

No. 131527
IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 1-23-1183.
	)	
Plaintiff-Appellant,	)	There on appeal from the Circuit Court of Cook County, Illinois, No.
-vs-	)	20 CR 07045.
	)	
JOSEPH GIZEL,	)	Honorable
	)	Mark W. Martin,
Defendant-Appellee.	)	Judge Presiding.

**BRIEF OF APPELLEE.
CROSS-RELIEF REQUESTED.**

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

MAXIMILLIAN HUGHES-ZAHNER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLEE

ORAL ARGUMENT REQUESTED

*Destiny Sanders, a third-year law student at the Northwestern University Pritzker School of Law and an intern with the First District of the Office of the State Appellate Defender, assisted in the research of this brief.

E-FILED
4/22/2026 2:44 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

	Page
Issues Presented for Review	1
Statement of Facts	2
Argument	23
I. The trial court committed plain error in allowing Joseph Gizel to represent himself at trial when the record showed, and an expert concluded, that Gizel’s mental illness prevented him from conducting trial proceedings on his own.	23
<i>Indiana v. Edwards</i> , 554 U.S. 164 (2008)	23
<i>People v. Gizel</i> , 2025 IL App (1st) 231183-U	23
<i>Godinez v. Moran</i> , 509 U.S. 389 (1993)	24
A. General Law.....	24
<i>People v. Baez</i> , 241 Ill. 2d 44 (2011)	25
<i>People v. Haynes</i> , 174 Ill. 2d 204 (1996)	25
<i>Cooper v. Oklahoma</i> , 517 U.S. 348 (1996)	25
<i>Medina v. California</i> , 505 U.S. 437 (1992)	25
<i>Dusky v. United States</i> , 362 U.S. 402 (1960)	26
<i>Godinez v. Moran</i> , 509 U.S. 389 (1993)	26, 27
<i>Indiana v. Edwards</i> , 554 U.S. 164 (2008)	<i>passim</i>
<i>People v. Allen</i> , 401 Ill. App. 3d 840 (1st Dist. 2010)	27
<i>People v. McNutt</i> , 2020 IL App (1st) 173030	27, 28, 29
<i>People v. Rodriguez-Aranda</i> , 2022 IL App (2d) 200715	27, 28
<i>People v. Lucas</i> , 388 Ill. App. 3d 721 (2d Dist. 2009)	29

<i>People v. Williams</i> , 87 Ill. App. 3d 860 (2d Dist. 1980)	29
<i>People v. Schoreck</i> , 384 Ill. App. 3d 904 (2d Dist. 2008)	29
<i>People v. Washington</i> , 2016 IL App (1st) 131198.	29
<i>People v. Finlaw</i> , 2023 IL App (4th) 220797	30
U.S. Const., amend. VI	25
U.S. Const., amend. XIV	25
Ill. Const. 1970, art. I, § 8	25
Ill. S. Ct. R. 401(a).	25
725 ILCS 5/104-10.	28
B. Gizel is the Quintessential <i>Edwards</i> “Gray Area Defendant.”	30
<i>People v. Lucas</i> , 388 Ill. App. 3d 721 (2d Dist. 2009).	35
C. The Trial Court Committed Error in Finding Gizel Fit to Represent Himself.	37
<i>People v. Lucas</i> , 388 Ill. App. 3d 721 (2d Dist. 2009).	38
<i>People v. Gizel</i> , 2025 IL App (1st) 231183-U	39
<i>Indiana v. Edwards</i> , 554 U.S. 164 (2008)	<i>passim</i>
<i>Godinez v. Moran</i> , 509 U.S. 389 (1993)	41
<i>People v. Rodriguez-Aranda</i> , 2022 IL App (2d) 200715.	41
<i>People v. McNutt</i> , 2020 IL App (1st) 173030	41
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	44
<i>People v. Kidd</i> , 178 Ill. 2d 92 (1997).	44
<i>People v. Washington</i> , 2016 IL App (1st) 131198.	44
<i>People v. Finlaw</i> , 2023 IL App (4th) 220797	44

People v. Fisher, 407 Ill. App. 3d 585 (4th Dist. 2011). 44

D. The State’s Argument Recapitulates the Trial Court’s Error. 45

Indiana v. Edwards, 554 U.S. 164 (2008) 45, 46, 54

People v. Rainey, 2019 IL App (1st) 160187 47, 48, 49

People v. Burton, 184 Ill. 2d 1 (1998) 47, 48

People v. Mayo, 198 Ill. 2d 530 (2002) 48

People v. Rodriguez-Aranda, 2022 IL App (2d) 200715 48, 49, 50

People v. Hughes, 2025 IL App (4th) 240514 48

People v. Gibson, 2017 IL App (1st) 143566 48

People v. Rogatchev, 2026 IL App (4th) 241165 48, 50

People v. Baez, 241 Ill. 2d 44 (2011) 49

People v. Talidis, 2023 IL App (2d) 220109 50

People v. Smith, 2025 IL App (1st) 220365-U 50

People v. Lemons, 2025 IL App (5th) 230601-U 50

People v. McNutt, 2020 IL App (1st) 173030 50

People v. Jackson, 2022 IL 127256 51

Weaver v. Massachusetts, 582 U.S. 286 (2017). 51, 52

United States v. Hakim, 30 F. 4th 1310 (11th Cir. 2022) 52

United States v. Erskine, 355 F. 3d 1161 (9th Cir. 2004) 52

United States v. Johnson, 24 F. 4th 590 (6th Cir. 2022) 52

People v. Gizel, 2025 IL App (1st) 231183-U 53

Gideon v. Wainwright, 372 U.S. 335 (1963). 53

United States v. Cronin, 466 U.S. 648 (1984). 53

	<i>People v. Hattery</i> , 109 Ill. 2d 449 (1985)	53
	<i>People v. Johnson</i> , 267 P. 3d 1125 (Cal. 2012)	54
	<i>State v. Connor</i> , 973 A. 2d 627 (Conn. 2009)	55, 56
	<i>Chadwick v. State</i> , 309 S.W. 3d 558 (Tex. Crim. App. 2010)	55
	<i>State v. Jason</i> , 779 N.W. 2d 66 (Iowa Ct. App. 2009)	55
	<i>Illinois v. Allen</i> , 397 U.S. 337 (1970)	56
	Ill. S. Ct. R. 615(a)	51
II.	The trial court committed plain error when it failed to appoint Gizel counsel at the fitness hearing after finding a <i>bona fide</i> doubt of his fitness. (<i>Cross-relief requested.</i>)	58
	<i>People v. Washington</i> , 2017 IL App (4th) 150054	58, 59, 61
	<i>People v. Esang</i> , 396 Ill. App. 3d 833 (1st Dist. 2009)	59, 61
	<i>People v. Holt</i> , 2013 IL App (2d) 120476	60
	<i>People v. Lewis</i> , 75 Ill. App. 3d 560 (5th Dist. 1979)	60
	<i>People v. Holt</i> , 2014 IL 116989	60
	725 ILCS 5/104-11(a)	58
	U.S. Const., amend. VI	58
	U.S. Const., amend. XIV	58
	Ill. Const. 1970, art. I, § 8	58
	725 ILCS 5/104-11(c)	59
III.	The trial court committed plain error in admitting J.G.’s forensic interview when it fell outside the time constraints of 725 ILCS 5/115-10(b)(3). (<i>Cross-relief requested.</i>)	62
	<i>People v. Williams</i> , 193 Ill. 2d 306 (2000)	62
	<i>Williamson v. United States</i> , 512 U.S. 594 (1994)	63

<i>People v. Mitchell</i> , 155 Ill. 2d 344 (1993)	63
<i>People v. Johnson</i> , 363 Ill. App. 3d 1060 (2d Dist. 2005).	63, 69, 70
<i>Leach v. Department of Employment Security</i> , 2020 IL App (1st) 190299	66
<i>People v. Patterson</i> , 217 Ill. 2d 407 (2005)	67
<i>People v. Enoch</i> , 122 Ill. 2d 176 (1988).	69
<i>People v. Herron</i> , 215 Ill. 2d 167 (2005)	69
Ill. R. Evid. 801(c)	62
Ill. R. Evid. 802	62
725 ILCS 5/115-10.	62, 69
725 ILCS 5/115-10(b)(3)	62, 63, 64
725 ILCS 5/115-10(a), (b)	63
725 ILCS 5/115-7.3	65
Department of Defense, <i>Coronavirus: Timeline</i> , (March 18, 2024, 11:15 a.m.), https://www.war.gov/Spotlights/Coronavirus-DOD-Response/Timeline	66
Office of Governor J.B. Pritzker, Stay-at-Home Order Press Release (Mar. 20, 2020), https://www.illinois.gov/news/release.html?releaseid=21288	66
Ill. S. Ct. R. 615(a).	69
Conclusion	71

ISSUES PRESENTED FOR REVIEW

- I. Whether the trial court committed plain error in allowing Joseph Gizel to represent himself at trial when the record showed, and an expert concluded, that Gizel's mental illness prevented him from conducting trial proceedings on his own.
- II. Whether the trial court committed plain error when it failed to appoint Gizel counsel at the fitness hearing after finding a *bona fide* doubt of his fitness. (*Cross-relief requested.*)
- III. Whether the trial court committed plain error in admitting J.G.'s forensic interview when it fell outside the time constraints of 725 ILCS 5/115-10(b)(3). (*Cross-relief requested.*)

STATEMENT OF FACTS

Overview of Case

Joseph Gizel was charged with several counts of predatory criminal sexual assault that alleged he committed acts of sexual penetration against his minor daughter, J.G. (CI. 36-41). Four months after being arraigned on these charges, Gizel waived counsel and represented himself *pro se* for the remainder of the case. (R. 33-40). The State filed two pretrial motions: to admit evidence of Gizel's other sex crimes allegedly committed against his other daughter, A.G., pursuant to 725 ILCS 5/115-7.3; and, to admit J.G.'s hearsay statements to a forensic interviewer, pursuant to 725 ILCS 5/115-10. (CI. 168-69, 186-89). The trial court granted both motions. (R. 135, 164-65). Three years into pretrial proceedings, the trial court found a *bona fide* doubt existed as to Gizel's fitness and ordered a behavioral clinical examination. (R. 200-01). A fitness hearing was held wherein Dr. Philip Pan, the forensic psychiatrist who interviewed Gizel, testified that Gizel was fit to stand trial but unfit to represent himself. (R. 255-62). After the fitness hearing, however, the trial court found Gizel fit to represent himself. (R. 299-301). Following a bench trial, the trial court convicted Gizel of five counts of predatory criminal sexual assault and four counts of criminal sexual assault. (R. 469). The criminal sexual assault counts were merged into the predatory criminal sexual assault counts, and Gizel was sentenced to 75 years' imprisonment. (R. 477-78, 500-01).

On direct appeal, Gizel argued that the trial court erred in allowing him to represent himself at trial. *People v. Gizel*, 2025 IL App (1st) 231183-U, ¶ 56. As part of this issue, Gizel also argued that the trial court abused its discretion

in failing to appoint counsel to represent Gizel at the fitness hearing after it had found a *bona fide* doubt of Gizel's fitness. Finally, Gizel argued that the trial court erred in admitting J.G.'s forensic interview when it fell outside the time constraint of the section 115-10 hearsay exception. On January 16, 2025, the appellate court vacated Gizel's convictions and sentence and remanded for a new trial, holding that the trial court committed second-prong plain error in allowing Gizel to represent himself *pro se*. *Id.* ¶ 70. It further instructed that Gizel be appointed counsel to represent him at a new fitness hearing. *Id.* ¶ 71. The appellate court did not reach Gizel's evidentiary argument. *Id.* ¶ 72.

The State filed a petition for leave to appeal, which was allowed by this Court on September 24, 2025. The issue presented for review is whether the trial court committed second-prong plain error when it allowed Gizel to represent himself *pro se*. Gizel additionally requests cross-relief on the two issues he raised on direct appeal that were not directly addressed in the appellate court's decision.

Pretrial Proceedings

Gizel first expressed a desire to represent himself on November 13, 2020. (R. 22). The court gave him a few weeks to rethink his decision, but on December 9, 2020, Gizel stated that he still wanted to represent himself. (R. 33). Pursuant to Supreme Court Rule 401(a), the court admonished Gizel of the nature of the charges against him, the minimum and maximum sentences, and his right to counsel. (R. 33-40). Gizel stated that he understood the Rule 401(a) admonishments, but that he still wished to proceed *pro se*. (R. 38). The court accepted Gizel's waiver of counsel. (R. 40).

Two hearings were held on the State's request to consume DNA evidence on a vibrator that Gisel allegedly used on J.G. (R. 51-52, 59-60). At the first hearing, the court asked Gisel for his response to the request, and he replied, "I don't know what to say, your Honor." (R. 52). When the court pressed him for an answer, he replied, "Can I deny right now? I want to say no. I mean, I want to look more into it." (R. 53). The court gave him two weeks to look into the request. At the second hearing, however, Gisel again expressed confusion, believing that the State was requesting to extract his DNA. (R. 59-60). After being corrected about the nature of the State's request, Gisel asked for more time, but the court denied his continuance and demanded a response. (R. 60). Gisel said, "I object. I deny. I don't agree. I mean, what else am I supposed to say, your Honor?" (R. 60). The court granted the State's motion. (R. 61-62).

On June 25, 2021, Gisel again informed the court that he intended to represent himself. (R. 79). Before giving Rule 401(a) admonishments, the court asked Gisel, *inter alia*, about his criminal history, and Gisel responded that he had previously served time for aggravated battery.¹ (R. 79-80). The State asked for a date to show Gisel the video of J.G.'s interview with a forensic investigator and to file a section 115-10 motion for the admission of hearsay evidence and a section 115-7.3 motion for the admission of evidence of other sexual offenses committed against A.G. (R. 84).

On July 28, 2021, the State was granted leave to file its section 115-7.3

¹ Six months later during another set of Rule 401(a) admonishments, Gisel would contradict himself, stating he had never before been convicted of a crime. (R. 114).

motion to admit proof of other crimes to show propensity. (R. 88-89). The motion stated that Gizel had forced A.G. to engage in oral, vaginal, and anal sex from the ages 9 to 15 and had similarly forced J.G. to perform the same acts from ages 8 to 12. (CI. 154-57). Further, the motion set out a five-year range—between May 17, 2015, and March 31, 2020—during which Gizel allegedly abused J.G. (CI. 154). The motion also established, however, that the last time Gizel abused both J.G. and A.G. was “before the quarantine began” in March of 2020.² (CI. 155). The court continued the cause to September 2 for Gizel to file a response and for the State to also file its section 115-10 motion. (R. 89-90).

On September 2, 2021, the court asked Gizel if he had filed a response to the section 115-7.3 motion and he said no. (R. 93). The court asked Gizel if he intended to file a response, and Gizel responded, “I’m not sure, your Honor. No.” (R. 93). The State asked for a new date to file its section 115-10 motion, and the court continued the cause to October 6. (R. 93-94).

On October 6, 2021, the State filed its section 115-10 motion, seeking the introduction of J.G.’s hearsay statements to her mother and to the forensic investigator. (R. 99; CI. 168-69). The court asked Gizel if he had filed a response to the State’s previously filed section 115-7.3 motion, and he responded no. (R. 100-01). The court implored him to do so and Gizel assented. (R. 101). The court told Gizel to file his response to the section 115-7.3 motion by October 27. (R. 101).

On October 27, 2021, the State tendered Gizel copies of the section 115-7.3

² Illinois Governor J.B. Pritzker’s stay at home order took effect on March 21, 2020. See pg. 66, *infra*.

and 115-10 motions and the DNA results from the vibrator. (R. 104-05). The court asked Gizel if he wanted to look over the section 115-7.3 motion and file a response. (R. 105). Gizel answered affirmatively. (R. 105). At the next date, Gizel was given Rule 401(a) admonishments again and the court reiterated the dangers of self-representation. (R. 111-14). The court also told Gizel that if the case went to trial, stand-by counsel would not be appointed to help him. (R. 114).

On January 27, 2022, the State informed the court that discovery was complete. (R. 120). The State also told the court that it had attempted to show Gizel videos of the forensic interviews with J.G. and A.G., but that he had refused to watch them. (R. 119-20). The State also said that Gizel had not filed any responses to the section 115-7.3 and 115-10 motions. (R. 121-22). The court asked Gizel if he had refused to watch the forensic videos, and he said yes. (R. 121). The court asked Gizel if he had filed a written response to the State's motions, and he responded, "Not yet." (R. 122). The court asked why, and Gizel said, "I'm catching up on everything and I got a lot going on and I'll catch up on it." (R. 122).

On March 30, 2022, the parties appeared for the hearings on the State's section 115-7.3 and 115-10 motions. (R. 126). The court asked Gizel whether he had filed any responses to the motions, and Gizel said no. (R. 127). The court stated that it would first conduct a hearing on the section 115-7.3 motion and it again asked Gizel whether he had prepared a written response to the motion. (R. 127). Gizel replied, "No, your Honor. I wasn't prepared. I don't have those things." (R. 127). The court told the State to present the motion. (R. 127).

The State argued for the admission of the evidence of Gizel's sexual abuse

of A.G. to show his propensity to commit sex crimes and to show his motive and intent. (R. 127-34; CI. 186-89). It alleged that the abuse of J.G. “occurred between May 17th of 2015 and May 31st of 2020.” (R. 127-28; CI. 186). However, it also alleged that the last time Gizel abused J.G. was “in March 2020 – before the quarantine began.” (R. 130; CI. 187). After the State finished its argument, the court asked Gizel for his response. (R. 134-35). Gizel stated, “That’s all arguable. It’s all hearsay, and I don’t know where they got this and that from; but I am unprepared at the moment to mention anything further.” (R. 135). The court granted the State’s section 115-7.3 motion. (R. 135). The hearing on the section 115-10 motion was continued to May 17, 2022. (R. 146).

On May 17, the State informed the court that it was amending the section 115-10 motion, seeking only to have the video of the forensic interview with J.G. admitted and not J.G.’s statements to her mother. (R. 150-51). It also sought to strike paragraph six, which detailed J.G.’s disclosures to her mother, Jun Akaishi, including that Gizel’s abuse of J.G. “occurred up until the start of COVID 19 in mid March of 2020.” (R. 151; CI. 168). The court asked Gizel whether he was ready to proceed. (R. 152). Gizel responded, “Your Honor, I was told it was continued to December 18th, and I would want to ask for a three-week continuance. I’m not ready.” (R. 152). The court asked Gizel why he was not ready. (R. 153). Gizel replied, “I wasn’t feeling well for the past couple weeks and I’m a little bit behind. I’m just asking for three weeks.” (R. 153). The court denied Gizel’s motion for a continuance and told the State to call its witness. (R. 153).

The State called Guadalupe Salgado, who testified that she formerly worked

as a forensic interviewer for the Children’s Advocacy Center and conducted an interview with J.G. on June 26, 2020. (R. 154-57). Salgado identified People’s Exhibit 1 (“PE1”) as the video of the interview. (R. 158-59). The State asked to publish the video, and the court asked Gizel whether he had any objections. (R. 159). Gizel responded, “Again, I’m just not ready, your Honor. I want a continuance so I can be ready more.” (R. 159). The court asked Gizel whether he wanted to ask Salgado any questions prior to the viewing of the video, and he replied, “I’m not ready. I have so much to dispute about it, but I’m not ready.” (R. 160). The State informed the court that Gizel had been given the opportunity to view the video on December 16 and refused. (R. 160). Gizel responded, “I did refuse it and with good reason, and I will be ready in good time. The defendant needs time. I am just not ready now. I did refuse it and I don’t need to see it. I didn’t do it but I’m going to prove it.” (R. 160). The court then viewed the video. (R. 161).

The video depicts Salgado and J.G. sitting in a room, speaking with each other. (PE1 at approx. 11:33:14 AM (1m:20s)).³ Salgado asks J.G. to describe what Gizel did to her. (PE1 at approx. 11:37:30 AM (5m:34s)). J.G. states that beginning when she was eight years old, Gizel forced her to do “sexual things.” (PE1 at approx. 11:37:50 AM (5m:54s)). J.G. later specifies that Gizel forced her to engage in vaginal (PE1 at approx. 11:39:20 AM (7m:24s)) and anal sex (PE1 at approx. 11:42:12 AM (10m:16s)), and to perform oral sex on him. (PE1 at approx. 11:38:25 AM

³ The forensic interview was People’s Exhibit 1 at the hearing on the State’s section 115-10 motion; it was People’s Exhibit 21 at trial. The video itself does not have a timestamp, but a separate window gives the AM/PM time. The recording is about 37 minutes, from 11:31:56 AM until 12:08:49 PM. For citation purposes, this brief includes the AM/PM time and the time elapsed.

(6m:29s)). At least three times, Gizel forced her to engage in a threesome with A.G. (PE1 at approx. 11:45:56 AM (14m)). He also showed her pornography (PE1 at approx. 11:46:46 AM (14m:50s)), made her wear lingerie (PE1 at approx. 11:47:56 AM (16m)), and once inserted a glittery, pink vibrator into her vagina. (PE1 at approx. 11:50:23 AM (18m:27s)). If she resisted, Gizel would get angry and yell at her and grab her arms. (PE1 at approx. 11:51:26 AM (19m:30s)). J.G. had been scared to tell anyone of the abuse because Gizel was a very large man with a temper (PE1 at approx. 11:51:36 AM (19m:40s)); sometimes he would punch the walls of his house when angry. (PE1 at approx. 11:51:54 AM (19m:58s)). Gizel last abused her in March 2020. (PE1 at approx. 11:43:14 AM (11m:18s)).

After the video was played, the State rested. (R. 161). The court asked Gizel whether he wanted to present any evidence in opposition to the State's motion and he said no. (R. 161). The State then argued for admission of the video at trial, arguing that the time, content and circumstances of J.G.'s statements during the interview provide sufficient safeguards of reliability. (R. 161-63). Specifically, the State asserted that, "J.G. says that the last time that anything happened is in March when Coronavirus started, so that is March of 2020. We know that her birthday is *** May 17th, and that's when she turned 13. And this forensic interview was done on June 26 of 2020. Your Honor, so the time is reliable." (R. 161-62). Following the State's argument, the court asked Gizel for a response. (R. 163). Gizel stated he had "a lot to dispute against that" but was "not prepared to do this at the moment." (R. 163). The court granted the State's section 115-10 motion. (R. 164-65).

Fitness Proceedings

The State asked to set the case for trial and, after the trial court advised him, Gizel requested a bench trial and signed a jury waiver. (R. 165-69). The court asked Gizel if he intended to call any witnesses and he said yes. (R. 171). The court then asked how many witnesses he intended to call and Gizel said he was unsure because he was “having a hard time getting a hold of people.” (R. 171). Gizel also indicated that he planned to testify. (R. 171). The court told Gizel that it would give him one month to send a letter to the State containing a list of his witnesses. (R. 172). The court continued the cause to July 5 for Gizel to file his answer and to provide the State with his witness list. (R. 173-74).

On July 5, 2022, the court asked Gizel whether he had filed his answer and witness list. (R. 177). Gizel said no, explaining, “I have a good reason. I’ve been moved five times in the past four weeks. I got moved to Cermak, which is the medical unit, because I don’t come out of my cell. I remain in my cell.” (R. 177-78). The court responded that it had been over a year since discovery was completed and Gizel had been given sufficient time to submit his answer, provide the witness list, and make any pretrial motions. (R. 178). The court set the case for trial on October 18, 2022. (R. 186-87).

On October 18, the State sought a continuance because one of its witnesses was unavailable. (R. 190). The court questioned whether a behavioral clinical exam (“BCX”) had ever been performed on Gizel, noting that it needed to ensure Gizel was fit to waive his right to counsel. (R. 191-92). Gizel stated he had never been interviewed by forensic clinical services. (R. 192). The court continued the

cause to November 2 for a status hearing and further discussion of whether to order a BCX for Gizel. (R. 192-93).

On November 2, 2022, the court stated that it had a *bona fide* doubt of Gizel's fitness after reviewing the transcripts. (R. 200). The court ordered that Gizel undergo a fitness examination by forensic clinical services. (R. 200-01). The cause was continued to December 14, 2022. (R. 202-03).

On December 14, the court stated that it had received a letter filed that day from Dr. Philip Pan, a psychiatrist with forensic clinical services who had examined Gizel on November 21, 2022, and December 13, 2022. (R. 207; CI. 222-23). In the letter, Dr. Pan stated that he diagnosed Gizel with unspecified schizophrenia spectrum and other psychotic disorder. (CI. 222). Dr. Pan noted that Gizel "evidences some very odd if not bizarre behaviors, such as not showering and his appearance during the interviews. He exhibits some idiosyncratic and disorganized thinking, as well as restricted affect." (CI. 222). Due to Gizel's "delusional thinking," he had been prescribed anti-psychotic medication but was not taking it. (CI. 222).

Dr. Pan concluded that Gizel was fit to stand trial because he "currently demonstrates an adequate understanding of the nature and purpose of the proceedings against him. He is able to assist counsel in his defense." (CI. 222). However, Dr. Pan concluded that Gizel was unfit to represent himself *pro se* as he is "unable to mount a defense solely on his own due to disorganized and paranoid thinking." (CI. 223).

The court ordered a fitness hearing, which was held on March 14, 2023. (R. 247-49). Dr. Pan was the only witness and the court conducted the examination.

(R. 254-63). Dr. Pan reiterated his conclusion that Gizel suffered from unspecified schizophrenia spectrum and other psychotic disorder. (R. 255-56). When asked the symptoms of this disorder, Dr. Pan testified, “Well, he’s got some very odd behaviors. He’s had a lot of problems with his hygiene at the jail and not showering. There is some *** idiosyncratic and disorganized thinking. And I’m concerned about some paranoid delusional thinking.” (R. 256). Gizel had been prescribed anti-psychotic medication but refused to take it, so the medication was discontinued. (R. 256-57). Dr. Pan determined that Gizel was fit to stand trial even without medications because his answers to the interview questions indicated his understanding of the charges against him and how a trial works. (R. 257-58).

Regarding Gizel’s fitness to go *pro se*, Dr. Pan testified that there are a series of questions forensic clinical services uses to determine the ability of a defendant to represent himself, including whether he knows how to file a motion, make an opening statement and closing argument, and issue a subpoena. (R. 258-61). Gizel expressed uncertainty as to how to perform any of those functions. (R. 259-60).

Dr. Pan concluded that while Gizel was fit to stand trial with counsel, he was not fit to represent himself. (R. 258). Dr. Pan explained:

[B]asically, Mr. Gizel insists that the allegations are false and he’s being set up by his [ex-wife]. He cited he has many witnesses on his behalf, but he wouldn’t elaborate or share with me who those people are. He expressed a lot of focus that the charges would be dropped but didn’t really give me any explanation or logic why they would be. When I asked him about some apparent evidence that existed on his phone, he basically just denied that this could be the case and said it was false. He was adamant that—one of the victims must have dropped the charges by now. And some of his logic for why his ex-wife was persecuting him just seemed very bizarre and faulty.

(R. 258-59). The court questioned Dr. Pan as to the severity of Gizel’s mental illness,

specifically asking whether it would interfere with his fitness to stand trial. (R. 261-62). Dr. Pan testified that the active symptoms of Gizel's mental illness were not so severe as to affect his ability to stand trial, but Dr. Pan concluded that the illness caused Gizel to be so disorganized as to render him incapable of representing himself. (R. 262). The court followed up by asking Dr. Pan, "So is it your conclusion that he is not suffering from severe mental illness?" (R. 262). Dr. Pan responded, "Yes." (R. 262). Neither party wished to question the witness, so the court excused Dr. Pan and admitted his psychiatric report into evidence, which largely mirrored his testimony at the hearing. (R. 262-63; CI. 224-33).

On May 8, 2023, the trial court first found Gizel fit to stand trial based on Dr. Pan's testimony and report that Gizel understood the nature of the proceedings against him and was able to assist counsel in his defense. (R. 275-76). Turning to the issue of whether Gizel was fit to represent himself and conduct trial proceedings on his own, the trial court stated that in *Godinez v. Moran*, 509 U.S. 389 (1993), the Supreme Court held that "the standard for fitness to stand trial and represent one's self are the same." (R. 276). Accordingly, the trial court determined that, since Dr. Pan found that Gizel was fit to stand trial with counsel, "[t]his finding potentially ends the matter with respect to the question whether the defendant is fit to represent himself [under] *Godinez*." (R. 276).

The trial court then cited the Supreme Court's holding in *Indiana v. Edwards*, 554 U.S. 164 (2008), that a state court may deny a defendant's request to represent himself during trial where he suffers from a severe mental illness rendering him incompetent to conduct trial proceedings by himself. (R. 276-77). Before making

a final ruling on Gizel's fitness to represent himself, the trial court carefully admonished Gizel pursuant to Rule 401(a). (R. 278-99). Gizel stated that he understood and wished to waive his right to counsel. (R. 278-99).

The trial court then returned to the issue of whether Gizel was competent to waive his right to counsel. (R. 299-300). It again found that under *Godinez*, the competence to stand trial and the competence to waive counsel are determined under the same standard, and "this standard is not whether defendant is competent to represent himself." (R. 300). The court further determined that under *Edwards*, the defendant may be found incompetent to waive counsel only if he is suffering from "severe" mental illness. (R. 300-01). Noting Dr. Pan's testimony that Gizel's mental illness was not severe, the court ruled that Gizel was fit to represent himself at trial and therefore it accepted his waiver of counsel. (R. 301).

Trial and Sentencing Proceedings

The bench trial commenced on May 9, 2023. (R. 306). The State gave an opening statement recounting how the evidence would show that Gizel forced J.G. to engage in vaginal, anal, and oral sex from ages 8 to 13. (R. 310-12). Gizel gave a rambling opening statement focusing on his unhappy marriage. (R. 313-16). He did not directly address the sexual assault charges against him or indicate what he expected the evidence to show.

The State called J.G., who testified she was 15 years old and that her date of birth was May 17, 2007. (R. 317). J.G. testified that when she was eight or nine years old, Gizel called her into his bedroom and asked her to perform a threesome with him and her sister, A.G. (R. 320). She remembers sucking on Gizel's fingers

on that occasion, but otherwise cannot remember what else occurred. (R. 320-21). For years afterward, Gizel regularly forced J.G. to perform oral sex on him and to engage in vaginal and anal sex. (R. 321-22). This usually occurred in Gizel's bedroom, but also sometimes in a closet or in the garage. (R. 324-25). Gizel also required J.G. to wear lingerie and rub his penis with her hands and he put a vibrator in her vagina and showed her pornography. (R. 323-24, 326-30). J.G.'s mom was a flight attendant who was not at home on the many occasions when this sexual abuse occurred. (R. 324-25).

The State showed J.G. several photographs, which she identified as depicting the lingerie Gizel forced her to wear and the vibrator he used on her. (R. 328-30). The State offered the photographs into evidence without any objection from Gizel, and the court admitted the photographs. (R. 330).

J.G. testified that in May 2020, when she was 13, her mom asked her whether Gizel was abusing her and she said yes. (R. 330-31). On June 25, 2020, J.G. went to the hospital where an exam was performed on her. (R. 331). On June 26, J.G.'s mom took her to the Child Advocacy Center, where she spoke with a forensic investigator. (R. 331).

During cross-examination, Gizel initially asked J.G. when the sexual acts allegedly occurred, and she said day and night. (R. 333-34). He then asked J.G. a series of vague, compound questions regarding her day-to-day life with him. (R. 334-37). Objections were sustained to all these questions. (R. 334-37). Gizel did not ask J.G. any other questions regarding her testimony on direct examination that he had sexually abused her for years.

The State called Jun Akaishi, Gizel's ex-wife. (R. 341-42). During their marriage, Akaishi worked as a flight attendant while Gizel stayed home with their four children. (R. 342-43). In May 2020, A.G. told her what Gizel "had been doing to her." (R. 343-44). Akaishi then spoke with J.G., who also told Akaishi what Gizel "had been doing [to her]." (R. 344). Gizel made no hearsay objection to either of these. On June 25, 2020, Akaishi went to the police and then took A.G. and J.G. to the hospital for an examination. (R. 344-45). The next day, Akaishi took them to the Child Advocacy Center for forensic interviews. (R. 345). On July 6, 2020, Akaishi discovered a lockbox in her home containing a pink vibrator. (R. 346-47). She called the police, and they came to the house and collected the lockbox and took buccal swabs of her, J.G., and A.G. (R. 347-48).

During cross-examination, Gizel elicited testimony from Akaishi that during their marriage, she sometimes agreed to his having sex with other women. (R. 351). However, she insisted that she never intended for him to engage in sexual acts with their children. (R. 351). Akaishi further testified that although she wanted to quit her job, she made more money than Gizel and felt obligated to support the family. (R. 353-54). Sometimes she wore lingerie for him, but she did not wear any of the clothing found in the lockbox. (R. 356-58). Gizel did not ask her any questions about his alleged sexual abuse of J.G. and A.G.

The State called A.G. as an other-crimes witness. (R. 359). A.G. testified that she was 18 years old and her date of birth was July 9, 2004. (R. 359). The sexual abuse committed by Gizel began when she was nine years old. (R. 362). Gizel asked her to touch his penis over his clothes with her hand. (R. 363).

Subsequently, continuing for several years, Gizel forced her to rub his bare penis with her hands and to engage in oral, anal, and vaginal sex. (R. 363-67). These acts usually happened in the bedroom. (R. 368). Gizel also put sex toys in her vagina, required her to wear a school-girl costume with stockings, and showed her pornography. (R. 367-68, 372). Sometimes Gizel would engage in a threesome with A.G. and J.G., during which he would force them to perform oral sex on him and on each other. (R. 369-71). The State showed A.G. photographs, which she identified as depicting the school-girl costume, sex toy, and lockbox. (R. 372-75). She also identified photographs from Gizel's phone focusing on her cleavage. (R. 375-77). When the State sought to admit the photographs from Gizel's phone into evidence, he objected on the grounds that A.G. "took half of them." (R. 377-78). The court clarified that Gizel would have the chance to present his case and asked again if Gizel had any objections. (R. 378). Gizel stated, "I'll just defend myself against them, your Honor." (R. 378). The photographs were admitted. (R. 378).

A.G. testified that in May 2020, she told her mom about Gizel's abuse. (R. 379). On June 25, 2020, she went to the hospital for an examination. (R. 379). On June 26, she had a forensic interview at the Child Advocacy Center. (R. 379).

On cross-examination, Gizel asked A.G. whether she had taken the photographs of herself on his phone and she said no. (R. 380-81). Gizel asked A.G. whether he had allowed her to go on sleepovers, and she replied, "Yes, but on conditions." (R. 384). When asked what conditions, A.G. testified, "That I would have sex with you before." (R. 384). Gizel did not ask A.G. any questions regarding her testimony on direct examination that he had sexually abused her for years.

Detective Frank Moreno testified that Gizel was arrested on June 25, 2020, and a search of Gizel's home was conducted the next day. (R. 388-91). Gizel consented to a search of his phone wherein Moreno discovered videos of sex acts and photographs of A.G. focusing on her cleavage. (R. 391-94). On July 6, Akaishi called him to say that, in the closet of the master bedroom, she had discovered Gizel's lockbox, which contained a pink vibrator, school-girl uniform, and lingerie. (R. 394-98). Gizel did not cross-examine Moreno. (R. 401-02).

The State called Le'Kai Adams, a forensic scientist with the Illinois State Police. (R. 409). Adams was tendered as an expert in the field of forensic biology and DNA analysis, and Gizel made no objection. (R. 412-13). Adams testified that she tested DNA from the vibrator and found a match with J.G.'s DNA. (R. 417-21).

The State called Guadalupe Salgado, who identified People's Exhibit 21 as the video of her interview with J.G. on June 26, 2020. (R. 424-29). The State sought to publish the interview, and Gizel made no objection. (R. 429). The video was played for the court. (R. 432). Gizel did not cross-examine Salgado. (R. 432).

After the State rested its case, the court asked Gizel whether he had any motions. (R. 434-35). Gizel asked, "Motions as far as what, your Honor?" (R. 435). The court explained that it could not advise Gizel on the motions to file, although it noted that typically a criminal defendant will file a motion for a directed finding. (R. 435-36). Gizel stated that he did not have any motions. (R. 436).

The court then asked Gizel whether he had any witnesses to call. (R. 436). Gizel responded that there were witnesses he wished to call, but he did not have any of their phone numbers. (R. 436-37). The court asked Gizel if he had issued

any subpoenas for witnesses and he said no. (R. 437). The court asked, “So you do not wish to present any defense witness testimony, correct?” (R. 437). Gizel responded, “I do. I’m late on doing it. It was a mistake, your Honor.” (R. 437). The trial court asked Gizel whether he had filed an answer listing the witnesses he wanted to call, and Gizel said no. (R. 437). The trial court asked Gizel whether he had any physical or documentary evidence, and he said no. (R. 438-39). The court then explained that Gizel had the right to testify as well as the right to remain silent and rely on the State’s inability to prove the charges. (R. 439-40). Gizel stated he did not wish to testify. (R. 440). The court accepted Gizel’s waiver of the right to testify, and Gizel rested his case. (R. 441).

The State gave a closing argument recounting the evidence of Gizel’s guilt. (R. 441-48). Gizel made a rambling closing argument in which he accused Akaishi of falsely planting the evidence found in the lockbox and turning their children against him. (R. 448-58). The court sustained multiple objections that Gizel’s argument was not based on the evidence at trial. (R. 452-53).

The court found Gizel guilty on all nine counts and set June 7, 2023, for the presentation of post-trial motions and sentencing. (R. 464-70). On June 7, Gizel informed the court that he had not filed any post-trial motions. (R. 474). The cause proceeded to sentencing. (R. 475-76). The State presented a victim impact statement from Akaishi and argued factors in aggravation. (R. 478-86). The court asked Gizel whether he had any evidence in mitigation, and he responded that he had been unable to contact any witnesses. (R. 487). The court allowed Gizel to proffer what the witnesses would say. (R. 487). Gizel asserted that four of his

witnesses (his mother, aunt, and two sisters) would testify to his unhappy marriage and that they each offered to talk to Akaishi to “help ease tension in the home.” (R. 487-90). A fifth witness, Salvatore Martirano, also would testify to the “trauma” Gizel endured during the marriage. (R. 490).

The court gave Gizel the opportunity to present arguments in mitigation. (R. 490-91). Gizel stated he was a great father and that he did not commit the charged crimes. (R. 491-93). The court gave Gizel the opportunity to make a statement in allocution, and Gizel repeated the argument that he was a great father and innocent of the charges. (R. 494-97). The court sentenced Gizel to 75 years’ imprisonment and advised him of his appellate rights and of the need to file a post-sentencing motion within 30 days if he wished to challenge his sentence. (R. 498-501, 503-05). The cause was continued to July 5. (R. 509-10).

On July 5, 2023, the court asked Gizel if he had filed a motion to reconsider the sentence, and Gizel responded, “Your Honor, I don’t even know how to do that.” (R. 513-14). He asked for another week to file the motion, but the court expressed its concern that the motion would be untimely. (R. 514). Gizel was provided with a pre-printed motion for new trial and motion to reconsider sentence, which he filled out. (R. 514-15). The court struck the motion for new trial as untimely and denied the motion to reconsider sentence. (R. 518-19). Gizel filed a timely notice of appeal. (R. 520).

Direct Appeal

Gizel raised two issues on direct appeal: (1) the trial court abused its discretion in finding Gizel fit to represent himself or, alternatively, in failing to appoint counsel

to represent Gizel at a fitness hearing after it found a *bona fide* doubt of his fitness; and, (2) the admission of J.G.’s forensic interview was erroneous when it fell outside the time constraint of 725 ILCS 5/115-10. The appellate court held that the trial court erred by accepting Gizel’s jury waiver and allowing him to represent himself *pro se*. *People v. Gizel*, 2025 IL App (1st) 231183-U, ¶ 1. Accordingly, it vacated Gizel’s convictions and sentence and remanded for a new trial at which Gizel will be represented by counsel. *Id.* Should Gizel insist on representing himself again, the trial court should order a new BCX and conduct a fitness hearing wherein Gizel is represented by counsel. *Id.* ¶ 71.

In granting Gizel relief on his first issue, the reviewing court explained that the record showed that Gizel was not competent to conduct trial proceedings by himself. *Id.* ¶ 64. It noted too that Dr. Pan’s findings supported what the record showed—that Gizel’s “mental illness rendered him so disorganized in his thinking as to render him incapable of representing himself at trial.” *Id.* The appellate court found that the trial court erroneously discounted Dr. Pan’s findings and misunderstood the law following *Indiana v. Edwards*, 554 U.S. 164 (2008). *Id.* ¶ 65. Contrary to the trial court’s determination, it found Dr. Pan’s uncontradicted testimony to be “sufficient under *Edwards* to show that [Gizel] was incompetent to represent himself and conduct trial proceedings on his own even though he was fit to stand trial with counsel.” *Id.* ¶ 66. Acknowledging that a lack of legal sophistication, knowledge, or experience is not a basis for finding a defendant unfit to waive counsel, the reviewing court explained that “[t]his is not a case where [Gizel] mounted a poor defense because of a lack of legal training; this is a case

where [Gizel] mounted no defense due to mental illness.” *Id.* ¶ 67. These facts in conjunction differentiated the case from other cases where Illinois courts held that the defendant was competent to represent himself without counsel. *Id.* ¶ 68. The appellate court concluded that these facts amounted to an invalid waiver of counsel, which necessitated remand for a new trial. *Id.* ¶ 71.

Because it granted Gizel relief on his first issue, the appellate court did not address Gizel’s other issues. *Id.* ¶ 72. The State filed a petition for leave to appeal, which was allowed by this Court on September 24, 2025.

ARGUMENT

I. The trial court committed plain error in allowing Joseph Gizel to represent himself at trial when the record showed, and an expert concluded, that Gizel’s mental illness prevented him from conducting trial proceedings on his own.

A few months after being charged with multiple predatory criminal sexual assault charges, Joseph Gizel waived his right to counsel. (R. 33-40; CI. 37-60). After more than two years of pretrial proceedings, the trial court raised a *bona fide* doubt of Gizel’s fitness. (R. 200-01). In his report and testimony at the fitness hearing, the appointed forensic psychiatrist, Dr. Philip Pan, was consistent in his ultimate conclusion: Gizel was fit to stand trial with counsel but unfit to conduct trial proceedings without the help of counsel. (R. 255-62; CI. 222-23). Dr. Pan’s specific finding—that Gizel was unable to mount a defense solely on his own due to disorganized and paranoid thinking—was amply supported by Gizel’s conduct during pretrial proceedings. More importantly, Dr. Pan’s finding also categorically invoked the circumstances that prompted the United States Supreme Court in *Indiana v. Edwards*, 554 U.S. 164, 174-78 (2008), to establish a limitation on the self-representation right—namely, where a defendant who is fit to stand trial but who still suffers from mental illness severe enough that he is not competent to conduct trial proceedings by himself. Nevertheless, the trial court rejected Dr. Pan’s uncontradicted opinion and accepted Gizel’s waiver of counsel. (R. 299-301). The appellate court correctly held that this was an abuse of discretion that amounted to second-prong plain error. *People v. Gizel*, 2025 IL App (1st) 231183-U, ¶ 1. This Court should affirm the appellate court and reverse the trial court.

Subsection A will lay out the general law underlying fitness determinations

and the limitation on a defendant's right to self-representation when his mental illness prevents him from conducting trial proceedings on his own. Further, Gizel will examine how this limitation rests on an appreciation that allowing such an unfit defendant to represent himself at trial would vitiate due process and threaten the integrity of the judicial system. **Subsection B** will explain how Gizel squarely fits within the "gray area defendant" category described by *Edwards*, as evinced by his behavior and by Dr. Pan's uncontradicted clinical conclusions. **Subsection C** will explain the trial court's error in finding Gizel fit to represent himself at trial, where the court below unreasonably rejected Dr. Pan's report and turned a blind eye to Gizel's problematic conduct during pretrial proceedings. Further, the court misinterpreted Dr. Pan's testimony due to a misunderstanding of *Godinez v. Moran*, 509 U.S. 389 (1993), and *Edwards*. **Subsection D** will demonstrate that the State's argument in its opening brief recapitulates the trial court's error, in that the State also fails to appreciate the fitness principles set out in *Godinez* and *Edwards*. Additionally, the State cherry-picks its facts in an attempt to show that Gizel was fit to represent himself while sugar-coating or, at times, plainly omitting the precise conduct that led the appellate court to reverse the trial court's finding.

A. General Law.

The legal issue in this case lies at the nexus of, and reveals the tension between, two constitutional principles: the individual right to self-representation, and the due process prohibition against trying an unfit defendant.

On the one hand, the federal and Illinois constitutions guarantee a defendant

the right to self-representation in the trial court. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. To invoke the self-representation right, a defendant must knowingly and intelligently relinquish his right to counsel, and that waiver must be clear and unequivocal, not ambiguous. *People v. Baez*, 241 Ill. 2d 44, 115-16 (2011). “The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances of that case, including the background, experience, and conduct of the accused.” *Id.* at 116. The purpose of Rule 401(a) is to ensure a defendant’s waiver is knowing and voluntary, and it requires the trial court to determine that the defendant understands the nature of the charges, the sentence range, and the right to counsel before permitting his waiver. *People v. Haynes*, 174 Ill. 2d 204, 236 (1996); Ill. S. Ct. R. 401(a).

At the same time, a criminal defendant must be fit in order to stand trial. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996) (the U.S. Supreme Court “ha[s] repeatedly and consistently recognized that ‘the criminal trial of an incompetent^[4] defendant violates due process’”) (quoting *Medina v. California*, 505 U.S. 437, 453 (1992)). The constitutional prohibition against trying the unfit arises from the “deep roots in our common-law heritage” that demand the accused be able to understand the nature of, and take meaningful part in, the trial process. *Medina*, 505 U.S. at 446. And taking meaningful part in the trial process traditionally means engaging with counsel to advance one’s own interests in defense against

⁴ Federal courts use the terms “competency” and “competent,” whereas Illinois courts use the equivalent terms “fitness” and “fit.”

the charge. In fact, the U.S. Supreme Court in 1960 set forth a standard of fitness that, predictably, assumes a criminal defendant will be represented by counsel at trial. *Dusky v. United States*, 362 U.S. 402, 402 (1960) (“[T]he test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.”) (quotations omitted). The *Dusky* standard is still used today. And in accordance with this standard, the U.S. Supreme Court in 1993 held that the level of fitness one must possess to waive counsel in order to plead guilty is equivalent to the level of fitness necessary to stand trial. *Godinez v. Moran*, 509 U.S. 389, 399-400 (1993).

But what of the criminal defendant who, while fit to stand trial because he possesses the baseline “ability to consult with his lawyer with a reasonable degree of rational understanding,” *Dusky*, 362 U.S. at 402, nonetheless suffers from mental illness sufficient to keep him from acting as his own counsel? Does due process permit that “gray area” defendant to proceed to trial despite his inability, owing to mental illness, to represent himself? That question sets forth the stakes in this case.

In *Indiana v. Edwards*, 554 U.S. 164, 174 (2008), the U.S. Supreme Court was asked whether the federal constitution permits a state to limit a defendant’s self-representation right by insisting upon representation by counsel at trial on the ground that the defendant lacks the mental capacity to conduct his own trial defense. The *Edwards* Court answered affirmatively, holding that “the Constitution permits States to insist upon representation by counsel for those competent enough

to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.” 554 U.S. at 178.

Importantly, the *Edwards* Court did not contend that a defendant’s request to waive counsel and represent himself called for a higher standard of competency or required an additional inquiry—such a holding would run counter to *Godinez*. *Id.* at 172-73. Illinois courts, too, have uniformly held as much. See *People v. Allen*, 401 Ill. App. 3d 840, 851 (1st Dist. 2010); *People v. McNutt*, 2020 IL App (1st) 173030, ¶ 90. Instead, *Edwards* “recognized a gray area of defendants who were competent to stand trial under *Dusky* (and therefore competent to waive the right to counsel) but who were not competent to conduct trial proceedings themselves.” *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 49.

In other words, *Edwards* established that “the standard for deciding whether [a] defendant was competent to conduct trial proceedings on his own is not the same standard for whether he was fit to stand trial.” *Id.*; *Edwards*, 554 U.S. at 175 (“[T]he nature of the problem before us cautions against the use of a single mental competency standard for deciding both (1) whether a defendant who is represented by counsel can proceed to trial and (2) whether a defendant who goes to trial must be permitted to represent himself.”). This understanding fits squarely with the holding in *Godinez* because “a competency determination is necessary only when a court has reason to doubt the defendant’s competence” to stand trial. 509 U.S. at 401, n. 13 (citing *Drope v. Missouri*, 420 U.S. 162, 180-81 (1975); *Pate v. Robinson*, 383 U.S. 375, 385 (1966)). Further, a defendant is presumed to be

fit to stand trial or to plead, and be sentenced. 725 ILCS 5/104-10. As such, the consideration addressed in *Edwards*—a defendant’s fitness to conduct trial proceedings on his own—would only apply in circumstances, like those present here, where a determination was necessary after the trial court established a *bona fide* doubt of the defendant’s fitness, and the fitness hearing revealed suspicions about the defendant’s fitness to conduct trial proceedings by himself.

The *Edwards* Court laid out two conditions that begat its analysis: (1) the defendant is fit to stand trial, and (2) the defendant insists on representing himself during that trial. 554 U.S. at 174. Its holding addressed the scenario where both the foregoing conditions are met, *and* the defendant exhibits mental illness that is sufficiently serious as to impact his ability to conduct trial proceedings by himself. *Id.* at 178. In the *Edwards* context, therefore, “severe mental illness” acts as a term of art, which derives its legal significance from the specific effect that a defendant’s mental illness has on his ability to conduct trial proceedings on his own. A defendant’s right to self-representation may only be limited if his mental illness is severe “to the point where [he is] not competent to conduct trial proceedings by [himself].” *Id.* Accordingly, the severity of a defendant’s mental illness, for applicability under *Edwards*, relates directly to the repercussions on his ability to conduct trial proceedings without the help of counsel. See *McNutt*, 2020 IL App (1st) 173030, ¶ 91. A defendant’s fitness to conduct trial proceedings without the help of counsel, therefore, is determined differently from his fitness to stand trial with counsel, *a la Dusky*, or to waive counsel in order to plead guilty, *a la Godinez*. See *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 49.

If, as here, the prerequisites are established, “the trial court may consider the specific facts and circumstances of the case to determine whether that defendant is, in fact, competent to *** conduct trial on his own.” *McNutt*, 2020 IL App (1st) 173030, ¶ 90. Put differently, “the Constitution permits judges to take realistic account of the particular defendant’s mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so.” *Edwards*, 554 U.S. at 177-78. Further, “the trial judge *** will *often* prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant.” (Emphasis added.) *Id.* at 177. In determining fitness, the trial court is not required to accept the opinions of psychiatrists; rather, it should assess the credibility and weight of expert testimony and independently analyze and evaluate the factual basis for the expert’s opinion rather than reflexively rely on the ultimate opinion itself. *People v. Lucas*, 388 Ill. App. 3d 721, 728 (2d Dist. 2009). However, the trial court’s power to reject expert testimony is not unlimited, and a trial court cannot reject an expert’s opinion that a defendant is unfit without evidence that the defendant is, in fact, fit. *Id.* Critical to a reviewing court’s analysis of the trial court’s fitness determination, particularly when it conflicts with an expert’s uncontroverted opinion, is the length and nature of the court’s observations of the defendant. See *People v. Williams*, 87 Ill. App. 3d 860, 864 (2d Dist. 1980); *People v. Schoreck*, 384 Ill. App. 3d 904, 919-21 (2d Dist. 2008).

Reviewing courts apply a deferential standard to a trial court’s determination of a defendant’s fitness. Compare *People v. Washington*, 2016 IL App (1st) 131198,

¶ 50 (abuse of discretion), with *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 53 (manifest weight of the evidence).

B. Gizel is the Quintessential *Edwards* “Gray Area Defendant.”

Here, like all criminal defendants, Gizel was presumed fit to stand trial, and from December 9, 2020, until he was brought to trial on May 9, 2023, he insisted on representing himself. (R. 33-40, 79-84, 278-99). But red flags concerning his fitness to represent himself emerged immediately.

About three months after Gizel went *pro se*, the State asked to consume the DNA on the pink vibrator found in his lockbox and compare it to buccal swabs taken of J.G. and A.G. (R. 51-53). Gizel did not know how to respond, asked for more time to look into the issue, and he was given almost two weeks for that purpose. (R. 52-54). At the next hearing, however, Gizel clearly still did not grasp the State’s request, stating, “I want to deny my DNA. I don’t want to give my DNA.” (R. 59). When the court told him that was not the issue, Gizel asked for more time. (R. 59). The court pressed Gizel for a response, which led Gizel to ask, “So what’s the issue?” (R. 60). The court explained it had to rule on the State’s request and asked again what Gizel’s reply was. (R. 60). Gizel responded, “Reply, don’t you already have it? I object. I deny. I don’t agree. I mean, what else am I supposed to say, your Honor?” (R. 60). After the court granted the State’s request, Gizel stated, “I don’t know how my DNA was consumed or have gotten. And the sex toy, I have so many objections to that because, I mean, anything could have been done to have planted this whole situation. And, *** there’s reasons, *** I mean, I use that with my [ex-wife]. You know, on my [ex-wife] and I, we had our fun.” (R. 61). After

the court advised him not to say things on the record that could be used against him, Gizel replied, “I’m simply stating that I feel that this is false and it’s not, you know, real; and that I wanted to deny it. *** I want to fight against it. I want to reject it and fight it.” (R. 62). The court asked if he meant his DNA, and Gizel said yes. (R. 62). Perpetuated by Gizel’s untreated mental illness, this vicious cycle—Gizel plainly failing to appreciate the nature of the proceeding, the court allowing him more than enough time to research the issue, and Gizel inevitably reappearing just as lost and confused about what was being asked of him—recurred time and again throughout the three years of pretrial proceedings.

The State filed its section 115-7.3 motion on July 28, 2021. (R. 88-90). Over the next eight months, until March 30, 2022, when the court heard argument on the motion, Gizel was asked four separate times whether he had filed his response, and each time the answer was no. (R. 93, 100-01, 105, 122). On January 27, 2022, the date preceding the hearing on the State’s motion, the court questioned Gizel about the delay in filing his response, and Gizel stated, “I’m catching up on everything and I got a lot going on and I’ll catch up on it.” (R. 122). The court told him that he had two months to file his response. (R. 123). Although it was clear from his statements and requests for continuances that Gizel wanted to understand and intended to respond, he nevertheless appeared completely unprepared on March 30, 2022. The court asked Gizel for a fifth time whether he had filed a response, and Gizel stated, “No, your Honor. I wasn’t prepared. I don’t have those things.” (R. 127). After the State argued its motion, Gizel asserted, “That’s all arguable. It’s all hearsay, and I don’t know where they got this and

that from; but I am unprepared at the moment to mention anything further.” (R. 135). The court granted the State’s motion. (R. 135).

On October 6, 2021, the State filed its section 115-10 motion, seeking to admit J.G.’s forensic interview. (R. 99). Just as with the State’s other motion, Gizel failed to file a response despite consistently expressing his intention and receiving repeated reminders from the court to do so. (R. 105, 122, 141). Gizel even refused to watch the interview when the State attempted to show it to him. (R. 119-21). Initially, the hearing on the section 115-10 motion was also set for March 30, 2022, but Gizel requested more time to file his response, and the court gave him a month for that purpose. (R. 141). Of course, at the next date, Gizel still had not filed his response, though he was given a few more weeks because the State sought a continuance to May 17, 2022. (R. 141-42). It did not matter that he had over seven months to file a response because Gizel showed up unprepared yet again to the hearing on the State’s section 115-10 motion. (R. 150). When the court asked if he was ready to proceed, Gizel stated, “I was told it was continued to December 18th, and I would want to ask for a three-week continuance. I’m not ready.”⁵ (R. 152). The court asked Gizel why he said he was not ready, and Gizel replied, “I wasn’t feeling well for the past couple weeks and I’m a little bit behind. I’m just asking for three weeks.” (R. 153). The court denied Gizel’s request, and the State called its witness. (R. 153-54). As the State presented its evidence, Gizel continued to emphasize that he was not ready and that he needed a continuance to prepare. (R. 159-61, 163-64). To be sure, Gizel had already been given months to prepare

⁵ December 18th was more than seven months from the last court date.

for this hearing and, though the State attempted to show him J.G.'s forensic interview, *i.e.*, the very subject of its motion, Gizel refused "with good reason" and "[did]n't need to see it" to prepare a response. (R. 160). Gizel also repeatedly stated that he had "so much to dispute about it" yet he failed to articulate what he could dispute or how considering he refused to watch the video. (R. 160, 163). After the State played the video for the court, Gizel stated, "[M]y breath is taken out of me hearing all this. Last time I knew, I was a good father and I took care of [J.G.] and I defended her[.] *** I did all these great things but this is another time. I'm not going to defend against something right now." (R. 163).

Indeed, Gizel did not defend himself against any of the State's pretrial requests and motions, nor could he when his disorganized thinking prevented him from doing any of the concrete tasks he consistently indicated he intended to do. Moreover, Gizel's paranoid and delusional thoughts impeded his ability to understand the State's evidence and led him to make bare, conclusory statements irrelevant to the issue in front of him. Gizel repeatedly stated that he had arguments against the State's evidence, but he was never ready to present those arguments despite being given ample time for that express purpose. Gizel also claimed to have witnesses he intended to call at trial. (R. 171-72). He was given until July 5, 2022, to file his answer, with a list of his witnesses. (R. 171-74). At the next date, Gizel had not filed anything, though he claimed it was because he had been moved around the prison and lost everything in the process. (R. 177-78). The court told him that discovery had been complete for over a year and now the case was being set for trial, but he could still submit his answer up to that date. (R. 178).

Gizel still had not filed anything by November 2, 2022, but by then a new judge had taken over the case and, to become familiar with the case, had requested “transcripts of any prior substantive matters and transcripts of the dates on which [Gizel] waived [his] right to counsel.” (R. 198). This led the trial court to find a *bona fide* doubt as to Gizel’s fitness to stand trial and to order a behavioral clinical examination (“BCX”).⁶ (R. 200-01). After interviewing Gizel on two occasions, Dr. Philip Pan issued a report concluding that Gizel was fit to stand trial but unfit to represent himself. In so concluding, Dr. Pan diagnosed Gizel with unspecified schizophrenia spectrum and other psychotic disorder and opined that Gizel was “unable to mount a defense solely on his own due to disorganized and paranoid thinking.” (CI. 222-23; R. 207). Dr. Pan explained that there was a standard set of questions used to determine a defendant’s fitness to represent himself, such as whether he knew how to file a motion, subpoena a witness or make an opening statement. (R. 259). For most of these questions, particularly those related to procedural processes, Gizel indicated he would have to look it up at the law library. (CI. 232; R. 259-61). Dr. Pan concluded that Gizel’s mental illness simply rendered him too disorganized to actually achieve what he apparently intended to do. And this was in addition to his obstructively delusional and paranoid thinking. For example, Gizel insisted his ex-wife set him up and was adamant A.G. would drop the charges against him. (CI. 232). Mind you, none of the charges he faced were based on acts committed against A.G. (CI. 37-45). At one point, Gizel even stated

⁶ As Gizel notes below, the judge who expressed the *bona fide* doubt had not presided over the case for long but reached that conclusion based on the transcripts alone. See pg. 37, *infra*.

that only A.G. was his daughter as he believed that J.G. was “the product of one of his ex-wife’s affairs.” (CI. 230). This suite of facts places Gisel plainly within the ambit of *Edwards*’ holding: while fit to stand trial with the aid of counsel, Gisel’s mental illness was sufficiently severe as to render him unfit to go *pro se*.

In analyzing a trial court’s determination of fitness, reviewing courts may consider facts that arose after the fitness hearing. *Lucas*, 388 Ill. App. 3d at 727 (citing *People v. Sandham*, 174 Ill. 2d 379, 389 (1996) (testimony and events, including those occurring during the sentencing hearing, are relevant to defendant’s fitness at the time of trial)). As such, Gisel’s conduct after the fitness hearing is relevant in reviewing the trial court’s determination that Gisel was fit to represent himself. And indeed, like his pretrial conduct, Gisel’s conduct during and after trial supported Dr. Pan’s conclusion that he was unfit to go *pro se* due to the severity of his mental illness.

During trial, Gisel’s opening statement did not address the charges against him or what he expected the evidence to show, but was a rambling diatribe about his unhappy marriage. (R. 313-16). His cross-examination of the witnesses largely consisted of irrelevant questions unrelated to the charges; not once did he ask a direct question confronting the abuse allegations that underpinned the prosecution. Worse, he unwittingly elicited damning testimony from the complainant J.G., his ex-wife Jun Akaishi, and other-crimes witness A.G. that was highly prejudicial to him—namely, that he sexually assaulted J.G. day and night, (R. 333-34), that Akaishi did not mean their children when she agreed to his having sex with other women, (R. 351), and that he required A.G. to have sex with him before going

on sleepovers. (R. 384). He made no objections to the admission of the photographs of A.G. on his phone, or of the pink vibrator and lingerie, or to the videotape of J.G.'s forensic interview with Guadalupe Salgado, nor did he cross-examine Salgado. Gizel offered no evidence at trial and expressed an abject inability to understand how he might have secured, through subpoena, the attendance of potential defense witnesses. (R. 436-39). His closing argument made no effort to attack the charges against him but wove a conspiratorial web predicated on perceived persecution at the hands of Akaishi. (R. 448-58).

Gizel's conduct after trial was no different. At sentencing, Gizel again claimed that he had witnesses "to everything that [he] ha[d] been talking about," but he failed to call those witnesses, so the court allowed him to proffer their testimony. (R. 487). His first four witnesses—his aunt, his mother, and his sisters—would testify that they observed tensions between Gizel and his ex-wife and had offered to help. (R. 488-90). His fifth witness—Salvatore Martirano—would testify to the "years of the abuse and trauma [Gizel] went through" with his ex-wife. (R. 490). In mitigation, Gizel stated he did not do it and claimed the State's evidence was hearsay, not fact. (R. 491). He never actually referenced any mitigating factors and used this argument, as well as his statement in allocution, to reiterate that he was a great father and a great person. (R. 491-97).

While it is ostensibly true that Gizel filed a motion for new trial and a motion to reconsider sentence, he only did so with the prompting and assistance of the prosecutor and the public defender (whose representation was limited to a misdemeanor order of protection charge). (R. 514-18). And even then, both post-trial

motions were hollow placeholders, with no substance beyond boilerplate language. (CI. 311-13). Rather than showing that Gizel was fit to go *pro se*, these post-trial motions reflect the collective discomfort amongst the lawyers in the courtroom as they witnessed an unfit defendant's flailing attempt to represent himself. Neither motion contained claims specific to Gizel or the circumstances of his convictions or sentences. (CI. 311-13). Further, the time to file his motion for a new trial had expired. In other words, these were sham motions that came about not to allow Gizel to raise actual issues regarding his trial or sentences, but to assuage a shared sense of unease at the unjust proceedings that permeated the courtroom.

C. The Trial Court Committed Error in Finding Gizel Fit to Represent Himself.

Despite the foregoing indicia that Gizel's mental illness rendered him unfit to represent himself—and indeed, despite Dr. Pan's expert testimony concluding as much—the trial court found Gizel fit to go *pro se*. Of course, the judge below who ultimately found Gizel fit to represent himself did not witness much of the pretrial proceedings during which Gizel's haplessness became undeniably evident. In fact, the judge did not officially preside over the case until September 6, 2022, after discovery was completed. This means that the vast majority of pretrial proceedings, including each hearing on the State's pretrial requests and motions, were overseen by a different judge. In other words, the trial judge who in the end deemed Gizel fit to represent himself had only a limited opportunity to observe Gizel and, unlike the other two judges, did not have the benefit of observing firsthand Gizel's inability to appreciate, understand, and conduct proceedings in the trial

court. Nevertheless, even that limited opportunity prompted the court to find a *bona fide* doubt of Gizel's fitness and order a BCX. (R. 200-01).

Absent any evidence that contradicted Dr. Pan's findings and, indeed, despite of a plethora in support, the trial court rejected the forensic psychiatrist's conclusion that Gizel's mental illness, manifested by paranoid, delusional, and disorganized thinking, rendered him unfit to conduct trial proceedings by himself. An analogue is *People v. Lucas*, 388 Ill. App. 3d 721, 728-29 (2d Dist. 2009), where the appellate court reversed the trial court's determination that the defendant was fit to stand trial because there was no evidence of the defendant's fitness, and the only evidence presented was that the defendant was unfit. At the fitness hearing, the forensic psychiatrist who was appointed to assess the defendant's fitness testified that the defendant was unfit to stand trial due to his severe cognitive disability. *Id.* at 724-26. The reviewing court held that the trial court's rejection of the psychiatrist's conclusions "was not warranted where the doctor's testimony was unimpeached and unrebutted and had sufficient factual support." *Id.* at 728. Likewise, Dr. Pan's report and testimony were the only evidence presented at Gizel's fitness hearing. (R. 253-62). He was not impeached, his testimony was not rebutted by any other witness or other medical evidence, and the record provides ample factual support for Dr. Pan's conclusions. As the appellate court aptly noted:

[Gizel] failed to carry out even the most basic tasks needed to present his own defense. Specifically, [Gizel] failed to file any responses or make any coherent arguments against the State's pretrial motions to consume DNA from the pink vibrator and to the section 115-7.3 and 115-10 motions, explaining that he was unprepared even though he had been granted continuances for eight months to prepare for the motions. [Gizel] failed to file an answer or a witness list or any pretrial motions, again explaining that he was unprepared despite

being given multiple continuances over several months to prepare.
People v. Gizel, 2025 IL App (1st) 231183-U, ¶ 66.

The entire record illustrates that Gizel's mental illness prevented him from conducting trial proceedings on his own. Indeed, the trial court had sufficient concern that this might be the case such that it raised a *bona fide* doubt of Gizel's fitness and ordered a BCX to evaluate his fitness to stand trial and fitness to represent himself. (R. 200, 207). And at the fitness hearing, the court heard evidence exclusively in support of Dr. Pan's conclusions. (R. 253-62). Specifically, Dr. Pan explained that his interviews with Gizel revealed idiosyncratic, disorganized, and paranoid thinking, and he was concerned that Gizel's mental illness rendered him unable to organize a defense without the help of counsel. (R. 256, 262). Neither the assistant State's attorney, nor Gizel, nor Gizel's standby counsel on his misdemeanor case questioned the psychiatrist; only the trial judge examined Dr. Pan. (R. 255-62). The key exchange, which led the trial court to erroneously find Gizel fit to represent himself, is as follows:

COURT: Now, let me see if I can phrase this coherently. You concluded Mr. Gizel is fit to stand trial, and obviously, part of a trial is representation by a lawyer. Is that correct?

DR. PAN: Yes.

COURT: And you also concluded that he was suffering from a mental disorder, the unspecified schizophrenia spectrum or other psychotic disorder; is that correct?

DR. PAN: Yes.

COURT: Now, are there degrees of severity with respect to this mental illness?

DR. PAN: Yes.

COURT: And where would you say Mr. Gizel falls on the spectrum? *Would you characterize it as a condition that is present but doesn't interfere with his fitness to stand trial?*

DR. PAN: *I think he is having active symptoms which do not affect his ability to stand trial.* I don't think he has severe symptoms, at least when I interviewed him, in that he's extremely disorganized.

But as my report says, I'm concerned that he is not organized enough to mount his own defense by himself.

COURT: So is it your conclusion that he is not suffering from severe mental illness?

DR. PAN: Yes.

(Emphases added.) (R. 261-62).

At the next date following the fitness hearing, the trial court first found Gizel fit to stand trial based on Dr. Pan's testimony and report. (R. 276). Turning to Gizel's fitness to represent himself, the court stated that the Supreme Court in *Godinez* held that "the standard for fitness to stand trial and represent one's self are the same." (R. 276). Thus, having found Gizel fit to stand trial, the court noted that "[t]his finding potentially ends the matter with respect to the question whether [Gizel] is fit to represent himself [under] *Godinez*." (R. 276). After discussing the U.S. Supreme Court's holding in *Edwards*, 554 U.S. 164, the trial court again noted that under *Godinez*, the standard for determining fitness to stand trial is the same as that for fitness to waive counsel, and since Dr. Pan found Gizel fit to stand trial, Gizel was necessarily fit to waive counsel and proceed *pro se* during trial. (R. 299-300). Although it acknowledged that, under *Edwards*, courts may insist on representation by counsel when a defendant suffers from severe mental illness to the point of being incompetent to conduct trial proceedings on their own, the trial court referred to Dr. Pan's testimony that Gizel was not suffering from severe mental illness and found Gizel was fit to represent himself. (R. 300-01). Notably, the court side-stepped *Edwards* to find Gizel fit to represent himself because, from its misguided understanding of the case, the condition-precedent to applicability under *Edwards*—severe mental illness—was not met; its determination

did not stem from an understanding that the holding in *Edwards* was permissive.

This determination extends from a clear misinterpretation of *Godinez* and *Edwards*. It is true that the *Godinez* Court “reject[ed] the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the *Dusky* standard.” 509 U.S. at 398. But it did not go any further than that, for example, to hold that a defendant’s competence to conduct trial proceedings is the same as his competence to stand trial. *Id.* at 399 (“[T]he competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.” (Emphasis in original.)). Further, the *Edwards* Court, in distinguishing *Godinez*, explained that “the *Godinez* defendant sought only to change his pleas to guilty, he did not seek to conduct trial proceedings, and his ability to conduct a defense at trial was expressly not at issue.” 554 U.S. at 173.

The trial court here appears to have conflated the holding in *Godinez* with the factual circumstances in *Edwards* and, in so doing, erroneously found that the standard for determining a defendant’s fitness to stand trial was the same as the standard for deciding whether the defendant was competent to conduct trial proceedings on his own. See *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 49 (articulating that fitness to stand trial and fitness to represent oneself at trial are governed by different standards). If *Godinez* had established that the standard for determining whether a defendant was competent to conduct trial proceedings on his own was the same as the standard for competence to stand trial, it would have answered the question presented in *Edwards*. See *McNutt*,

2020 IL App (1st) 173030, ¶ 90, n. 1 (“The *Edwards* Court concluded that *Godinez* did not answer the question in *Edwards* because *Godinez* involved a defendant who wished only to plead guilty on his own, not conduct trial proceedings, and because *Godinez* only considered whether a ‘gray-area’ defendant may be permitted to represent himself, not whether he could be denied the right to represent himself.”).

As a consequence of its ill-conceived interpretation of *Godinez* and *Edwards*, the trial court misconstrued the meaning of Dr. Pan’s testimony. The trial court asked Dr. Pan whether he would characterize Gisel’s mental illness as a “condition that is present but doesn’t interfere with his fitness to stand trial.” (R. 262). In response, Dr. Pan testified that the symptoms of Gisel’s mental illness were not so severe as to affect his ability to stand trial; however, Dr. Pan emphasized that his report indicated that Gisel’s mental illness rendered him so disorganized as to be incapable of mounting his own defense. (R. 262). Based on that answer, the trial court asked its final question: “So is it your conclusion that he is not suffering from severe mental illness?” (R. 262). Since the court framed the significance of “severe mental illness” as related to Gisel’s fitness to stand trial, Dr. Pan answered affirmatively, and the trial court used this answer, without the context of the doctor’s previous response, to find that Gisel could not fall under *Edwards*. (R. 262, 300-01).

As the holding in *Edwards* makes clear, however, the severity of a defendant’s mental illness should be measured by the extent that it renders him unfit to conduct trial proceedings on his own. 554 U.S. at 178. Further, per *Edwards*, where one’s mental illness is sufficiently severe that it prevents one from competently representing oneself, that fact bears legal significance irrespective of the fact that

the defendant is fit to stand trial, or to waive counsel in order to plead guilty. *Id.* Dr. Pan's un rebutted conclusion—that Gizel's mental illness rendered him unfit to mount a defense at trial on his own—was sufficient to establish that, for the purposes of *Edwards* applicability, Gizel was suffering from "severe mental illness." Additionally, the trial court framed the question regarding the severity of Gizel's mental illness as if it related only to Gizel's fitness to stand trial, which was not at issue. (R. 261-62). And Dr. Pan responded that Gizel's mental illness was not so severe as to vitiate his fitness to stand trial. (R. 262). Of course, if Dr. Pan had concluded that Gizel's mental illness rendered him unfit to stand trial, Gizel could not have been tried until he was restored to fitness.

Finally, the trial court failed to properly place Dr. Pan's conclusions within the context of the specific facts and circumstances of the case. As described above, Gizel's conduct during pre-trial proceedings supported Dr. Pan's opinion that he was unfit to represent himself at trial. Gizel consistently misunderstood the State's requests and motions, he asked numerous times what he was supposed to do and, when it was clear he was well out of his depths, Gizel would predictably request more time. Then, like clockwork, Gizel would appear in court again and express the same confusion, the same misunderstanding, the same request for more time. When Gizel invariably showed up to the next court date empty-handed and clueless as ever, the State's request or motion was granted without so much as a boilerplate response or objection from Gizel. Moreover, when the State attempted to show Gizel the forensic interviews, he refused to watch them, effectively blinding himself from some of the State's most significant evidence. (R. 119-21). Therefore, although

Gizel was repeatedly and sufficiently advised of the dangers and disadvantages of self-representation, and although he appeared to knowingly and intelligently relinquish his right to counsel and choose self-representation, it cannot be said that the record established that he knew what he was doing and his choice was made with eyes open. See *Faretta*, 422 U.S. 806, 835 (1975); accord *People v. Kidd*, 178 Ill. 2d 92, 104 (1997).

As noted before, the districts of the Illinois Appellate Court are split regarding the appropriate standard for reviewing a trial court's ruling on the issue of fitness. Compare *People v. Washington*, 2016 IL App (1st) 131198, ¶ 81 (abuse of discretion), with *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 53 (manifest weight of the evidence). "An abuse of discretion goes outside the range of reasonableness and disregards established principles of law, thereby causing a party substantial prejudice." *People v. Fisher*, 407 Ill. App. 3d 585, 589 (4th Dist. 2011). Here, the trial court's determination was unequivocally unreasonable in light of Gizel's clear inability to conduct pre-trial proceedings by himself and Dr. Pan's unimpeached and uncontradicted conclusion, which was supported by the record. Further, the trial court's determination disregarded established principles of law—namely, that *Edwards* denoted a limitation on the self-representation right when a defendant's mental illness is so severe as to implicate due process and fair trial principles. See *Edwards*, 554 U.S. at 174-77. Likewise, the trial court's determination was against the manifest weight of the evidence when, under the totality of the circumstances, there was only evidence—at the fitness hearing and across the entire record—that Gizel was unfit to represent himself. In sum, regardless of which

standard of review is appropriate, the trial court committed plain error in determining that Gizel was fit to represent himself.

D. The State’s Argument Recapitulates the Trial Court’s Error.

In its opening brief, the State makes a series of legally- and factually-inaccurate statements regarding the appellate court’s decision below that not only signal a misguided understanding of the law but also highlight an erroneous view of the appellate court’s analysis. (Op. Br., pgs. 19-39). To give one example, the State asserts that “the appellate court here wrongly concluded that a defendant who is fit to stand trial ‘still may be incompetent to conduct trial proceedings on his own if he suffers from a severe mental illness.’” (Op. Br., pg. 26). Further, it insists that this conclusion “not only ignored *Godinez* and Illinois decisions interpreting *Edwards* [but also] this Court’s clear statement that ‘[c]ompetence to waive counsel is measured by the same standard as competence to stand trial *** and the defendant’s fitness for trial therefore also established his fitness to waive counsel.’” (Op. Br., pg. 27) (quoting *People v. Mahaffey*, 166 Ill.2d 1, 19 (1995)).

The State conflates the concepts of “fitness to waive counsel” and “fitness to conduct trial proceedings without counsel,” a distinction which the *Edwards* Court clearly recognized in differentiating the question it faced from the one settled in *Godinez*. *Edwards*, 554 U.S. at 173 (“We nonetheless conclude that *Godinez* does not answer the question before us [because] the *Godinez* defendant sought only to change his pleas to guilty, he did not seek to conduct trial proceedings, and his ability to conduct a defense at trial was expressly not at issue.”). Further, the *Edwards* Court set out two conditions that preceded analysis under its holding:

it assumes “that a criminal defendant has sufficient mental competence to stand trial (*i.e.*, the defendant meets *Dusky*’s standard) and that the defendant insists on representing himself during that trial.” *Id.* at 174. Put differently, before determining whether “the defendant lacks the mental capacity to conduct his trial defense unless represented” (*i.e.*, the defendant applies under the *Edwards*’ holding), it is *assumed* that he is fit to stand trial and, therefore, fit to waive counsel. *Id.* Accordingly, the appellate court’s conclusion sits squarely with *Edwards*, *Godinez*, and this Court’s clear statement in *Mahaffey* (which was decided 13 years before *Edwards*), despite the State’s repeated contentions to the contrary.

As this example illustrates, the State’s argument echoes the same fallacies, highlighted in Subsection C, that led the trial court to erroneously find Gizel fit to represent himself. Just as the trial court misinterpreted the key distinctions between *Godinez* and *Edwards*, so too does the State. (Op. Br., pgs. 21-27). Just as it did for the trial court, this misinterpretation leads the State to misconstrue Dr. Pan’s testimony regarding his opinion of Gizel’s fitness. (Op. Br., pgs. 27-35). Finally, just as the trial court failed to tailor its fitness determination to the individualized circumstances of Gizel, the State likewise neglects the specific context surrounding Gizel’s lack of fitness to represent himself. (Op. Br., pgs. 33-35).

While acknowledging the holding in *Edwards*, the State contends that because *Edwards* is permissive rather than prescriptive, trial courts are allowed to grant a defendant’s waiver of counsel and invocation of the self-representation right even if the defendant’s mental illness prevents him from conducting trial proceedings on his own. (Op. Br., pgs. 23-27). While Illinois law indicates that the trial court’s

determination of fitness to proceed *pro se* is discretionary, it does not support the State's contention that such a determination can *never* amount to an abuse of discretion. (Op. Br., pgs. 26-27). The State highlights that Gizel was fit to stand trial and clearly and unequivocally waived counsel, including after the fitness hearing. (Op. Br., pgs. 19-27). From its perspective, such clear and unequivocal waiver of counsel, ironically, has a prescriptive effect on the reviewing court in that no consideration (such as the effect of defendant's mental illness on his fitness to conduct trial proceedings on his own) could ever overcome that waiver. (Op. Br., pg. 27). Not so. A review of Illinois law regarding other recognized limitations on the self-representation right makes it abundantly clear that, like any exercise of discretion, the trial court's determination of a *pro se* defendant's fitness to conduct trial proceedings can amount to an abuse of discretion.

Given the overarching concern for the protection of a criminal defendant's fundamental right to a fair trial, representation by counsel is the default, and trial courts must indulge in every reasonable presumption against waiver of counsel. *People v. Rainey*, 2019 IL App (1st) 160187, ¶ 36 (citing *Brewer v. Williams*, 430 U.S. 387, 404 (1977); *People v. Burton*, 184 Ill. 2d 1, 22 (1998)). Reflecting this duty to "indulge in every reasonable presumption against waiver of the right to counsel," a defendant seeking to represent himself must make a "clear and unequivocal, not ambiguous" waiver. *Burton*, 184 Ill. 2d at 21-23. This Court has emphasized that the purpose of requiring a clear and unequivocal waiver of counsel is to "(1) prevent the defendant from appealing the denial of his right to self-representation or the denial of his right to counsel, and (2) prevent the defendant

from manipulating or abusing the system by going back and forth between his request for counsel and his wish to proceed *pro se*.” *People v. Mayo*, 198 Ill. 2d 530, 538 (2002).

These objectives represent a uniformly recognized presumption against waiver of counsel “where a defendant abuses the right to waive counsel as a tactic to delay or disrupt proceedings.” *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 33; see *People v. Hughes*, 2025 IL App (4th) 240514, ¶ 164 (acknowledging the possible utility of invoking the right of self-representation and waiving counsel for defendants seeking to game the system); *Burton*, 184 Ill. 2d at 22 (requiring clear requests for self-representation forestalls any “effort to sandbag the court and the opposition, [and] to seek an acquittal with an ace up the sleeve to be whipped out in the event of conviction”); *People v. Gibson*, 2017 IL App (1st) 143566, ¶ 25 (court may deny request to revoke waiver of counsel if it finds defendant is trying to delay proceedings). Another uniformly recognized presumption against the waiver of counsel is a concern that the “defendant’s lack of civility and decorum would result in an abuse of the dignity of the courtroom” if he were allowed to represent himself at trial. *People v. Rogatchev*, 2026 IL App (4th) 241165, ¶ 70 (quoting *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 33); see *Rainey*, 2019 IL App (1st) 160187, ¶ 74 (“[W]hen a *pro se* defendant ‘deliberately engages in serious and obstructionist misconduct,’ the judge may ‘terminate’ his self-representation.” (quoting *Faretta v. California*, 422 U.S. 806, 834 n. 46 (1975))).

Importantly, “courts are especially cautious *** about denying a defendant’s fundamental trial rights on account of his conduct *before* trial.” (Emphasis in

original.) *Rainey*, 2019 IL App (1st) 160187, ¶ 77. “Rather, the pretrial misconduct must provide a strong indication that the defendant would continue to disrupt and forestall the proceedings, including the trial, if allowed to continue his own defense.” *Id.* ¶ 78. Put differently, the trial courts are charged with the discretion to accept *or* reject a defendant’s waiver of counsel depending “in each case, upon the particular facts and circumstances of that case, including the background, experience, and conduct of the accused.” *Baez*, 241 Ill. 2d at 116. The trial court has discretion in such circumstances, not only because it is often best positioned to observe the defendant, but also because a state’s ability to limit the right of self-representation is permissive in nature. See *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 33. The fact that these considerations are permissive is exactly what bestows the trial court with the discretion to accept or reject a defendant’s waiver of counsel.

The two aforementioned considerations, which Illinois courts have routinely found *may* justify a trial court’s decision to reject or terminate a defendant’s waiver of counsel, operate as limitations on the right of self-representation and signal the superseding governmental interest in preventing a defendant from weaponizing their sixth amendment right. See *Rainey*, 2019 IL App (1st) 160187, ¶ 39. *Edwards* established, for the first time, a third presumption against the waiver of counsel, but this time the operative concern was the vitiation of the defendant’s right to due process and a fair trial due to his mental illness, not gamesmanship or recalcitrance. Illinois courts have recognized this additional consideration, though few, if any, have had reason to analyze its application. See *Rodriguez-Aranda*,

2022 IL App (2d) 200715, ¶ 33; *People v. Talidis*, 2023 IL App (2d) 220109, ¶ 41; *People v. Smith*, 2025 IL App (1st) 220365-U, ¶ 61; *People v. Lemons*, 2025 IL App (5th) 230601-U, ¶ 80; *Rogatchev*, 2026 IL App (4th) 241165, ¶ 65. Nevertheless, the permissive nature of the *Edwards* holding cannot prevent, as the State contends, the reviewing court from assessing whether the trial court’s determination was an abuse of discretion. Regardless of *what it determined* (e.g., fit or unfit to waive counsel) in its exercise of discretion, the trial court can abuse that discretion if its determination “is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court.” *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 33.

It is also true that the trial court is not required to perform an additional inquiry regarding competency before allowing a defendant to represent himself. *People v. McNutt*, 2020 IL App (1st) 173030, ¶ 90. Gizel concedes that, had the trial court not established a *bona fide* doubt of his fitness nor appointed a forensic psychiatrist to evaluate him nor held a fitness hearing to assess the psychiatrist’s findings, he would not have been able to successfully argue that the trial court abused its discretion in finding him fit to represent himself at trial. However, the trial court (1) *did* establish a *bona fide* doubt of Gizel’s fitness, (2) *did* appoint a forensic psychiatrist to evaluate Gizel’s fitness to stand trial and represent himself, and (3) *did* hold a fitness hearing to assess the psychiatrist’s findings that Gizel was fit to stand trial but unfit to represent himself. Therefore, although the trial court was “not required to perform an additional inquiry regarding competency” before allowing Gizel to represent himself, it did, in fact, do just that. See *Id.* Then,

it unreasonably rejected the results of that additional inquiry without any evidence in support of its contrary determination that Gizel was fit to represent himself. Further, the only evidence to be gleaned from the record regarding Gizel's fitness supports Dr. Pan's conclusion that Gizel was unfit to conduct trial proceedings on his own. In light of these facts, the trial court's determination was unreasonable and amounted to an abuse of discretion.

Turning then to the State's final argument, it asserts that "[a]llowing a defendant fit to stand trial to exercise the right to self-representation is not second prong plain error." (Op. Br., pg. 35). Second-prong plain error can be invoked "only in those exceptional circumstances where, despite the absence of [an] objection, application of the rule is necessary to preserve the integrity and reputation of the judicial process." *People v. Jackson*, 2022 IL 127256, ¶ 28 (quoting *People v. Herrett*, 137 Ill. 2d 195, 214 (1990)); Ill. S. Ct. R. 615(a). It is akin to structural error in that "[i]t is a type of error that 'erode[s] the integrity of the judicial process and undermine[s] the fairness of the defendant's trial.'" *Id.* (quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)). This is because the structural error doctrine ensures insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017). The defining feature of a structural error, therefore, is "that it 'affect[s] the framework within which the trial proceeds,'" and due to this, it "def[ies] analysis by harmless error standards." *Weaver*, 582 U.S. at 295 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991)). One reason an error may be deemed structural is if the effects of the error are simply too hard to measure. *Weaver*,

582 U.S. at 295. Another is if the error always results in fundamental unfairness, *e.g.*, when an indigent defendant is denied an attorney. *Weaver*, 582 U.S. at 296. Critically, more than one rationale may explain why an error is deemed structural, and it need not always or necessarily render a trial fundamentally unfair or unreliable to be labeled structural. *Weaver*, 582 U.S. at 296.

Given the centrality of the right to counsel in the Constitution’s formulation of our criminal justice apparatus, the infringement of the right to counsel is one context wherein courts do not hesitate to invoke structural error. Federal courts have uniformly held that a defective waiver of counsel due to imperfect admonitions given to a *fit* defendant forms the basis for application of the structural error doctrine—even when the defendant only goes without counsel for a portion of pretrial proceedings. See, *e.g.*, *United States v. Hakim*, 30 F. 4th 1310, 1327 (11th Cir. 2022) (“If the Government cannot meet [its] burden [to prove a valid waiver], the defendant need not show prejudice to obtain a reversal.”); *United States v. Erskine*, 355 F. 3d 1161, 1167 (9th Cir. 2004) (failure to obtain a valid waiver of counsel is “*per se* prejudicial error” (citing *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 8 (1984))). The foregoing error is presumptively prejudicial, and therefore structural, because “[i]t would be nonsensical to require that a prospective *pro se* defendant object to the [judge’s] inquiry into the defendant’s rationale and ability to proceed *pro se*.” *United States v. Johnson*, 24 F. 4th 590, 601 (6th Cir. 2022).

Here, the effects of the trial court’s error—unreasonably allowing Gizel to represent himself when, due to his mental illness, he was incapable of conducting trial proceedings on his own—undermine the basic fairness of the proceedings,

and are therefore simply too hard to measure. Because “this is a case where [Gizel] mounted no defense [at trial] due to mental illness” and one can safely assume that appointed counsel would have provided more than nothing (*e.g.*, would have objected to the inadmissible section 115-10 evidence as outlined in Issue III), it is an impossible errand to speculate the extent to which counsel’s representation might have affected the outcome of Gizel’s trial. *Gizel*, 2025 IL App (1st) 231183-U, ¶ 67. Further, the complete denial of counsel is structural error. *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963). Of course, *Gideon* held that, under the sixth and fourteenth amendments, an indigent defendant in a criminal prosecution in a state court has the right to have counsel appointed for him. 372 U.S. at 341. Over two decades later, the U.S. Supreme Court expanded this structural error to include where “counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing” such that “there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable.” *United States v. Cronin*, 466 U.S. 648, 659 (1984); accord *People v. Hattery*, 109 Ill. 2d 449, 461 (1985). Accordingly, prejudice is presumed when defense counsel entirely fails to subject the State’s case to meaningful adversarial testing. Unlike in *Gideon*, the trial court repeatedly encouraged Gizel to accept the appointment of counsel, and Gizel waived counsel and invoked his right of self-representation. But as explained in Subsection C, the trial court abused its discretion in granting Gizel’s waiver in spite of the overwhelming evidence that Gizel’s mental illness prevented him from conducting trial proceedings on his own, resulting in Gizel failing to subject the State’s case to any, let alone meaningful, adversarial

testing. By failing to appoint counsel when self-representation was impossible, the court rendered the proceedings a farce, thereby effectively denying Gisel his right to counsel.

The *Edwards* Court, in establishing its mental-competence-related limitation on the right to self-representation, recognized that mental illness is not a unitary concept but one that fluctuates in degree and over time, and it interferes with an individual's functioning at different times in different ways. 554 U.S. at 175. It quoted the American Psychiatric Association's *amicus* brief for the proposition that "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." *Id.* at 176. In accordance with these considerations, the Court was concerned with circumstances where allowing a mentally ill defendant to represent himself at trial had the unintended effect of diminishing the very principles that underlie the self-representation right—dignity and autonomy of the individual—and undermining the most basic of the Constitution's criminal law objectives—providing a fair trial. *Id.* at 176-77. It also noted that "proceedings must not only be fair, they must 'appear fair to all who observe them.'" *Id.* at 177 (quoting *Wheat v. United States*, 486 U.S. 153, 160 (1988)).

Other jurisdictions have applied *Edwards* to alleviate the risk of an unfair trial created when a defendant's mental illness prevents him from conducting trial proceedings on his own. See, e.g., *People v. Johnson*, 267 P. 3d 1125 (Cal.

2012); *State v. Connor*, 973 A. 2d 627 (Conn. 2009); *Chadwick v. State*, 309 S.W. 3d 558 (Tex. Crim. App. 2010); *State v. Jason*, 779 N.W. 2d 66 (Iowa Ct. App. 2009).

For example, the Connecticut Supreme Court in *Connor* remanded to the trial court for the purpose of determining whether the defendant was fit to conduct trial proceedings on his own in the wake of *Edwards*, which came down after the defendant had been tried and convicted. 973 A. 2d at 656-57. In so doing, it agreed with *Edwards* that, “in light of ‘the different capacities needed to proceed to trial without counsel, there is little reason to believe that [the] *Dusky* [competency standard] alone is sufficient’ for determining whether a mentally ill or incapacitated defendant who, although competent to stand trial with the aid and assistance of counsel, also is competent to represent himself at that trial.” *Id.* at 654 (quoting *Edwards*, 554 U.S. at 177). Highlighting the serious threat to the integrity of the criminal justice system identified in *Edwards*, the court in *Connor* explained that “when a mentally ill or incapacitated defendant is permitted to represent himself at trial despite his *** lack of competence to do so, the reliability of the adversarial process, and thus the fairness of the trial itself, inevitably is cast in doubt.” *Id.* at 655. With respect to the right of self-representation and its aim to affirm the dignity and autonomy of the accused, the court found that “that interest is outweighed by the interest of the state, the defendant and the public in a fair trial when, due to mental illness, the defendant is incompetent to conduct trial proceedings without the assistance of counsel.” *Id.* Finally, it clarified the confines of the trial court’s determination of a defendant’s fitness to conduct trial proceedings on his own:

[T]he issue to be decided *** is not whether the defendant lacked the technical legal skill or knowledge to conduct the trial proceedings effectively without counsel. Indeed, it appears quite clear that he did lack such skill or knowledge. That fact, however, has no bearing on whether he was competent to represent himself for purposes of *Edwards*. Rather, *the determination of his competence or lack thereof must be predicated solely on his ability to carry out the basic tasks needed to present his own defense without the help of counsel* [citation] notwithstanding any mental incapacity or impairment serious enough to call that ability into question. Of course, in making this determination, *the trial court should consider the manner in which the defendant conducted the trial proceedings and whether he grasped the issues pertinent to those proceedings*, along with his ability to communicate coherently with the court and the jury. (Emphases added and internal quotation marks omitted.) *Id.* at 657.

This Court has the opportunity, like the court in *Connor*, to clarify to the lower courts the process by which fitness determinations must be made to ensure that the integrity and fairness of Illinois’s criminal justice system is not compromised.

Gizel, like every other criminal defendant, had the presumed right to conduct his own defense—right up and until it was explicitly shown that his mental illness rendered him incompetent to do so. And since he lacked the mental capacity to conduct his own defense, the result of Gizel’s self-representation at trial precisely embodied that which the *Edwards* Court sought to prevent: a humiliating spectacle that did not affirm but denigrated the dignity of Gizel, that made a mockery of our adversarial system, and that appeared so manifestly unfair as to prompt the appellate court below to reverse Gizel’s convictions. Indeed, “[t]he Constitution would protect none of us if it prevented the courts from acting to preserve the very processes that the Constitution itself prescribes.” *Illinois v. Allen*, 397 U.S. 337, 350 (1970) (Brennan, J., concurring). Here, the trial court’s error in finding Gizel fit to represent himself eroded the integrity of the judicial process and

undermined the fairness of Gize's trial. The error is presumptively prejudicial because its consequences are immeasurable and it effectively resulted in the denial of Gize's right to counsel. In other words, the trial court committed second-prong plain error, and this Court should affirm the appellate court's decision reversing Gize's convictions and remanding for a new trial.

II. The trial court committed plain error when it failed to appoint Gizel counsel at the fitness hearing after finding a *bona fide* doubt of his fitness. (Cross-relief requested.)

Even if this Court finds no error in the trial court’s fitness determination, the case should still be remanded for a new fitness hearing because the trial court violated Gizel’s right to counsel when it did not appoint counsel to represent him during his fitness hearing.

Section 104-11(a) of the Illinois Code of Criminal Procedure provides that “the issue of the defendant’s fitness for trial, to plead, or to be sentenced may be raised by the defense, the State or the court at any appropriate time before a plea is entered or before, during, or after trial.” 725 ILCS 5/104-11(a). The court is required to order a determination of the issue before proceeding further. 725 ILCS 5/104-11(a). Where the court finds a *bona fide* doubt exists as to a defendant’s fitness, the defendant loses the ability to knowingly and intelligently waive the right to counsel. *People v. Washington*, 2017 IL App (4th) 150054, ¶ 21. To allow the defendant to proceed *pro se* in such event is therefore a violation of the federal and state constitutional right to counsel. *Id.*; U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. Accordingly, once a *bona fide* doubt is established, the court is required to appoint counsel to represent the defendant until he regains fitness to stand trial. *Id.*

Because this presents a constitutional question of law, *i.e.*, whether the court’s failure to appoint counsel violated Gizel’s sixth amendment right to counsel, the standard of review is *de novo*. *Washington*, 2017 IL App (4th) 150054, ¶ 15 (citing *In re Torski C.*, 395 Ill. App. 3d 1010, 1017 (4th Dist. 2009) (“The standard

of review for constitutional questions, like other questions of law, is *de novo*.”)).

In *Washington*, the trial court found a *bona fide* doubt existed as to the defendant’s fitness but did not appoint counsel to represent the defendant at the subsequent hearings, which included a fitness hearing. *Id.* ¶¶ 7-9. The appellate court remanded the case to the trial court to conduct a new fitness hearing, during which the defendant was to be represented by counsel. *Id.* ¶ 23.

Here, the trial court found a *bona fide* doubt existed as to Gizel’s fitness. (R. 200). The court specifically stated on the record that Gizel could represent himself at the fitness hearing. (R. 223). A fitness hearing was held after a forensic psychiatrist evaluated Gizel. (R. 247-69). The trial court did not appoint counsel to represent Gizel at that fitness hearing even though, by finding a *bona fide* doubt existed, it established that Gizel had lost the ability to knowingly and intelligently waive his right to counsel until his fitness was definitely restored. See *People v. Esang*, 396 Ill. App. 3d 833, 841 (1st Dist. 2009).

The issue stemming from the court’s failure to appoint counsel at the fitness hearing relates to defense counsel’s unique role during such proceedings, particularly when, as here, the defendant is insistent on representing himself at trial. Pursuant to section 104-11(c) of the Illinois Code of Criminal Procedure, “[w]hen a *bona fide* doubt of the defendant’s fitness has been raised, the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State.” 725 ILCS 5/104-11(c). Given the adversarial nature of trial and the obligations of defense counsel to honor certain choices made by their client, one could presume that, in light of the State’s analogous

role in meeting its burden at the fitness hearing, defense counsel is similarly duty-bound to honor the defendant's decision whether to seek a finding of fitness or unfitness. See *People v. Holt*, 2013 IL App (2d) 120476, ¶ 9. However, "defense counsel's duty with respect to the issue of a defendant's fitness consists not in exerting a maximum effort to obtain a finding that the defendant is unfit, but, rather, in taking all necessary steps to [e]nsure a fair determination of the issue." *People v. Lewis*, 75 Ill. App. 3d 560, 566 (5th Dist. 1979). Conversely, the same is true when the defendant's interest is a finding of fitness, in that "counsel must exercise professional judgment in order to ensure that the defendant, if unfit, is not tried in violation of his or her right to due process of law." *Holt*, 2013 IL App (2d) 120476, ¶ 13. This Court in *People v. Holt*, 2014 IL 116989, ¶ 52, summarized this principle: "[T]he first responsibility of any criminal defense attorney, upon his or her appointment to representation, should be to independently assess whether the client is fit to stand trial."

Here, Gizel was personally interested in the court finding him fit regardless of whether he was actually fit, and due to the court's error in allowing him to represent himself at the very proceeding intended to determine his fitness to do so, no party was present to independently ensure that the State met its burden. Indeed, only the trial court examined Dr. Pan and, as had come to be expected of him, Gizel stood silent. (R. 247-64). If the court had appointed a lawyer to represent Gizel at the fitness hearing, that attorney could have used the opportunity to develop the operative distinction at issue in this case—namely, that while Gizel was fit to stand trial with representation, he was not fit to stand trial while

representing himself due to his mental illness. Further, defense counsel could have called Gizel to testify to his mental illness and consequent inability to represent himself.

This was a clear error because “[l]ogically, the trial court cannot simultaneously question a defendant’s mental competence to stand trial and at one and the same time be convinced that the defendant has knowingly and intelligently waived his right to counsel.” *Washington*, 2017 IL App (4th) 150054, ¶ 20 (quoting *United States v. Purnett*, 910 F.2d 51, 55 (2d Cir. 1990)); see *Esang*, 396 Ill. App. 3d at 841 (“Where a *bona fide* doubt exists as to a defendant’s competency to stand trial, that defendant cannot intelligently waive his constitutional right to representation by counsel, and permitting him to represent himself is reversible error.”). Although Gizel failed to preserve this issue for appeal, for the same reasons established in Issue I, this error falls under second-prong plain error when it is immeasurable and denied Gizel his right to counsel. See pgs. 51-54, *supra*. As in *Washington*, this Court should remand the case to the trial court to conduct a new fitness hearing, during which Gizel is represented by counsel.

III. The trial court committed plain error in admitting J.G.'s forensic interview when it fell outside the time constraints of 725 ILCS 5/115-10(b)(3). (*Cross-relief requested.*)

Section 115-10 of the Illinois Code of Criminal Procedure creates a hearsay exception for statements made by victims of sexual crimes who are under the age of 13. 725 ILCS 5/115-10. Statements that fall under the constraints laid out in section 115-10 are used to corroborate the testimony of minor victims whose age may impact their ability to testify clearly. One such constraint is a time limit: for a minor victim's statement to be admissible, it must be made before the victim turns 13 or within three months of the commission of an offense. 725 ILCS 5/115-10(b)(3). In this case, the State used section 115-10 to admit J.G.'s forensic interview. (R. 150-51; CI. 168-69). J.G.'s forensic interview, however, did not fall within section 115-10's time constraint because, by the time it was made, J.G. had turned 13 and more than three months had passed since the commission of any charged offense. This evidence, therefore, was inadmissible at Gizel's trial.

This Court has held that a circuit court's decision to admit evidence under section 115-10 will not be reversed unless the record clearly demonstrates that the circuit court abused its discretion. *People v. Williams*, 193 Ill. 2d 306, 343 (2000).

Hearsay is a statement, other than one made by the declarant while testifying at trial or a hearing, offered in evidence to prove the truth of the matter asserted. Ill. R. Evid. 801(c). Hearsay is not admissible except as provided by the Illinois Rules of Evidence, by other rules prescribed by this Court, or by statute as provided in Rule 101. Ill. R. Evid. 802. Hearsay evidence is generally inadmissible due to the "particular hazards" of out-of-court statements taken without the benefit of

cross-examination or oath. *Williamson v. United States*, 512 U.S. 594, 598 (1994).

Section 115-10 permits the introduction of certain hearsay statements from minor declarants in sexual abuse cases to counteract the problems of young witnesses testifying inadequately. *People v. Mitchell*, 155 Ill. 2d 344, 352 (1993). It allows “testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim,” but only if “[t]he court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability[.]” 725 ILCS 5/115-10(a), (b). Specific to cases involving offenses perpetrated against a child under the age of 13, the out-of-court statement must have been made “before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later.” 725 ILCS 5/115-10(b)(3). Put differently, if the victim was 13 years of age or older at the time of the out-of-court statement, it must have been made within 3 months of the commission of the offense or it is not admissible under section 115-10(b)(3). See *People v. Johnson*, 363 Ill. App. 3d 1060, 1072-73 (2d Dist. 2005).

The State filed its section 115-10 motion on October 6, 2021. (R. 99). The purpose of its motion was to introduce into evidence the testimony of Guadalupe Salgado, the forensic interviewer who interviewed J.G., and a video of the forensic interview itself. (R. 150-51; CI. 168-69). The forensic interview occurred on June 26, 2020. (R. 156-57; CI. 169). It is uncontroverted that J.G. turned 13 years old on May 17, 2020. (R. 161-62). Therefore, unless the commission of any charged

offense occurred within three months of June 26, 2020, the video of the forensic interview, as well as the forensic interviewer's testimony, is inadmissible hearsay. 725 ILCS 5/115-10(b)(3). Because the State's theory was that Gizel sexually abused J.G. multiple times over the course of five years, the "commission of the offense" as referred to in section 115-10(b)(3) would be the last instance of sexual abuse. As such, establishing the last time that J.G. was sexually abused is integral to determining whether the forensic interview was admissible. If the last instance of abuse occurred before March 26, 2020, J.G.'s forensic interview is inadmissible.

An examination of the State's evidence shows that the last time Gizel allegedly sexually abused J.G. was before March 26, 2020. During the forensic interview held on June 26, 2020, J.G. detailed the alleged sexual abuse she had endured over the last five years. (R. 155-57; PE1).⁷ At one point in the interview, Salgado asked J.G., "When was the last time anything happened?" (PE1 at approx. 11:43:08 AM (11m:12s)). J.G. responded, "About March, because I kept saying 'no.' And then [Gizel] stopped asking." (PE1 at approx. 11:43:14 AM (11m:18s)). Shortly after this exchange, Salgado asked J.G., "When did it stop?" (PE1 at approx. 11:43:30 AM (11m:34s)). J.G. responded, "During when corona[virus] happened." (PE1 at approx. 11:43:34 AM (11m:38s)). Throughout the forensic interview, J.G. gave no specific date with regard to the last time Gizel allegedly sexually abused her. Instead, a general period was established: some time in the middle of March around the start of the Covid-19 pandemic.

⁷ For consistency, the forensic interview is cited as People's Exhibit 1 ("PE1"). The same citation format used previously, see pg. 8 *supra*, is used here.

This is in line with how J.G. testified at trial. The assistant State’s attorney asked J.G., “When Covid happened and your mom stopped traveling, is that when this ended?” (R. 331). After J.G. said yes, the assistant State’s attorney asked, “And you were 12, correct?” (R. 331). J.G. again responded, “Yes.” (R. 331).

Similarly, the State’s representations leading up to trial, particularly through its two pre-trial motions, echoed this timeframe: that the sexual abuse ended in mid-March around when the Covid-19 pandemic began. The State’s original section 115-10 motion stated that “[the sexual abuse] occurred up until the start of COVID 19 in mid March of 2020.” (CI. 168). The State amended its motion on May 17, 2022, the day the trial court heard arguments on the motion, and withdrew the paragraph that contained the relevant quote. (R. 151). In its argument, the State asserted, “J.G. says that the last time that anything happened is in March when Coronavirus started, so that is March of 2020.” (R. 161-62). The State also filed a motion pursuant to 725 ILCS 5/115-7.3 to admit propensity evidence of other crimes in the form of testimony from A.G., J.G.’s older sister. (R. 88). The State’s section 115-7.3 motion stated, “[t]he last time that [Gizel] abused both [J.G. and A.G.] was in March 2020—before the quarantine began.” (CI. 187).

In sum, all of the State’s evidence regarding this issue indicated that the last time Gizel sexually abused J.G. was in the middle of March around the time the Covid-19 pandemic started; and while no evidence was introduced establishing when the pandemic began or when quarantine started in Illinois, that information is readily accessible to this Court.

Information on government websites is sufficiently reliable such that the

court may take judicial notice of the information. *Leach v. Department of Employment Security*, 2020 IL App (1st) 190299, ¶ 44. The World Health Organization (“WHO”) declared Covid-19 a pandemic on March 11, 2020, and President Donald Trump declared the Covid-19 outbreak a national emergency on March 13, 2020. U.S. Department of Defense, *Coronavirus: Timeline*, (March 18, 2024, 11:15 a.m.), <https://www.war.gov/Spotlights/Coronavirus-DOD-Response/Timeline>. Illinois Governor J.B. Pritzker issued a stay-at-home order that took effect on March 21, 2020. Office of Governor J.B. Pritzker, Stay-at-Home Order Press Release (Mar. 20, 2020), <https://www.illinois.gov/news/release.html?releaseid=21288>. According to the federal government, the Covid-19 pandemic began on March 11, 2020, and, according to the Illinois government, quarantine began in Illinois on March 21, 2020. As such and by the State’s own admissions, the last time Gizel allegedly sexually abused J.G. was around March 11, 2020, but in any event was before March 21, 2020. This means that J.G.’s forensic interview, which occurred on June 26, 2020, was not made within three months of the commission of any charged offense. Therefore, the State’s section 115-10 motion as to J.G.’s forensic interview should have been denied.

It is worth noting that the State’s charging theory was that Gizel abused J.G. from May 17, 2015, until March 31, 2020. (R. 127-28, 278-87). Each count on the indictment alleged that Gizel committed an act of sexual misconduct “on or about May 17, 2015, and continuing through March 31, 2020.” (CI. 37-60). Both of the State’s motions—a section 115-7.3 motion and a section 115-10 motion—alleged this same five-year time period. (CI. 168-69, 186-89). However, at no point during

her forensic interview or trial testimony did J.G. state that the last time Gizel sexually abused her was March 31, 2020. Indeed, as established above, the State's own statements contradict its charging theory. Before it was superseded by indictment, even the complaint, which was reviewed and approved by an assistant State's attorney, alleged that the date of the offense was March 15, 2020. (CI. 6). Since J.G.'s forensic interview did not fall within the time constraints of the section 115-10 exception, the video recording and Salgado's testimony in reference to it were inadmissible hearsay evidence. Therefore, the trial court abused its discretion in granting the State's motion and admitting J.G.'s forensic interview.

Significantly, the trial court relied on J.G.'s forensic interview in convicting Gizel due to its timing, detail, and corroborative effect. (R. 460-64). Because of the trial court's reliance on inadmissible hearsay, Gizel was prejudiced by its inclusion. Further, the forensic interview was created in preparation for trial, and it contained J.G.'s statements identifying Gizel as her abuser and describing the abuse in greater detail than her trial testimony. In other words, the forensic interview was extremely powerful evidence of Gizel's guilt, and there is no doubt that it contributed to the court finding Gizel guilty on all counts. See *People v. Patterson*, 217 Ill. 2d 407, 436 (2005) ("The statements of a victim identifying her attacker and describing the attack are extremely powerful evidence of a defendant's guilt. It would be difficult to argue that such statements did not contribute to [a guilty] verdict."). In addition to this, the erroneously admitted forensic interview lent substantial corroboration to much of the physical evidence used against Gizel, *i.e.*, the photos of the lockbox and its contents. The prejudicial effect is highlighted

by the trial court's comments while issuing its ruling.

The trial court, while describing the physical evidence that corroborated J.G.'s testimony, stated that it did not accept Gizel's argument that the lockbox, which contained various pieces of lingerie and a pink vibrator, was planted. (R. 464). The trial court explained that its reason for summarily dismissing Gizel's argument was because J.G. had described the items before they were even recovered—a direct reference to J.G.'s forensic interview from June 26, 2020, in which J.G. disclosed sex toys that Gizel allegedly used on her, sex toys that were eventually found in the lockbox. (R. 389, 464). A search of the Gizel home was conducted the same day as the forensic interview, and Detective Frank Moreno, who listened to the forensic interviews, specifically searched for the sex toys described by J.G. (R. 388-89). The lockbox, however, was not discovered until July 6, 2020, by Gizel's then-wife, Jun Akaishi, who contacted Moreno and informed him that "she found what [Moreno] was looking for." (R. 394). Therefore, the trial court's rejection of Gizel's argument was purely based on its knowledge of the improperly admitted hearsay evidence.

Because the forensic interview was admitted and considered for substantive purposes, it had the improper effect of bolstering the credibility and content of J.G.'s trial testimony, leading to Gizel's convictions. The forensic interview contained more detail and information than J.G.'s trial testimony, and it corroborated the State's properly-admitted evidence, such that the trial court relied on it in denying Gizel's arguments and finding Gizel guilty. Therefore, inadmissible evidence was used to secure Gizel's guilt, and he was denied a fair trial.

In order to preserve an issue for appellate review, both a trial objection and a written post-trial motion raising the issue are required. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Ordinarily, a failure to object to the admission of evidence and raise it in a post-trial motion operates as a forfeiture of the right to consider the question on appeal. *Id.* The plain error doctrine, however, bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005); Ill. S.Ct. R. 615(a).

Gizel did not argue that the State failed to meet the section 115-10 requirements when the motion was filed, and he did not raise this issue in his post-trial motion. (R. 163-64; CI. 313). Therefore, the issue was not preserved for appellate review. However, as the previous discussion established, an error did plainly occur—the admission of J.G.'s forensic interview into evidence pursuant to 725 ILCS 5/115-10—and that error had a prejudicial effect on the fairness of Gizel's trial in that it improperly bolstered J.G.'s trial testimony, both in credibility and content.

In *People v. Johnson*, 363 Ill. App. 3d 1060, 1072 (2d Dist. 2005), the appellate court addressed a defendant's contention that he was entitled to a new trial because section 115-10(b)(3) rendered the victim's hearsay statements statutorily inadmissible. Because the defendant's argument implicated his substantial rights, the appellate court noted that the issue was reviewable under the plain error doctrine. *Id.* The key aspect in *Johnson* was that the victim was both under the

age of 13 at the time of the offense and intellectually disabled, meaning he fell within both protected classes envisioned by the legislature in constructing section 115-10. *Id.* at 1073-74. The appellate court found that the time constraints in section 115-10(b)(3) applied only to outcry statements of victims under the age of 13. *Id.* at 1073. Although the *Johnson* victim's outcry statements were made after he turned 13 and seven months after the commission of the offense, his intellectual disability meant that he still had an impaired ability to testify, which is exactly the type of situation section 115-10 was intended to rectify. *Id.* at 1075-76. Significantly, the appellate court acknowledged that if the victim did not have an intellectual disability, the time constraint of section 115-10(b)(3) would apply and preclude the admission of the outcry statements. *Id.* at 1075.

Here, unlike the victim in *Johnson*, J.G. did not have an intellectual disability. J.G.'s forensic interview was made after she turned 13 and more than three months after the commission of any charged offense. Therefore, the time constraint of section 115-10(b)(3) did apply and precluded the admission of the outcry statement. Because the erroneous admission of hearsay evidence implicated Gize's substantial rights, the plain error doctrine applies. As established above, J.G.'s forensic interview strongly influenced the trial court's findings of guilt, and without the improper admission, Gize's trial outcome might well have been different. As such, this Court should find that the trial court's admission of J.G.'s forensic interview constituted plain error, and remand for a new trial.

CONCLUSION

For the foregoing reasons, Joseph Gizel, Defendant-Appellee, respectfully requests that this Court affirm the appellate court and reverse the trial court under Issue I. Alternatively, for the cross-relief issues, Gizel respectfully requests that this Court reverse and remand for a new fitness hearing under Issue II, or reverse and remand for a new trial under Issue III.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

MAXIMILLIAN HUGHES-ZAHNER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLEE

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 71 pages.

/s/Maximillian Hughes-Zahner
MAXIMILLIAN HUGHES-ZAHNER
Assistant Appellate Defender

No. 131527

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-23-1183.
	)	
Plaintiff-Appellant,	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois, No.
-vs-	)	20 CR 07045.
	)	
JOSEPH GIZEL,	)	Honorable
	)	Mark W. Martin,
	)	Judge Presiding.
Defendant-Appellee.	)	

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603,
 eserve.criminalappeals@ilag.gov;

Ms. Eileen O'Neill Burke, State's Attorney, Cook County State's Attorney Office,
 300 Daley Center, Chicago, IL 60602,
 eserve.criminalappeals@cookcountysao.org;

Mr. Joseph Gizel, Register No. B19264, Danville Correctional Center, 3820 East
 Main Street, Danville, IL 61834

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 April 22, 2026, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Tosya Khodarkovsky
 LEGAL SECRETARY
 Office of the State Appellate Defender
 203 N. LaSalle St., 24th Floor
 Chicago, IL 60601
 (312) 814-5472
 Service via email is accepted at
 1stdistrict.eserve@osad.state.il.us