

No. 132785

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court
ILLINOIS,	)	of Illinois, First District,
	)	No. 1-24-1265
Plaintiff-Appellee,	)	
	)	There on Appeal from the Circuit
v.	)	Court of Cook County, Illinois,
	)	No. 20 CR 05282
	)	
CALVIN DOSS,	)	The Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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**RULE 341(c) CERTIFICATE OF COMPLIANCE
CERTIFICATE OF FILING AND SERVICE**

NATURE OF THE ACTION

Following a jury trial, defendant was convicted of first degree murder and sentenced to 50 years in prison. C169.¹ The appellate court affirmed, and defendant appeals from that judgment. No question is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

Defendant moved in limine to admit evidence of Thomas's violent character to support his claim that he shot and killed her in self-defense. C100-11. The trial court admitted two prior instances of Thomas's violent conduct but barred defendant from presenting evidence that approximately one year before defendant fatally shot Thomas, she had threatened another woman. R123-28. The issues presented are:

1. Whether the trial court did not abuse its discretion by excluding Thomas's statement that she would go to the other woman's workplace and "kick her ass."
2. Alternatively, if the trial court erred in excluding this evidence, whether the error was harmless because there is no reasonable probability that it impacted the verdict where the jury heard evidence that Thomas had

¹ "C" denotes the common law record; "CI" the impounded common law record; "R" the report of proceedings; "Imp. Exh." the impounded exhibits; and "Def. Br." defendant's opening brief in this Court. Defendant's opening brief and the People's response brief in the appellate court below, which were filed in this Court pursuant to Rule 318(c), are cited as "Def. App. Br." and "Peo. App. Br.," respectively.

previously stabbed defendant and had attacked defendant's paramour hours before defendant fatally shot Thomas.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 604(a). This Court allowed defendant's petition for leave to appeal on March 25, 2026.

ILLINOIS RULES OF EVIDENCE INVOLVED

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

- (a) **Character Evidence Generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

* * *

- (2) **Character of Alleged Victim.** In a criminal case, . . . evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide or battery case to rebut evidence that the alleged victim was the first aggressor[.]

Rule 405. Methods of Proving Character

* * *

(b) Specific Instances of Conduct.

* * *

- (2) In criminal homicide or battery cases when the accused raises the theory of self-defense and there is conflicting evidence as to whether the alleged victim was the aggressor, proof may also be made of specific instances of the alleged victim's prior violent conduct.

STATEMENT OF FACTS**I. Pretrial Motions in Limine**

In April 2020, defendant was charged with the first degree murder of his girlfriend, Vanessa Thomas. C20-27. Defendant admitted that he fatally shot Thomas but claimed that he did so in self-defense. *See* C134.

Before trial, the People moved in limine to present evidence of five instances of defendant's prior acts of domestic violence: (1) in March 2020, defendant hit Thomas in front of her children and was charged with a domestic violence offense, C88-89; (2) in December 2013, defendant hit his then-girlfriend Michaela Blaye and was charged with a domestic violence offense, C89; (3) in August 2012, defendant hit Blaye in the eye and took her phone, *id.*; (4) in July 2010, defendant punched Blaye in the eye after she tried to end their relationship, *id.*; and (5) in November 2007, defendant used a blanket to smother another former girlfriend who was pregnant with his child, and defendant was charged with a domestic violence offense, *id.*

For his part, defendant moved in limine to present evidence of Thomas's violent character under *People v. Lynch*, 104 Ill. 2d 194 (1984), to support his self-defense claim. *See* C100-11. Defendant initially moved to present evidence that (1) earlier on the night that he shot Thomas, Thomas had punched defendant's paramour LaEasha Johnson and threatened to kill her, C100-01, and that (2) about 10 months earlier, Thomas had stabbed defendant with a kitchen knife during an argument, C101. Defendant later supplemented his motion to present evidence that "within one year of" Thomas's death, Thomas had called Cherish Hollings's workplace "approximately 30 times asking to speak to" Hollings. C110. Hollings and defendant both worked for Aries Transport at Chicago's O'Hare airport, Hollings as a dispatcher and defendant as a driver. *Id.*; R514. Defendant proffered that Thomas "would call dispatch and accuse Ms. Hollings of having engaged in sexual intercourse with the defendant" and had "threatened to come to Ms. Hollings[s] work location and 'kick her ass.'" C110. When Hollings eventually spoke with Thomas by phone, Thomas "stated that [she] was contemplating killing [defendant] because he was sleeping with Ms. Hollings" and told Hollings that she (Thomas) had previously stabbed defendant. *Id.* Hollings convinced Thomas that Hollings was not sleeping with defendant, and the threats ended. C111.

At argument on the respective motions in limine, defendant argued for the admission of all three instances of Thomas's violent character. *See* R108-

13. Regarding the proffered testimony from Hollings, defense counsel argued that “approximately a year before the homicide,” Thomas had threatened Hollings with physical violence. R112. The trial court clarified, “She’d kick her ass, that’s the threat?” *Id.* Counsel replied that “[w]hatever’s in [the] supplemental motion” was the threat. *Id.* Counsel did not address Thomas’s other two alleged statements, i.e., that she “was contemplating killing” defendant or that she had previously stabbed him. *See* R111-13. Nor did defendant proffer that he was aware of any of these statements at the time of Thomas’s death. *See id.*; *see also* C110-11.

In response, the People argued that only “reasonably reliable” evidence of Thomas’s violent character was admissible under *Lynch*, *see* R114, and that Hollings’s proffered testimony included hearsay statements “made to the dispatcher,” R115. The People further argued that Hollings’s proffered testimony was not reliable and “less probative and more prejudicial” because Thomas’s threats stopped after she learned that Hollings and defendant were not in a relationship. R121.

The trial court clarified that defendant would be permitted to present evidence of Thomas’s violent character only after he had presented some evidence of self-defense. R123-25. The court then turned to “the balance consideration” for each proffered incident by weighing its “probative value versus prejudicial effect.” R125. As to the Hollings incident, the court held that Thomas’s statement that she would “come to the place they work and,

quote, unquote, kick her ass” did not “fall within *Lynch*.” R126. The court explained that this was “a veiled, if at all, threat,” and that “the prejudicial value far outweighs any probative effect in the case.” *Id.* The court thus held “that part [of the motion] is not going to come in even if you call Hollings.” *Id.*; *see also* R128 (“The throw-in involving the so-called comment about kicking your ass, not very lady like, but that won’t come in.”). The court did not address Thomas’s alleged statement that she “was contemplating killing” defendant or any other proffered testimony from Hollings. *See id.* The court then allowed evidence that Thomas had threatened and punched Johnson the evening she was killed, as well as evidence that Thomas had stabbed defendant 10 months earlier. R127-28.

The court also allowed evidence of two of defendant’s prior acts of domestic violence — the March 2020 incident between defendant and Thomas, and the December 2013 incident between defendant and Blaye — but excluded the three earlier incidents as too remote. R128-30.²

Defendant listed Hollings as a potential defense witness in his pretrial answer to discovery, which he filed the week before trial, C134, and months after the court’s ruling on his motion in limine, but he did not call her to testify, *see generally* R502-601 (defense case).

² At trial, the People did not present evidence of the December 2013 incident involving Blaye. *See generally* R396-493 (State’s case).

II. Trial and Direct Appeal

A. Defendant was convicted of murdering his girlfriend, Vanessa Thomas, after an argument.

The evidence presented at defendant's March 2024 jury trial showed that defendant and Thomas began dating in early 2019, *see* R503, 559, and Thomas and her two sons moved in with defendant sometime that year, R503-04. In November 2019, Thomas gave birth to defendant's son. R504-05. Defendant fatally shot Thomas in the early morning hours of April 5, 2020. *See* R415, 530-32.

1. Defendant had battered Thomas in front of her children three weeks before the fatal shooting.

Thomas's son Harvey Davis (who was 10 at the time of the murder and 14 at trial) testified that approximately three weeks before the shooting, he was in the car with his four-year-old brother, his cousin, his mother (Thomas), defendant, and defendant's nephew. R440-41, 447. Thomas had to use the bathroom, but defendant refused to stop the car. R442. When Thomas accidentally urinated in the passenger seat, defendant became angry, told her to get out, and "lightly shoved her" out of the car while it was stopped at a red light. R442-43. After she walked across the street to a fast-food restaurant, defendant pulled into the restaurant's parking lot, got out of the car, grabbed Thomas by her hair and shirt, and pushed her towards the car. R443-44. Davis told defendant to stop touching his mother, but defendant ignored him. R444. A bystander holding a metal pipe approached and told defendant to stop putting hands on Thomas. R445-46. Defendant

returned to the car with his nephew and left the others at the restaurant, and police were called. R446.

2. The night of the murder, Thomas attacked defendant's paramour and filmed him leaving their apartment with his belongings and a gun.

The night he shot Thomas, defendant had called his former girlfriend Johnson and asked her to bring him some food at his father's house. R562-63. Although defendant and Johnson had stopped living together the previous year (when Johnson found out that defendant was "messing with" Thomas), defendant and Johnson continued to date while defendant was living with Thomas. R559-60, 573. Hours before the murder, Johnson picked up the food, and her friend drove her to defendant's father's house. R564, 575. Unbeknownst to Johnson, defendant had also called Thomas to come pick him up because he was too drunk to drive home, and Johnson and Thomas arrived at approximately the same time. *See* R515-17. Before she exited her car, Johnson saw defendant and Thomas, then saw a text message from defendant telling her to stay in the car because Thomas was there. R566-67, 577.

Thomas opened the door to Johnson's car and punched her in the head three or four times while saying, "Bitch, I'm about to kill you. You stupid hoe." R568. Thomas also said, "[Y]ou think this is a joke," "I'm about to get you," and "I'm going to slap the shit out you, hoe." R569-70. Johnson defended herself by punching Thomas and pulling her hair. R570, 580. Defendant and his friend JR pulled Thomas away from Johnson, and

defendant put Thomas in his car and held her down. R570-71, 579. Johnson grabbed a golf club and tried to attack Thomas, but defendant took the club from Johnson, and JR put Johnson back in her car; Johnson and her friend then left. R571-72, 579-80. Defendant and Thomas also went home in their own cars. R522-23.

Later that night, Thomas recorded on her cell phone a series of three videos, *see* R482-83, 523, which were admitted and played for the jury, R484-85. The first video, recorded at 4:21:30 a.m., R483; *see* Imp. Exh. 4 (4: VTS_01_1 (December 06, 2024) I4 - I4),³ begins with defendant approaching Thomas while holding a black handgun pointed downward, Imp. Exh. 4 at 0:00-0:17. Defendant repeatedly tells Thomas to leave and pushes the phone away while Thomas repeats, “I’m not touching you.” *See id.* Defendant then walks over to the kitchen sink while Thomas retreats to the opposite corner of the combined kitchen and living room and chides defendant for being with another woman and letting his friend “run up on” her while she was holding their baby. *See id.* at 0:17-1:50.

Defendant runs water in the sink, *id.* at 1:00, and Thomas tells him, “that’s not how you clean prints off a gun . . . you need to go get a cloth and some Vaseline and wipe your prints off the gun,” then laughs at him, *id.* at 1:50-2:17. She asks if he ejected the clip, then warns him to be careful

³ Each impounded video exhibit includes the file name as labeled in Thomson Reuters Case Center. The date in the file name appears to be the date that the file was uploaded; it is not the date of the video’s recording.

because there is a bullet in the chamber, to which defendant replies, “you never locked and loaded it, you dumb bitch,” and Thomas retorts, “you just did.” *Id.* at 2:17-2:33. Thomas states that she is recording so she can send the video to the police and says, “I learned my lesson the last time” and “I’m not putting my hands on no—” before the video cuts off. *Id.* at 2:33-2:53.

The second video, recorded a few minutes later at 4:25:47 a.m., R483; *see* Imp. Exh. 6 (6: VTS_02_1 (December 06, 2024) I6 - I6), shows defendant packing his belongings in a large, lidless blue plastic tote while Thomas tells him that she does not want any of his things and that he should call his friends who “got him into this situation in the first place” to come help him with his stuff, *see* Imp. Exh. 6 at 0:00-0:30. She accuses defendant of sending men over to “run up on her” and fight her, which defendant repeatedly denies as he continues packing. *Id.* at 0:30-1:55. She suggests that he and his friend who “ran up on her” were going on a double date with “their women who act like women,” and says she’s “not a woman” because she won’t let him cheat on her, to which defendant replies, “No, you ain’t a woman.” *Id.* at 1:55-2:13.

In the third video, recorded at 4:28:52 a.m., R483; *see* Imp. Exh. 8 (8: VTS_03_1 (December 06, 2024) I8 - I8), defendant attempts to move a large flatscreen television down the building’s interior stairs while Thomas mocks him for breaking his own television, and defendant holds up his middle

finger, *see* Imp. Exh. 8 at 0:00-0:35.⁴ As he tries to maneuver the television down the stairs and out the apartment's door into the vestibule, a gun falls to the ground, and defendant picks it up and puts it in his waistband. *Id.* at 0:35-0:50. He continues dragging the television down the stairs, out the apartment's door, through the vestibule, out a second door, and onto an exterior landing as Thomas films him from the top of the interior stairs. *Id.* at 0:50-01:36. Defendant tosses some sneakers outside then comes back upstairs into the apartment, prompting Thomas to retreat to the opposite corner of the room, stating that she is "not doing anything" except waiting for defendant to get his stuff. *Id.* at 0:50-2:00.

Defendant then drags the blue plastic tote filled with his belongings down the interior stairs and into the vestibule. *Id.* at 2:23-3:15. Thomas tells him that she's "being the bigger person" by not damaging his property, despite defendant throwing her "\$200 pair of shoes" outside. *Id.* at 3:15-3:40. Thomas descends the interior stairs as defendant drags the tote out to the exterior landing. *Id.* at 3:45-4:03. They then exchange words:

⁴ As shown in another video filmed by investigators and played at trial, *see* R414-15; Imp. Exh. 1 (1: VTS_01_1 (December 06, 2024) I1 - I1), the apartment was located on the third floor of a three-story building, *see id.*; *see also* R592. Looking at the building from the street, a black metal exterior staircase leads from a concrete walkway and rises (from right to left, parallel to the sidewalk) eight steps to an intermediate landing, turns 90 degrees to the right, then rises another nine steps to a landing in front of the building's second-floor exterior door, which opens into an interior vestibule. *See* Imp. Exh. 1 at 1:00-1:50. Inside the vestibule, another door opens to a set of interior stairs, which lead up to the third-floor apartment. *See id.* at 1:50-2:00; *see also* Imp. Exh. 8 at 00:30-1:30.

Defendant: I'm good, you don't have to do nothing.

Thomas: Alright, love you.

Defendant: Alright, fuck you.

Id. at 4:03-4:12. Thomas offers to watch while defendant gathers everything; he declines and descends the stairs to the sidewalk below. *Id.* at 4:12-4:30.

Thomas then appears to take something from the tote on the landing and toss it over the railing, prompting defendant to ask why she's damaging his property, and Thomas responds that she did it because he threw her shoes, which they argue over. *Id.* at 4:30-5:15. Thomas then steps inside the vestibule and closes the exterior door, and the video ends. *Id.* at 5:15-5:30.

Thomas's body was found outside on the ground beneath the second-floor landing of the building's exterior staircase less than two hours after the videos were recorded. *See* Imp. Exh. 1 at 1:18; R412-24, 476-77, 597.

Defendant turned himself in about 36 hours later. R486. Police recovered an expended shell casing and two live rounds, as well as Thomas's cell phone, on the ground near her body. R417-18.

3. Defendant shot Thomas once through the top of her head, straight down from above, and once through her chest from the front.

The medical examiner found that Thomas sustained a gunshot wound at "the crown of the head centered at the top of the head and at the midline," and the bullet went "from front to back and downwards" from the crown of her head and through her brain, with "no left or right deviation," before becoming lodged in her neck. R451-52. Thomas was also shot through the

right breast; the bullet entered the front and exited through her back, traveling “slightly left to right and upwards.” R452-53. In addition, Thomas had an abrasion and bruise on her right arm and an abrasion on her right shin. R453.

After learning of the murder, Thomas’s mother went to the apartment to retrieve Thomas’s children’s clothes. R402. She found a grey plastic tote in the front entryway, and although she saw “some stuff in the tote,” she “didn’t pay attention [to] what was in” it; she “just grabbed it” and threw some clothes inside. R407-08. The next day, while looking through the tote, she found a handgun and called police. R402-03, 405. Forensic analysis confirmed that the recovered handgun had fired the bullet that had lodged in Thomas’s neck. R456.

The gun’s handle and trigger were swabbed for DNA, and samples recovered from the gun contained a mixture of DNA that originated from three people. R459-60. Forensic analysis revealed that it was “98 times more likely to observe the mixture from the firearm if the mixture originated from Thomas, [defendant], and an unknown, unrelated contributor than if it originated from Thomas and two unknown, unrelated contributors,” which “provide[d] limited support for the proposition that [defendant] is a contributor to the DNA profile from the firearm.” R461.

4. Defendant claimed that he shot Thomas in self-defense.

Defendant argued self-defense. He testified that although he broke up with his former girlfriend (Johnson) in February 2019 when he started seeing Thomas, he continued to see Johnson in an “off and on again romantic relationship.” R505-06. Defendant described coming home one morning in June 2019, while living with Thomas, after staying out all night with another woman. R506-07. They argued, and Thomas grabbed a butcher knife and stabbed defendant in the forearm. R507-08. Thomas then “chased” him into the bathroom, and defendant locked himself inside while Thomas tried to kick in the door. R508-09. Defendant wrapped a towel around his wound, and when Thomas went to attend to her crying son, defendant ran out of the bathroom and out to the back porch where he fainted. R509-10. He awoke to Thomas standing over him, saying that she should leave him there. R510. Defendant received 26 stitches at the hospital, and he told hospital staff that he had been robbed in an alley. R511-13.

Defendant then recounted the events leading up to Thomas’s death.⁵ That night, defendant went to his father’s house to play poker and called Thomas to come pick him up because he was too drunk to drive home. R515. Then he called Johnson to bring him food. R516. Thomas and Johnson

⁵ On direct examination, defense counsel referred to “the early morning of June 5, 2024,” *see* R514-15, but it is clear from context that counsel intended to reference April 5, 2020, shortly before Thomas was shot, *see id.*; *see also* R523 (noting videos were recorded on April 5, 2020). Moreover, defendant could not have testified to the events of June 2024 at his March 2024 trial.

arrived at approximately the same time, R517, and when Thomas saw Johnson in the car, Thomas opened Johnson's car door and started punching her, R519-20. Defendant grabbed Thomas and took her back to his car to hold her and calm her down, which angered Thomas, and she started hitting him. R521-22. Thomas then left in her own car, and defendant drove himself home. R522-23.

When defendant arrived home, Thomas was standing at the counter cleaning and loading a gun. R524, 540. He grabbed her by the hair, took the gun, and told Thomas to leave, but she refused and told defendant he should leave; he eventually agreed. R524-25, 541. He started putting his belongings in a blue plastic tote, brought his television downstairs, and dragged the tote down the apartment's interior stairs and outside to the landing at the top of the exterior stairs, R525-26, 541-43, as shown in the cell phone video, *see* Imp. Exh. 8 at 00:00-4:03. During this process, the gun fell out of defendant's pants to the floor, and he picked it up and put it back in his waistband. *See id.* at 0:35-0:50; *see also* R528-29.

According to defendant, about 30 seconds after the final video ended with Thomas closing herself inside the vestibule, *see* Imp. Exh. 8 at 5:15-5:30, she returned to the landing at the top of the exterior stairs, R526-29, 537, 542, took defendant's shoes and some of his other belongings out of the blue tote, and threw them out into the yard, R526-29, 541-43. Defendant came back up the stairs to stop her, and when he neared the top, the gun fell out of

his pants again and into the tote. R528-30, 544-45. Thomas reached into the tote and “came up with” the gun, hitting defendant in the mouth and causing some of his teeth to fall out. R530, 545. Defendant wrestled the gun away from Thomas then fired it while standing “two or three steps” below her but did not realize he had hit her. R530, 546-47. He believed Thomas would kill him if she got the gun. R531.

After firing the first shot, defendant went down the stairs to the intermediate landing, and Thomas followed. R548-49. As Thomas neared him, defendant “shoved her off,” and Thomas went further down the stairs, “a step or two” below him, then defendant fired again because he was scared. R531-32, 535, 549-51. Defendant descended the remaining stairs to the ground and ran around to a gangway beside the building, and Thomas followed him until she fell. R532, 552. Defendant said, “Baby, get up,” then realized she was dead. R553.

Defendant “panicked” and picked up the gun and cocked it; he thought about killing himself. R532-33. Instead, he “went back up the stairs for some reason,” dropped the gun, left the blue tote at the top of the landing and the television on the stairs, and fled the scene. R533, 554-55. Defendant then called his father and sister. R533. He did not remember reentering the apartment or where he dropped the gun. R554-55.

Defendant’s sister testified that she arrived at the apartment “around three or four in the morning”; her father was there, but defendant was not.

R593, 599-600. She saw the television on the exterior stairs, the blue tote on the sidewalk at the bottom of the stairs, and the open front door at the top of the stairs leading to the apartment's interior staircase. R593-96. She did not see Thomas's body until she "leaned over the banister" of the exterior stairs. R597. She went to check for a pulse, found none, and called 911. R597-98. She did not stay to speak with police. R598.

At the time defendant shot Thomas, he was about 6 feet, 2 inches tall and weighed between 220 and 230 pounds, R538; Thomas was 5 feet, one inch tall and weighed 174 pounds when she died, R451.

5. The jury convicted defendant, and the court sentenced him to 50 years in prison.

The jury found defendant guilty of first degree murder. R626-27; C135. Defendant moved for a new trial arguing, as relevant here, that the trial court erred in denying the defense's motion in limine "to present *Lynch* material through a witness who would testify to threats and aggressive statements made by Ms. Thomas, the deceased, to her on many occasions." C162-63. At the motion hearing, defense counsel argued that Hollings "would have testified to threats made to her and also made towards the defendant" by Thomas, which "would have been relevant to the case and could not have been dismissed simply as bias on the part of a family member." R701. The People responded that "the jury was able to hear *Lynch* material" from the defense, and the court had "properly weighed the factors" in excluding the statements. R704.

The trial court denied defendant's motion for a new trial. R709. The court believed its evidentiary rulings were correct, but even had an error occurred, it was harmless. R708-09. As the court put it, defendant's self-defense claim was "a meager effort," which "the jurors didn't buy," R706, and defendant's version of events "didn't make any sense at all, especially viewing the circumstantial evidence that [Thomas] was shot once . . . in the chest and once in the top of the head," R708.

The court then sentenced defendant to 50 years in prison. R723; C169.

B. The appellate court affirmed the trial court's evidentiary ruling.

On appeal, as relevant here, defendant argued that the trial court had erred in barring Hollings's proffered testimony. *See* Def. App. Br. 24-28. First, defendant claimed that the trial court had "wrongly concluded that Hollings'[s] testimony was not *Lynch* evidence," but instead a mere "veiled" threat, if a threat at all. *Id.* at 26 (quoting R126). Defendant argued that Thomas had directed a clear threat of violence against Hollings (i.e., that Thomas would come to Hollings's workplace and "kick her ass"), which falls within *Lynch*. *Id.* Defendant, however, acknowledged that the trial court "did not make any specific findings regarding the other portions of Hollings'[s] proposed testimony, including Thomas's statements about contemplating killing [defendant] because she thought he was sleeping with Hollings and that she had previously stabbed [defendant]." *Id.*

Defendant then argued that the trial court had erred in holding that Hollings's proffered testimony was more prejudicial than probative. *Id.* at 26-28. Defendant contended that the testimony provided evidence both that defendant subjectively believed that Thomas intended to kill him, and that Thomas initiated the fatal confrontation with defendant — that is, that Thomas was the initial aggressor. *See id.* at 26-27. Furthermore, this statement was not more prejudicial than probative because “the danger of prejudice to the defendant lies in refusing to admit such evidence.” *Id.* at 28 (quoting *Lynch*, 104 Ill. 2d at 201).

The People responded that defendant had forfeited any argument that Hollings's testimony was admissible to show his state of mind during the confrontation with Thomas because neither his pre-trial proffer nor any evidence at trial established that defendant was aware of Thomas's prior statements to Hollings. *See* Peo. App. Br. 29-36. Furthermore, the proffered threats were not reasonably reliable evidence of Thomas's propensity to commit violence against defendant because they were too remote in time. *See id.* at 34-35.

Finally, the People argued that even if the trial court erred by excluding Hollings's proffered testimony, any error was harmless because defendant presented two other instances of Thomas's violent behavior: stabbing defendant months before the murder and attacking Johnson hours before the murder. *See id.* at 38. The jury nevertheless convicted defendant

based on the significant evidence of his guilt, so there was no reasonable probability that the jury would have reached a different outcome had it also heard about Thomas's threats by phone to another woman nearly a year earlier. *Id.*

The appellate court affirmed, holding that the trial court had properly excluded Thomas's "mere threat[s], devoid of violence," under Rule 405(b)(2) because the rule's language encompasses only violent actions. *People v. Doss*, 2025 IL App (1st) 241265-U, ¶ 48.

STANDARDS OF REVIEW

A reviewing court will not disturb a trial court's evidentiary ruling absent an abuse of discretion, *People v. Smart*, 2025 IL 130127, ¶ 38, that is, unless its ruling was so "arbitrary, fanciful, or unreasonable" that "no reasonable person would adopt the trial court's view," *People v. Heintz*, 2026 IL 131340, ¶ 37. Contrary to defendant's assertions, *see* Def. Br. 14, de novo review is inappropriate where, as here, the trial court's ruling turned on its consideration of defendant's proffer and the specific circumstances of his case. *See* R123-28; *see also* *People v. Caffey*, 205 Ill. 2d 52, 89-90 (2001) (rejecting application of de novo review where trial court based its evidentiary rulings on the specific circumstances of the case before it and not on a broadly applicable legal rule). This Court interprets the Rules of Evidence de novo. *Heintz*, 2026 IL 131340, ¶ 27.

ARGUMENT

This Court should affirm the trial court’s decision barring Hollings’s testimony that Thomas had threatened to come to her workplace and “kick her ass” as an appropriate exercise of the court’s discretion under Illinois Rule of Evidence 403 or, alternatively, because that statement was inadmissible hearsay. The court did not, however, bar any other proposed testimony from Hollings. Moreover, defendant forfeited any argument that Thomas’s statements were admissible as relevant to his perception of her dangerousness, and his forfeiture cannot be reviewed for plain error. Finally, even had the trial court erred in barring any of Hollings’s proffered Rule 405(b)(2) testimony, the error was harmless.

I. The Trial Court Properly Excluded Thomas’s Threat That She Would “Kick [Hollings’s] Ass” and Did Not Bar Any Other Testimony.

Thomas’s threat to come to Hollings’s workplace and “kick her ass” was not reasonably reliable evidence of Thomas’s propensity for violence and thus was not probative of whether she was the initial aggressor against defendant one year later. The threat was also both unduly prejudicial and cumulative of other evidence admitted for the same purpose. Accordingly, the trial court appropriately exercised its discretion by excluding it under Rule 403. Alternatively, Thomas’s threat to “kick [Hollings’s] ass” was offered as hearsay that Hollings only heard through an unidentified dispatcher and so also inadmissible for that independent reason.

Moreover, the trial court only barred Hollings from relating Thomas's threat to "kick her ass," and defendant never attempted to elicit any of Hollings's other proffered testimony at trial. Thus, to the extent defendant claims that the trial court abused its discretion by barring Hollings from testifying that Thomas said she "was contemplating killing" defendant and had stabbed him before, defendant's claim is contradicted by the record. But even assuming the court's Rule 403 ruling extended to bar this testimony, the ruling was reasonable.

Finally, defendant never proffered in the trial court that he was aware of any of Thomas's statements to Hollings, so he has forfeited any claim that they were admissible to show his state of mind or perception of Thomas's dangerousness. And he cannot excuse his forfeiture as plain error because no clear or obvious error occurred where no evidence established that defendant knew about Thomas's prior threats.

A. The trial court appropriately exercised its discretion when excluding Thomas's threat against Hollings.

1. The court's ruling was not an abuse of discretion under Rule 403.

The trial court acted within its discretion when it determined that the probative value of Thomas's threat to "kick [Hollings's] ass" was substantially outweighed by its prejudicial effect under Rule 403. *See* R124-26. That ruling was not an abuse of discretion because Thomas's threat by phone against another woman nearly a year before defendant fatally shot her did not constitute "reasonably reliable evidence" of Thomas's violent character or

her propensity for violence and thus was not probative of whether she was the initial aggressor against defendant. *See Lynch*, 104 Ill. 2d at 201.

When a defendant in a battery or homicide case claims self-defense and it is unclear who was the initial aggressor, the accused may introduce specific instances of his victim's prior violent conduct (i.e., "other crimes, wrongs, or acts" normally excluded under Rule 404(b)) to show that his victim had a violent character and acted in conformity with that character on the occasion at issue. Ill. R. Evid. 405(b)(2); *see also* Ill. R. Evid. 404(a)(2) (allowing accused to offer evidence of victim's pertinent character trait to prove that person acted in conformity with her character on a particular occasion). This rule codifies *Lynch*'s holding that when a defendant claims self-defense, "the victim's aggressive and violent character is relevant to show who was the aggressor, and the defendant may show it by appropriate evidence, regardless of when he learned it." 104 Ill. 2d at 200. Importantly, *Lynch* provides that only "reasonably reliable evidence" of the victim's violent character is probative of whether the victim was the initial aggressor and admissible for that purpose. *See id.* at 201 (convictions for crimes of violence constitute "reasonably reliable evidence of a violent character" and thus are probative of the initial-aggressor issue); *see also People v. Barnes*, 2017 IL App (1st) 143902, ¶ 42 ("Evidence under the second prong of *Lynch* is admissible only if it constitutes 'reasonably reliable evidence of a violent character.'") (quoting same).

Accordingly, when a defendant offers Rule 405(b)(2) evidence that is not reasonably reliable evidence of the victim's violent character, the trial court may exclude that evidence under Rule 403: Its weak probative value as to the initial-aggressor issue may be substantially outweighed by undue prejudice or other relevant considerations. *See* Ill. R. Evid. 403 (relevant evidence may be excluded when probative value is substantially outweighed by prejudicial effect or by such other considerations as "undue delay, waste of time, or needless presentation of cumulative evidence"); *see also Smart*, 2025 IL 130127, ¶¶ 47-48 (all evidence must also meet Rule 403's balancing requirement); *People v. Martinez*, 2019 IL App (2d) 170793, ¶ 79 ("evidence that meets the requirements of Rule 405(b)(2) must also meet those of Rule 403").

Here, Thomas's threat against Hollings was not such "reasonably reliable evidence" of Thomas's violent character to be probative of whether Thomas was the initial aggressor against defendant. *See Lynch*, 104 Ill. 2d at 201. First, the threat was made nearly a year before the confrontation between Thomas and defendant, C110; R112, and was thus too remote to be probative of the initial-aggressor issue, *see People v. Martinez*, 2021 IL App (1st) 182553, ¶ 46 ("Remoteness in time is a valid consideration in determining whether it is reasonable for the trial court to allow the admission of evidence regarding the victim's violent character in a prosecution in which the defendant raises a claim of self-defense."); *Barnes*,

2017 IL App (1st) 143902, ¶ 49 (same, collecting cases). Additionally, as the trial court noted, Thomas’s statement to Hollings (that she would come “kick her ass”) was not a specific threat of imminent violence. The trial court described Thomas’s statement as a “veiled, if at all, threat.” R126. And indeed, Thomas never followed through on the threat: Thomas stopped threatening Hollings as soon as she realized that Hollings was not having an affair with defendant. C111. Moreover, Thomas made the statement by phone rather than in person, so no physical violence was imminent when Thomas made her threat against Hollings, and no violence ever occurred between them. *See People v. Chavez*, 2025 IL App (1st) 221601, ¶¶ 163-65 (victim’s social media posts expressing “penchant” for guns, violence, and robbing customers were not competent evidence of propensity for violence where no evidence showed he committed violent acts).

Accordingly, given the remoteness in time and the nonspecific nature of this threat that never resulted in violence, Thomas’s threat to “kick [Hollings’s] ass” was at best minimally probative of whether Thomas was the initial aggressor against defendant, and the trial court reasonably determined as much. *See, e.g., State v. Zaid*, 467 P.3d 279, 283 (Ariz. Ct. App. 2020) (citing 1 Kenneth S. Broun et al., *McCormick on Evidence* § 190.11 (8th ed. 2020)) (“In deciding whether to preclude a victim’s otherwise admissible prior violent act under Rule 403, a court may consider factors such as the strength of the evidence of the prior violent act, the degree of

similarity between the prior violent act and the event at issue, the need for the evidence, whether alternative proof would be effective, whether the prior violent act was recent or remote, and the degree to which the evidence would likely engender hostility in the jury.”); *State v. Osimanti*, 6 A.3d 790, 800-01 (Conn. 2010) (probative value of victim’s prior violent conduct rests within trial court’s discretion, and a defendant is not entitled to introduce “any and all” prior violent acts “no matter how petty, how remote in time, or how dissimilar in their nature to the facts of the alleged aggression”) (internal citations and quotation marks omitted).

The trial court’s finding that this evidence’s weak probative value was substantially outweighed by its prejudicial effect was not an abuse of discretion. *See* R126 (“the prejudicial value far outweighs any probative effect in the case”). Contrary to defendant’s assertions, *see* Def. Br. 29-30, prejudice to the prosecution is relevant to the Rule 403 analysis, *see Martinez*, 2019 IL App (2d) 170793, ¶ 79, and here, evidence that Thomas had threatened to “kick [Hollings’s] ass” would have unduly portrayed a homicide victim as an unsympathetic figure to the jury; it would have suggested that Thomas’s conduct somehow justified defendant’s use of deadly force against her. Such considerations are why, for example, a defendant generally cannot present evidence of a sexual assault victim’s propensity to engage in consensual sex with others: It unduly prejudices the prosecution by implying that the victim’s own behavior led to the crime committed

against her. *See People v. Patterson*, 2014 IL 115102, ¶ 118 (purpose underlying rape shield statute is to prevent undue harassment and humiliation of victim).

Moreover, Thomas’s threat against Hollings was cumulative of other Rule 405(b)(2) evidence that the court allowed. *See* Ill. R. Evid. 403 (evidence may be excluded “if its probative value is substantially outweighed by . . . considerations of . . . needless presentation of cumulative evidence”); *People v. Ortiz*, 235 Ill. 2d 319, 335 (2009) (“Evidence is cumulative when it adds nothing to what was already before the jury.”). The court permitted defendant to present evidence that Thomas had both (1) stabbed defendant several months earlier, and (2) had struck Johnson and threatened to kill her in an unprovoked attack hours before the confrontation with defendant. Because the court expressly ruled that this other Rule 405(b)(2) evidence was admissible, Thomas’s threat against Hollings was properly excluded as cumulative as well as unduly prejudicial. *See* Ill. R. Evid. 403.

Defendant overstates *Lynch* in arguing that a victim’s threats of violence are always admissible as probative of the initial-aggressor issue. *See* Def. Br. 21-23. *Lynch* never purported to hold that prior threats against *someone other than* the defendant — much less remote-in-time threats made by phone that did not result in any violence — are per se reliable evidence of a victim’s violent character or probative of the initial-aggressor issue. Rather, in holding that “appropriate evidence” of a victim’s violent character

is relevant to the initial-aggressor issue, *Lynch* cited “the related rule” that the victim’s prior threats against *the defendant* are admissible, even if not communicated to the defendant, because they may contextualize the confrontation. *See* 104 Ill. 2d at 201. *Lynch* then cited cases involving a victim’s *recent* threats of violence directed against the *defendant* that explained the circumstances of the fatal encounter. *See, e.g., People v. Adams*, 25 Ill. 2d 568, 572 (1962) (“evidence as to the violent disposition of the decedent and prior threats or misconduct by the decedent *directed towards the defendant* is admissible” in self-defense cases) (emphasis added); *Neathery v. People*, 227 Ill. 110, 116-17 (1907) (witness should have been permitted to testify that, two days before defendant fatally shot the victim, the witness heard the victim making threats against the defendant); *see also Campbell v. People*, 16 Ill. 17, 18 (1854) (where on same day and in the days before he was fatally shot, the white decedent had threatened “to kill, maim or dangerously beat the [black] defendant,” then went to the defendant’s house at night with a mob of white men, the decedent’s threats were admissible to show that he had “sought [defendant] out for the purpose of executing those threats, and thus they would serve to characterize his conduct toward the [defendant] at the time of their meeting, and of the affray”). Here, by contrast, Thomas’s threat against another woman was neither close in time to Thomas’s confrontation with defendant nor necessary to contextualize their fatal encounter.

Nor do defendant's cited cases hold that remote-in-time, uncommunicated threats against third parties are reasonably reliable evidence of a victim's violent character or probative of the initial-aggressor issue. *See People v. Robinson*, 163 Ill. App. 3d 754, 773-74 (1st Dist. 1987) (where defendant was aware of victim's prior threats and violence *against him*, he should have been permitted to introduce such evidence to "show his state of mind"); *People v. Florey*, 153 Ill. App. 3d 530, 539-40 (1st Dist. 1987) (defendant's proffer that he had recognized victim on night of shooting because he had previously seen victim in court where he was tried for shooting one of defendant's friends was *not* admissible because "under the circumstances" of this case, a single prior prosecution "made neither the reasonableness of defendant's belief that deadly force was necessary nor the proposition that the victim was the aggressor was more probable"); *People v. Booker*, 274 Ill. App. 3d 168, 172 (1st Dist. 1995) (threats by decedent *against defendant* should have been admitted); *People v. Hanson*, 138 Ill. App. 3d 530, 537-38 (5th Dist. 1985) (defendant's proffer alleged that he knew of victim's prior acts of violence — pulling out a knife while threatening other people — so the acts "were relevant to show defendant's state of mind in acting of self-defense, because defendant had knowledge of them prior to his confrontation with [the victim]"). Accordingly, defendant provides no support for extending *Lynch's* holding — that prior convictions for violent crimes are "reasonably reliable evidence" of a violent character and thus probative of the initial-

aggressor issue, 104 Ill. 2d at 201 — to uncommunicated, remote-in-time verbal threats against a third party.

In sum, the trial court did not abuse its discretion when it excluded under Rule 403 Thomas’s threat to “kick [Hollings’s] ass” because that statement was not “reasonably reliable evidence” of Thomas’s violent character and therefore was not probative of whether she was the initial aggressor against defendant one year later. The statement was also unduly prejudicial and cumulative of other Rule 405(b)(2) evidence admitted to show Thomas’s violent character.

2. Alternatively, Thomas’s threat against Hollings was inadmissible hearsay.

Moreover, this Court may affirm the trial court’s judgment on the alternative ground that Thomas’s threat to “kick [Hollings’s] ass” — as presented in defendant’s proffer — was inadmissible hearsay, as the People also argued at the time. *See* R115; *see also Tillman v. Pritzker*, 2021 IL 126387, ¶ 24 (court may affirm judgment on any basis in the record).

Hollings’s proposed testimony regarding this threat is a textbook example of inadmissible hearsay. The rule against hearsay prohibits “the introduction at trial of out-of-court statements offered to prove the truth of the matter asserted.” *People v. Chatman*, 2024 IL 129133, ¶ 33; *see also* Ill. Rs. Evid. 801 & 802. Here, according to defendant’s proffer, Thomas “would call dispatch [at Aries Transport] and accuse Ms. Hollings of having engaged in sexual intercourse with the defendant,” she “threatened to come to Ms.

Hollings[’s] work location and ‘kick her ass,’” she further stated that “she would have access to Ms. Hollings[’s] work location,” and she “called back approximately 30 times asking to speak to Ms. Hollings.” C110. The proffer does not explain who at “dispatch” heard these statements, but it apparently was not Hollings because Thomas made all these statements *before* “Hollings *eventually* spoke telephonically to” Thomas. *Id.* (emphasis added). Thomas therefore made these statements to someone *other than* Hollings, who learned of them from the unnamed dispatcher. *See* R115. As a result, Hollings could have testified only that *someone else* told her that Thomas said she would “kick her ass.”

As presented through Hollings, the dispatcher’s statement to Hollings — that Thomas said she would come “kick [Hollings’s] ass” — was an out-of-court statement by an unknown declarant (the dispatcher) offered for the truth of the matter asserted, i.e., that Thomas, in fact, said she would come and kick Hollings’s ass. No exception to the hearsay rule applies here. *See* Ill. Rs. Evid. 803 & 804. And when the People argued that this statement was inadmissible hearsay, *see* R115, defendant did not argue otherwise, *see* R112-23. Therefore, as presented in the proffer, Thomas’s threat that she would “kick [Hollings’s] ass” was inadmissible hearsay, such that the trial court could also have correctly excluded it for that independent reason.

- B. The trial court never barred any testimony other than Thomas’s threat to “kick [Hollings’s] ass,” but even had its Rule 403 ruling extended to Hollings’s other proffered testimony, the ruling was not an abuse of discretion.**

The trial court barred only evidence of Thomas’s threat against Hollings; it did not expressly exclude Hollings’s proffered testimony that Thomas said she was “contemplating killing” defendant and “had previously stabbed” him. Alternatively, even if this Court understands the trial court’s Rule 403 ruling to extend to this testimony, that ruling was not an abuse of discretion.

- 1. The trial court’s limited ruling did not bar Thomas’s statement to Hollings that she “was contemplating killing” defendant and had previously stabbed him.**

Much of defendant’s argument rests on the false premise that the trial court excluded Hollings’s proffered testimony that Thomas said she “was contemplating killing” defendant and “had previously stabbed” him. *See, e.g.*, Def. Br. 13 (“the court barred the defense from introducing evidence that less than a year before the charged offense, Thomas had threatened to kill [defendant]”), *id.* at 15 (“the appellate court affirmed the trial court’s decision to exclude evidence that the decedent previously threatened to kill [defendant]”), *id.* at 26 (“[d]espite the clear threat to [defendant’s] life, the trial court barred Hollings from testifying”), *id.* at 29 (“the trial court should have permitted Hollings to testify”), *id.* at 30 (“the trial court barred the only evidence that Thomas had previously threatened to kill [defendant]”).

But the trial court barred only Hollings’s testimony about Thomas’s statement that she would “kick [Hollings’s] ass.” *See* R124-28. Indeed, the court clearly allowed Hollings to testify as part of defendant’s case. The court referenced Thomas’s statement “I’ll come and kick her ass,” then ruled “that part is not going to come in *even if you call Hollings*.” R126 (emphasis added); *see also* R126-27 (noting that if the defense decides “to bring out the evidence of Cherish Hollings that [at] some point Ms. Thomas said she was going to kick her ass . . . *that part* won’t come in.”) (emphasis added); R128 (after admitting the other two incidents of Thomas’s prior violent conduct, the court again clarified, “the so-called comment about kicking your ass, not very lady like, but that won’t come in”). The court’s ruling was therefore limited to Thomas’s threat against Hollings; the court never barred the defense from presenting any other evidence through Hollings. Indeed, defendant acknowledges in this Court, *see* Def. Br. 4-5, 27 — as he did in the appellate court, *see* Def. App. Br. 26 — that the trial court’s ruling did not expressly address Thomas’s statements that she “was contemplating killing” defendant or “had previously stabbed” him.

Nothing in the record suggests that the court intended to exclude any testimony beyond its explicit ruling regarding Thomas’s threat to “kick [Hollings’s] ass.” It is appropriate for trial courts to enter narrow in limine orders, *see People v. Zimmerman*, 2018 IL App (4th) 170695, ¶ 136; *see also People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 30 (because trial courts rule

on motions in limine before hearing evidence at trial, broad rulings are discouraged), and before excluding proffered evidence, “courts must be certain that such action will not unduly restrict” a party’s presentation of its case, *Reidelberger v. Highland Body Shop, Inc.*, 83 Ill. 2d 545, 549 (1981).

Moreover, where there is no live testimony, the trial court “must rely upon counsel’s representations or offers of proof to determine what the context for the evidentiary ruling will likely be at trial,” *People v. Gliniewicz*, 2018 IL App (2d) 170490, ¶ 32 (internal quotation marks and citations omitted), so counsel’s representations must be clear. Here, however, defense counsel never clarified to the trial court that he also intended to call Hollings to testify that Thomas “was contemplating killing” defendant and said she had previously stabbed him, or that he sought a ruling on this testimony. *See* R108-13. And, in any event, the record indicates that counsel did not understand the court’s ruling to bar all of Hollings’s proposed testimony because several months after the court’s ruling, counsel listed Hollings as a potential witness in defendant’s final pretrial answer to discovery. C134. Counsel then chose not to call Hollings. *See generally* R503-601 (defense case). Nor did defendant’s motion for a new trial specifically identify these statements as having been wrongfully excluded in the court’s ruling on his motion in limine. *See* C162-63. Accordingly, nothing in the record suggests that the trial court’s ruling broadly excluded Hollings’s testimony, much less

barred her from relating Thomas’s statements that she “was contemplating killing” defendant and had stabbed him before.

The record therefore contradicts the factual premise of defendant’s challenge to the court’s purported exclusion of Hollings’s other testimony. *See People v. Johnson*, 2023 IL App (2d) 210110, ¶ 32 (“[d]efendant bases his argument on a false premise — that the court’s ‘previous rulings’ . . . precluded defendant” from pursuing a line of inquiry); *Zimmerman*, 2018 IL App (4th) 170695, ¶ 152 (trial court order barred “only the *specific statements* offered by the State” rather than the underlying facts behind the statements or other related subject matter, so the State’s challenge to the court’s purported exclusion of anything else was unfounded) (emphasis in original). Because the court never excluded Thomas’s statement that she “was contemplating killing” defendant and previously stabbed him, the record does not support his claim of trial court error as to that testimony.

2. Alternatively, if the trial court’s ruling applied to all of Hollings’s proffered testimony, the court did not abuse its discretion.

In any event, even if this Court construes the trial court’s Rule 403 ruling broadly to prohibit Hollings’s proffered testimony regarding Thomas’s other statements, that ruling was within the trial court’s broad discretion. Like her threat to “kick [Hollings’s] ass,” Thomas’s statements to Hollings that she “was contemplating killing” defendant and had previously stabbed him are not such reasonably reliable evidence of Thomas’s violent character to be probative of who was the initial aggressor in the confrontation with

defendant nearly one year later and also was cumulative of other Rule 405(b)(2) evidence.

Thomas's statements were too remote in time, and too general in nature, to constitute reliable evidence of Thomas's violent character. As explained, *see supra* Section I.A.1, Rule 405(b)(2) evidence must constitute "reasonably reliable evidence" of an alleged victim's violent character to be admissible as probative of the initial-aggressor issue. *See Lynch*, 104 Ill. 2d at 201-03 ("[c]onvictions for crimes of violence . . . are reasonably reliable evidence of a violent character" so victim's three recent battery convictions were "admissible for the purpose of proving that [victim] was the aggressor"); *see also People v. Figueroa*, 381 Ill. App. 3d 828, 846 (1st Dist. 2008) (prior altercation or arrest without a conviction may reflect a violent character but defendant must still show that the victim actually committed alleged violent acts to show propensity to commit violence); *People v. Cook*, 352 Ill. App. 3d 108, 128 (1st Dist. 2004) (although *Lynch* does not require a conviction, there still must be proof that victim committed the alleged acts). Prior instances of violent conduct may be too remote to be probative of a violent character or the initial-aggressor issue. *See, e.g., Martinez*, 2021 IL App (1st) 182553, ¶ 46 (remoteness of conviction of violent crime is relevant to balancing test); *Barnes*, 2017 IL App (1st) 143902, ¶ 49 (same and collecting cases). Such evidence may also be properly barred as too general and indefinite to be considered reliable and probative of a victim's violent tendencies. *See People*

v. Ware, 180 Ill. App. 3d 921, 927-29 (1st Dist. 1988) (report that victim had “history of hostility and belligerence” and was gang-member was too general and indefinite to be reliable evidence of propensity for violence); *see also Lynch*, 104 Ill. 2d at 203-04 (examining context of criminal convictions when considering their admissibility).

Prior verbal threats of violence, in particular, must be sufficiently concrete and close-in-time to the confrontation at issue for those threats to be probative of the initial-aggressor issue. For example, in perhaps the earliest Illinois case of uncommunicated threats held to be probative of the initial-aggressor issue, the decedent had repeatedly threatened “to kill, maim, or dangerously beat the defendant” on the day of the homicide and in the days leading up to it. *Campbell*, 16 Ill. at 18. The decedent then led a mob of (white) men to the (black) defendant’s house, where the defendant ultimately shot the decedent. *Id.* This Court held that the decedent’s recent and concrete threats were admissible to show that he had “sought [defendant] out for the purpose of executing those threats” because they could “characterize his conduct toward the [defendant] at the time of their meeting, and of the affray.” *Id.* Similarly, in *Neathery*, cited by *Lynch*, *see* 104 Ill. 2d at 199, the evidence showed an ongoing feud and reciprocal, escalating threats between the defendant and the decedent, *see* 227 Ill. at 112-13. The week before the shooting, the decedent said, “if he ever caught [the defendant] out, he was going to ‘whip hell out of him,’” and he made similar threats two days before

the fatal confrontation. *Id.* at 113, 116-17. The Court held that the evidence was admissible as probative of the initial-aggressor issue: The close-in-time, concrete threats allowed an inference that the decedent sought out the defendant to harm him or, at least, intended to harm him in the immediate future. *See id.*

Here, by contrast, Thomas’s statement that she was “contemplating killing” defendant was too remote and unspecific to allow any reasonable inference that Thomas was the initial aggressor against defendant nearly one year later. That Thomas may have been “contemplating” such an act demonstrates no intention to carry out any specific plan to harm defendant. And, after the alleged June 2019 stabbing incident, defendant provided no evidence that he ever feared Thomas or that she ever intended to harm him while they lived together for another 10 months, further undermining defendant’s contentions that she planned to kill him. *See* R513 (defendant acknowledged he continued living with Thomas after the June 2019 incident). Nor did Thomas threaten defendant with violence in the videos recorded shortly before the shooting. *See generally* Imp. Exhs. 4, 6 & 8. And, as discussed *supra* Section I.A.2, this evidence was also cumulative of the other instances of Thomas’s violent character — including that she had previously stabbed him — that the court admitted under Rule 405(b)(2).

In sum, Thomas’s statements nearly a year before the shooting that she “was contemplating killing” defendant and had previously stabbed him

was not such reasonably reliable evidence of Thomas's propensity for violence as to be probative of whether she was the initial aggressor in their fatal confrontation and was also cumulative of other evidence admitted for the same purpose. Thus, to the extent that the trial court's ruling is construed to have barred Hollings's testimony about those statements, the court appropriately exercised its discretion under Rule 403.

C. Defendant forfeited any argument that Hollings's testimony was admissible for its effect on defendant.

As the People argued below, *see* Peo. App. Br. 19-34, by omitting it in the trial court, defendant forfeited any argument that Hollings's testimony relating Thomas's threats was admissible to show the effect of those threats on defendant, and he cannot excuse his forfeiture as plain error.

Thomas's statements, as recounted by Hollings, were not admissible for their effect on defendant because defendant did not know about them at the time of the murder. Rule 404(b) permits evidence of an alleged victim's "other crimes, wrongs, or acts" when relevant to for a non-propensity purpose, i.e., when relevant to show a defendant's subjective belief of the victim's dangerousness as an element of his self-defense claim. *See* Ill. R. Evid. 404(b); *see also Lynch*, 104 Ill. 2d at 200 ("the defendant's knowledge of the victim's violent tendencies necessary affects his perceptions of and reactions to the victim's behavior" because "[t]he same deadly force that would be unreasonable in an altercation with a presumably peaceful citizen may be reasonable in response to similar behavior by a man of known violent and

aggressive tendencies”); *see also Heintz*, 2026 IL 131340, ¶ 28; *People v. Gray*, 2017 IL 120958, ¶ 50 (elements of self-defense claim include, among others, that “the person threatened actually and subjectively believed a danger existed that required the use of force applied”) (citing 720 ILCS 5/7-1). But evidence of a victim’s violent tendencies is relevant for this purpose only if the defendant *knows* of the prior violent acts, for “[o]ne can only consider facts one knows.” *Lynch*, 204 Ill. 2d at 200. Stated differently, what a defendant does not know about another person cannot affect the defendant’s perception of that person. A victim’s *unknown* prior violent conduct is thus irrelevant to a defendant’s subjective beliefs during a confrontation and therefore inadmissible on that basis. *See* Ill. Rs. Evid. 402 & 404(b).

Here, defendant never proffered that, at the time of his confrontation with Thomas, he was aware of her prior statements to Hollings. *See* C110-11; *see also* R108-13. By failing to raise this basis for admissibility in his motion in limine or his posttrial motion, defendant forfeited any argument that Thomas’s statements were relevant to his alleged belief that she was violent or dangerous. *See, e.g., People v. Denson*, 2014 IL 116231, ¶¶ 11-13 (defendant preserves issue by fully litigating it in motion in limine and raising in posttrial motion); *see also People v. Hudson*, 157 Ill. 2d 401, 434 (1993) (issue preserved when properly raised in motion in limine).

Defendant ignores his forfeiture and asserts that Thomas’s statements to Hollings were admissible for their effect on him. *See* Def. Br. 28. But

defendant points to nothing in the trial record to demonstrate that he was ever aware of these statements, much less that he raised this basis for their admission in the trial court. *See id.* Indeed, the most he can postulate is that his ignorance was “unlikely given that [defendant] and Hollings are coworkers.” *Id.* But defendant’s post hoc speculation fails to overcome the lack of record evidence demonstrating his knowledge. He may not now argue that excluded evidence was admissible under a legal theory that relies on facts he neither proffered nor developed in the trial court.

Nor could defendant excuse his forfeiture as plain error. *See People v. Johnson*, 2025 IL 130447, ¶ 34 (plain-error review is available when “a clear and obvious error occurred,” and either (1) the evidence is closely balanced, or (2) the error is structural). A plain error claim would fail at the first step, for no error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (“The first step of plain-error review is determining whether any error occurred.”). Defendant never testified at trial that he had personally overheard — or even learned about secondhand — any threats that Thomas had made against Hollings or against him, before he shot Thomas. *See* R505-56. Because defendant was not aware of them, Thomas’s statements had no bearing on his subjective belief that Thomas would harm him. *See Lynch*, 104 Ill. 2d at 200. Accordingly, Thomas’s threats were not relevant for that non-propensity purpose and thus inadmissible on that basis, *see* Ill. Rs. Evid. 401, 402 &

404(b), and the court committed no clear or obvious error occurred by excluding them, *see Johnson*, 2025 IL 130447, ¶ 34.

II. Any Error in Excluding Hollings’s Testimony Was Harmless.

Alternatively, even had the trial court erred in excluding any Rule 405(b)(2) evidence — that is, if the trial court erred in barring any of Hollings’s proffered testimony as admissible to show that Thomas was the initial aggressor against defendant, and even if Hollings’s testimony regarding Thomas’s threat to “kick her ass” was also otherwise admissible under an exception to the rule against hearsay — the error was harmless and does not require a new trial.

Evidentiary error is subject to harmless-error analysis, and “an evidentiary error is harmless if the other evidence in the record overwhelmingly supports the conviction,” *Heintz*, 2026 IL 131340, ¶ 51, such that “there is no reasonable probability that the jury would have acquitted the defendant absent the error,” *People v. Pinkett*, 2023 IL 127223, ¶ 39. Here, even had the jury heard Hollings’s proffered testimony, there is no reasonable probability that defendant would not have been convicted of first degree murder.

The People disproved defendant’s self-defense claim, and defendant’s proffered evidence would not have changed the trial’s result. Once a defendant raises self-defense, the People must prove beyond a reasonable doubt that the defendant did not act in self-defense. *Gray*, 2017 IL 120958, ¶ 50. The elements of self-defense are that the defendant (1) was threatened

with unlawful force, (2) was not the aggressor, (3) faced imminent danger of harm, (4) needed to use force in defense, and (5) subjectively believed a danger existed that required the use of the force applied; moreover, the defendant's beliefs must be objectively reasonable. *Id.* (citing 720 ILCS 5/7-1). To be convicted of the lesser offense of second degree murder (imperfect self-defense), the defendant must provide sufficient evidence to show that he subjectively believed he was acting in self-defense, but his beliefs were objectively unreasonable. *People v. Guy*, 2025 IL 129967, ¶ 42.

Here, in addition to the evidence of defendant's guilt, the jury heard evidence of two prior incidents of Thomas's violent conduct to support defendant's self-defense claim: Thomas's stabbing of defendant in June 2019, *see* R506-13, and her unprovoked attack against, and threat to kill, Johnson mere hours before the shooting, *see* R515-23, 556-82. Both incidents were far more probative of the initial-aggressor issue because they involved Thomas's violent actions — one of which was directed against defendant — rather than mere threats. And because defendant had firsthand knowledge of both incidents, they were also relevant to his subjective belief that Thomas was violent and therefore dangerous.

The jury rejected defendant's self-defense claim despite hearing this evidence. Accordingly, testimony from Hollings about Thomas's prior statements — i.e., threats against Hollings and defendant that were made by phone over a year earlier and resulted in no violence — would have added

nothing to defendant's claim. And contrary to defendant's assertions, *see* Def. Br. 30, Thomas's statement that she "was contemplating killing" defendant was not "the only evidence that Thomas had previously threatened to kill" defendant. Defendant testified that after Thomas stabbed him, Thomas saw defendant bleeding on the porch and said that she should just leave him there, R510 — clearly a more imminent threat against his life.

Moreover, defendant's explanation of what happened the night of the murder does not accord with the cell phone video recordings or the forensic evidence. Thomas did not threaten or act aggressively toward defendant in the videos recorded shortly before the shooting; rather, the videos show that she physically retreated whenever defendant approached her. *See generally* Imp. Exhs. 4, 6 & 8. Although defendant claimed that Thomas was the initial aggressor and that he was afraid she would kill him, R530-31, he also acknowledged that he — a 6-foot, 2-inch tall man weighing between 220 and 230 pounds, R538 — had already disarmed Thomas, R530 — a 174-pound, 5-foot, 1-inch tall woman, R451 — before he shot her two times, once in the top of the head, R547-49.

Furthermore, a reasonable factfinder would not credit defendant's assertions that Thomas chased defendant down the stairs after he shot her in the chest, and that she continued chasing him down more stairs and around to the side of the building after he shot her through the top of her head. *See* R531-32. And rather than showing that defendant feared Thomas, the

evidence instead showed that defendant grew increasingly angry at her taunts and provocations and felt aggrieved by her demands that he leave his house. *See* R525 (“it was my house so I felt she should leave if she was going to act like that”); *see also* Imp. Exh. 4 at 2:17-33 (calling Thomas a “dumb bitch”); Imp. Exh. 8 at 00:20-35 (holding up middle finger at Thomas while taking his things); *id.* at 4:03-4:12 (in response to Thomas’s “I love you,” telling Thomas “fuck you”). Considering this evidence, it is more reasonable to conclude that defendant shot Thomas twice in anger, first through the chest, then through the top of her head after she fell to her knees, resulting in the abrasion on her shin. *See* R453. Indeed, defendant admitted that instead of calling for an ambulance, R553, he abandoned the gun (which was later found hidden in the grey tote inside the apartment), *see* R402-08, called his family members, and fled the scene, R533.

In short, defendant’s self-defense claim was not credible, and there thus is no reasonable probability that the jury would have either acquitted him or convicted him of a lesser offense had they also heard Hollings’s testimony about old, vague threats in addition to the more probative Rule 405(b)(2) evidence that defendant presented.

CONCLUSION

For these reasons, the People respectfully request that this Court affirm the trial court's judgment.

September 29, 2026

Respectfully submitted,

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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 46 pages.

/s/ Lauren E. Schneider
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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 September 29, 2026, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Illinois Supreme Court using the Court's electronic filing system, which provided service to the following:

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