No. 121755

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JARED M. STAAKE, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, Fourth Judicial District No. 4-14-0638 There on Appeal from the Circuit Court of the Eighth Judicial Circuit, Schuyler County, Illinois No. 13 CF 29 The Honorable Alesia A. McMillen, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a jury trial in the Circuit Court of Schuyler County on an amended charge of first degree murder, defendant Jared Staake was convicted of second degree murder and sentenced to eighteen years in prison. The Illinois Appellate Court, Fourth District, affirmed defendant's conviction and sentence, rejecting claims that the prosecution violated the Speedy Trial Act by filing an amended charge and that the trial court erred in limiting testimony and argument that the victim's resistance to medical treatment constituted an intervening cause of death. This Court granted defendant's petition for leave to appeal (PLA) on those two issues. No issue is raised on the pleadings.

ISSUES PRESENTED

I. Whether defendant's affirmative waiver of his speedy trial right precludes relief on his speedy trial claim; or, alternatively, whether defendant has failed to demonstrate plain error or ineffective assistance of counsel to overcome his forfeiture of the issue.

II. Whether the prosecution complied with the Speedy Trial Act by amending the charge from second degree murder to first degree murder and proceeding to trial on the agreed date.

III. Whether the trial court properly excluded irrelevant testimony and argument concerning the victim's resistance to medical treatment.

JURISDICTION

Jurisdiction lies under the Illinois Constitution, article VI, § 1, and Supreme Court Rules 315 and 612(b). This Court allowed defendant's timely PLA on March 29, 2017.

STATUTES INVOLVED

720 ILCS 5/3-3 (Multiple prosecutions for same act).

(a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.

(b) If the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution, except as provided in Subsection (c), if they are based on the same act.

(c) When 2 or more offenses are charged as required by Subsection (b), the court in the interest of justice may order that one or more of such charges shall be tried separately.

725 ILCS 5/103-5 (Speedy trial).

(a) Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant . . . . Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. . . .

* * *

(d) Every person not tried in accordance with subsections (a), (b), and (c) of this Section shall be discharged from custody or released from the obligations of his bail or recognizance.

* * *

(f) Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by subsections (a), (b), or (e) of this Section and on the day of expiration of the delay the said period shall continue at the point at which it was suspended. . . .

STATEMENT OF FACTS

A. The Original and Amended Charges

Defendant was taken into custody on July 5, 2013. C1.[1] Three days later, the People filed an information alleging that he committed second degree murder, "in that while committing First Degree Murder" and "acting under a sudden and intense passion resulting from serious provocation by Michael Box," defendant stabbed Box with a knife, causing his death. C3.

At the conclusion of a preliminary hearing held on July 24, 2013, the trial judge proposed setting the case for trial in October. R. Vol. V at R60. Defense counsel objected that "it would not be provident to set it for such an early setting." *Id.* Counsel stated that defendant would waive his speedy trial right, and that "any and all delay to the next [jury trial] setting would be delay occasioned by the actions of the defendant." *Id.* The trial judge, after confirming with defendant that he was knowingly and voluntarily waiving his speedy trial right, set the case for trial in February 2014. *Id.* at R63-64. Later, by agreement, the trial court moved the trial to January 2014. R. Vol. VII at R15-18; R. Vol. X at R31.

Defendant disclosed his intent to assert self-defense, *see* C26, 56; and, at a December 4, 2013 status hearing, the People stated that they intended to amend the

[1] Citations appear as follows: "C_" denotes the common law record; "R. Vol. _ at R_" refers to the reports of proceedings, which are identified by volume number; "Def. Br. _" refers to defendant's opening brief; and "A_" denotes defendant's appendix.

charge to first degree murder. R. Vol. IX at R9.[2] The prosecutor noted that the amendment "shouldn't change anything, because even in a second-degree murder case, the State still has to prove first-degree murder first." *Id.* Defense counsel stated that such an amendment might impair defendant's readiness for trial the next month, and the trial judge indicated that the court would postpone the trial if defendant requested it. *Id.* at R10, 12. The court ordered the People to amend the charge quickly in light of the impending trial date, *id.* at R14, and the next day the People filed an amended information charging that defendant committed first degree murder by stabbing the victim, "knowing said act would cause [his] death," C66.

On review of the amended charge at a final pretrial hearing on December 18, 2013, defense counsel stated that defendant was "ready for trial January 13th." R. Vol. X at R30. Counsel elaborated: "to echo what the State just mentioned . . . , to prove second-degree murder, you basically have to prove first-degree murder." *Id.* at R31. Thus, "[a]ll of the evidence is exactly the same as it was when the second-degree murder charge was the pending charge," and the amendment "changes nothing at all as far as our preparation and being ready for trial." *Id.* A few days before trial, the People amended the first degree murder charge to allege that defendant stabbed Box "knowing said act created a strong probability of death or great bodily harm." C124.[3]

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[2] The prosecutor later explained at the jury instruction conference that this amendment was necessary because the mental state underlying a claim of self-defense is inconsistent with second degree murder premised on provocation. R. Vol. XV at R128-29; *see also* discussion *infra* at pp. 28-29.

[3] Defendant objected that this amendment was untimely because it was filed after the deadline that the trial court set for amending the charge. R. Vol. XIII at R8. The

B. Motion in Limine Concerning Victim's Resistance to Treatment

The prosecution moved in limine to "exclud[e] any and all evidence, references to evidence, testimony or argument relating to the victim['s] refusal of medical treatment[ ] as an intervening cause of death." C51. The State's forensic pathologist would testify "that the victim's death was caused by septic shock due to acute peritonitis due to [a] stab wound in the abdomen." C51-52. Defendant objected that the prosecution bore the burden of establishing causation and argued that the jury should be instructed on the issue. C75-77. He identified no evidence, however, that might support a theory that Box's resistance to medical treatment was an intervening cause of death.

At the hearing on the motion, the trial court agreed "that the People must prove causation" but reasoned that "if the [d]efense is going to raise an alternate theory, a question mark to some of the People's evidence, it has to be raised by evidence, not just by speculation." R. Vol. X at R6-7. Given that defendant had not yet offered such evidence, the court preliminarily granted the motion in limine, but invited defendant to make an offer of proof if he developed evidence to support a theory that Box's resistance to medical treatment was an intervening cause. *Id.* at R7-9; C88.

Defendant moved to reconsider that preliminary ruling, again emphasizing that the State needed to prove causation and that he had no burden to produce evidence. C104-05. In denying the motion, the court clarified that defendant did not need to offer an

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court rejected that argument, noting that the State had complied with the deadline by filing the first degree murder charge in December, and that the State was entitled to amend a charge of first degree murder even in the midst of trial to conform to the evidence. *Id.* at R9, 12.

independent expert and could introduce testimony relevant to causation through cross-examination of the State's forensic pathologist. R. Vol. XI at R39-40. But defendant could ask questions about a purported intervening cause only if he had reason to believe that the expert would testify that "there's a real question about causation." *Id.* at R39. The court emphasized that defendant would not be permitted to "just go on a fishing expedition" that would not "produce any evidence." *Id.* The court again invited defendant to revisit the issue, if appropriate, through an offer of proof. *Id.* at R39-42.

Defendant made no offer of proof — before, during, or after trial — supporting a theory that Box's resistance to treatment was an intervening cause of death.

C. Trial, Conviction, and Sentence

Defendant's jury trial commenced on January 13, 2014. *See* R. Vol. XIII. As the testimony established, a traveling carnival arrived at the Schuyler County fairgrounds in July 2013. R. Vol. XIV at R45-46. Michael Box and Casey Slusser worked and lived together in a game trailer, sleeping in separate rooms. *Id.* at R46, 49. Slusser testified that Box was the "best friend" of her then-boyfriend and that Box viewed himself as her "protector." *Id.* at R46-47.

On the evening of July 1st, Slusser and Box, among others, left the fairgrounds to visit a grocery store and a gas station, and they encountered defendant, who was an acquaintance. *Id.* at R50-52. Defendant accompanied them back to the fairgrounds to socialize. *Id.* at R52. Slusser, Box, and a few others played a game of beer pong, during which they consumed alcohol. *Id.* at R52-53. After the game, Box went to his room in the rear of the trailer, and Slusser invited defendant to join her in her room. *Id.* at R54. A

few minutes later, Box began yelling and knocking on Slusser's door. *Id.* at R54-55. Defendant opened Slusser's door and went outside. *Id.* at R55. Slusser testified that Box punched defendant in the face and then took a few steps backward. *Id.* at R58. Defendant pulled a knife out of his pocket, took a few steps forward, and stabbed Box in the abdomen. *Id.* at R58-59. Defendant then told Box, "'I'm sorry. I'm sorry. I didn't mean to stab you,'" and fled. *Id.* at R59.

Another carnival employee, Brandon Hodge, heard the loud noises from his nearby trailer and stepped outside to see Box knocking on Slusser's door. *Id.* at R112-13. Hodge testified that defendant opened the door and stepped outside, and Box punched defendant in the face. *Id.* at R113-15. Hodge confirmed that Box, after punching defendant, took several steps backward. *Id.* at R116. Hodge overheard defendant say, "'I thought I was your boy. Why did you hit me?'" *Id.* Defendant then stabbed Box in the side. *Id.* at R117.

Slusser and a coworker took Box to the emergency room after the incident, and Dr. Mark Day treated him. *Id.* at R60, 153-54. Day testified that Box "had a small stab wound in his left upper abdomen" that was not "bleeding significantly." *Id.* at R154-55. Day ordered a chest X-ray and discerned no injury to Box's diaphragm. *Id.* at R155. When Day attempted to examine the stab wound, Box became uncooperative and tried to strike him. *Id.* Day testified that Box appeared to be intoxicated, and a blood test revealed a blood alcohol content (BAC) of .179, more than double the legal driving limit. *Id.* at R168-69. Eventually, Box lost consciousness, and Day was able to examine his wound. *Id.* at R156. He testified that his goal was to assess whether the wound had

penetrated the "fascia," a layer of tissue underneath the layers of skin, fat, and muscle, because "if you don't have an injury to the fascia, you don't have a wound that you need to worry about that much." *Id.* at R156-57. Day testified that he did not "see anything that looked like fascia." *Id.* at R158. He stitched the wound, which was a little more than an inch in length. *Id.* at R158, 162-63. Box declined to be admitted for further observation and left the hospital. *Id.* at R171-72.

Slusser testified that Box spent the day of July 2nd recuperating in his room, and she checked on him occasionally. *Id.* at R61-65. That afternoon, Box complained that he was in pain and visited the hospital a second time, then returned. *Id.* at R96-97. On the night of July 3rd, Slusser went to Box's room to check on him and found him lying naked on the floor, with vomit coming out of his nose and mouth. *Id.* at R65-66. Box was pronounced dead at the scene. *Id.* at R67.

At the ensuing autopsy, a forensic pathologist determined that the stab wound, three inches deep, had "penetrated the left side of the diaphragm" and "penetrated the stomach." *Id.* at R186, 189. As a result, the contents of Box's stomach had leaked into his abdomen, causing extensive inflammation of his bowel and abdominal lining (the peritoneum). *Id.* at R190-91. The pathologist concluded that the cause of Box's death was "septic shock due to acute peritonitis due to stab wound of the abdomen." *Id.* at R192. She noted that Box had abrasions on the knuckles of one hand. *Id.* at R198.

When defendant was arrested on July 5th, he had no visible bruises or swelling on his face. *Id.* at R177.

Defendant testified that he killed Box in self-defense. When defendant exited Slusser's room in response to Box's yelling and pounding on the door, he felt a fist hit the side of his face. R. Vol. XV at R48-51. Defendant staggered backward, pulled a knife out of his back pocket, and stabbed Box as Box was coming towards him for a second punch. *Id.* at R51-53. Defendant testified that he "was scared for [his] life" and intended to stop Box from further attacking him, but he did not intend to kill Box. *Id.* at R53.

At the jury instruction conference held after the close of the testimony, the trial judge noted that the evidence clearly supported an instruction on second degree murder predicated on an unreasonable belief in self-defense, and asked whether either side requested that instruction. *Id.* at R75-80. Defense counsel objected to instructing the jury on second degree murder, claiming that defendant had not received proper notice of such a theory and arguing that defendant had an absolute right to decide whether such an instruction should be given. *Id.* at R76-77, 107-08. The trial court explained, however, that the rule defense counsel invoked applied only to instructions concerning lesser-included offenses, and that an instruction on a lesser-mitigated offense could be given without defendant's consent. *Id.* at R76-77. Furthermore, the court rejected defendant's argument that the instruction was a surprise because the facts of the case, known to the parties since the preliminary hearing, obviously suggested that second degree murder would be an issue. *Id.* at R116. The prosecutor ultimately requested the instruction, *id.* at R81, and the trial court gave it, *id.* at R115-16.

In closing, defendant conceded the issue of causation, noting that defendant "stabbed Mr. Box"; that "Mr. Box some two days later perished"; and that defendant "set

those dominoes falling for Mr. Box in an adverse way." R. Vol. XVI at R24. Defense counsel instructed the jury, with respect to causation, "next to that element, put guilty." *Id.* Later, defense counsel urged the jury, "[d]on't even waste time deliberating about" the causation element, because the State "proved [that proposition] beyond a reasonable doubt." *Id.* at R29. Defense counsel argued that the State had not proved that the killing was unjustified, and thus failed to prove first degree murder. *Id.* at R29-30. Counsel emphasized that the jury should not consider the mitigating factor of unreasonable self-defense unless they first found first degree murder to be proved beyond a reasonable doubt. *Id.*

The jury convicted defendant of second degree murder. *Id.* at R79. Defendant filed a motion for new trial, in which he argued that the trial court had erred in restricting testimony concerning causation, but did not allege that the State had violated the Speedy Trial Act. C170-73. The trial court denied the motion and sentenced defendant to eighteen years in prison. R. Vol. XVII at R7, 82.

D. Appeal

Defendant appealed to the Illinois Appellate Court, Fourth District, raising two claims relevant here. For the first time, defendant contended that the People violated the Speedy Trial Act by amending the charge to first degree murder. A21. Specifically, defendant argued that the first degree murder charge was "new and additional" and subject to compulsory joinder with the second degree murder charge; therefore, delays attributable to defendant on the second degree murder charge were not attributable to him with respect to the first degree murder charge. *See* A22-23, 31-34. Second, defendant

contended that the trial court erred in restricting evidence and argument pertaining to causation. A34-35, 49-50.

The appellate court affirmed. A45. With respect to the speedy-trial issue, the court reasoned that "[f]irst degree murder and second degree murder require proof of the same elements, with the only difference being that second degree murder requires the additional proof of a mitigating factor." A30. First degree murder is not a "new and additional charge" for purposes of compulsory joinder "because the criminal behavior the State alleges the defendant engaged in regarding both charges[ ] . . . is the same." A31. The appellate court cited defense counsel's concession that the amendment did not undermine his readiness for trial. A32. Counsel "was already prepared to defend against first degree murder, because the offense of second degree murder already alleged that he had committed first degree murder." *Id.*

The appellate court rejected as forfeited defendant's argument concerning evidence that the victim's resistance to treatment was an intervening cause because defendant "failed to make an offer of proof regarding the evidence the trial court allegedly improperly kept out." A35. The appellate court also noted that "the trial court did not *prohibit* defendant from cross-examining the State's witnesses on the issue of causation" but merely required defendant to make an offer of proof before doing so. A34-35. Thus, "[i]f defendant had a legitimate factual basis to question the State's witnesses or introduce other testimony about causation, he was free to do so." A35.

Defendant petitioned for rehearing, arguing that the appellate court had overlooked that defendant challenged not only the trial court's exclusion of evidence

pertaining to causation, but also the court's alleged restriction of argument on that point. *See* A49-50. The appellate court denied the petition. A54.

ARGUMENT

I. Defendant Affirmatively Waived His Speedy-Trial Right; At a Minimum, He Forfeited His Speedy-Trial Objection and Can Show Neither Plain Error nor Ineffective Assistance of Counsel to Overcome His Forfeiture.

Defendant's speedy-trial claim is procedurally barred because he affirmatively waived his speedy-trial right. At the very least, defendant forfeited his speedy-trial claim, and he cannot show plain error or ineffective assistance of counsel to overcome his forfeiture. Whether a claim is procedurally barred is a legal question that this Court reviews de novo. *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009).

A. Defendant Affirmatively Waived His Speedy-Trial Right.

Defendant acknowledges that he did not object to the amended charge on speedy-trial grounds and argues that this Court should find plain error. *See* Def. Br. 19-20. But defendant's claim is not merely forfeited; it is affirmatively waived.

Waiver and forfeiture are "distinct." *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). "[W]aiver is the voluntary relinquishment of a known right." *Id.* Forfeiture, by contrast, results from "'the failure to make the timely assertion of [a] right.'" *People v. Blair*, 215 Ill. 2d 427, 444 n.2 (2005) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). If a claim has been waived, rather than forfeited, defendant may not invoke the plain-error doctrine. *People v. Townsell*, 209 Ill. 2d 543, 547-48 (2004); *People v. Scott*, 2015 IL App (4th) 130222, ¶ 21; *People v. Williams*, 2015 IL App (2d) 130585, ¶ 6.

Here, defendant expressly waived his speedy-trial right at his preliminary hearing when he insisted that the court schedule his trial in February 2014. R. Vol. V at R60-64. Defense counsel not only stated on the record that defendant "waive[d]" his speedy-trial right, but the trial judge confirmed with defendant that his waiver was both knowing and voluntary. *Id.* at R60, 63-64. Defendant never rescinded his waiver, and he ultimately went to trial sooner than he contemplated at the time of his waiver.[4]

Defendant cannot claim that he is entitled to discharge based on a right he expressly waived, and this Court should affirm.

B. At a Minimum, Defendant Forfeited His Speedy-Trial Claim and Can Show Neither Plain Error nor Ineffective Assistance of Counsel.

Even if defendant were not bound by his express waiver, his speedy-trial claim is at least forfeited, as he concedes. *See* Def. Br. 19.

Indeed, it is forfeited three times over. To invoke his statutory right to discharge for a speedy-trial violation, *see* 725 ILCS 5/103-5(d), defendant needed to file a pretrial motion to dismiss, *see* 725 ILCS 5/114-1(a)(1); *People v. Pearson*, 88 Ill. 2d 210, 219 (1981). Because he failed to do so, defendant's statutory speedy-trial claim is, in the words of the statute, "waived." 725 ILCS 5/114-1(b). While this forfeiture alone should

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[4] To be sure, a defendant's waiver of a constitutional right made in the context of pending charges might not carry over, if new offenses are added later. *See People v. Hernandez*, 409 Ill. App. 3d 294, 297 (2d Dist. 2011) (holding that waiver of right to jury trial extended only to charges pending at time of waiver and not to newly filed charges of which defendant was unaware). To constitute the "voluntary relinquishment of a known right," a defendant must know the relevant circumstances. But for the same reasons that the first degree murder charge was not "new and additional" for purposes of compulsory joinder, *see infra* Section II.B, defendant had sufficient notice of the first degree murder allegations at the time he waived his speedy-trial right that his waiver should carry over to the amended charge.

doom defendant's claim, defendant also failed on two more occasions to raise the issue: he neither contemporaneously objected to the State's first degree murder charge on speedy-trial grounds nor included a speedy-trial claim in his post-trial motion. Both steps were required to preserve this issue for appeal. *See People v. Allen*, 222 Ill. 2d 340, 350 (2006) ("The failure to object to alleged error at trial and raise the issue in a posttrial motion ordinarily results in the forfeiture of the issue on appeal.").

As this case illustrates, these procedural rules are not mere technicalities. A contemporaneous objection, in particular, allows the trial court and the parties to avoid or correct errors that can easily be cured. *See People v. Piatkowsi*, 225 Ill. 2d 551, 564 (2007) (defendant must object to jury instructions to enable "court to correct its errors before the instructions are given"); *People v. Woods*, 214 Ill. 2d 455, 470 (2005) (defendant must object to State's failure to provide proper foundation for admission of evidence to enable prosecutor "to correct any deficiency in the foundational proof at the trial level"). Here, had defendant contemporaneously objected to the first degree murder charge on speedy-trial grounds, the State could have avoided the speedy-trial issue by proceeding instead (or in addition) on the original charge of second degree murder. Defendant now seeks to benefit from his inaction by invoking the drastic remedy of complete immunity from prosecution. The forfeiture rule exists to discourage such gamesmanship.

Defendant asserts that his forfeiture of the speedy-trial claim should be excused, either because filing the first degree murder charge constituted plain error, or because trial counsel was ineffective for failing to object on speedy-trial grounds. Because the

prosecution complied with the Speedy Trial Act, *see infra* Section II, there was no error for purposes of the plain-error doctrine, *see People v. Sargent*, 239 Ill. 2d 166, 189 (2010) ("As a matter of convention, our court typically undertakes plain-error analysis by first determining whether error occurred at all."), and counsel was not ineffective for failing to pursue a meritless issue, *see People v. Cordell*, 223 Ill. 2d 380, 385 (2006) ("The failure of counsel to argue a speedy-trial violation cannot satisfy either prong of *Strickland* where there is no lawful basis for arguing a speedy-trial violation.").

Moreover, even if an error occurred, defendant cannot shoulder his additional burdens under the plain-error doctrine or the ineffective assistance standard. To show plain error, defendant must identify an error that is "clear or obvious" and show that either (1) the evidence of guilt was closely balanced; or (2) the error was so serious that it undermined the fairness of the proceedings. *McLaurin*, 235 Ill. 2d at 489. Here, to the extent an error occurred, it was not a "clear or obvious" error, especially given that defendant had waived his speedy-trial right on the record.

Nor can defendant satisfy the remaining element of the plain-error test. Defendant does not allege that the evidence was closely balanced, such that it qualifies for first-prong plain-error review, *see* Def. Br. 19-20 ("[t]he close evidence prong seems irrelevant"), and "[a] defendant who fails to argue for plain-error review obviously cannot meet his burden of persuasion," *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Forfeiture aside, the evidence was not closely balanced on the key disputed issue of whether the killing was justified. Even though Box punched defendant in the face, two eyewitnesses testified that Box had taken several steps backward and posed no immediate threat when

defendant moved forward to stab him in the abdomen; and, furthermore, defendant used a knife against an unarmed aggressor. *See People v. Purdle*, 212 Ill. App. 3d 594, 598 (3d Dist. 1991) (noting disparity between victim's "small knife — one that merely scratched or scraped defendant, but neither punctured him nor threatened his life" and defendant's butcher knife, "a weapon fully capable of killing a man with a single, well-placed thrust," in concluding that jury properly rejected claim of self-defense); *People v. Chatman*, 102 Ill. App. 3d 692, 700 (1st Dist. 1981) (claim of self-defense failed because it was "unreasonable for defendant . . . , armed with a knife, to believe that the unarmed victim, who had turned his back and was walking away, posed an imminent threat of death or great bodily harm").

Defendant asserts that he has shown second-prong plain error because, if the amended charge had been dismissed, "there would have been no trial," and therefore his present conviction "challenges the integrity of the judicial process." Def. Br. 20. Although defendant cites no precedent in support of this proposition, the appellate court has suggested on numerous occasions that a violation of the Speedy Trial Act qualifies for second-prong plain-error review. *See People v. Mosley*, 2016 IL App (5th) 130223, ¶ 9 ("we will address the issue under the plain-error doctrine because a speedy trial is a substantial fundamental right"); *People v. Smith*, 2016 IL App (3d) 140235, ¶ 10 ("we accept defendant's request to consider his argument under the plain error doctrine" because right to speedy trial is fundamental); *People v. McKinney*, 2011 IL App (1st) 100317, ¶ 29 ("despite the defendant's failure to include this issue in the motion for a new trial, it is subject to plain error review because a speedy trial implicates fundamental

constitutional concerns"); *People v. Gay*, 376 Ill. App. 3d 796, 799 (4th Dist. 2007) ("a speedy trial is a substantial, fundamental right," and therefore "we will review defendant's claim under the plain-error doctrine").

This Court is not bound by those holdings, and in three of the four decisions, the plain-error language appears to be dicta because the appellate court ultimately concluded that no speedy-trial violation had occurred. *See Mosley*, 2016 IL App (5th) 130223, ¶¶ 20-22; *McKinney*, 2011 IL App (1st) 100317, ¶ 32; *Gay*, 376 Ill. App. 3d at 803; *but see Smith*, 2016 IL App (3d) 140235, ¶¶ 20-21 (granting relief because statutory speedy-trial error was "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process"). The cases are also wrongly decided. It is not enough for defendant to show that an alleged error affected a substantial right: the plain error doctrine "is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.'" *People v. Herron*, 215 Ill. 2d 167, 177 (2005) (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)). Rather, "it is a narrow and limited exception . . . whose purpose is to protect the rights of the defendant and the integrity and reputation of the judicial process." *Id.* (internal quotation marks removed).

Significantly, defendant alleges only a violation of his *statutory* speedy-trial right. Although the right to a speedy trial set forth in the federal and state constitutions may be "fundamental," *People v. Crane*, 195 Ill. 2d 42, 46 (2001), "the statutory right and constitutional right are not coextensive," *People v. Hunter*, 2013 IL 114100, ¶ 9; *see also People v. Gooden*, 189 Ill. 2d 209, 216 (2000) (distinguishing between constitutional

right to speedy trial, which this Court deemed "fundamental," and "additional statutory right" set forth in Speedy Trial Act). To establish a constitutional violation, a defendant must show that he was prejudiced by the delay, whereas a statutory violation may occur in the absence of prejudice. *See People v. Campa*, 217 Ill. 2d 243, 250-51 (2005); *see also Barker v. Wingo*, 407 U.S. 514, 532 (1972) (delay could prejudice defendant, in violation of constitutional speedy-trial right, if witnesses were to "die or disappear," or become "unable to recall accurately events of the distant past"). Defendant does not allege that he was prejudiced, such that his constitutional right was violated.

The General Assembly provided defendants with a statutory right to a trial within a strictly defined period, but it conditioned the exercise of that statutory right on the filing of a pretrial motion to dismiss. 725 ILCS 5/114-1(a)(1), (b) (claims alleging violations of Speedy Trial Act are "waived" if not raised through motion to dismiss). Where the General Assembly confers a statutory right, it may limit the scope of that right and impose conditions on its exercise. *See People v. Staten*, 159 Ill. 2d 419, 429-30 (1994) (recognizing "legislative prerogative to set reasonable conditions" on exercise of statutory speedy-trial right). In accordance with that principle, this Court has strictly enforced the provisions of the Speedy Trial Act dictating the form of an effective speedy-trial demand. *See People v. Sandoval*, 236 Ill. 2d 57, 65-69 (2010) (holding defendant did not file effective speedy-trial demand where he failed to specify charges to which demand applied); *Staten*, 159 Ill. 2d at 428-30 (strictly requiring that defendant file speedy trial demand in form specified by statute). This Court should likewise enforce the General Assembly's express requirement that a defendant file a pretrial motion to invoke his

statutory speedy-trial right. Because the approach taken by the Illinois Appellate Court equates a statutory speedy-trial violation with second-prong plain error, it eviscerates the General Assembly's express limitation on statutory claims, and this Court should reject it.[5]

Finally, defendant cannot demonstrate that trial counsel was ineffective for failing to raise a speedy-trial objection through a pretrial motion, a contemporaneous objection, or a post-trial motion. To do so, he must demonstrate both deficient performance and resulting prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Cordell*, 223 Ill. 2d at 385. Defendant contends that he has established prejudice because his speedy-trial claim is meritorious. Def. Br. 21. Because it is not, *see infra* Section II, this argument fails.

But even if there were some merit to defendant's claim, trial counsel still was not deficient for failing to object to the amended charge on speedy-trial grounds. Defendant argues that "there can be no strategic reason to fail to invoke the defendant's right to a speedy trial." Def. Br. 20. However, "[t]he relevant question is not whether counsel's choices were strategic, but whether they were reasonable." *Roe v. Flores-Ortega*, 528 U.S. 470, 481 (2000). Here, reasonable defense counsel could have declined to object to the amended charge, considering that defendant had expressly waived his speedy-trial right at the preliminary hearing, and counsel had no good-faith basis to claim that he was surprised or prejudiced by the amendment. As this Court has repeatedly stated, the

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[5] Because defendant raises no constitutional claim, this Court need not decide whether a constitutional violation, in contrast, amounts to second-prong plain error.

Speedy Trial Act is intended "'to guarantee a speedy trial and not to open a new procedural loophole which defense counsel could unconscionably use to obstruct the ends of justice.'" *Cordell*, 223 Ill. 2d at 390 (quoting *Gooden*, 189 Ill. 2d at 221) (internal quotation marks omitted). Reasonable counsel could decline to raise a speedy-trial objection under the circumstances here.

In sum, defendant's speedy-trial claim is procedurally barred, and this Court should affirm his conviction on that basis.

II. The People Did Not Violate the Speedy Trial Act By Amending Defendant's Second Degree Murder Charge to First Degree Murder and Proceeding on the Agreed Trial Date.

Defendant's speedy-trial claim lacks merit, in any event. Whether the People complied with the statute is a legal question that this Court reviews de novo. *Phipps*, 238 Ill. 2d at 67.

Defendant does not appear to dispute that, if the People had proceeded to trial in January 2014 on the original second degree murder charge, they would have complied with the statute. Amending the charge to first degree murder and proceeding on that same date did not result in a violation. Petitioner's claim that first degree murder was a "new and additional" charge subject to compulsory joinder, such that delays attributable to defendant on the original second degree murder charge are not attributable to him on the amended charge, is meritless, as the appellate court correctly concluded.

A. The People Complied with the Speedy Trial Act with Respect to the Original But Superseded Second Degree Murder Charge.

Under the Speedy Trial Act, "[e]very person in custody in this State for an alleged offense shall be tried . . . within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant." 725 ILCS 5/103-5(a). "Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." *Id.*

Defendant's speedy trial period commenced on July 6, 2013, the day after his arrest. *People v. Murray*, 379 Ill. App. 3d 153, 158 (2d Dist. 2008); *see also People v. Ladd*, 185 Ill. 2d 602, 607-08 (1999). His trial began 191 days later, on January 13, 2014. If every day in that period were attributable to the People's delay, then the trial would be barred by the Speedy Trial Act. To determine whether a delay is attributable to defendant, this Court must "carefully examine[ ] the facts to prevent a mockery of justice either by technical evasion of the right to speedy trial by the State, or by a discharge of a defendant by a delay in fact caused by him." *Ladd*, 185 Ill. 2d at 609 (internal quotation marks omitted).

Defendant does not appear to dispute that there would have been no violation of the Speedy Trial Act if the People had prosecuted the original charge of second degree murder at the January 2014 trial. On July 24, 2013, defendant waived his speedy-trial right in the context of the second degree murder charge and expressly stated that any delay between the date of the preliminary hearing and the anticipated date of trial (then

February 2014) was attributable to him. R. Vol. V at R60-64. Thus, when the trial commenced, only eighteen days had elapsed on defendant's speedy-trial clock.

In short, if the delay attributable to defendant on the original second degree murder charge is also attributable to him on the amended first degree murder charge, then the People complied with the Speedy Trial Act.

B. The Delay Attributable to Defendant on the Second Degree Murder Charge Is Also Attributable to Defendant on the First Degree Murder Charge.

The appellate court correctly concluded that the People did not violate the Speedy Trial Act by proceeding to trial on an amended charge of first degree murder because the original charge gave defendant sufficient notice to prepare his defense. A31-32. The second degree murder charge "alleged that he had committed first degree murder," and, accordingly, defendant "was already prepared to defend against" that embedded charge. A32.

To contend otherwise, defendant relies on a series of this Court's cases addressing the relationship between the Speedy Trial Act and the compulsory joinder statute, which mandates that if "several offenses are known to the proper prosecuting officer at the time of commencing the prosecution" and "are based on the same act," the charges "must be prosecuted in a single prosecution." 720 ILCS 5/3-3(b). The joinder statute "alleviate[s] the fundamental unfairness that ensues when the State holds repeated trials for the same illegal conduct." *Gooden*, 189 Ill. 2d at 219. Where charges are subject to compulsory joinder, the same speedy-trial limitation applies to all of them, even if some of the charges are filed later. *People v. Quigley*, 183 Ill. 2d 1, 13 (1998) ("If the charges are

required to be brought in a single prosecution, the speedy-trial period begins to run when the speedy-trial demand is filed, even if the State brings some of the charges at a later date.").

Even if the speedy-trial term has not yet run on the initial charges, the filing of subsequent charges may nevertheless violate the Speedy Trial Act, if delays that would otherwise be attributable to the defense bring the case outside of the 120-day window. This Court has reasoned that "[i]f the initial and subsequent charges filed against the defendant are subject to compulsory joinder," and if the subsequently filed charges are "new and additional," then "delays attributable to the defendant on the initial charges are not attributable to the defendant on the subsequent charges." *People v. Williams*, 204 Ill. 2d 191, 207 (2003); *see also Phipps*, 238 Ill. 2d at 66-67. The rule protects defendants against "'trial by ambush,'" a strategy in which the State, unbeknownst to defendant, "'prepare[s] for a trial on more serious, not-yet-pending charges.'" *Phipps*, 238 Ill. 2d at 67 (quoting *Williams*, 204 Ill. 2d at 207). By springing such charges on a defendant at the eleventh hour, the State could confront defendant with "'a Hobson's choice between a trial without adequate preparation and further pretrial detention to prepare for trial.'" *Id.* (quoting *Williams*, 204 Ill. 2d at 207).

Whether a later-filed charge violates the Speedy Trial Act turns on whether that charge is "new and additional" for purposes of compulsory joinder. *Id.* at 66-67. Given the rationale for the so-called "*Williams* rule," "[t]he focus is on whether the original charging instrument gave the defendant sufficient notice of the subsequent charges to

prepare adequately for trial on those charges." *Id.* at 67.[6] If the original charge provided sufficient notice, then defendant's "ability to prepare for trial on [the subsequently filed] charges is not hindered in any way," and he "may proceed to trial on the subsequent charges with adequate preparation instead of being forced to agree to further delay." *Id.* at 67-68. In that case, delays attributable to defendant on the original charge are properly attributable to defendant on the later-filed charge as well. *Id.* at 70.

Here, the second degree murder charge provided defendant with sufficient notice to prepare a defense to first degree murder. The best evidence of that is defense counsel's unequivocal concession that it did. Given the opportunity to request a continuance following the amended charge, defense counsel acknowledged that the first degree murder charge had been implicit in the second degree murder charge, conceded that "[a]ll of the evidence is exactly the same," and stated that the amendment "really changes nothing at all as far as our preparation and being ready for trial." R. Vol. X at R31.

Defendant argues that counsel's concession should be discounted because "defense counsel repeatedly objected to instructing the jury on second degree murder" at the jury instruction conference. Def. Br. 16. But the question for purposes of determining whether the first degree murder charge was "new and additional" is whether defendant received sufficient notice to prepare a defense to *that charge* — and he confirmed that he did. Moreover, defendant cannot legitimately claim to have been

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[6] The rule originated in *People v. Williams*, 94 Ill. App. 3d 241, 248-49 (1st Dist. 1981), and this Court first referred to it as "the *Williams* rule" in *Gooden*, 189 Ill. 2d at 217-18. Coincidentally, this Court then addressed the doctrine at length in *Williams*, 204 Ill. 2d 191, and both the appellate court and defendant cite this Court's 2003 *Williams* decision in referring to the "*Williams* rule," A22-23; Def. Br. 11-12.

surprised by the instruction. Second degree murder instructions are possible in any first degree murder prosecution and may be given by the court *sua sponte* even if defendant objects. *People v. Johnson*, 2013 IL App (1st) 103361, ¶¶ 25-28; *see also People v. Wilmington*, 2013 IL 112938, ¶¶ 44-48 (defendant's right to refuse jury instruction on lesser-included offense does not apply to jury instruction on mitigating factor in first degree murder prosecution, and such instruction may be given without his consent). Furthermore, the unreasonable self-defense prong of the second degree murder statute is so closely related to self-defense that "when the evidence supports the giving of a jury instruction on self-defense, an instruction on second degree murder must be given as a mandatory counterpart" at defendant's request. *People v. Washington*, 2012 IL 110283, ¶ 56.

As the appellate court correctly reasoned, the conclusion that the first degree murder charge was not "new and additional" is further supported by the unique relationship between first degree and second degree murder. A17-33. Both crimes have the same elements. A27-29 (citing *People v. Jeffries*, 164 Ill. 2d 104, 122 (1995)). Thus, "[w]hen the State charges a defendant with second degree murder, it must still prove all of the elements that underlie the offense of first degree murder," A29, and, indeed, the second degree murder charge alleged that defendant "committ[ed] First Degree Murder in violation of [720 ILCS 5/9-1(a)(1)]," C3. Because of this identity of elements, "second degree murder is *not* a lesser included offense of murder," but rather a "lesser mitigated offense." *Jeffries*, 164 Ill. 2d at 122. The State must prove the elements of first degree murder beyond a reasonable doubt before the jury may even consider whether a

mitigating factor has been proven, *People v. Parker*, 223 Ill. 2d 494, 504-05 (2006), as defendant's own jury was instructed, R. Vol. XVI at R70-71.[7]

And because the crimes of second degree murder and first degree murder have the same elements, they are subject to the same defenses. Self-defense defeats both charges because it negates one of the elements of the crime: that the killing be unjustified. *See* 720 ILCS 5/9-1(a) ("[a] person who kills an individual without lawful justification commits first degree murder" if additional elements are met); 720 ILCS 5/9-2(a) ("[a] person commits the offense of second degree murder when he or she commits the offense of first degree murder" and mitigating factor is shown); *see also People v. Romero*, 387 Ill. App. 3d 954, 965 (2d Dist. 2008) ("lack of self-defense, when self-defense is raised, is an element of first or second degree murder"). Thus, an individual who believes a killing to be justified by self-defense — like defendant here — prepares for trial the same way whether charged with first degree or second degree murder.

Defendant asserts that the charge was new and additional because it "suddenly plac[ed] the burden to prove the mitigating factor necessary to establish second degree murder on" him. Def. Br. 16. The Fourth District concluded that this argument was irrelevant, reasoning that "the compulsory joinder statute[ ] says nothing about a mitigating factor that a defendant need prove," and that the joinder analysis turns instead on whether an amended charge "'add[s] new elements to the charged offense.'" A33

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[7] Because this Court "presume[s] that jurors follow the law as set forth in the instructions given them," *Wilmington*, 2013 IL 112938, ¶ 49, it should reject defendant's speculation that the second degree murder instruction "cause[d] those who felt [defendant] was innocent of first degree murder to compromise with those who felt he was guilty," Def. Br. 18.

(quoting *People v. Izquierdo-Flores*, 367 Ill. App. 3d 377, 390 (2d Dist. 2006) (Bowman, J., dissenting) (added emphasis removed)). This Court has similarly relied on the fact that two charges had identical elements in finding that a later-filed charge was not "new and additional." *Phipps*, 238 Ill. 2d at 68.

The Second District in *Izquierdo-Flores* reasoned otherwise, finding a first degree murder charge to be new and additional because, even though it added no elements, "'it did place on defendant a burden that did not exist before.'" *See* A33 (quoting *Izquierdo-Flores*, 367 Ill. App. 3d at 383). Even if this consideration were relevant, its premise is mistaken. As this case illustrates, defendant assumed no additional burden to prove either provocation or an unreasonable belief in self-defense. First, if the prosecution fails to disprove self-defense beyond a reasonable doubt, then a defendant bears no burden to show mitigation at all. *Parker*, 223 Ill. 2d at 505 ("[A] defendant need not seek to mitigate first degree murder if that offense is not proven[.]").

Second, the amendment did not place on defendant a new burden to prove an unreasonable belief in self-defense. As noted, proof of self-defense defeats both first degree and second degree murder, and a defendant who relies on self-defense automatically places before the jury the facts relevant to the mitigating factor of unreasonable self-defense. To establish either, defendant must show that "he had an actual belief in the necessity for self-defense." *Jeffries*, 164 Ill. 2d at 126. If he succeeds in doing so, then the jury must consider whether that belief was reasonable. A defendant claiming self-defense submits that his belief was reasonable and does not assume the burden of simultaneously showing, for purposes of the mitigating factor, that his belief

was instead unreasonable. *See id.* If the jury agrees that defendant's belief was reasonable, their deliberations end, and defendant must be acquitted of both first degree and second degree murder.

Third, under the circumstances here, the amended charge did not place on defendant the burden of proving provocation. Defendant inconsistently suggests, on the one hand, that the amendment burdened him with proving provocation, *see* Def. Br. 16 (asserting that amendment "forc[ed the defense] to prove the mitigating factor"); and, on the other hand, that "the first degree murder charges[ ] . . . unforeseeably changed the mitigating factor he would have to prove," from provocation to unreasonable self-defense, Def. Br. 18. Both assertions are incorrect. The amendment did not force defendant to prove provocation and could not have done so. The People initially charged defendant with second degree murder based on provocation and amended the charge to first degree murder in response to defendant's assertion of self-defense. The mitigating factor of provocation, being premised on "mutual combat," is inconsistent with self-defense. *See People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 36-38 (defendant who claimed self-defense was not engaged in "mutual combat" and was not entitled to instruction on provocation); *People v. Delgado*, 282 Ill. App. 3d 851, 859 (1st Dist. 1996) (mitigating factor of provocation does not apply where defendant "found himself the unwilling participant in a fight and acted only to defend himself from attack"); *People v. Tirrell*, 87 Ill. App. 3d 511, 519 (3d Dist. 1980) ("a defense of self-defense negatives an inference of sudden and intense passion"). Given that defendant insisted that he acted in self-defense, the People could not concede that the mitigating factor of provocation was

present, because it was not; and amending the charge did not foist on defendant the burden of proving provocation because that theory was unavailable on the facts.

Defendant's suggestion that the amendment somehow barred him from relying on the mitigating factor of provocation is equally flawed. Theoretically, defendant could have pursued that theory if the evidence supported it; he would have been entitled to a jury instruction on provocation even if there were only "'[v]ery slight evidence'" to support such a theory. *People v. Randall*, 2016 IL App (1st) 143371, ¶ 46 (quoting *People v. Jones*, 175 Ill. 2d 126, 132 (1997)). Despite now claiming that he was burdened with proving provocation, however, defendant never introduced any evidence to support such a theory.

Finally, defendant argues that the first degree murder charge should be considered new and additional because first degree murder carries a greater penalty than second degree murder. Def. Br. 19. This Court has never held that a difference in penalties alone suffices to render a charge new and additional. In *Phipps*, a case on which defendant heavily relies, *see* Def. Br. 12-13, 19, this Court concluded that a charge of aggravated driving under the influence was not "new and additional" by comparison to a charge of reckless homicide, reasoning that the crimes had the same elements and carried the same penalties, such that the charges were essentially identical despite having different names. *See Phipps*, 238 Ill. 2d at 68-69. Obviously, *Phipps* is distinguishable on that ground because first degree murder and second degree murder are not identical: they carry different penalties, and the latter requires proof of a mitigating factor not contained in the first degree murder statute. The critical point, however, is that the two

crimes have the same elements and are subject to the same defenses, such that a second degree murder charge provides sufficient notice for a defendant to prepare a defense to first degree murder. *See id.* at 67 ("The focus is on whether the original charging instrument gave the defendant sufficient notice of the subsequent charges to prepare adequately for trial on those charges."). Indeed, a defendant charged with second degree murder necessarily prepares a defense to first degree murder.

Because the first degree murder charge was not a new and additional charge, it "relates back" to the original second degree murder charge, and any delays attributable to defendant on the initial charge "are also attributable to him on the subsequent charge." *Id.* at 70. Defendant's trial was therefore held within the timeframe required by the Speedy Trial Act, and this Court should affirm.

III. The Trial Court Properly Restricted Irrelevant Testimony and Argument Concerning the Victim's Resistance to Medical Treatment.

This Court should also reject defendant's claim that the trial court erred by precluding him from presenting testimony and argument concerning Box's resistance to medical treatment.

This Court reviews a trial court's ruling on a motion in limine for abuse of discretion. *People v. Williams*, 188 Ill. 2d 365, 369 (1999). Defendant argues that the trial court's ruling rested on an error of law, an issue that this Court should review de novo. Def. Br. 26. Ultimately, the Court need not resolve this dispute because the trial court's ruling survives any standard of review. As explained below, contrary to

defendant's assertion that the ruling "deprived [him] of a legally viable defense," Def. Br. 23, it is irrelevant whether Box's conduct contributed to his own death.

In addition, defendant's conduct below should preclude relief on either theory. On the evidentiary issue, "[i]t is well recognized that the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court," and a party's failure to do so "results in a waiver of the issue on appeal." *People v. Andrews*, 146 Ill. 2d 413, 420-21 (1992); *see also People v. Way*, 2017 IL 120023, ¶ 33. Here, defendant's failure to make an offer of proof is particularly problematic, given that the trial court provisionally granted the State's motion in limine and repeatedly invited defendant to submit an offer of proof if he had evidence relevant to causation. R. Vol. X at R7-9; R. Vol. XI at R39-42. His failure to revisit the issue forfeited any argument that the trial court erred in excluding such evidence.

On the issue of the trial court's purported restriction of argument concerning causation, which defendant addresses separately, *see* Def. Br. 29-31, defendant waived any claim of error when he repeatedly conceded to the jury that the State had met its burden of proof on this element. Defense counsel told the jury, with respect to the element of causation, "next to that element, put guilty," because defendant, in stabbing Box, "set those dominoes falling" that resulted in Box's death "two days later." R. Vol. XVI at R24. Later, defense counsel urged the jury, "[d]on't even waste time deliberating about" the causation element, because the State "proved [that proposition] beyond a reasonable doubt." *Id.* at R29. Defendant does not allege that counsel was ineffective in his closing argument, and defendant, having conceded below that the State had proven

causation beyond a reasonable doubt, cannot now claim on appeal that the trial testimony, to the contrary, provided a valid defense on the element of causation that he was precluded from pursuing. *See generally McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000) ("'It is fundamental to our adversarial process that a party waives his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding.'") (quoting *Auton v. Logan Landfill, Inc.*, 105 Ill. 2d 537, 543 (1984)); *Veazey v. Bd. of Educ. of Rich Tp. High Schl. Dist. 227*, 2016 IL App (1st) 151795, ¶ 16 ("[T]he doctrines of invited error, waiver and judicial estoppel prevent the Board from taking one position in the trial court and a different position on appeal.").

Forfeiture aside, the trial court's rulings were correct because it is irrelevant whether Box's actions worsened his condition or hastened his demise. The State must prove causation, but "[t]he injury inflicted by an accused need not be the sole or immediate cause of death in order to constitute the legal cause of death." *People v. Mars*, 2012 IL App (2d) 110695, ¶ 16. To relieve defendant of criminal liability, an intervening cause must be "'completely unrelated to the acts of the defendant.'" *People v. Domagala*, 2013 IL 113688, ¶ 39 (quoting *People v. Brackett*, 117 Ill. 2d 170, 176 (1987)). If "the State has shown the existence, through the act of the accused, of a sufficient cause of death, the death is presumed to have resulted from such act." *Mars*, 2012 IL App (2d) 110695, ¶ 16. Here, there is no dispute that defendant stabbed Box in the abdomen, and Box's death is presumed to have resulted from that act. Moreover, the forensic pathologist confirmed this to be the case, testifying that defendant's knife perforated

Box's stomach, causing its contents to leak into his abdomen, which ultimately led to septic shock and death. R. Vol. XIV at R190-92.

In the mere two days that separated the stabbing and Box's death, Box did nothing so unforeseeable that it could amount to an intervening cause. *See People v. Gulliford*, 86 Ill. App. 3d 237, 242 (3d Dist. 1980) (emphasizing that intervening cause must be unforeseeable to break chain of causation).[8] Defendant, having unlawfully stabbed Box in the abdomen, had no right to expect that Box would even obtain medical treatment, much less do everything necessary to care for himself and ensure a full recovery. *See Mars*, 2012 IL App (2d) 110695, ¶¶ 7, 28 (victim's failure to comply with medical advice was not intervening cause); *Caldwell*, 295 Ill. App. 3d at 181 (victim's voluntary decision to remove artificial life support was "the natural and foreseeable result of defendant's wrongful act," and not an intervening cause); *see also State v. Perez-Cervantes*, 6 P.3d 1160, 1166 (Wash. 2000) (victim's drug use and failure to seek medical care were not intervening causes of death); *Klinger v. State*, 816 So. 2d 697, 699 (Fla. Dist. Ct. App. 2002) (victim's refusal of "blood transfusion that might have saved his life" did not

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[8] Defendant disputes that Box was "competent" to refuse medical treatment and insists that Box's competency "was a question of fact for the jury." Def. Br. 27-28. But Box's competency is irrelevant. The pertinent question is whether Box's resistance to treatment is an intervening cause of death because it was unforeseeable. Defendant's cited case, *People v. Caldwell*, 295 Ill. App. 3d 172 (4th Dist. 1998), did not suggest otherwise. There, the defendant argued that the victim was the cause of her own death because she discontinued artificial life support. The appellate court reasoned that because "a competent person has the right to refuse all types of medical treatment, including life-saving or live-sustaining procedures," the victim's "decision to remove artificial life support was consistent with Illinois policy and was the natural and foreseeable result of defendant's wrongful act" in severing her spine. *Id.* at 181. *Caldwell* suggests that a victim's refusal of treatment is always foreseeable; the State need not prove that the victim was competent to invoke this rule.

constitute intervening cause); *Kusmider v. State*, 688 P.2d 957, 959-60 (Alaska Ct. App. 1984) (defendant's actions are legal cause of death "'even if the injured person did not take proper care of himself, or neglected to obtain medical treatment, or delayed too long in doing so, or refused to submit to a surgical operation despite medical advice as to its necessity'") (quoting R. Perkins & R. Boyce, *Criminal Law* § 9 at 799-800). Similarly, defendant was not entitled to presume that medical personnel would provide the best possible treatment. *Gulliford*, 86 Ill. App. 3d at 241 (medical errors, short of "gross or intentional medical maltreatment," are "reasonably foreseeable").

The appellate court's reasoning in *Mars* is persuasive. The defendant there likewise attempted to blame his victim's death on the victim's resistance to medical treatment and errors made by medical personnel. While robbing the victim, the defendant "stabbed the victim in the head, shoulder, and right arm." *Mars*, 2012 IL App (2d) 110695, ¶ 4. The victim was taken by ambulance to a nearby hospital, where he "would not allow the doctor to stitch his wounds." *Id.* ¶ 5. Approximately twenty-four hours later, the victim's arm became swollen and "turned blue, green, and red," and finally "black," and his wife took him to a second hospital. *Id.* ¶ 6. There, the treating physician noticed "small scratches and abrasions on the victim's arms," but she concluded that the arm injury was minor and attempted to treat the victim's apparent diabetic condition. *Id.* ¶ 7. When she administered "intravenous (IV) fluids and insulin," the victim "resisted treatment and pulled out the IVs." *Id.* Eventually, he left the hospital "against medical advice." *Id.* Only after the victim's condition had worsened further, leading him to visit a third hospital, did doctors diagnose him with "necrotizing fasciitis (flesh-eating

disease)." *Id.* ¶ 8. Despite amputation of his infected arm, he "died of sepsis." *Id.* The court held that "any delay in treatment could not have been the *sole* cause of death, because the undisputed evidence was that the infection entered through the wound defendant caused." *Id.* ¶ 28.

Here, similarly, any delay caused by Box's resistance to treatment was not the sole cause of death because the contents of Box's stomach entered his abdominal cavity through the hole made by defendant's knife. There is a direct causal link between defendant's stabbing and the septic shock that caused Box's death. Accordingly, defendant had no defense on the issue of the causation, and the trial court did not err in provisionally granting the State's motion in limine.

CONCLUSION

This Court should affirm the judgment of the Circuit Court of Schuyler County convicting defendant of second degree murder.

August 16, 2017

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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) 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 thirty-six pages.

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

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 16, 2017, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system; and (2) served on counsel for defendant by transmitting a copy from my e-mail address to counsel's e-mail address, listed below, before 5:00 p.m.:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen e-stamped copies of the brief to the Clerk of the Supreme Court of Illinois, Herndon Building, 421 East Capitol Avenue, Springfield, Illinois 62701.

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