No. 130447

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. DEVIN JOHNSON Defendant-Appellant.	)))))))))))	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-22-1021 There on Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 21-CF-48 The Honorable Frank R. Fuhr, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MADELINE CALLAGHAN
Assistant Attorney General
115 South La Salle Street
Chicago, Illinois 60603
312-405-0854
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
3/5/2025 10:45 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

Page replaced and corrected by order of March 13, 2025.

TABLE OF CONTENTS

Page(s)

POINTS AND AUTHORITIES

Page replaced and corrected by orderof March 13, 2025.

Page replaced and corrected by orderof March 13, 2025.

NATURE OF THE ACTION

Defendant was convicted of attempted first degree murder and sentenced to 50 years in prison. R675, 716.[1] Defendant now appeals from the appellate court's judgment affirming his conviction. A35, ¶ 64. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

At trial, defendant moved for a directed verdict at the close of the People's evidence, and the trial court informed defendant that it was taking his motion under advisement. R613-16. Defendant did not object. R613-16. The day after the jury returned its verdict, the court denied defendant's motion in a written order. C250. On appeal, defendant argued that by deferring its ruling, the trial court violated 725 ILCS 5/115-4(k) — the statute governing motions for directed verdict — and the Fifth Amendment to the United States Constitution. A26, ¶ 41. Defendant now argues that the trial court's deferral of its ruling violated section 115-4(k), the Fifth Amendment, and the Sixth Amendment to the United States Constitution. The issues presented are:

---

[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," to defendant's brief as "Def. Br. __," and to defendant's appendix as "A__." Citations to the People's trial exhibits appear as "Peo. Exh. __," with time stamps referring to the progress bar of the video player provided for video exhibits. The appendix to this brief provides an index to these exhibits. Citations to defendant's appellate brief filed in the appellate court appear as "Def. App. Br."

1. Whether defendant forfeited his claims — that the trial court violated section 115-4(k) and the Fifth and Sixth Amendments by deferring its ruling denying his motion for directed verdict — because he failed to object on any basis when the trial court stated its intention to defer its ruling and failed to raise his Sixth Amendment claim on appeal.

2. Whether defendant's claims are not reviewable under the plain error standard because he did not testify at trial.

3. Whether the trial court did not err, much less clearly or obviously err, under section 115-4(k) by deferring its ruling denying defendant's motion for directed verdict because that statute does not mandate that such motions be denied at any particular time.

4. Whether the trial court did not violate, much less clearly or obviously violate, defendant's Fifth or Sixth Amendment rights by reserving ruling on his motion for directed verdict because the delay in denying the motion did not compel defendant's decision regarding whether to testify or prevent counsel from advising him regarding that decision.

5. Whether, if the trial court clearly or obviously erred by not denying defendant's motion for directed verdict immediately, the error was neither first- nor second-prong plain error because the evidence was not closely balanced, and the error was not structural.

JURISDICTION

On May 29, 2024, this Court allowed defendant's petition for leave to appeal. Accordingly, the Court has jurisdiction under Supreme Court Rules 315, 602, and 612.

STATUTE INVOLVED

725 ILCS 5/115-4(k) provides:

> When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant.

STATEMENT OF FACTS

Following a jury trial, defendant was convicted of attempted first degree murder for shooting Kelvin Bell in the head, R525, 675-77, and sentenced to 50 years in prison, C283.

I. The People's Evidence Establishes that Defendant Shot Bell in the Head.

At trial, the People's evidence established that, in the early morning of January 24, 2021, Bell was shot in his right temple while sitting in the passenger seat of defendant's car, which was parked outside defendant's house. R255-56; Peo. Exh 10; Peo. Exh. 17; Peo. Exhs. 5-1-5-10.

At around 2 a.m., defendant's wife, Alisha, called 911 and reported that she and defendant had gone to the store and returned to find that Bell had been shot in defendant's car. R253-54, 268-69; Peo. Exh. 7 at 0:25-55. Responding officers found Bell in the passenger seat of defendant's car; he

had a gunshot wound to the right side of his head, R255-56, and was moaning while defendant — who appeared distraught — attempted to comfort him, R254, 262. There was a bullet hole in the front passenger window, R256, and a spent shell casing lay about three feet in front of the car, R290-91. There was also an unfired bullet on the ground below the passenger door, R290-91, and the evidence showed that an unfired bullet can be left when a shooter racks a semiautomatic handgun's slide, expelling the unfired round from the gun and loading a new round into the chamber, R396-97.

Defendant initially denied, but ultimately admitted, that he had shot Bell. Defendant claimed to one of the responding officers that he and Alisha had gone to buy cigarettes, leaving Bell sitting in defendant's car as he phoned people to try to get a ride; when they returned, defendant saw that Bell had been shot. R276-77; Peo. Exh. 2.2. Police transported defendant and Alisha to the police station, where detectives interviewed each of them three times.

During her first police interview, Alisha claimed that she and defendant went to 7-Eleven at around 1:30 a.m. and, when they left, Bell was sitting in defendant's car in front of their home. R440, 442-43. Alisha and defendant returned about ten minutes later and found that Bell had been shot. R441, 443.

After talking to Alisha, detectives interviewed defendant for the first time. Defendant told detectives that he had given Bell a ride home after the

two had gone out drinking. Peo. Exh. 8 at 2:07-2:40. Shortly after defendant dropped Bell off at home, Bell called defendant and told him that people who had previously beaten Bell were in his parking lot. *Id.* at 2:47-3:06. Defendant picked up Bell and drove to defendant's house, where he told Bell that he was not going to drive Bell anywhere else. *Id.* at 3:10-3:25. Defendant got out of the car and went to get cigarettes with Alisha while Bell stayed in the car and started calling people for a ride. *Id.* at 3:30-4:03. When defendant and Alisha returned, Bell was unresponsive in the passenger seat, so defendant tried to revive him while Alisha ran inside to call the police. *Id.* at 4:30-4:56. Defendant suggested that whoever shot Bell might have done so thinking Bell was defendant. *Id.* at 5:22-40. Defendant denied having any guns in his house. *Id.* at 10:03-10:06.

Detectives then interviewed Alisha a second time. This time, she told detectives that she was at home when defendant came inside and told her, while crying, that someone had shot Bell; defendant then left through the back door. R484-87, 489. Alisha went out the front door and saw that Bell had been shot; she then got in her car and went looking for defendant. R487.

When detectives interviewed defendant a second time, R490; Peo. Exh. 9, he said that he and Bell were sitting in defendant's car when Bell was shot, Peo. Exh. 9 at 5:20-6:10. Defendant claimed that he saw the shooter approaching and ducked when the shots were fired. *Id.* at 6:10-50. Defendant saw the shooter run away but "couldn't get a look at him." *Id.* at

6:50-7:00. After the shooting, defendant ran inside, woke Alisha, and drove around with her to discuss how to "keep [himself] out of the situation." *Id.* at 10:33-39, 12:56-13:04. Defendant said that he did not immediately call 911 because he thought Bell was dead. *Id.* at 13:10-13:23.

Detectives interviewed Alisha a third time, and she showed them a video recording taken by a camera inside her bedroom, which captured footage from the morning of the shooting. R492-94; Peo. Exh. 15. The video showed Alisha lying in bed when defendant ran into the room, dropped an object on the floor, and collapsed. R492-94, 561-64. Defendant fell to the floor and appeared to be crying as he changed his shirt, pants, and shoes. Peo. Exh. 15 at 0:05-7:02. Alisha then carried his clothes out of the room. *Id.* at 5:55-6:00. Defendant handed Alisha the object that he'd dropped to the floor, Alisha carried it out of the room, and defendant followed. *Id.* at 1:06-1:12.

When detectives interviewed defendant the third time and confronted him with the video, Peo. Exh. 10 at 1:00-50, he admitted that he had shot Bell, *id.* at 4:09-16; R573. Defendant explained that he had driven Bell to his (defendant's) home; when they arrived, Bell refused defendant's request to get out of the car. Peo. Exh. 10 at 4:09-11; R571-72. Defendant, who was drunk and high and had been awake for two days, decided to use the gun to scare Bell into leaving the car. Peo. Exh. 10 at 4:51-5:02; R573. Defendant claimed he was "not in [his] right mind" and that he believed the trigger was

on safety. Peo. Exh. 10 at 4:45-47, 5:05-08. After defendant shot Bell, he and Alisha drove around, and defendant threw the gun into the river. *Id.* at 8:56-10:13. When asked why there was an unfired round outside the passenger door, defendant said that he did not know. *Id.* at 5:12-28.

At trial, Alisha testified that she was in her bedroom on the morning of the shooting when defendant ran into the bedroom screaming and holding a gun. R546-47. Defendant put the gun on the floor and told Alisha to "get it away from him," so Alisha put it underneath the bathroom sink. R547-48. Defendant changed his clothes, then ran out the back door. R547-49. Alisha put his clothes in the washing machine and went to the front of the house, where she saw Bell moving in the passenger seat of defendant's vehicle, R548-49, and then drove off in her car to find defendant, R549-50. She found defendant about a block away, and the two drove around before stopping at a 7-Eleven to get cigarettes and returning home. R552-54. On cross-examination, Alisha admitted that defendant and Bell were childhood friends, and that defendant was distraught and panicking after the shooting. R567.

The People also submitted transcripts of a recorded phone call that defendant made the day after the shooting. R603-07, 611. During the call, defendant stated that he had "been up for two days straight," and that Bell had the gun first but "once [defendant] got it back from him" he "upped" the gun "just to scare" Bell because Bell would not leave defendant's car. Peo.

Exh. 17. After he shot Bell, defendant "tried to get [him]self away from the whole situation." *Id.*

II. Defendant Moves for a Directed Verdict, the Trial Court Takes the Motion Under Advisement, and Defendant Rests Without Presenting Evidence.

At the close of the People's evidence, defense counsel moved for a directed verdict outside of the presence of the jury, arguing that there was insufficient evidence to prove that defendant intended to kill Bell when he shot him in the head. R613. The People responded that defendant's "self-serving statements" were the only evidence of his lack of intent. R614. The following exchange then occurred:

> Court: I'm going to take [the motion] under advisement. Does the defense have any evidence?
>
> [Defense Counsel]: Your Honor, I would like to make a record.
>
> Court: Sure.
>
> [Defense Counsel]: Mr. Johnson, you are aware that it is absolutely your right to testify should you choose to?
>
> Defendant: Yes.
>
> [Defense Counsel]: And [additional defense counsel] and myself spoke with you in chambers about this issue?
>
> Defendant: Yes.
>
> [Defense Counsel]: And you are knowingly and voluntarily waiving your right to testify at this trial?
>
> Defendant: Yes.

R613-16.

After the court found that defendant knowingly and voluntarily waived his right to testify, defendant rested. R615-25.[2] Before closing arguments, defense counsel asked whether the court was going to rule on the pending motion for directed verdict, and the court responded, "After the verdict." R625-26. Counsel responded, "all right." R626.

III. The Jury Finds Defendant Guilty, and the Trial Court Denies His Motion for Directed Verdict.

The jury found defendant guilty of attempted first degree murder and aggravated battery with a firearm. R675. Defense counsel then reminded the court that he had "made a motion for directed verdict and [the court] reserved judgment." R678. The court answered that it was "going to keep it under advisement" because it "want[ed] to do some legal research and [would] issue a written opinion shortly." *Id.* Defense counsel thanked the court and asked whether it "want[ed] any legal research from" defendant's attorneys, which the court declined. *Id.* The next day, the court denied defendant's motion. C250.

IV. The Trial Court Denies Defendant's Posttrial Motion.

Defendant moved for a new trial on various grounds, including, as relevant here, that the trial court (1) erred by denying defendant's motion for directed verdict and (2) violated section 115-4(k) by reserving its ruling on

---

[2] Defendant did not subpoena any witnesses for trial, *see generally* C33-212, and the only witnesses listed on defendant's disclosure to the prosecution are Alisha Johnson, "any person named in the State's disclosure," and "any and all people named in the police reports disclosed by the State," C121.

that motion, which, he alleged, gave defendant "a false impression on the State's evidence during his trial and thus, affected his decision on whether or not to testify." C258. The court denied the motion, stating that it believed it was defendant's "trial strategy" not to raise concerns regarding the reservation of the ruling during trial so that counsel could "use" the deferral "in a post-trial motion to ask for a new trial." R684-85 (cleaned up). The court noted that defendant could have asked the court to rule "if it was going to make a difference" or "was crucial in [counsel's] decision as to whether or not your client was going to exercise his right to testify." *Id.* After a sentencing hearing, the trial court sentenced defendant on the attempted murder verdict to 50 years in prison (25 years for attempted murder plus a 25-year firearm enhancement). R716.

V. The Appellate Court Affirms.

On appeal, defendant claimed, as relevant here, that the trial court denied him a fair trial by reserving its ruling on his motion for directed verdict. A22, ¶ 26. The appellate court affirmed, holding that defendant had forfeited his claim that the trial court erred when it took his motion under advisement by not objecting when the trial court stated its intention to reserve its ruling, A27, ¶ 43, and that he could not establish that the trial court clearly or obviously erred as necessary to excuse his forfeiture as plain error because the propriety of reserving ruling on motions for directed verdict was unclear under Illinois law, A31-32, ¶¶ 53-54.

STANDARDS OF REVIEW

Whether defendant forfeited his claims that the trial court violated section 115-4(k), the Fifth Amendment, and the Sixth Amendment presents a question of law, which is reviewed de novo. *People v. Sophanavong*, 2020 IL 124337, ¶ 21. Whether section 115-4(k) precluded the trial court from reserving ruling on defendant's motion for directed verdict presents a question of statutory interpretation, which, had defendant preserved this claim of error, this Court would review de novo. *People v. Fair*, 2024 IL 128373, ¶ 61. Similarly, defendant's claims that the trial court violated the Fifth and Sixth Amendments would be reviewed de novo, had the defendant preserved them. *People v. Sneed*, 2023 IL 127968, ¶ 61. However, because defendant did not preserve any of his claims, they are reviewed at most for plain error. *People v. Williams*, 2022 IL 126918, ¶ 48.

ARGUMENT

Defendant does not dispute that the trial court correctly denied his motion for directed verdict — that is, he does not dispute that the evidence presented in the People's case in chief was sufficient to prove his guilt beyond a reasonable doubt. Instead, he argues that he is entitled to a new trial because the trial court did not deny his motion at the conclusion of the People's case, but instead first proceeded to the defense case. But defendant neither objected to the trial court's decision to defer its ruling, nor testified in his defense. Under this Court's precedent, a defendant's claims that the trial

court's procedural error prejudiced him in making his decision whether to testify is unreviewable when, as here, the defendant does not testify. Moreover, even if defendant's claims were reviewable, they would fail, for defendant forfeited the claims and he cannot establish error, much less plain error. Therefore, the Court should affirm.

I. Defendant Forfeited His Claims.

Defendant forfeited his claims that the trial court erred by deferring its ruling on his motion for a directed verdict because he did not timely object to that deferral. To preserve his claims for appellate review, defendant had to both "object to [the] error and raise the error in a posttrial motion." *People v. Jackson*, 2022 IL 127256, ¶ 15; *see Williams*, 2022 IL 126918, ¶ 48 (defendant forfeits any error not raised "both in a timely objection and in a written posttrial motion").

Defendant did not object when the trial court stated that it was going to take his motion under advisement rather than rule immediately. *See* R614.[3] Nor did defendant ask that the court rule at the close of the People's case in chief on the ground that the court's ruling would influence the defense strategy in some way. *Id.* Because defendant failed to make the "[t]imely and specific objection[ ]" necessary to "afford the trial court an opportunity to prevent" any error by proceeding without having ruled on defendant's motion

[3] Nor did defendant object when, after he reminded the court of his pending motion before closing arguments, the court told him that it would rule on the motion "[a]fter the verdict." R625-26.

for directed verdict, *People v. Nelson*, 235 Ill. 2d 386, 436-37 (2009), he failed to preserve his claims of error for review, *cf. People v. Logan*, 2011 IL App (1st) 093582, ¶¶ 49-50 (defendant forfeited claim that trial court erroneously deferred issuing limiting instruction until the close of trial because he did not object to deferral).

Indeed, when the trial court later denied defendant's post-trial motion asserting the deferred ruling as grounds for a new trial, the court correctly noted that defendant "could have asked [it] to rule, especially if it was going to make a difference" or if it was "crucial" to "whether or not [defendant] was going to exercise his right to testify or exercise his right to remain silent." R684-85. Thus, the trial court found that "it was a matter of trial strategy on the defense's part not to request that ruling" and instead "to allow [the motion] to remain under advisement" so that defendant could later assert the deferral of the ruling as a basis for a new trial. C685. Accordingly, defendant forfeited his claims.

Contrary to defendant's assertion, Def. Br. 25, the bare fact that he moved for a directed verdict did not preserve any objection to the trial court's subsequent deferral of its ruling on that motion. Defendant's argument that his motion "alone trigger[ed] the court's duty to rule before proceeding to the defense case," *id.*, simply restates his argument that the court erred by not ruling before proceeding to the defense case and does not excuse defendant

from his obligation to preserve the issue by raising a timely objection when the court announced that it would defer its ruling.

Nor do the cases on which defendant relies — *People v. Patrick*, 233 Ill. 2d 62 (2009), and *People v. Rascher*, 223 Ill. App. 3d 847 (4th Dist. 1992), *see* Def. Br. 25 — stand for the proposition that a defendant need not object to a trial court's decision to defer ruling to preserve a challenge to that decision. Neither *Patrick* nor *Rascher* addressed forfeiture, much less excuse defendant from established claim preservation rules. In *Patrick*, this Court held that the trial court abused its discretion by customarily deferring its ruling on motions in limine seeking to bar introduction of a defendant's prior convictions as impeachment evidence until after the defendant testified. 233 Ill. 2d at 74. The Court did not address whether the defendant had forfeited his challenge to the trial court's decision to defer ruling, much less hold that no objection is required to preserve the issue for appeal. *See id.* at 74-76. Similarly, the appellate court in *Rascher* held only that the trial court erred by denying the defendant's motion for a directed verdict. 223 Ill. App. 3d at 854. The court went on to say, in dicta, that "[a] trial court should not reserve ruling on a motion for directed verdict at the close of the State's evidence" because "[t]he practice could be reversible error in some cases." *Id.* at 855. But *Rascher* did not address any argument that the defendant's claim had been forfeited, nor did the holding suspend traditional claim preservation rules. *See id.* at 854-55. Thus, neither *Patrick* nor *Rascher* held that claims

that a trial court erred by deferring its ruling on a motion for directed verdict are exempt from the usual rules of forfeiture.

Further, defendant forfeited his claim that the trial court violated the Sixth Amendment for the additional reason that he did not raise that claim before the appellate court. *See People v. Washington*, 2012 IL 110283, ¶ 62 (issue not raised in appellate court is forfeited). In the appellate court, defendant argued only that the trial court's decision to defer ruling violated section 115-4(k) and the Fifth Amendment. *See* Def. App. Br., *People v. Johnson,* 2023 IL App (4th) 221021-U. Therefore, defendant's Sixth Amendment claim is doubly forfeited.

II. Defendant's Forfeited Claims Are Not Subject to Plain-Error Review.

Defendant argues that by deferring its ruling on his motion for directed verdict, the court deprived him of information that was relevant to his decision whether to testify. *See* Def. Br. 10, 14. But defendant did not testify and, as this Court has explained, a forfeited claim that a trial court erroneously reserved ruling on a motion and thus deprived the defendant of information relevant to his decision whether to testify "is unreviewable if the defendant chooses not to testify at trial." *People v. Averett*, 237 Ill. 2d 1, 14 (2010).

The Court reasoned that "[w]hile the plain-error rule may be applied to bypass normal forfeiture principles, it cannot be applied here because [defendant's] decision not to testify go[es] beyond normal forfeiture,"

rendering the issue of the reserved ruling that allegedly resulted in the decision not to testify "unreviewable." *Id*. at 18 (citing *Patrick*, 233 Ill. 2d at 79). "Without the defendant's actual testimony, [this Court] would be forced to speculate on the substance of that testimony and the prosecution's questions on cross-examination," *id.*; thus, a defendant deciding whether to testify "must either [testify] and open the possibility of an erroneous decision subject to appellate review, or forgo [testifying] and adopt an alternative strategy favoring [his] chances at trial." *Id.* He cannot, however, "'have it both ways' by altering his trial strategy to make the best of the trial court's decision and still maintain on appeal that the trial court's decision was erroneous." *Id.* (quoting *Patrick*, 233 Ill. 2d at 79); *see* R685 (trial court's finding that "it was a matter of trial strategy on the defense's part not to request that ruling and . . . to allow it remain under advisement," with defendant "now using it in a post-trial motion to ask for a new trial"). Because defendant decided not to testify despite his claimed belief that the trial court's deferral of its ruling on his motion for directed verdict deprived him of information necessary to his decision about whether to testify, *see* Def. Br. 10, "the plain-error rule for bypassing normal forfeiture principles is inapplicable here," *Averett*, 237 Ill. 2d at 19.

III. Alternatively, the Trial Court Did Not Plainly Err by Deferring Ruling On Defendant's Motion for Directed Verdict.

Even if his claims were subject to plain error review, defendant cannot show that the trial court plainly erred by deferring its ruling on his motion

for directed verdict. To rise to the level of plain error, the trial court's deferral of its ruling on defendant's motion must have been clearly or obviously erroneous. *See Jackson*, 2022 IL 127256, ¶ 21 (first step of plain-error analysis "is to determine whether a clear or obvious error occurred"). If the trial court's ruling was clearly or obviously erroneous, then defendant's forfeiture may be excused only if he further shows that (1) "the evidence was so closely balanced that the error alone severely threatened to tip the scales of justices" or (2) "the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process." *People v. Moon*, 2022 IL 125959, ¶¶ 23-24 (internal quotation marks omitted).

Defendant can make none of these showings. The trial court did not clearly or obviously err by deferring its denial of defendant's motion for directed verdict, the evidence of defendant's guilt was not closely balanced, and any error in the timing of the court's ruling did not undermine the integrity of the judicial process.

A. The trial court did not commit clear or obvious error by deferring ruling on defendant's motion for directed verdict.

The "threshold inquiry" in determining whether an alleged error was clear or obvious "is whether there was an error at all," for defendant cannot "obtain relief on an unpreserved error under the plain-error doctrine if he would not have been entitled to relief on the same error if preserved." *Williams*, 2022 IL 126918, ¶ 49. In other words, if an error would not clearly or obviously be reversible if preserved, then it is not clear or obvious error for

the purposes of plain-error review. Here, the trial court did not commit reversible error, much less clearly or obviously commit reversible error, when it denied defendant's motion for a directed verdict after proceeding to the defense case rather than immediately.

As an initial matter, contrary to defendant's assertion, Def. Br. 35-36, the trial court did not err, much less clearly or obviously err, by deferring its denial of defendant's motion for directed verdict at the close of the prosecution's case simply because Third District precedent supposedly prohibited it. Third District precedent did *not* prohibit the court from deferring its ruling on defendant's motion for directed verdict. Although the Third District cautioned in dicta against reserving ruling on such motions in *Rascher*, 223 Ill. App. 3d 847, and *People v. Trump*, 62 Ill. App. 3d 747 (3d Dist. 1978), neither case held that a trial court is prohibited from reserving ruling on a motion for directed verdict made at the close of the People's evidence.

Trump considered a trial court's reservation of its ruling on a motion for directed verdict raised at the close of *all* the evidence and held that the reservation was not error. 62 Ill. App. 3d at 748. *Trump*'s concern about deferring rulings on motions for directed verdict raised at the close of the People's evidence — that "[t]here is reason for not allowing a trial court to reserve ruling on a motion for directed verdict made at the close of the prosecution's case," *id.* — was thus dicta, for it was neither "essential to the

outcome of the case" nor "an integral part of the opinion," *People v. Lightheart*, 2023 IL 128398, ¶ 51. *Trump* thus did not preclude the trial court from taking defendant's motion for directed verdict under advisement rather than ruling immediately. *See Lightheart*, 2023 IL 128398, ¶ 50 (dicta "is not binding authority or precedent with the *stare decisis* rule").

Rascher's holding is similarly inapposite. There, the defendant argued that the trial court erred by reserving ruling on her motion for directed verdict made at the close of the prosecution's case because the evidence was insufficient to prove her guilt, as evident from the trial court's observation when it took the motion under advisement that "[t]here's a lot of stuff we don't know based on this evidence." 223 Ill. App. 3d at 849-50; *see also id.* at 853, 855. After agreeing that the evidence was insufficient, *Rascher* addressed the defendant's additional argument that, given the trial court's comments about the insufficiency of the evidence, the trial court had erred by deferring its ruling on the motion for directed verdict rather than granting it immediately. *Id.* at 853-54. *Rascher* recited the rule that a court "is compelled to direct a verdict in favor of defendant at the close of the State's case" if the evidence is insufficient, *id.* at 854, and then cautioned that "[a] court should not reserve ruling on a motion for directed verdict at the close of the State's evidence" because "[t]he practice could be reversible error in some cases," *id.* at 855. But *Rascher* did not hold that the trial court had committed reversible error by *deferring* its ruling denying the defendant's

motion for directed verdict, only that the court had erred by *denying* the motion. Nor did *Rascher* explain when deferring a ruling on a motion for directed verdict would be reversible error. Therefore, to the extent that *Rascher* pronounced a rule regarding when a trial court must rule on a motion for directed verdict, that, too, was dicta.

Moreover, even if *Rascher* had held that a trial court may not delay ruling on a motion for directed verdict made at the close of the prosecution's case, that holding would be limited to instances when the court reserves its ruling so that it can consider the defendant's evidence. In *Rascher*, the trial court indicated that it was deferring its ruling on the defendant's motion for directed verdict because the prosecution's evidence left the court with "a lot" it did not know, so the court planned to consider any evidence the defendant chose to present, as well. *See id*. at 849-50. This was error, as the merits of a motion for directed verdict made at the close of the prosecution's evidence turn solely on the prosecution's evidence. Here, by contrast, there was no indication that the trial court planned to consider any evidence defendant chose to present before ruling on his motion. On the contrary, the court explained that it was taking the motion under advisement because it wished to conduct additional legal research. R677-78. Thus, *Rascher* has no application here.

In any event, even if the Third District precedent precluded the trial court from deferring ruling on defendant's motion for directed verdict, the

trial court still would not have clearly or obviously erred. As defendant concedes, *see* Def. Br. 33-34, whether the trial court clearly or obviously erred depends on *this* Court's determination of the law, regardless of whether one or more appellate districts had previously reached a contrary conclusion. *See Henderson v. United States*, 568 U.S. 266, 273-77 (2013) (whether forfeited error raised on direct appeal is "plain" turns on clarity of error as determined by court of final review); *People v. McLaurin*, 235 Ill. 2d 478, 497 (2009) ("not[ing] the similarity between our plain-error analysis and the parallel analysis under the federal rules"). If this Court were to hold that neither section 115-4(k) nor the Fifth or Sixth Amendments clearly or obviously precluded the trial court from delaying ruling on defendant's motion, then the trial court could not have committed clear or obvious error, even if it was contrary to appellate precedent, because that precedent itself was incorrect. Likewise, a trial court's ruling may be clear or obvious error even when it conforms to appellate precedent if this Court subsequently holds that such authority was incorrect.

And, as now explained, this Court should hold that the trial court's decision to defer its ruling did not clearly or obviously violate defendant's rights under section 115-4(k), which is silent regarding when trial courts should decide motions for directed verdicts. Nor did the trial court's deferral of its ruling clearly or obviously violate defendant's Fifth Amendment right to testify in his defense (or not, as he chose) or his Sixth Amendment right to

the effective assistance of counsel, for that deferral did not compel defendant to testify against his wishes, or bar him from testifying, and it did not prevent counsel from advising defendant whether testifying would be helpful or harmful to his defense.

1. Deferring ruling on defendant's motion for directed verdict was not clear or obvious error under section 115-4(k).

The court did not violate, much less clearly or obviously violate, section 115-4(k) by denying defendant's motion for directed verdict after proceeding to the defense case rather than immediately because that statute does not require that a trial court rule on a defendant's motion for directed verdict before proceeding to the defense case.

When construing section 115-4(k), this Court's primary objective is to "ascertain and give effect to the intent of the legislature" in enacting that statute. *People v. Burge*, 2021 IL 125642, ¶ 20. "[T]he best indication of that intent is the statutory language itself, giving it its plain and ordinary meaning," *id.*, and construing it in light of "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another," *People v. Boyce*, 2015 IL 117108, ¶ 15. The Court presumes that the legislature did not intend "absurd results," and must avoid construing the statute in a way that would lead to such results. *People v. Hanna*, 207 Ill. 2d 486, 498 (2003).

The purpose of section 115-4(k) is to protect a defendant's right not to be convicted based on insufficient evidence. This Court has long recognized a

defendant's substantive right to be acquitted when the evidence is insufficient to sustain a conviction, *see People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), and the corresponding procedural right to move for a directed verdict based on the insufficiency of the evidence, *see People v. Withers*, 87 Ill. 2d 224, 228 (1982) (Illinois recognized defendants' right to move for directed verdict in 1930s). Section 115-4(k) legislatively enshrines those rights, providing that:

> When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant.

725 ILCS 5/115-4(k). Thus, section 115-4(k) protects a defendant's right to be acquitted when the evidence is insufficient by (1) mandating that the trial court grant a defendant's motion for directed verdict and enter a judgment of acquittal when the evidence is insufficient and (2) authorizing the trial court to enter a judgment of acquittal sua sponte when the evidence is insufficient, regardless of whether the defendant moves for directed verdict.

Section 115-4(k) does not specify *when* a trial court must enter a judgment of acquittal after determining that the evidence is insufficient, *see id.*; *see also People v. Ramirez*, 244 Ill. App. 3d 136, 149-50 (1st Dist. 1993) ("section 115-4(k) does not mandate that the trial court must make its ruling at the close of the State's evidence") (citing *People v. Watkins*, 206 Ill. App. 3d 228, 243 (1st Dist. 1990)), for there is no reason to do so. The statute's

purpose of ensuring that a defendant is not convicted based on insufficient evidence is achieved regardless of when the court enters the judgment of acquittal; a defendant is equally acquitted whether the judgment of acquittal is entered immediately after the close of the prosecution's case, after the close of all the evidence, or after the jury has returned its verdict.

For that reason, section 115-4(k) does not distinguish between motions for directed verdict made at the close of the prosecution's evidence and those made at the close of all evidence. Regardless of when the motion is made, the court must enter a judgment of acquittal when the condition warranting acquittal is met: "when . . . the evidence is insufficient to support a finding or verdict of guilty." 725 ILCS 5/115-4(k). The legislature's use of the word "when" in this context is therefore conditional, not temporal; it does not identify the time when trial courts must rule on motions for directed verdict, but the condition that must be satisfied to grant such motions — that the evidence is insufficient to sustain a conviction. *See Webster's Third New International Dictionary* 2602 (2021) (defining "when" as meaning, among other things, "in the event that : on the condition that : if").

Indeed, this Court has recognized that the condition warranting entry of a judgment of acquittal — the insufficiency of the evidence — is the same when the motion challenging the sufficiency of the evidence is made *after* the jury returns its verdict. *See People v. Van Cleve*, 89 Ill. 2d 298, 303 (1982). In *Van Cleve*, the Court relied on section 115-4(k) to identify trial courts'

authority to enter judgments notwithstanding the verdict, explaining that a judgment notwithstanding the verdict is effectively the same as "a reserved ruling upon the motion for a directed verdict." *Id.* at 302-03. The two orders "are in substance the same, because they provide the same relief and are applicable on the same insufficiency-of-evidence ground." *Id.* at 303. In other words, whenever a defendant challenges the sufficiency of the evidence, the sole question under section 115-4(k) is whether the evidence to that point was sufficient to sustain a conviction; if the evidence was insufficient, then a judgment of acquittal fully protects the defendant's right to be acquitted, regardless of when it is entered.

Here, the trial court appropriately exercised its discretion to take defendant's motion for directed verdict under advisement because, as the court later explained, it wanted to conduct additional legal research before ruling. *See* R677-78. Because that exercise of discretion was not prohibited by section 115-4(k), the court did not clearly or obviously violate the statute.

a. Section 115-4(k)'s silence regarding when courts must rule on motions for a directed verdict cannot be construed as a requirement that courts rule immediately.

Defendant's argument that "[n]othing in the plain language of the statute allows a judge to reserve ruling on a defendant's motion for directed verdict," Def. Br. 14, turns principles of statutory interpretation on their head. Section 115-4(k), like all statutes, "must be construed as written, without reading into it exceptions, conditions, or limitations that the

legislature did not express." *Elam v. Mun. Officers Electoral Bd. for Vill. of Riverdale*, 2021 IL 127080, ¶ 14. The statute's silence regarding any timing requirement for ruling on motions for a directed verdict cannot be construed as a requirement that courts rule on such motions immediately.

Indeed, interpreting the statute to prohibit trial courts from deferring ruling on motions for directed verdict made at the close of the prosecution's evidence would be contrary to this Court's precedent. This Court has recognized that even when the prosecution's evidence is insufficient, the trial court maintains the discretion to defer ruling on a motion for directed verdict made at the close of that evidence and permit the prosecution to reopen its case and make its proof. *See People v. Cross*, 40 Ill. 2d 85, 90 (1968) (trial court did not abuse its discretion by deferring ruling on motion for directed verdict and permitting prosecution to reopen its case and make its proof).

Moreover, even if section 115-4(k)'s silence could be construed as a timing requirement regarding when trial courts must grant motions for directed verdict, there is no basis to construe it as a timing requirement for orders *denying* motions for directed verdict. The only mandate in section 115-4(k) pertains to orders *granting* motions for directed verdict, providing that when the evidence is insufficient and the defendant moves for a directed verdict, the court "shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant." 725 ILCS 5/115-4(k). The statute does not address a trial court's response to a

motion for directed verdict when the evidence is *sufficient* to sustain a conviction, much less a requirement that courts deny such motions immediately.[4]

And even if section 115-4(k)'s silence could be construed as not only a timing requirement, but a timing requirement for denials of meritless motions for directed verdict, the consequence of violating that silent mandate would not be a new trial. Statutes providing that the court "shall" act in a particular manner are mandatory rather than permissive, *People v. Robinson*, 217 Ill. 2d 43, 54 (2005), meaning they "refer[ ] to an obligatory duty which a governmental entity is required to perform," as opposed to "a discretionary power which a governmental entity may exercise or not as it chooses," *People v. Delvillar*, 235 Ill. 2d 507, 514 (2009) (internal quotations omitted). But the fact that a statute is mandatory does not mean that noncompliance with the statute's mandate renders the noncompliant action invalid. Rather, a separate distinction — between mandatory and directory

[4] Although defendant does not dispute that the trial court correctly denied his motion for directed verdict, the People note that the trial court's ruling was in fact correct. When viewed in the light most favorable to the People, *see Withers*, 87 Ill. 2d at 230, the evidence that defendant racked the slide before shooting Bell in the head, hid the gun and fled, and repeatedly lied to police, *see* Peo. Exh. 10 at 8:56-10:13; Peo. Exh. 8-10; R290-91, 396-97, 547-54, would allow a rational juror to find that defendant intended to shoot Bell in the head and therefore was guilty of attempted first degree murder, *see Withers*, 87 Ill. 2d at 230 (motion for directed verdict should not be granted if a "reasonable mind could fairly conclude the guilt of the accused beyond a reasonable doubt considering the evidence most strongly in the People's favor").

statutory mandates — determines the consequences of noncompliance. *Id.* at 516. Noncompliance with a statutory mandate invalidates the noncompliant action only if the statutory mandate is mandatory rather than directory. *Id.*

A statutory mandate is mandatory rather than directory if the underlying intent "dictates a particular consequence for failure to comply with the provision." *Id.* at 514. Procedural mandates like timing requirements are presumed to be directory. *See In re M.I.*, 2013 IL 113776, ¶ 18 (timing requirement is presumptively directory procedural command). This presumption may be overcome only if (1) "there is negative language prohibiting further action in the case of noncompliance," or (2) a directory reading would generally prejudice "the right the provision is designed to protect." *Delvillar*, 235 Ill. 2d at 517.

Defendant cannot overcome the presumption that section 115-4(k)'s silence — or, as defendant would have it, section 115-4(k)'s unwritten timing mandate — is directory, such that a failure to immediately deny defendant's motion for directed verdict did not render the rest of his trial invalid.

First, the statute provides no consequence for noncompliance with any timing requirement, much less that noncompliance invalidates the remainder of the trial and the ultimate conviction. *See In re M.I.*, 2013 IL 113776, ¶ 18 (statute mandating hearings on motion within 60 days was directory because it lacked any "specific consequences" for failure to hold a timely hearing). Nor does the statute have any negative language prohibiting further action if

a court does not immediately rule on a defendant's motion. *Id*. (statute mandating hearing within 60 days directory where it lacked "any negative language prohibiting further action if the hearing is not held").

Second, a directory reading would not prejudice the right the statute is intended to protect. As explained, the right that section 115-4(k) protects is the right to be acquitted when the evidence is insufficient. *See supra* pp. 23-25. Deferring a ruling on a motion for directed verdict made at the close of the prosecution's evidence does not prejudice that right. If the evidence is insufficient, then the motion will be granted and the defendant's right to be acquitted will have been fully protected, regardless of when the judgment of acquittal was entered. And if the evidence is sufficient, then the defendant has no right to be acquitted and so the right cannot be prejudiced by the deferred denial of the motion.

b. Allowing courts to defer ruling on motions for directed verdict at the close of the prosecution's case does not make defendants choose between presenting evidence in their defense and challenging a later denial of their motion.

Defendant is incorrect that interpreting section 115-4(k) as permitting courts to defer ruling on motions for directed verdict would force defendants to choose between presenting evidence in their defense and challenging a later ruling denying their motion. *See* Def. Br. 27. A defendant who testifies after the trial court denies his motion for directed verdict made at the close of the People's evidence waives any challenge to the denial on appeal. *People v.*

Slaughter, 29 Ill. 2d 384, 389 (1963). If that defendant on appeal wishes to challenge the sufficiency of the evidence, he may do so only on the basis of all the evidence presented at trial, including his own. *People v. Peters*, 32 Ill. App. 3d 1018, 1019 (4th Dist. 1975) (when defendant presents evidence after motion for directed verdict is denied, sufficiency challenge on appeal considers "all the testimony" because "a defendant waives the right to a directed verdict when he introduces evidence after the motion is denied" (citing *People v. Gokey*, 57 Ill. 2d 433, 436 (1974)).

By contrast, a defendant who testifies after the trial court *defers* ruling on his motion for directed verdict has not waived any challenge to a later ruling denying that motion because he has not acquiesced to the court's unmade determination that the motion lacked merit. When the court ultimately rules on the defendant's motion for directed verdict made at the close of the prosecution's evidence and holds that the prosecution's evidence was insufficient, that ruling considers only the prosecution's evidence. *See United States v. Tyson*, 653 F.3d 192, 199-200 (3d Cir. 2011) (when court reserves ruling on motion for judgment of acquittal, ruling is based solely on the evidence presented when the ruling was reserved); *United States v. Moore*, 504 F.3d 1345, 1347 (11th Cir. 2007) (same); *see also* Fed. R. Crim. P. 29(b) (courts may reserve ruling on motion for acquittal but must "decide the motion on the basis of the evidence at the time the ruling was preserved"). A court that reserves its ruling on a motion for directed verdict made at the

close of the prosecution's evidence and later denies the motion based on evidence presented by the defendant errs not because it reserved its ruling on the motion, but because it ultimately addressed the sufficiency of all of the evidence instead of cabining its ruling to the motion that was actually made.

Thus, when a trial court defers ruling on a motion for directed verdict made at the close of the prosecution's evidence, the defendant on appeal may challenge both that ruling — which tests the sufficiency of the People's evidence — and the sufficiency of all the evidence. Construing section 115-4(k) as including an unwritten timing mandate that prohibits courts from deferring ruling on motions for directed verdict made at the close of the prosecution's evidence is thus unnecessary to prevent deferred rulings from barring defendants from challenging that ruling on appeal.

c. Neither Illinois statutes governing motions for directed verdict in civil cases nor other States' statutes are relevant to whether section 115-4(k) prohibits deferred rulings.

Finally, defendant is incorrect that other statutes supply reason to impute a timing requirement into section 115-4(k). *See* Def. Br. 19-22. Neither Illinois statutes governing motions for directed findings in civil cases nor statutes from other States can overcome the plain language of section 115-4(k).

The General Assembly's decision not to include a timing requirement in section 115-4(k) demonstrates that the statute does not mandate when a court must rule on a motion for directed verdict. The provisions of the Code

of Civil Procedure governing motions for directed findings in civil cases provide no basis to add a timing requirement to section 115-4(k), much less to invalidate any conviction obtained after a procedurally noncompliant but substantively correct denial of a defendant's motion for directed verdict. Defendant notes that 735 ILCS 5/2-1202(a) expressly *permits* a court to reserve ruling on a motion for directed verdict made at the close of all the evidence and argues that, because the legislature expressly permitted deferred rulings in one statute, section 115-4(k) must be read to prohibit deferred rulings. Def. Br. 20. Defendant also notes that section 2-1110 expressly *prohibits* a court from reserving ruling on a defendant's motion for directed finding or judgment at the close of plaintiff's evidence in a non-jury trial, "only allow[ing] a court to proceed to the defense case if its ruling 'is adverse to the defendant.'" *Id.* (quoting 735 ILCS 5/2-1110). By defendant's reasoning, the fact that the legislature expressly prohibited deferred rulings in one statute would mean that, without that express prohibition, section 115-4(k) must permit deferred rulings. Thus, under defendant's approach to statutory interpretation, where the legislature has both expressly permitted and expressly prohibited deferred rulings in other statutes, section 115-4(k)'s silence regarding both permission and prohibition would mean that it both prohibits and permits deferred rulings. But the fact that other statutes governing motions made in civil cases variously expressly permit or prohibit reserved rulings is irrelevant to construing section 115-4(k)'s silence. If

anything, it demonstrates that when the legislature wishes to mandate how a court may rule on motions, it does so explicitly.

Defendant's reliance on decisions interpreting Maryland and Massachusetts statutes, *see* Def. Br. 20-21, is equally misplaced. To be sure, when this Court has been called upon to construe a particular term in a particular statutory context, it has sometimes considered how courts in other jurisdictions have construed that term in similar contexts. For example, in *Schultz v. Ill. Farmers Ins. Co.*, 237 Ill. 2d 391 (2010), which turned on the meaning of the word "user" in a statute concerning motor vehicle insurance policies, the Court looked to other courts' interpretations of what it means to "use" a car "for the purposes of motor vehicle insurance policies." *Id.* at 402. But caselaw from other States interpreting different statutes that use different language cannot inform this Court's interpretation of section 115-4(k)'s *lack* of any language concerning the timing of a court's ruling.

For instance, defendant's reliance on *Commonwealth v. Yasin*, 132 N.E.3d 531 (Mass. 2019), is misplaced because, there, the Massachusetts Supreme Court construed a rule stating that when a defendant moves for a directed verdict at the close of the prosecution's case, the motion "shall be ruled upon at that time." *Id.* at 350 (quoting Mass. R. Crim. P. 25(a)). The Maryland Supreme Court's decision in *Johnson v. State*, 158 A.3d 1005 (Md. 2017), does not support defendant's position, either. *Johnson* held that the Maryland statute, which neither expressly permitted nor prohibited reserved

rulings on motions for a directed verdict, did not allow the trial court to grant a motion for directed verdict weeks after declaring a mistrial and discharging the jury. *Id.* at 1005-06. As *Johnson* explained, because the Maryland statute did not authorize courts to reserve ruling on motions for directed verdict, when a court purports to do so, "it is tantamount to denying the motion," such that any subsequent ruling on the motion "[i]s completely ineffectual and meaningless." *Id.* at 1015. Under *Johnson*'s reasoning, then, defendant's argument that the trial court erred by deferring its ruling is meritless, for the trial court would have immediately denied his motion, as he claims it should have.

2. Deferring ruling on defendant's motion for directed verdict was not clear or obvious error under the Fifth or Sixth Amendment.

Nor did the trial court's decision to reserve ruling clearly or obviously violate either defendant's Fifth Amendment right to testify (or remain silent) or his Sixth Amendment right to the assistance of counsel in making that decision. Def. Br. 11-13.

First, deferring ruling on defendant's motion did not violate his Fifth Amendment to "testify in his own defense, or to refuse to do so." *Rock v. Arkansas*, 483 U.S. 44, 52-53 (1987) (internal quotations and citation omitted). The trial court's decision to reserve ruling neither compelled defendant to testify against his will nor prevented him from testifying in his own defense if he wished. Indeed, defendant confirmed on the record that he

knew that "it [wa]s absolutely [his] right to testify should [he] choose to" and that he decided "of [his] own free will" not to testify. R614-15.

Similarly, deferring ruling did not violate his Sixth Amendment right to the effective assistance of counsel — here, the right to have counsel offer reasonable strategic advice regarding whether to testify in his own defense. *See People v. Coleman*, 2011 IL App (1st) 091005, ¶¶ 29-32. The record shows that the trial court's deferral of its ruling did not prevent counsel from advising defendant whether to testify, for immediately after the court announced that it was taking the motion under advisement, counsel made a record that he "spoke with [defendant]" about testifying and that defendant had decided to "waiv[e] [his] right to testify." R614-15.

Defendant misreads *People v. Bruner*, 343 Ill. 146 (1931), and *People v. Withers*, 87 Ill. 2d 224 (1981), because neither supports his argument that motions for directed verdict are intended "to protect [defendants'] rights to testify, to remain silent, and to the effective assistance of counsel." Def. Br. 18-19 (emphasis omitted). Neither *Withers* nor *Bruner* mentioned these rights, much less held that motions for directed verdicts — or more to the point, prompt rulings on such motions — are necessary to protect them.

In *Bruner*, this Court held that a statute mandating that "juries in all criminal cases [be] the judges of the law as well as the facts" was unconstitutional because only judges may decide questions of law. 343 Ill. at 155-56, 162. As the Court explained, because a jury's verdict "cannot be

contrary to the law," judges must have "the power to set aside a verdict of guilty for that reason" and cannot be stripped of that constitutional authority by statute. 343 Ill. at 158-60. *Bruner* did not suggest that motions for directed verdict, including the timing of decision on such motions, are relevant to a defendant's Fifth or Sixth Amendment rights, much less that they are necessary to protect those rights.

Withers was similarly silent regarding any constitutional significance of motions for directed verdicts. *Withers* rejected the argument that, under the Sixth Amendment, defense counsel must be allowed to argue in support of a motion for directed verdict; such a motion, this Court explained, requires only that the trial court consider "whether a reasonable mind could fairly conclude the guilt of the accused beyond a reasonable doubt, considering the evidence most strongly in the People's favor." 87 Ill. 2d at 228-31. Thus, *Withers*'s discussion of the Sixth Amendment was limited to its holding that the Amendment does not require trial courts to permit counsel to argue in support of a motion for directed verdict, and *Withers* did not mention the Fifth Amendment at all.

a. A defendant's decision whether to testify, knowing that the prosecution's evidence will be going to the jury, does not turn on whether the court might later grant a directed verdict.

At bottom, defendant's argument that the trial court's deferral of its ruling on his motion for directed verdict violated his Fifth and Sixth Amendment rights — that uncertainty about whether the trial court would

eventually grant the motion "denied [defendant] his right to make an informed waiver of his right either to testify or to remain silent, and deprived [defendant's] counsel of information necessary to providing effective assistance," Def. Br. 10 — rests on the false premise that whether the court would direct a verdict in his favor is relevant to his decision whether to testify and that he was constitutionally entitled to that information before he decided whether to testify.

When deciding whether to exercise his Fifth Amendment right to testify, a defendant must evaluate (with the assistance of counsel) whether his testimony may increase or decrease the likelihood that the jury will acquit him. *See Patrick*, 233 Ill. 2d at 69. Information relevant to that "tactical determination" includes whether and how the defendant may be impeached because, if a defendant's testimony "may open the door to otherwise inadmissible evidence" that would undermine his defense, he may conclude that his testimony would do more harm than good and elect to remain silent. *Id.*; *see Averett*, 237 Ill. 2d at 10 (early rulings on motions in limine about admissibility of impeachment evidence aid defendants in "ascertain[ing] the strength of their testimony").

But the possibility that a jury will not ultimately decide a defendant's case because the judge will grant a motion for directed verdict based solely on the prosecution's evidence is irrelevant to the defendant's decision to testify. Whether a court immediately denies a defendant's motion for directed verdict

made at the close of the prosecution's evidence or defers its ruling, the defendant faces the same decision: he must evaluate the strength of the prosecution's evidence and decide whether his testimony will increase or decrease the possibility of an acquittal by the jury. The possibility that the court may later acquit the defendant does not bear on that evaluation.

Defendant argues that the deferral of the ruling on his motion affected his decision not to testify by giving him a "false impression" of the strength of the prosecution's case. Def. Br. 24-25. But the question before him was whether, given his assessment of the prosecution's evidence and its effect on the jury, he believed that testifying would improve the likelihood of an acquittal. There is no reason to believe that a defendant, assisted by experienced counsel, can make this decision only if the trial court first denies his motion for directed verdict, thereby confirming that the prosecution's evidence is at least not objectively so weak that, even when viewed in the light most favorable to the prosecution, no rational factfinder could possibly find the defendant guilty.

Finally, the record shows that the trial court's deferral of its ruling had no effect on defendant's decision not to testify. Immediately after the court took defendant's motion under advisement, counsel announced that, before presenting the motion, he spoke with defendant about testifying and defendant decided against it. *See* R614-15.[5] Thus, the trial court's deferral of

[5] Defendant's decision not to testify regarding his claim that he accidentally

its ruling did not deprive defendant of any information relevant to his decision whether to testify.

b. A defendant is not constitutionally entitled to know whether the court will grant his motion for directed verdict before he decides whether to testify.

Even if the possibility of a favorable ruling on a motion for directed verdict were relevant to a defendant's decision whether to testify, the defendant does not have a constitutional right to the ruling before making that decision. As this Court has explained, defendants are often faced with "difficult decisions when weighing the pros and cons of testifying at trial," and requiring them to make these decisions with imperfect knowledge "does not necessarily deprive defendants of any constitutional right." *Averett*, 237 Ill. 2d at 15-16; *see also People v. Rosenberg*, 213 Ill. 2d 69, 81 (2004) ("The necessity of making" difficult decisions "when weighing the pros and cons of testifying" does not "inevitably deprive defendants of any constitutional right."). Thus, as the Court explained in *Averett*, a trial court's decision to defer ruling on a defendant's motion in limine to exclude certain impeachment evidence — a ruling that would provide information relevant to the defendant's evaluation of the strength of his testimony — "d[oes] not violate [the defendant's] constitutional right to testify at trial," 237 Ill. 2d at 15, because it does not "prevent[ ] [the defendant] from taking the stand and

---

fired the gun was likely influenced by the fact that he could have been impeached with evidence of his "four prior gun convictions." R716.

testifying" but merely requires the defendant to "weigh the possibility of being impeached . . . along with other facts in determining whether to testify," *id.* at 16. Here, the trial court's deferral of its ruling on defendant's motion for directed verdict similarly did not prevent defendant from testifying, but merely required that he weigh the possibility of being acquitted by directed verdict when determining whether to testify.

Defendant was not denied his right to the assistance of counsel in making his decision to testify for the same reason: counsel was able to — and did — advise defendant about whether he should testify given the prosecution's evidence. *See* R682. As this Court held in *Averett*, the trial court's decision to reserve ruling on a motion in limine — even a ruling that could impact a defendant's decision whether to testify — does not deprive the defendant of his right to the "guiding hand of counsel" because it does not restrict the defense attorney from counseling his client. 237 Ill. 2d at 16-17. The Court distinguished a trial court's decision to defer ruling on a motion in limine from the policy challenged in *Brooks v. Tennessee*, 406 U.S. 605 (1972), which required defendants choosing to testify to do so before presenting any other evidence. *Averett*, 237 Ill. 2d at 16-17. Unlike the policy in *Brooks*, which "cast[ ] a heavy burden on a defendant's otherwise unconditional right not to take the stand," *Brooks*, 406 U.S. at 610-11, reserving ruling on a motion in limine does not restrict the defendant or counsel "in determining whether, and when in the course of the defense, the defendant should testify,"

Averett, 237 Ill. 2d at 16-17. Just as in *Averett*, the trial court's reservation of its ruling on defendant's motion for a directed verdict did not implicate the Sixth Amendment because it did not prevent counsel from advising defendant whether to testify or limit counsel's ability to present defendant's testimony if defendant chose to testify.

Defendant's related argument that the trial court's deferred ruling "deprived [defendant's] counsel of information necessary to providing effective assistance" in advising him whether to testify, Def. Br. 10; *see id.* at 15, appears to raise a claim under *United States v. Cronic*, 466 U.S. 648 (1984). Sixth Amendment claims are typically reviewed under *Strickland v. Washington*, 466 U.S. 668 (1984), and require a showing that counsel performed deficiently and that counsel's deficient performance prejudiced defendant. *See People v. Simms*, 192 Ill. 2d 348, 361 (2000) (citing *Strickland*, 466 U.S. at 687). But defendant does not claim that his counsel performed deficiently or that he was prejudiced by any such deficiency; rather, he argues that counsel *could not* perform competently given the deferred ruling. Def. Br. 15-16. That suggests a claim under *Cronic*, which provides a "narrow exception" to *Strickland*'s prejudice requirement, *Florida v. Nixon*, 543 U.S. 175, 190 (2004), in situations "where counsel is called upon to render assistance under circumstances where competent counsel very likely could not," *Bell v. Cone*, 535 U.S. 685, 696 (2002).

The People are aware of only one instance, in *Powell v. Alabama*, 287 U.S. 45 (1932), in which either the Supreme Court or this Court identified a meritorious claim under this standard. But defendant has not established that the circumstances of his case are "of either the character or magnitude that would give rise to" a *Powell* claim. *See People v. Coleman*, 168 Ill. 2d 509, 543 (1995) (describing circumstances where standard is satisfied). In *Powell*, defense counsel in a highly publicized capital case was not appointed until the day of trial and was forced to proceed despite being unprepared to do so. 287 U.S. at 53-58. Under those extraordinary circumstances, it was "so unlikely that any lawyer could provide effective assistance that ineffectiveness was properly presumed." *Cronic*, 466 U.S. at 661.

In contrast, here, the trial court's decision to defer ruling on defendant's motion for directed verdict did not make it impossible for counsel to advise defendant about testifying. As explained, *see supra* § II.A.2.a, the deferral did not deprive defendant of any information that could have impacted his defense strategy. Indeed, the record shows that the court's decision to defer ruling had no impact on counsel's ability to advise defendant about whether to testify, for after the court reserved its ruling, counsel stated on the record that he had discussed testifying with defendant and defendant had decided not to testify. R614-15. Thus, this case does not present the kind of extraordinary circumstances that amounts to a complete deprivation of the right to counsel.

Finally, the trial court's decision to defer ruling on defendant's motion for directed verdict was not clearly or obviously reversible error as a violation of the Fifth or Sixth Amendment because any error was harmless beyond a reasonable doubt. *People v. Mullins*, 242 Ill. 2d 1, 23 (2011) (in reviewing an erroneously deferred ruling, appellate court "must determine whether the trial court's error was harmless beyond a reasonable doubt," as such errors do not "automatically warrant reversal"); *see also Patrick*, 233 Ill. 2d 62, 75 (errors of constitutional magnitude are reviewed for harmlessness beyond a reasonable doubt). There is no doubt that defendant's trial strategy would not have differed had the court denied his motion immediately rather than after the jury returned its verdict. The record shows that defendant never intended to testify or present evidence, regardless of the court's ruling. Immediately after the court stated that it was taking defendant's motion under advisement, defense counsel affirmed that he and defendant had already discussed defendant's right to testify and that defendant was knowingly and voluntarily waiving that right. R613-16. Therefore, because the alleged constitutional violations would not have been reversible had they been preserved, they are not clear or obvious errors under plain error review. *See Williams*, 2022 IL 126918, ¶ 49.

B. The evidence was not closely balanced, as required to show first-prong plain error.

Even if defendant could establish that the trial court clearly or obviously erred — which he cannot — he could not establish first-prong plain

error because the trial evidence was not so closely balanced that the verdict "may have resulted from the error and not the evidence." *Williams*, 2022 IL 126918, ¶ 57. Indeed, there was *no* chance that the jury found defendant guilty because the trial court denied his motion for directed verdict outside its presence after the jury returned its verdict rather than outside the presence of the jury immediately after the People rested.

As defendant correctly notes, the primary issue at trial was whether he intended to kill Bell when he shot him in the head. Def. Br. 29. Intent is typically "shown by surrounding circumstances, including the character of the assault and the nature and seriousness of the injury." *People v. Williams*, 165 Ill. 2d 51, 64 (1995). A "qualitative, commonsense assessment" of "the totality of the evidence" here, *People v. Logan*, 2024 IL 129054, ¶ 71, including the character of the shooting and the nature and seriousness of Bell's injuries, as well as defendant's conduct after the shooting, confirms that the evidence of defendant's guilt was not so closely balanced that any error, no matter how seemingly inconsequential — or here, an alleged procedural error entirely unconnected to the jury's consideration of the evidence — would have caused the jury to convict defendant where it otherwise would have acquitted him.

At trial, it was undisputed that defendant raised a gun and shot Bell in the head, Peo. Exh. 10; R573, which, alone, "supports the conclusion that" defendant "d[id] so with an intent to kill" Bell, *see People v. Ephraim*, 323 Ill.

App. 3d 1097, 1110 (1st Dist. 2001) ("The very fact of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill." (internal quotations and citation omitted).

Defendant's conduct before and after he shot Bell further showed that the shooting was no accident. Defendant racked the gun before firing, R290-97, which is "strong circumstantial evidence" that defendant intended to fire, *see People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 84 (rejecting defendant's claim that he lacked intent to shoot because the fact that he "rack[ed] the slide" is "strong circumstantial evidence that he believed the gun had malfunctioned once he unsuccessfully attempted to discharge it"). After shooting Bell, defendant ran into his house, changed out of his blood-stained clothes, drove away in his wife's car, and threw the gun into a river, Peo. Exh. 10, 15; R492-94, 547-49, 561-64, providing additional evidence that he intended to kill Bell, *see People v. Garcia*, 407 Ill. App. 3d 195, 198, 201-02 (1st Dist. 2011) (defendant's "intent to kill [could] be inferred" from the fact that he fired "two bullets in the direction of an occupied car" before fleeing scene and discarding gun). Defendant and his wife did not call 911 until nearly half an hour later, after they had concocted a story to "keep [defendant] out of the situation." Peo. Exh. 9 at 10:33-39, 12:56-13:04; R253-54. Defendant then repeatedly lied to police about the nature of his involvement before ultimately admitting to shooting Bell after he refused to get out of defendant's car. Peo. Exhs. 8 & 9.

During his confession — given in his third interview and only after he was confronted with the video from his wife's bedroom — defendant admitted that he pulled out his gun to scare Bell and claimed he was "not in [his] right mind" and believed the gun was on safety. Peo. Exh. 10 at 4:45-47, 5:05-08. But defendant presented no evidence in support of this story at trial, C615-25, and offered no explanation for the presence of an unfired bullet on the ground outside of the car or why, if it were an accidental discharge, he did not offer aid to Bell, delayed calling for medical assistance, threw his gun into the river, and changed his clothes. Instead, defendant argued that evidence that he appeared distraught after shooting Bell showed that the shooting was accidental. R262-64, 567, 653-55. But the mere fact that defendant may have regretted his actions does not establish "that he *never* intended that [Bell] would die." *People v. Schlott*, 2019 IL App (3d) 160281, ¶ 40 (emphasis in original); *see also id.* ("Evidence that the defendant may have, after the fact, not wanted [his victim] to die" "does not inherently negate" intent requirement for attempted murder).

Accordingly, defendant cannot show that the evidence was "so closely balanced" that trial court's deferral of its ruling on his motion for directed verdict "alone severely threatened to tip the scales of justice against" him. *Moon*, 2022 IL 125959, ¶ 23.

C. Any error in deferring ruling on defendant's motion for directed verdict was not structural error, as required to constitute second-prong plain error.

Even if the trial court clearly or obviously erred by deferring ruling on defendant's motion, that error was not second-prong plain error. To satisfy the second prong of the plain-error test, defendant must show that the court committed structural error, *Jackson*, 2022 IL 127256, ¶ 26, which is an error that "affect[s] the framework within which the trial proceeds, rather than mere errors in the trial process itself," *Moon*, 2022 IL 125959, ¶¶ 28-29. In other words, structural errors undermine the integrity of the judicial process, rendering that process "an unreliable means of determining guilt or innocence." *Id.* ¶ 28. For that reason, "[s]tructural error 'def[ies] analysis by "harmless error" standards,'" *Jackson*, 2022 IL 127256, ¶ 49 (quoting and altering *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)), and warrants automatic reversal "regardless of the strength of the evidence of the defendant's guilt," *id.* ¶ 28. It is the "rare" error that rises to the level of structural errors *id.* ¶ 27, such as "a complete denial of counsel, denial of self-representation at trial, trial before a biased judge, denial of a public trial, racial discrimination in the selection of a grand jury, and a defective reasonable doubt instruction," *id.* ¶ 29.

The alleged error here did not render defendant's trial a fundamentally unreliable means of determining his guilt or innocence. Indeed, as *Averett* explained, even an erroneously reserved ruling on a motion in limine concerning the admissibility of impeachment evidence — a ruling that affects

the evidence that the jury will consider — is still "simply an error within the trial proceedings" that can be analyzed for harmless error. 237 Ill. 2d at 13-14; *see also Mullins*, 242 Ill. 2d at 22 (trial court's error in deferring ruling on motion in limine regarding admissibility of impeachment evidence "is not structural" and "does not require an automatic reversal of a defendant's conviction"). Certainly, the delayed entry of a ruling that the People's evidence is sufficient to prove defendant's guilt is "not comparable to the errors recognized by the Supreme Court as structural," such as a biased judge or a complete denial of counsel. *Averett*, 237 Ill. 2d at 13. Accordingly, the trial court's decision to reserve its ruling on defendant's motion for directed verdict — if error — is not structural error.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

March 5, 2025

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MADELINE CALLAGHAN
Assistant Attorney General
115 South LaSalle Street West
Chicago, Illinois 60603
312-405-0854
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellee
People of the State of Illinois

APPENDIX

E-FILED
Transaction ID: 4-22-1021
File Date: 1/24/2023 3:06 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-22-1021
	)	Circuit Court No: 2021CF48
	)	Trial Judge: Frank R Fuhr
v	)	
	)	
	)	
JOHNSON, DEVIN JACOB	)	
Defendant/Respondent	)	

EXHIBITS - TABLE OF CONTENTS

E-FILED
5/29/2024 2:47 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-22-1021
	)	Circuit Court No: 2021CF48
	)	Trial Judge: Frank R Fuhr
v	)	
	)	
	)	
JOHNSON, DEVIN JACOB	)	
Defendant/Respondent	)	

EXHIBITS - TABLE OF CONTENTS

Page 2 of 4

Party	Exhibit #	Description/Possession	Page No
People	3-19	CLOSE UP OF PHOTO OF BULLET CASING	E 32 - E 32
People	3-20	CLOSE UP OF EVIDENCE #2 CONE	E 33 - E 33
People	3-21	CLOSE UP OF BULLET	E 34 - E 34
People	3-22	CLOSE UP OF EVIDENCE #2 BULLET	E 35 - E 35
People	4-1	BULLET CASING IN ENVELOPE - RETAINED BY CIRCU	E 36 - E 36
People	4-2	SHELL CASING - RETAINED BY CIRCUIT CLERK	E 37 - E 37
People	4-3	COPPER FRAGMENT FROM CAR - RETAINED BY CIRCUI	E 38 - E 38
People	5-1	FRONT OF CADILLAC CAR	E 39 - E 39
People	5-2	SIDE VIEW OF CADILLAC CAR	E 40 - E 40
People	5-3	CLOSER SIDE OF CADILLAC CAR	E 41 - E 41
People	5-4	INSIDE OF FRONT OF VEHICLE	E 42 - E 42
People	5-5	INSIDE OF FRONT OF VEHICLE	E 43 - E 43
People	5-6	BACK SIDE OF PASSENGER SEAT	E 44 - E 44
People	5-7	CLOSE UP OF SIDE WINDOW	E 45 - E 45
People	5-8	FRONT PASSENGER SEAT CLOSE UP	E 46 - E 46
People	5-9	PASSENGER SEAT FLOOR	E 47 - E 47
People	5-10	PASSENGER SEAT	E 48 - E 48
People	5-11	CLOSE UP OF CELL PHONE	E 49 - E 49
People	5-12	CELL PHONE PASSENGER SEAT	E 50 - E 50
People	5-13	CLOSE UP OF CELL PHONE	E 51 - E 51
People	6-1	FRONT OF HOUSE	E 52 - E 52
People	6-2	FRONT DOOR WITH CAMERA	E 53 - E 53
People	6-3	INSIDE FRONT BEDROOM	E 54 - E 54
People	6-4	STAIRS TO BASEMENT	E 59 - E 59 V2
People	6-5	BASEMENT	E 60 - E 60 V2

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-22-1021
	)	Circuit Court No: 2021CF48
	)	Trial Judge: Frank R Fuhr
v	)	
	)	
	)	
JOHNSON, DEVIN JACOB	)	
Defendant/Respondent	)	

EXHIBITS - TABLE OF CONTENTS

Page 3 of 4

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-22-1021
	)	Circuit Court No: 2021CF48
	)	Trial Judge: Frank R Fuhr
v	)	
	)	
	)	
JOHNSON, DEVIN JACOB	)	
Defendant/Respondent	)	

EXHIBITS - TABLE OF CONTENTS

Page 4 of 4

PEOPLE'S EXHIBIT #1
FLASH DRIVE PRETRIAL MOTION HEARING
UPS SENT TO APPELLATE COURT

RULE 341(c) 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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 49 pages.

/s/ Madeline Callaghan
MADELINE CALLAGHAN
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 5, 2025, the foregoing **Brief and Appendix of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

Gilbert C. Lenz
Office of the State Appellate Defender
First Judicial District
203 N. La Salle St., 24th Floor
Chicago, IL 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellant

/s/ Madeline Callaghan
MADELINE CALLAGHAN
Assistant Attorney General