal Division,
	)	No. 15 CR 9154
	)	
SIDNEY BUTLER,	)	The Honorable
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
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NATURE OF THE CASE

Following a jury trial, the circuit court convicted defendant of aggravated criminal sexual assault, aggravated criminal sexual abuse, and predatory criminal sexual assault of a child and sentenced him to 21 years in prison. The Illinois Appellate Court affirmed that judgment, and defendant appeals. No question is raised concerning the charging instrument.

ISSUES PRESENTED FOR REVIEW

At trial, the People called the victim, K.P., to the stand, and she testified that she could recall neither the incidents of abuse nor statements she had made implicating defendant during an interview at a Child Advocacy Center, a recording of which was admitted pursuant to 725 ILCS 5/115-10(b). The issues presented are:

1. Whether defendant's constitutional right to confront K.P. was satisfied where she willingly answered the questions posed to her on cross examination.

2. Whether K.P. "testifie[d]" for purposes of 725 ILCS 5/115-10(b)(2)(A) where the prosecution called her to the stand and she testified on direct examination that she could not recall the incidents of abuse or her prior out-of-court statement.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court allowed leave to appeal on November 27, 2024.

STATEMENT OF FACTS

In 2015, defendant was charged with ten counts relating to the sexual abuse of his sister, K.P., between 2010 and 2013. C36-48.[1]

A. The circuit court held that K.P.'s recorded statement would be admissible if she testified at trial.

Prior to trial, the People moved pursuant to 725 ILCS 5/115-10 to admit a recorded interview of K.P., conducted on November 10, 2014, when she was nine years old. C100-02. The circuit court held a hearing to assess whether "the time, content, and circumstances of the statement provide[d] sufficient safeguards of reliability," 725 ILCS 5/115-10(b)(1).

Alison Alstott testified that she worked as a forensic interviewer supervisor at the Chicago Child Advocacy Center (CAC). R73-74. She explained that forensic interviewers follow established guidelines to ensure that questioning is open-ended and not suggestive. R75. She interviewed K.P. in accordance with these protocols for non-suggestive questioning. R77-79. The recording of the CAC interview was admitted as Exhibit 1. R80, 83.

By stipulation, defendant introduced a written statement by Roland Pierce, K.P.'s father, who was in prison for beating K.P., about the

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[1] "C_," "R_," "Def. Br.," and "A_" refer, respectively, to the common law record, report of proceedings, defendant's opening brief, and the appendix to that brief.

circumstances of that beating. R160-61, 183-84. Based on Pierce's admissions in that statement, defense counsel argued that K.P.'s recorded statement was unreliable because it followed two days of physical abuse by Pierce and was not spontaneous. R196-97.

The circuit court deemed the statement reliable and ruled that it would be admissible at trial if K.P. testified. R199-201; *see* 725 ILCS 5/115-10(b)(2)(A).

B. The jury convicted petitioner after K.P. was called to testify and her recorded statement was admitted.

In opening statements, the prosecutor conceded that he was uncertain how K.P. would testify but explained that the jury would review both her testimony and a recorded statement made when she was nine years old, in which she described sexual abuse by defendant. R508-10. Defense counsel argued that K.P.'s recorded statement was unreliable because it followed a vicious beating at the hands of her father. R511-14.

The People called K.P. as their first witness. R514-15. She testified to her name and that she was thirteen years old and in the seventh grade. R515-16. She stopped responding when asked the names of her parents and siblings, and the jury was removed from the courtroom. R516-17. The prosecutor told the court,

> Judge, I didn't really know what to anticipate in the case. I haven't had an opportunity to speak with her. Her mother would not let me speak with her, so I was confident that I would be able to get her to testify about some things. And apparently

> — I would like the record to reflect I was asking her a number of questions, and she was just refusing to answer my questions.

R519. Defense counsel agreed that K.P. was refusing to testify. *Id.* The People then opted to call another witness and recall K.P. later in the day. R522.

Following the testimony of a detective, R522-44, and a break for lunch, R544-45, the prosecutor recalled K.P., and the court allowed the prosecutor to ask leading questions because she was a hostile witness, R547-48. The court admonished K.P. that she needed to answer all questions posed to her and to give clear verbal answers. R564-67. An attorney who was seated in the gallery alerted the court that K.P.'s mother, T.P., appeared to be signaling and waving at her daughter during K.P's testimony. R559-60. The court admonished T.P. that she would subject to contempt if she continued to influence the witness. R563.

On direct examination, K.P. testified that defendant was her brother and he had lived with K.P. when she was eight or nine years old. R552-54, 571-72. When asked whether she could recall an incident during that period when defendant did something to her, K.P. stated, "I don't remember." R572. K.P. testified that she did not remember being interviewed in November 2014, but when shown a still image taken from the recording at the CAC, agreed that it was her. R573-75. She then testified that she remembered that she was there for an interview due to "household issues"

with her father, Roland Pierce, who had hurt her and caused her to go to the hospital. R575-76. She answered "[y]es" when asked, "In this interview, do you remember talking about anything else that anybody else did to you?" R576-77. When asked who, she identified defendant. R577. The prosecutor then asked a series of questions about specific questions and answers from the interview, and K.P. responded to each question that she did not remember the questions and answers and did not recall the events described. R577-87.

On cross examination, defense counsel asked K.P. about the incident with Pierce. R588-92. K.P. agreed that Pierce had "accuse[d]" her of "doing something with" her younger relatives, and he had beaten her with his belt and an extension cord and forced her to sleep on the cold basement floor for two nights without a mattress or blanket. R588-92. She identified photographs of her injuries, taken at the hospital where she was treated. R593-95. Defense counsel did not ask any questions concerning the substance of K.P.'s recorded statements, *see* R588-96, but he asked whether K.P. was experiencing pain from her injuries at the time of the interview, and K.P. agreed that she was, R595-96.

Defendant argued that K.P. had failed to "testify" for purposes of admitting her out-of-court statement, but the trial court disagreed and admitted the recording of the CAC interview, R599-600, which was published to the jury, R539-40, 627.

Defendant presented testimony from T.P. (K.P.'s and defendant's mother), R601-03, that Pierce had become angry when he learned that K.P. had been engaging in sexual conduct with Pierce's other children, and he "went crazy" and "was abusive" to K.P. R608-09, 618, 623-24. As a result of those beatings, K.P. had to be treated at a hospital. R611-12.

In closing, the prosecutor urged the jury to credit K.P.'s statements in the recorded CAC interview and explained how those statements supported each of the charges. R686-99. Defense counsel, in turn, argued that the circumstances of the interview rendered K.P.'s statements too unreliable to establish defendant's guilt beyond a reasonable doubt. R700-06.

The jury convicted defendant. R768-69. Defendant filed a motion for new trial, arguing, in relevant part, that the trial court erred by admitting K.P.'s recorded CAC statements. C359-63. The court denied this motion, R974-76, and sentenced defendant to 21 years in prison, R1073-74; C450.

C. The appellate court held that K.P.'s recorded statement met constitutional and statutory criteria for admission.

On appeal, defendant argued that the admission of K.P.'s recorded CAC statement violated the Confrontation Clause, and that K.P. failed to "testify" for purposes of 725 ILCS 5/115-10(b)(2)(A). The appellate court disagreed. It reasoned that "the testimony requirement of section 115-10 requires no more than the witness's availability for cross examination — the same requirement to satisfy the Confrontation Clause." A20, ¶ 40. Under

the constitutional test, "[a] witness will be found to have been available for cross examination if the witness was present in court and answered all questions asked of them by defense counsel." *Id.* Although K.P. was a reluctant witness for the prosecution, "no reluctance was apparent during her cross examination"; indeed, her "testimony on cross examination aligned with [defendant's] theory of the case." A20, ¶ 41. That defense counsel opted not to question K.P. about her recorded statement was "of no moment" because "the opportunity for cross examination satisfies the appearance requirement, irrespective of how defendant chooses to cross examine the witness." A20-21, ¶ 41.

STANDARDS OF REVIEW

This Court reviews de novo whether the admission of evidence violated the Confrontation Clause. *People v. Pacheco*, 2023 IL 127535, ¶ 48. The Court typically reviews for an abuse of discretion whether the admissibility requirements of 725 ILCS 5/115-10 were satisfied, *In re Brandon P.*, 2014 IL 116653, ¶ 45, but here, the answer turns on the proper construction of the statute, which this Court reviews novo, *People v. Yankaway*, 2025 IL 130207, ¶ 67.

ARGUMENT

A hearsay statement must satisfy both statutory and constitutional requirements for admissibility. *People v. Kitch*, 239 Ill. 2d 452, 470 (2011). Under the principle of constitutional avoidance, this Court has stressed that

a court should address the statutory question first. *In re E.H.*, 224 Ill. 2d 172, 179-80 (2006). However, for ease of explanation, the People first demonstrate that K.P.'s availability for cross examination at trial satisfied the minimal threshold of the Confrontation Clause, *see infra* Section I, and then that K.P.'s trial testimony satisfied the slightly higher threshold for admission under 725 ILCS 5/115-10(2)(A), *see infra* Section II. If this Court were to hold that K.P.'s CAC interview was admitted in error, then, contrary to defendant's argument, the proper remedy would be to remand this case for a new trial. *See infra* Section III.[2]

I. Because K.P. Took the Stand and Answered Questions on Cross Examination, Admitting Her Out-of-Court Statement Did Not Violate the Confrontation Clause.

The Confrontation Clause was satisfied when K.P. took the stand and willingly answered the questions posed to her on cross examination.

Under the Sixth Amendment, a defendant has "the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The Confrontation Clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Crawford v. Washington*, 541 U.S. 36, 61 (2004). As the United States Supreme Court has explained, the right of confrontation

[2] The erroneous admission of a hearsay statement may be harmless, *see In re Brandon P.*, 2014 IL 116653, ¶ 50, but the People do not argue harmlessness on the facts of this case.

serves three purposes. *California v. Green*, 399 U.S. 149, 158 (1970). First, it "insures that the witness will give his statements under oath — thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury." *Id.* Second, it "forces the witness to submit to cross-examination." *Id.* And third, it "permits the jury . . . to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility." *Id.*

Where an out-of-court statement is concerned, "the Clause protects a defendant's right of cross-examination by limiting the prosecution's ability to introduce statements made by people not in the courtroom." *Smith v. Arizona*, 602 U.S. 779, 783-84 (2024). Accordingly, the Confrontation Clause prohibits the introduction of a testimonial hearsay statement of a *non-testifying* witness, unless a defendant had a prior opportunity to cross examine the declarant. *Crawford*, 541 U.S. at 53-54. In contrast, "when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements." *Id.* at 59 n.9. Put differently, "[t]he Clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it." *Id.*

Here, admitting K.P.'s CAC interview did not violate the Confrontation Clause because she appeared for cross examination at trial. Under clear precedents of the United States Supreme Court and this Court, K.P.'s

memory loss did not render her unavailable for cross examination. Instead, K.P. was available for cross examination within the meaning of the Confrontation Clause because she responded willingly to questions posed to her on cross examination. And, although defendant suggests that admitting K.P.'s statement ran afoul of the Supreme Court's recent decision in *Smith v. Arizona*, that case instead confirms that the only relevant question is whether defendant had an opportunity to confront K.P., and not whether her cross examination satisfied any "truth-testing" benchmark.

A. Under the pertinent precedents of the United States Supreme Court and this Court, K.P.'s memory loss did not render her unavailable for cross examination.

Defendant was not denied the opportunity to cross-examine K.P. merely because she could not recall her out-of-court statement or the incidents of abuse that her statement described.

To the contrary, under the Supreme Court precedent most applicable to this case, a witness's memory loss is of no constitutional moment:

> "The Confrontation Clause includes no guarantee that every witness called by the prosecution will refrain from giving testimony that is marred by forgetfulness, confusion, or evasion. To the contrary, the Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose these infirmities through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony."

United States v. Owens, 484 U.S. 554, 558 (1988) (quoting *Delaware v. Fensterer*, 474 U.S. 15, 21-22 (1985) (per curiam)).

In *Fensterer*, a prosecution expert was unable to recall the basis for his opinion, and the defendant argued that this memory lapse deprived him of an adequate opportunity to cross-examine the expert about his opinion. 474 U.S. at 17. The Supreme Court rejected that argument, explaining that "the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Id.* at 20 (emphasis in original). The Court noted that "the witness' lapse of memory impedes one method of discrediting him," but "[q]uite obviously, an expert witness who cannot recall the basis for his opinion invites the jury to find that his opinion is as unreliable as his memory." *Id.* Moreover, "the assurances of reliability our cases have found in the right of cross-examination are fully satisfied in cases such as this one, notwithstanding the witness' inability to recall the basis for his opinion," for "the factfinder can observe the witness' demeanor under cross-examination, and the witness is testifying under oath and in the presence of the accused." *Id.*

Owens extended this rule to a case in which the prosecution introduced an out-of-court identification made by a testifying witness who could not recall the incident or the circumstances of the identification. 484 U.S. at 559-60. There, too, the defendant argued that he was unable to effectively cross-examine the witness on a subject the witness could no longer recall. *See id.* The Supreme Court again disagreed, emphasizing, in the context of a

forgotten identification, "[i]t is sufficient that the defendant has the opportunity to bring out such matters as the witness' bias, his lack of care and attentiveness, his poor eyesight, and even (what is often a prime objective of cross-examination, [citation omitted]) the very fact that he has a bad memory." *Id.* at 559.

Defendant claims that in *Owens*, "the United States Supreme Court determined that the confrontation clause was satisfied because, while the witness could not remember the offense itself, the witness was able to remember making the out-of-court statement identifying the defendant in a police interview two weeks after the offense." Def. Br. 20. But this characterization of *Owens* ignores the central issue in that case: the victim could recall nothing about the identification and thus, Owens argued, could not be effectively cross-examined as to whether the out-of-court identification was the result of police suggestion. 484 U.S. at 555-56. As the Court stressed in linking the issue in *Owens* to that of *Fensterer*, "[i]n both cases the foundation for the belief (current or past) cannot effectively be elicited, but other means of impugning the belief are available." *Id.* at 559. And the same underlying principle applied: "The Confrontation Clause guarantees only an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Id.* (cleaned up, with emphasis in original).

Relying on *Owens* and *Fensterer*, this Court has similarly recognized that a witness is not rendered unavailable for cross examination due to lack of memory. *People v. Flores*, 128 Ill. 2d 66, 88 (1989). The Court held that the Confrontation Clause was not violated by admission of grand jury testimony that a witness claimed he could not recall, stressing that "[c]ontrary to the defendant's assertions, a gap in the witness' recollection concerning the content of a prior statement does not necessarily preclude an opportunity for effective cross-examination." *Id.* Accordingly, *Flores* overruled *People v. Yarbrough*, 166 Ill. App. 3d 825 (5th Dist. 1988), a case on which defendant relies for the proposition that memory loss deprives a defendant of his confrontation right. *See* Def. Br. 17.

Since *Flores*, the Illinois Appellate Court has applied this principle with equal force to sexual assault victims whose testimony reveals gaps in their memory. *See People v. Garcia-Cordova*, 2011 IL App (2d) 070550-B, ¶ 66 ("The issue presented by the admission of hearsay is constitutionally identical in a child sex abuse case and a murder case, and the response of the sixth amendment is identical in both types of cases," which means that "[w]here the declarant appears for cross-examination, even where the declarant does not testify to the substance of his hearsay statement, its admission is a nonevent under the confrontation clause."); *see also*, *e.g.*, *People v. Smith*, 2019 IL App (3d) 160631, ¶ 32 ("'There are no confrontation clause problems merely because the witness's memory problems preclude him

from being cross-examined to the extent the parties would have liked.'") (quoting *People v. Leonard*, 391 Ill. App. 3d 926, 934-35 (3d Dist. 2009)); *People v. Bryant*, 391 Ill. App. 3d 1072, 1080-83 (4th Dist. 2009) (child victim appeared for cross examination despite gap in her testimony as to whether defendant forced her to engage in oral sex).

Defendant's reliance on *Goforth v. State*, 70 So. 3d 174 (Miss. 2011), to support the proposition that memory loss renders a witness unavailable for cross examination, Def. Br. 23, is misplaced. The Mississippi Supreme Court held that the defendant's right of confrontation (specifically, under the Mississippi State Constitution) was infringed in extreme circumstances that are not present here. *See* 70 So. 3d at 183, 187. In that case, a witness suffered catastrophic injuries in a car accident and lost half a lifetime of memories, leaving him unable to recall having met defendant or the victim, much less having produced a written statement. *Id.* at 180. The court observed that the "total loss of memory was genuine," and found that the witness, "though physically present at trial, did not have the requisite, minimal ability" to be cross-examined. *Id.* at 186.

This case is distinguishable, because K.P. did not suffer from such a total and genuine memory loss. *See People v. Leverton*, 405 P.3d 402, 410-11 (Colo. App. 2017) (distinguishing *Goforth* and observing, "[t]his case does not require us to determine whether total memory loss coupled with extreme physical disabilities could ever render a witness unavailable under the

Confrontation Clause and we express no opinion on that question"). Indeed, K.P. demonstrated a precise recollection of the circumstances of her beating just prior to the CAC interview. She also remembered, after being shown an image, having participated in the interview. She merely disavowed any recollection of discussing the charged events during that interview. Additionally, there *is* reason to doubt that her memory loss was genuine, particularly given that her mother — who is also defendant's mother — appeared to be coaching or influencing her testimony from the gallery.

Accordingly, K.P.'s limited, partial memory loss distinguishes this case from *Goforth*, an out-of-jurisdiction decision, and did not render her unavailable for cross-examination.

B. K.P. appeared for cross examination because she willingly answered the questions put to her by defense counsel.

Under decisions of the Supreme Court and this Court, K.P. appeared for cross examination because "a witness is regarded as 'subject to cross-examination' when [s]he is placed on the stand, under oath, and responds willingly to questions." *Owens*, 484 U.S. at 561; *see also People v. Bush*, 2023 IL 128747, ¶ 59 (deeming witness "subject to cross-examination," for purposes of rule governing admission of prior inconsistent statement, "where he was placed on the witness stand, under oath, and responded willingly to questions").

To be sure, *Owens* addressed whether a witness was "subject to cross-examination" within the meaning of Federal Rule of Evidence 801(d)(1), which defines certain prior statements as non-hearsay. *See Owens*, 484 U.S. at 561-64; Fed. R. Evid. 801(d)(1) & (d)(1)(C) (out-of-court statement identifying a person is not hearsay if "[t]he declarant testifies and is subject to cross-examination about [the] prior statement"). And *Bush* defined the phrase "subject to cross-examination" for purposes of Illinois's statute governing prior inconsistent statements. 2023 IL 128747, ¶¶ 58-59 (quoting and interpreting 725 ILCS 5/115-10.1(b)).

But courts have also used this standard to judge whether a witness is available for cross examination for purposes of the Confrontation Clause. *See, e.g., State v. Pierre*, 890 A.2d 474 (Conn. 2006) (defining constitutional standard as whether "the witness appears at trial, takes an oath to testify truthfully, and answers the questions put to him or her during cross-examination"). And, in particular, the Illinois Appellate Court has used this standard to define whether witnesses were available for cross examination for purposes of the Confrontation Clause where their hearsay statements were admitted under 725 ILCS 5/115-10. *See People v. Graves*, 2021 IL App (5th) 200104, ¶ 43 ("The key inquiry when determining whether a declarant is available for cross-examination is whether the declarant was present for cross-examination and answered questions asked of her by defense counsel.") (internal quotations and alteration omitted); *People v. Riggs*, 2019 IL App

(2d) 160991, ¶ 37 (Confrontation Clause satisfied where victim "willingly answered all questions put to her by the prosecution and defense counsel"); *Smith*, 2019 IL App (3d) 160631, ¶ 40 ("'In general, a witness is considered to be present, available for, or subject to cross-examination when the witness takes the stand, is placed under oath, [and] willingly answers questions, and the opposing party has an opportunity to cross-examine the witness.'") (quoting, with alteration, *People v. Dabney*, 2017 IL App (3d) 140915, ¶ 19); *People v. Lara*, 2011 IL App (4th) 080983-B, ¶ 49 ("defendant was not deprived of an opportunity to cross-examine R.K." where "[s]he answered all of defense counsel's questions on cross-examination").

Although this Court has not adopted a test for defining availability for cross examination under the Confrontation Clause, deeming a witness available for cross examination when she "responds willingly to questions" comports with this Court's case law addressing whether a child is "unavailable as a witness" for purposes of the statute, 725 ILCS 5/115-10(b)(2)(B), due to her inability or unwillingness to answer questions. *See People v. Stechly*, 225 Ill. 2d 246, 312-15 (2007) (setting forth analysis to determine whether reluctance to testify renders child witness unavailable). Indeed, this Court's cases addressing the admission of hearsay statements under 725 ILCS 5/115-10 have uniformly involved children who were "unavailable." *See In re Brandon P.*, 2014 IL 116653, ¶¶ 43-47 (finding trial court did not abuse discretion in finding child witness unavailable and

observing that "[t]here is no question, based upon the record in this case, that M.J. was unavailable to testify at respondent's trial based upon both her youth and fear," given that "M.J. could barely answer the trial court's preliminary questions, and then completely froze when the State attempted to begin its direct examination of her"); *In re Rolandis G.*, 232 Ill. 2d 13, 22 (2008) (noting that State conceded on appeal witness was unavailable due to refusal to answer questions); *Stechly*, 225 Ill. 2d at 312-15 (holding trial court did not abuse discretion in finding child witness unavailable where expert testified to trauma that would result from testifying).

Defendant is incorrect that "*Brandon P.* . . . controls this case," because there, the child victim could not answer questions. Def. Br. 17. Here, in contrast, K.P. willingly answered all questions posed to her on cross examination. *See* R588-96. Indeed, although K.P. was reluctant to cooperate at first and had to be admonished by the court to answer questions posed by the prosecutor, "no reluctance was apparent during her cross examination." A20, ¶ 41. Her testimony about Pierce's beatings of her in the days leading up to her CAC interview "aligned with [defendant's] theory of the case," *id.*, which was that K.P.'s statements implicating defendant were given under duress and therefore unreliable. Thus, all three purposes of confrontation were served, for K.P. was required to testify under penalty of perjury, the jury was able to evaluate her demeanor to determine the truth of

her testimony, and defendant was free to ask her whatever questions he wished.

Although defendant argues otherwise, *see* Def. Br. 15, 19, that K.P. did not recall the abuse or her CAC interview was not an impediment to cross examination. On the contrary, it was a proper subject of cross-examination, and defendant could have asked her about the abuse and her CAC interview. Although counsel did not do so, that was likely because K.P. had already answered those questions on direct examination. *See* R572-87.

Stated another way, the Confrontation Clause was satisfied because K.P. was "present at trial to defend or explain" her prior statement. *Crawford*, 541 U.S. at 59 n.9. It was not violated simply because K.P. could not, or would not, defend the statement. *See Leverton*, 405 P.3d at 410-11 (rejecting argument "that if a witness claims some memory loss, she cannot 'defend or explain' her prior statements and thus is unavailable for confrontation purposes," and noting that "[v]irtually every court that has addressed this argument has rejected it and has squarely held that the physical presence of the witness at trial avoids any confrontation issue"); *see also id.* (citing *Bryant*, 391 Ill. App. 3d 1072, and collecting cases from Arizona, Connecticut, Mississippi, New Hampshire, Texas, Virginia, and Washington).

Defendant's assertion that "'[c]onfrontation requires more than being allowed to confront the witness physically,'" Def. Br. 15-16 (quoting *Davis v.*

Alaska, 415 U.S. 308, 315 (1974)), takes that principle out of context. In *Davis*, the defendant's confrontation right was violated when the trial court prohibited defense counsel from asking questions intended to expose a witness's potential bias. 415 U.S. at 317. *Davis* establishes that physical confrontation without an adequate opportunity to pose meaningful questions on cross examination is not enough. *See Kentucky v. Stincer*, 482 U.S. 730, 737-38 (1987) (delineating two categories of Confrontation Clause cases and placing *Davis* in category of "cases in which the opportunity for cross-examination has been restricted by law or by a trial court ruling," rather than category involving improper admission of hearsay without opportunity for cross examination). That principle has no application here because defendant was not restricted from cross examining K.P. in any way. It cannot be that defense counsel's voluntary choice not to cross-examine a witness on a specific topic — in this case, likely because K.P.'s direct testimony on the topic was highly beneficial to the defense — renders that witness *unavailable* for cross examination on that topic. Where K.P. took the stand and voluntarily answered, under oath, all the questions that defense counsel chose to put to her, she was available for cross examination for purposes of the Confrontation Clause.

C. *Smith v. Arizona* confirmed that the Confrontation Clause does not ask whether defendant's cross examination of K.P. satisfied a "truth-testing" benchmark.

Defendant acknowledges the overwhelming weight of authority finding the Confrontation Clause met where the child victim willingly submitted to defense questioning, Def. Br. 20, but he argues that those cases are no longer good law following the Supreme Court's most recent Confrontation Clause case, *Smith*:

> In light of the importance of the truth-testing purpose of the confrontation clause as discussed in *Smith v. Arizona*, 602 U.S. at 797-99, any cases, like the instant case, determining that the witnesses testified and were available for cross-examination despite failing to make even vague accusations from the stand or acknowledge their own out-of-court statements were wrongly decided.

Def. Br. 22; *see also id.* at 18 (*Smith* was about the "truth-testing purpose of the Confrontation Clause").

Defendant is wrong. In fact, nowhere in *Smith* does the Supreme Court mention "truth-testing." Rather, *Smith* confirmed that the sole concern of the Confrontation Clause is whether the defendant was able to confront the witness, not whether the substance of the witness's testimony met some "truth-testing" benchmark. Specifically, *Smith* held that portions of a testifying expert's testimony — conveying the substance of a second, non-testifying expert's forensic analysis — constituted hearsay because the testimony was introduced to prove the truth of the matter asserted. 602

U.S. at 798-99. Here, it is undisputed that K.P.'s recorded statement was introduced to prove the truth of the matters it addressed, and so is hearsay. The question is whether it is admissible hearsay.

To that end, *Smith* reiterated that there can be no substitute for confrontation of the declarant herself where hearsay is admitted at trial. 602 U.S. at 800 (assuming hearsay statements qualified as testimonial, "Smith would then have had a right to confront the person who actually did the lab work, not a surrogate merely reading from her records"); *see also Bullcoming v. New Mexico*, 564 U.S. 647, 657-63 (2011) (considering, and rejecting, argument that cross examination of expert testifying to another expert's conclusions could provide substitute for confrontation of declarant). In other words, the *only* relevant question is whether the declarant herself appeared for cross examination. *See Crawford*, 541 U.S. at 59 n.9 ("when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements"). Here, she did. *Smith* neither established nor even suggested a new rule requiring that a witness's in-court answers satisfy any "truth-testing" benchmark. Instead, the fundamental holding of *Crawford* — which *Smith* did not disturb — is that the Confrontation Clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Crawford*, 541 U.S. at 61.

In sum, the Confrontation Clause was satisfied here because K.P., the maker of the out-of-court statements, appeared at trial for cross examination. Because she did, the Confrontation Clause imposed no constraints at all on the use of her CAC interview.

II. K.P. Testified for Purposes of 725 ILCS 5/115-10 Because the People Called Her to Testify, and Furthermore Her Answers to Questions on Direct Examination Established That She Did Not Recall the Abuse or Her Prior Statement.

K.P.'s testimony also satisfied the statutory criterion for admitting her statement under 725 ILCS 5/115-10(b)(2)(A) (requiring that the child victim "testifies at the proceeding"). Although defendant asserts that "there is a great deal of overlap between the analysis of alleged error under Section 115-10 and under the Confrontation Clause," and that "the issue under both standards is whether the witness was available," Def. Br. 13, the statutory and constitutional issues are analytically distinct. As discussed, the question under the Confrontation Clause is whether K.P. responded willingly to questions on cross examination. But the *statutory* question turns on the extent to which the People must elicit details on *direct* examination. *See People v. Bowen*, 183 Ill. 2d 103, 115 (1998) (statutory requirement that witness testify places burden on People to call witness to the stand); *see also People v. Learn*, 396 Ill. App. 3d 891, 895-97 (2d Dist. 2009) (holding statutory requirement was not met where victim's trial testimony did not specifically "accuse" defendant).

This Court should hold that the statutory criterion that K.P. testify was satisfied when the People called her to the stand and presented her for cross examination. *See infra* Section II.A. If this Court were to construe the statute to require something more, then it should find that K.P.'s testimony on direct examination was sufficient because the People asked her about the abuse, and she testified that she did not recall the incidents of abuse or her prior statement. *See infra* Section II.B.

A. To satisfy 725 ILCS 5/115-10(b)(2)(A), the People needed only to call K.P. to testify and make her available for cross examination.

Section 115-10 allows for the admission of out-of-court statements by a child witness describing sexual abuse in two scenarios: (1) if the declarant "testifies at the proceeding," or (2) if the declarant "is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement." 725 ILCS 5/115-10(b)(2); *Kitch*, 239 Ill. 2d at 467.

Here, K.P.'s interview was admissible under the first scenario because she testified at trial. This case turns on the meaning of "testifies," and thus presents a question of statutory construction. When construing a statute, "[t]he most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Yankaway*, 2025 IL 130207, ¶ 67. "In determining the plain, ordinary, and popularly understood meaning of a statutory term, it is entirely appropriate to look to the dictionary for a definition of the term." *People v. Castillo*, 2022 IL 127894,

¶ 24. While it is appropriate to consult dictionary definitions, a court should not disregard context: "[a] court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *Yankaway*, 2025 IL 130207, ¶ 67.

The word "testify" has a well-established plain meaning: to "testify" means "[t]o give evidence as a witness," *Black's Law Dictionary* (12th ed. 2024), or, more specifically, "to make a solemn declaration under oath for the purpose of establishing a fact (as in a court)," *Merriam Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/testify (last visited July 1, 2025); *see Castillo*, 2022 IL 127894, ¶ 27 (consulting *Black's Law Dictionary* and online dictionary to define "public property"). Read literally, then, the child witness need only present some evidence at trial for her to have testified and her out-of-court statement to be admitted.

However, this Court has given the word "testify" further meaning based on context. As noted, the statute permits admission of hearsay statements under the alternative scenario in which the child is "unavailable as a witness," 725 ILCS 5/115-10(b)(2)(B), and the two scenarios in section 115-10(b)(2) do not strictly mirror each other. As this Court has observed, "the mandate that the child actually testify at trial, rather than merely being made 'available' for testimony," places the burden on the prosecution to call the child to the stand to "spare[ ] the defense from a 'Catch 22' of either having to call the child itself and risk inflaming the jury against it, or forgo

completely its right to cross-examine the child." *Bowen*, 183 Ill. 2d at 115. Beyond the requirement that the People call the victim to testify, the statutory language imposes no specific requirements on the *substance* of the victim's testimony. *See, e.g., Riggs*, 2019 IL App (2d) 160991, ¶ 36 (finding hearsay statements may be admitted "regardless of whether the witness answers that she does not recall events or whether she is simply not asked" about events underlying charges). Here, the People complied with this requirement by calling K.P. to the stand and placing her under oath, making her available for cross examination.

To impose further substantive requirements, as defendant requests, Def. Br. 12, would not only conflict with the language of the statute, *see Hart v. Ill. State Police*, 2023 IL 128275, ¶ 20 (courts may not depart from statute's plain language by reading into it exceptions, limitations, or conditions legislature did not express), but it would undermine the purpose of the statute, which was "a needed response to the difficulty of convicting persons accused of sexually assaulting children," *Bowen*, 183 Ill. 2d at 115. "It is well known that child witnesses, especially the very young, often lack the cognitive or language skills to effectively communicate instances of abuse at trial . . . , or may be impeded psychologically in their efforts to do so." *Id.* In addition, "[c]hildren may be subject to memory loss in the often prolonged period between the abuse and trial." *Id.* The statute avoids these issues "by allowing for detailed corroborative evidence of the child's complaint about

the incident to another individual" and by "preserv[ing] the account while it is still fresh in the child's memory." *Id.* at 115-16.

Defendant asserts that a victim should be required to "say that she was sexually assaulted," Def. Br. 12, but a rule that would require the child victim to duplicate her testimony from the stand would undermine the statute's purpose — and be unworkable in light of the very problems the statute was intended to address. Child witnesses vary in the extent of their recollection and their ability to convey events in the courtroom, in ways that (as this case illustrates) may be unpredictable. To be sure, ideally, every child victim would both recall and be able to testify to all pertinent events when called to the stand. But if that were the case, the statute would serve no purpose. In fact, the statute was specifically intended to allow for a more detailed account where either gaps in memory or communication difficulties hamper a child witness.

Accordingly, this Court should hold that the statutory criterion for admission of K.P.'s statement was satisfied because the People called her to testify and made her available for cross examination.

B. Even if this Court were to construe the statute to require more, K.P. plainly "testified" because she answered questions on direct examination establishing that she did not recall the abuse or her prior statement.

As explained, this Court has never held that section 115-10 requires anything more than calling the child witness to the stand and making her

available for cross-examination, *see Bowen*, 183 Ill. 2d at 115, and it should decline to do so now. But even if this Court were to find that the statute did impose a higher threshold, the People necessarily satisfied that threshold here because the People elicited on direct examination that K.P. did not recall the incidents of abuse or her prior statement.

1. This Court should reject a requirement that the victim "accuse" a defendant from the stand to render her out-of-court statement admissible.

Relying on *People v. Learn*, 396 Ill. App. 3d 891 (2d Dist. 2009), defendant asserts that K.P. did not testify because she did not "accuse" defendant in her trial testimony. Def. Br. 14. But *Learn* was incorrectly reasoned, and this Court should reject its definition of "testify." *See, e.g., Graves*, 2021 IL App (5th) 200104, ¶ 41 ("To the extent that our decision here can be read as being inconsistent with the appellate court's ruling in *Learn*, we respectfully disagree with the conclusion reached by the court in that case and do not believe that it reflects the current state of Illinois law on this issue."); *Dabney*, 2017 IL App (3d) 140915, ¶ 21 (similar).

In *Learn*, the prosecutor called the victim, K.O., to testify, and the trial court deemed her competent despite that she was uncertain about the meaning of "the truth" and broke down crying in response to most questions. 396 Ill. App. 3d at 895-97. Faced with these emotional responses to innocuous questions, the prosecutor did not ask K.O. about the charged sexual abuse. *Id.* at 896-97. The trial court admitted her out-of-court

statement describing that abuse, finding that the People were not required to ask questions about the offenses because the defendant had the opportunity to cross-examine K.O. about them. *Id.* at 897-98.

The appellate court disagreed, concluding that K.O. was not available for cross examination and did not "testify" as the statute required. *Id.* at 898-99. To be sure, this may have been the correct *result*, in that K.O. likely should have been deemed incompetent or unavailable to testify. In fact, the Second District has, in subsequent cases, characterized *Learn* as a case about competency or unavailability. *See Garcia-Cordova*, 2011 IL App (2d) 070550-B, ¶ 62 ("in *Learn* the issue was one of competency," or unavailability, because "although the witness had initially been found competent by the trial judge, when questioned by counsel she actually lacked the ability to answer the questions propounded by counsel"); *People v. Martin*, 408 Ill. App. 3d 891, 897 (2d Dist. 2011) ("In both *Learn* and *Rolandis G.* the issue was one of competency. In each case, the witness was unable to testify and, as a result, did not answer any substantive questions.").

But the *Learn* court's reasoning was flawed, as it created a requirement that a witness must "accuse" a defendant from the stand: "[i]f the child is the only witness (other than hearsay reporters) who can accuse the defendant of actions constituting the charged offense, the child *must* testify and accuse if she is to be considered to have testified at the proceeding under section 115-10(b)(2)(A)." *Id.* (emphasis in original).

In other words, *Learn* added a requirement to the statute, requiring the victim to both "testify *and accuse*." *Id.* (emphasis added).[3] But it is well-established that "[i]n interpreting a statute, [courts] may not add words or fill in perceived omissions." *People v. Wells*, 2023 IL 127169, ¶ 31; *see also People v. Clark*, 2019 IL 122891, ¶ 23 ("A court must not depart from a statute's plain language by reading into it exceptions, limitations, or conditions that the legislature did not express."); *People v. Smith*, 2016 IL 119659, ¶ 28 ("No rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include."). The statute requires only that the child "testify;" further requiring that the testimony "accuse" has no grounding in its language.

Although the court claimed to be addressing only the statutory question, *Learn* did not focus on the statutory language. Rather, the court derived its "accusation" requirement from its understanding of the Confrontation Clause. It reasoned that "[t]he text of the confrontation clause applies to witnesses against the accused — those who bear testimony." *Id.* at 900 (internal quotations omitted). And it reasoned that "[t]he

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[3] *Learn* complicated matters further by making its accusation rule contingent on whether "the child is the only witness (other than hearsay reporters) who can accuse the defendant," 408 Ill. App. 3d at 897 — a caveat that similarly lacks any basis in the statutory text. The meaning of the statutory language should not vary depending on the circumstances of a particular case.

'confrontation,' then, is a witness's bearing of testimony against the defendant; the defendant then has the right to rigorously test that testimony through cross-examination." *Id.* From these propositions, the court devised a requirement that the victim accuse the defendant from the stand. *Id.*

The *Learn* court misconstrued both its duty in interpreting a statute and the Confrontation Clause. A child victim is a witness against the defendant, regardless of whether her in-court testimony is accusatory, if her prior out-of-court statement accusing him is admitted. *See Ohio v. Clark*, 576 U.S. 237, 243-46 (2015) (reasoning that three-year-old who was not competent to testify would constitute "witness" for purposes of Confrontation Clause if, and only if, her out-of-court statement qualified as testimonial). For this reason, defendant had a right to "confront" K.P. that did not hinge on the substance of her testimony from the stand. As discussed, the Confrontation Clause does not require a declarant to accuse a defendant in her direct testimony, and a witness is available for cross-examination even where, as here, she does not remember what happened. *See supra* Section I.A; *see also Graves*, 2021 IL App (5th) 200104, ¶ 41 ("In holding that the statute required a victim to 'testify and accuse,' the *Learn* court implicitly found that the testimony requirement of section 115-10(b)(2)(A) required more than availability for cross-examination to satisfy the confrontation clause."); *People v. Kennebrew*, 2014 IL App (2d) 121169, ¶ 38 ("[w]hether a witness's testimony at trial was sufficiently 'accusatory' is the question *Learn*

sought to address under section 115-10(b)(2)(A); it is not the question we ask here, to determine whether a witness was available for purposes of the confrontation clause"; instead, "if a witness physically appears, takes the stand under oath, and willingly answers counsel's questions, that witness is 'available' for cross-examination for purposes of the confrontation clause").

In sum, for her out-of-court statements to be admissible, neither the language of the statute nor the Confrontation Clause requires that a victim "accuse" a defendant from the stand, and this Court should reject *Learn*'s formulation of the statutory standard.

Defendant is wrong that this Court has *already* endorsed *Learn*'s standard. Def. Br. 13 (quoting *Kitch*, 239 Ill. 2d at 463) ("This Court has defined 'testifies' as set forth in section 115-10 as 'whether the State, through the victims' direct testimony, proved' the offenses."). In fact, in the quoted language, the *Kitch* court was describing defendant's argument, which it then rejected as unfounded. 239 Ill. 2d at 463 (characterizing issue as "whether, as defendant argues, the State improperly failed to ask the victims about each incident in enough detail to establish the elements of each count" and holding that, to the contrary, "K.J.K.'s and M.J.B.'s direct testimony, standing alone, was sufficient to establish the elements of the relevant counts against defendant"). *Kitch* ultimately supports the People's position: because of the victims' detailed testimony in that case, *Kitch* distinguished *Learn*. *Id.*

Learn is also distinguishable here because the People asked K.P. detailed questions about the incidents of abuse and about her CAC interview. However, rather than distinguish *Learn*, this Court should squarely reject its definition of "testify." *See Kennebrew*, 2014 IL App (2d) 121169, ¶¶ 46-57 (Schostok, J., specially concurring) (objecting that *Learn* was wrongly decided and calling for *Learn* to be overruled to "excuse the State from having to distinguish *Learn* in every future case that involves facts similar or nearly identical to those in *Learn*").

2. A witness necessarily testifies when her answers on direct examination establish her lack of memory.

Even if this Court concludes that the statute requires something more than simply calling the victim to the stand and making her available for cross examination, this Court should adopt a different standard that does not require the victim's testimony to be accusatory. To avoid thwarting the clear legislative intent, this Court should adopt a rule that requires the People to ask about the abuse on direct examination, but does not preclude a witness from answering that she does not recall.

Here, the People not only called K.P. to the stand, but elicited answers from her regarding the offenses at issue and regarding her interview, and she testified that she did not remember. K.P.'s answers to these detailed questions on direct examination distinguish this case from *Learn*, which involved a failure by the prosecution to ask the victim any questions about

the abuse or her out-of-court statement. *See People v. Sundling*, 2012 IL App (2d) 070455-B, ¶¶ 64-66 (distinguishing "memory-loss" scenario from situation in *Learn*).

The Washington Supreme Court has drawn this distinction and found the requirements for admission of an out-of-court statement satisfied where the witness testified to a lack of recollection. *See State v. Price*, 146 P.3d 1183 (Wash. 2006). Defendant relies on an earlier case from that court, *State v. Rohrich*, 939 P.2d 697 (Wash. 1997), to claim that a victim must provide accusatory testimony to satisfy both the hearsay statute for admitting statements concerning sexual abuse and the Confrontation Clause. Def. Br. 22-23. But in *Rohrich*, as in *Learn*, the prosecution had failed to ask the victim *any* questions about the offenses. *Rohrich*, 939 P.2d at 699. The Washington Supreme Court found that the prosecution's deliberate choice to elicit no live testimony on the charges and instead proceed solely through hearsay was inconsistent with "the Confrontation Clause's preference for live testimony." *Id.* at 700 (cleaned up).

However, in *Price*, 146 P.3d 1183, a memory-loss case, the court distinguished *Rohrich* as resting on the prosecutor's failure to ask questions about the offense and found the requirements for admission of an out-of-court statement satisfied when a victim's answers on direct examination demonstrated memory loss. In other words, this case is like *Price*, not *Rohrich*, and to the extent this Court chooses to look to foreign authority for

guidance, the Washington Supreme Court's jurisprudence firmly supports the People's position.

Indeed, adopting a rule that a witness who testifies to memory loss does not "testify" for purposes of section 115-10 would lead to an absurd result. K.P.'s memory loss rendered her statement admissible as a prior inconsistent statement pursuant to 725 ILCS 5/115-10.1 and Illinois Rule of Evidence 801(d)(1)(A). *See Bush*, 2023 IL 128747, ¶ 59 (statutory criterion for admitting prior inconsistent statement was met where witness claimed lack of memory); *Flores*, 128 Ill. 2d at 87-88 (trial court did not abuse discretion in admitting as prior inconsistent statement grand jury testimony that witness claimed he could not recall); *People v. Vannote*, 2012 IL App (4th) 100798, ¶¶ 20-26 (recorded interview of child sexual assault victim was properly admitted as prior inconsistent statement based on witness's claimed lack of memory); *Leonard*, 391 Ill. App. 3d at 933 ("Where a witness claims that he cannot recall a matter at trial, a former affirmation of it should be admitted as a contradiction."). It would be absurd to hold that a witness who "testifies at trial" for purposes of admitting an inconsistent statement, Ill. R. Evid. 801(d)(1)(A), did not also "testify" for purposes of section 115-10. *See Dawkins v. Fitness Int'l, Inc.*, 2022 IL 127561, ¶ 27 ("[S]tatutes must be construed to avoid absurd results."). This Court should interpret "testify" for purposes of 115-10 to include testimony that a witness does not remember, to

avoid creating a conflict with the well-established case law under which prior inconsistent statements are admissible.

Thus, if this Court were to find that the statute requires the People to do more than call the victim to the stand, then it should adopt a standard that requires the People to ask about the abuse — but permits the victim to answer that she does not recall.

III. If This Court Were to Find that Error Occurred, the Correct Remedy Would Be a New Trial.

If this Court were to conclude that K.P.'s recorded out-of-court statement was improperly admitted, then it should grant defendant a new trial and deny his request to reverse his convictions outright. *See* Def. Br. 24.

"The double jeopardy clause does not preclude retrial when a conviction has been overturned because of an error in the trial proceedings, but retrial is barred if the evidence introduced at the initial trial was insufficient to sustain the conviction." *People v. Drake*, 2019 IL 123734, ¶ 20. "'[F]or purposes of double jeopardy all evidence submitted at the original trial may be considered when determining the sufficiency of the evidence.'" *Id.* (quoting, with alteration, *People v. Olivera*, 164 Ill. 2d 382, 393 (1995)). Thus, "[r]etrial is the proper remedy if the evidence presented at the initial trial, including any improperly admitted evidence, was sufficient to sustain the conviction." *Id.* ¶ 21. The People may retry a

defendant so long as the trial evidence sufficed for "any rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt." *People v. Lopez*, 229 Ill. 2d 322, 367-68 (2008); *see also Lockhart v. Nelson*, 488 U.S. 33, 40-41 (1988). Here, considering K.P.'s recorded statement, a rational juror could convict defendant.

Defendant's reliance on *People v. Hagestedt*, 2025 IL 130286, ¶ 48, a suppression case, Def. Br. 24, for the proposition that this Court should instead reverse his convictions outright, is misplaced because *Hagestedt* is readily distinguishable. There, this Court held that "[t]he trial court erred in denying defendant's motion to quash his arrest and suppress the evidence found in the kitchen cabinet," and reasoned that "[b]ecause the State would be unable to convict defendant at a new trial without the suppressed evidence, we reverse defendant's conviction outright and vacate his sentence." *Id.* In support of this remedy, the Court cited *People v. Lozano*, 2023 IL 128609, ¶ 47, another suppression case. *Lozano* reasoned, similarly, that "[w]ithout the evidence that was improperly obtained, the State cannot prove the charges for burglary and possession of burglary tools," and "[t]herefore, we reverse defendant's convictions outright." *Id.* Finally, *Lozano*, for its part, cited *People v. Eubanks*, 2019 IL 123525, ¶ 100, which was also a suppression case. *Eubanks* held that "[b]ecause the State cannot prove the aggravated DUI charge without [the suppressed] evidence, we affirm the appellate court's judgment reversing that conviction outright," but remanded

for a new trial on other charges. *Id.* *Eubanks* cited no authority in support of this remedy.

These suppression cases are distinguishable. As the appellate court has explained, outright reversal may be warranted in a suppression case if the result of a suppression ruling leaves the People unable to prove that any crime occurred. *See People v. Harris*, 2015 IL App (1st) 132162, ¶¶ 47-48. But it is not even a foregone conclusion that K.P.'s CAC interview would be barred at a retrial. Defendant's argument turns on the substance of K.P.'s testimony at his first trial. Even if he were correct, such a holding would not establish that the statement would be inadmissible at a retrial, where K.P. might testify differently. Defendant does not dispute that the recorded statement meets the threshold reliability requirement of 725 ILCS 5/115-10, and its admissibility at a new trial would hinge on K.P.'s testimony at that trial. Because that testimony is uncertain, the proper remedy is a new trial, not outright reversal.

CONCLUSION

This Court should affirm the judgment. Alternatively, if this Court finds that evidence was admitted in error, it should remand for a new trial.

July 2, 2025

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 39 pages.

/s/ Erin M. O'Connell
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 2, 2025, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on counsel at the following email address:

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