No. 124143

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 4-16-0255.
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Seventh Judicial
-vs-	)	Circuit, Sangamon County, Illinois, No. 11-CF-953.
QUENTIN BATES	)	Honorable John Schmidt,
Defendant-Appellant	)	Judge Presiding.

BRIEF AND ARGUMENT FORDEFENDANT-APPELLANT

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POINT AND AUTHORITIES

NATURE OF THE CASE

Quentin Bates was convicted of home invasion and two counts of aggravated criminal sexual assault after a jury trial and was sentenced to an aggregate 70-year prison term. The appellate court affirmed the judgment on September 27, 2018. No petition for rehearing was filed. This Court granted Bates's petition for leave to appeal on January 31, 2019.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether Quentin Bates's trial counsel's post-trial admission that he was not prepared for trial triggered the trial court's duty to conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill.2d 181 (1984).

STATEMENT OF FACTS

Quentin Bates was tried before a jury on charges of aggravated criminal sexual assault ("ACSA") and home invasion in case number 11-CF-953. The State's theory was that on September 19, 2011, Bates entered A.P.'s apartment through a window while A.P. was sleeping and sexually assaulted her. During the jury trial, the State presented other-crimes evidence about 11-CF-888, an unrelated sexual assault. The defense theory was that Bates did not commit these offenses. (RXII. 25) The jury found Bates guilty of two counts of ACSA and one count of home invasion. (C. 480-82) At the motion for new trial, trial counsel stated that he was "taken by surprise" and "had no chance to review" the State's other-crimes evidence. (RVII. 138-9) The trial court did not address or make any inquiry into counsel's claims and denied the motion. (RVII. 143) Bates was subsequently sentenced to an aggregate 70-year prison term. (C. 521)

Jury Trial - State's Evidence

A.P. testified that she lived in a ground-floor apartment at 1613 North 11th Street in Springfield, Illinois. (RXII. 54) On September 19, 2011, she went to sleep on the living room couch. (RXII. 55) While sleeping, A.P. heard a noise in the kitchen and a man with his face covered approached her, pushing her down onto the couch. (RXII. 56-7, 61) The man put his hands around her neck, choking her, and touched her side with a knife. (RXII. 57) The man told her to be still and that he did not want to hurt her. (RXII. 57)

The man grabbed A.P., turned her over, and put his penis into her vagina. (RXII. 58) When A.P.'s son began to stir, the man took A.P. into a bedroom, where he threw her to the ground and told her to perform oral sex. (RXII. 59) The man

then turned A.P. over, put his penis back into her vagina, and ejaculated on her back. (VII. 60) The man told A.P. to count to 100 and he would be gone. (RXII. 60) A.P. heard the man leave her apartment through the door. (RXII. 61) She called 911. (RXII. 62)

Responding Officer Angela Royer arrived at A.P.'s apartment at 1:26 a.m. (RXII. 29) A.P. had a "little laceration on her mouth." (RXII. 31) A.P. found the knife in the bedroom and gave it to the police. (RXII. 62, 41)

A.P. went to the hospital where Nurse Theresa Duncan administered the sexual assault kit. (RXII. 63) Duncan swabbed A.P.'s mouth, vagina, vaginal area, and outer anal area. (RXII. 71)

Detective Brian Johnston testified that another sexual assault occurred on October 6, 2011, and Detective Flynn was assigned to that case. (RXIII. 87) Johnston and Flynn believed the September 19 and October 6 sexual assaults were committed by the same person. (RXIII. 87)

Bates was arrested on October 18, 2011 and gave a buccal swab the next day. (RXII. 95)

Interrogation Videotape

Detectives Flynn and Johnston interrogated Bates on October 18, 2011. (RXII. 95, 100) The videotape of Bates's interrogation was played for the jury (St. Ex. 49) and the jury was given a transcript of the statement. (St. Ex. 49A) (RXIII. 91)

Throughout the 96-minute interrogation, Bates continuously denied that he sexually assaulted anyone. (St. Ex. 49) In the video, Bates bragged about his sexual history and exploits. The detectives repeatedly accused Bates of other sexual

assaults and informed him that he was going to be connected to sexual assaults in Springfield and Chicago. (St. Ex. 49)

Forensic Evidence

DNA analyst Cory Formea testified that he analyzed the swabs from A.P.'s sexual assault kit. (RXIII. 29) Bates's DNA was not found on the vaginal swab or on A.P.'s nightgown. (RXIII. 57, 59, 63) A mixture of DNA was in A.P.'s anal swab. (RXIII. 38) The major profile belonged to A.P. and the minor profile was consistent, but did not match Bates, at 15 of the 16 loci that he tested. (RXIII. 44) According to Formea, "Bates cannot be excluded from that minor profile." (RXIII. 44) Formea then testified that he "would expect approximately one in 2.3 quadrillion whites, one in 840 trillion blacks, and one in 3.0 quadrillion southwest Hispanics could not be excluded from that profile." (RXIII. 47)

Other Crimes Evidence About 11-CF-888

C.H. testified that on October 6, 2011, she was living on East Mason Street in Springfield, Illinois. (RXII. 102) That night, C.H. was asleep in a bedroom with two children in bed with her, when she woke up to a knife at her throat and someone saying, "B***h, put the baby down." (RXII. 103, 105) C.H. could not see the man's face. (RXII. 105)

The man took C.H. to her son's bedroom. (RXII. 106) C.H. pleaded with the man, telling him she had just had a baby. (RXII. 106) The man had C.H. remove her clothes and lie on the bed. (RXII. 106) He climbed on top of C.H., kissing her neck, breasts, and vagina. (RXII. 106-7) C.H. offered the man money, retrieved her purse, and emptied it on the floor. C.H. testified that $50 was taken. (RXII. 108) The man took C.H. back upstairs and told her to stay in the bathroom and

count, warning her that if she opened the door, her family would be killed. (RXII. 109) After counting, C.H. ran to a nearby house and called the police. (RXII. 110) C.H. testified that she did not know Bates. (RXII. 111) C.H. subsequently told Detective Flynn what happened. (RXII. 114-15, 89-91)

C.H. initially identified Bates in a lineup, but then indicated that she was not certain. (RXII. 98-99)

DNA analyst Dana Pitchford examined C.H.'s sexual assault kit. (RXIII. 69) Pitchford examined swabs from the left side of C.H.'s chest and found a major male DNA profile on the chest swab. (RXIII. 71) Pitchford put the DNA profile into the CODIS database and it matched at each of the 16 loci tested to an individual named "Quentin Smith." (RXIII. 76, 80) Pitchford testified that "Quentin Smith" was an alias for Bates. (RXIII. 76)

Pitchford subsequently extracted the DNA from Bates's swab and compared it to the swab from the left side of C.H.'s chest. (RXIII. 77) According to Pitchford, the "male profile that was found in the mixed profile from the chest matches to Quentin Bates." (RXIII. 78) Pitchford explained that the major male profile "would be expected to occur in approximately one in 2.8 quintillion black. One in 53 quintillion white. Or one in 270 quintillion Southwest Hispanic unrelated individuals." (RXIII. 80)

Defense counsel did not cross-examine any of the State's witnesses about the offense against C.H. (RXII. 111, 49-52, 100, 117, 129; RXIII, 50-63, 81)

Defense Evidence

The defense presented one witness: DNA analyst James Ravellette. (RXIII. 109) Ravellette reviewed the Illinois State Crime Lab's file of its analysis in this

case. (RXIII. 112) Ravellette testified that Bates's DNA was not on the vaginal swabs or any other sample tested in this case. (RXIII. 117)

Ravellette explained when someone "matches" a profile, it means that the individual unequivocally contributed that profile. (RXIII. 117) In contrast, when someone "cannot be excluded," it means that the person is one out of a number of possible people or profiles that could have contributed to that sample. (RXIII. 118)

According to Ravellette, the entire human genome is not tested. Rather, the crime lab only tests 16 locations of the human genome. (RXIII. 119) Ravellette explained that of the 16 locations on the DNA found in the anal swab from A.P., at six of the loci there were multiple possible profiles that could be attributed to the sample, which means that this was a nine-loci match. (RXIII. 120) In other words, "there are a number of different locations within this sample where there are multiple possible human profiles that could have been a contributor to this sample." (RXIII. 12) According to Ravellette, "the actual contributor could be any combination of these listed alleles," which is a total of 486 possible people that could have contributed to the DNA from A.P.'s anal swab. (RXIII. 120-22) In sum, like Bates, all 486 of those possible people also cannot be excluded from contributing the DNA found on A.P.'s anal swab. (RXIII. 127)

Ravellette explained that the State's statistics were calculated based on the profile that was developed and did not factor in all of the possible profiles that could have contributed to the sample. (RXIII. 124-5)

Verdict, Post-Trial Motion, and Sentencing

The jury found Bates guilty of home invasion and two counts of ACSA. (C.

480-82)

During the hearing on the motion for new trial, trial counsel admitted he was unprepared for trial:

> . . . we had a trial within a trial when [the court] allowed testimony in another case which occurred after this one, which actually occurred on October 6th, 2011, when the event for which he was being tried occurred September 19th, 2011. The thing that really bothers me, and I think could bother the Appellate Court if it went that way is that Mr. Bates had another attorney Ryan Cadigin, I was not that attorney. So all the testimony about the hearing that – the event that occurred afterwards [11-CF-888], I was generally aware, of course, but I couldn't possibly do as good a job in defending my client since it wasn't my case. So I think that perhaps we all should have thought of that, State's Attorney as well. But I think that is first and foremost a reason for a new trial.
>
> I was taken by surprise at the depth of the evidence and testimony brought by the State's attorney, meaning, brought the victim – alleged victim, forensic scientists, I had no chance to review that. As [the court] know[s], had I been thinking about that case, I would have asked for review by our own experts. So that alone, I think, is reason for a new trial.

(RVII. 138-9) The trial court denied the motion and did not address trial counsel's admission that he was unprepared. (RVII. 143)

The trial court subsequently sentenced Bates to 30 years' imprisonment for home invasion, to be served concurrently with 40 years' imprisonment for one count of ACSA, to be served consecutive with 30 years' imprisonment for a second count of ACSA.

Proceedings in the Appellate Court

In the appellate court, Bates argued, *inter alia*, that the trial court failed to hold a *Krankel* hearing after trial counsel admitted his own ineffectiveness. The appellate court affirmed Bates's conviction and sentence. *People v. Bates*, 2018 IL App (4th) 160255. In denying Bates's claim that his counsel's post-trial

admission of ineffectiveness should have triggered a *Krankel* hearing, the appellate court noted that the "Illinois Supreme Court has never held that a *Krankel* hearing may be triggered by a defense counsel's representations in the absence of the defendant's *pro se* motion raising a claim of ineffective assistance of counsel." *Bates*, 2018 IL App (4th) 160255, ¶ 102. The appellate court emphasized that "*Krankel* and its progeny apply *only* to posttrial claims raised by a defendant *pro se*." *Id.* (internal citations omitted, emphasis in original).

This Court granted leave to appeal on January 31, 2019.

ARGUMENT

Quentin Bates's trial counsel's post-trial admission that he went to trial unprepared sufficiently triggered the trial court's duty to conduct a preliminary inquiry pursuant to *People v. Krankel,* 102 Ill. 2d 181 (1984).

At the hearing on Quentin Bates's motion for new trial, defense counsel stated that he was "taken by surprise at the depth of the [other crimes] evidence and testimony brought by the State's attorney, meaning, brought the victim – alleged victim, forensic scientists, I had no chance to review that." (RVII. 138-9) The trial court conducted no preliminary *Krankel* inquiry into this admission of possible neglect of the case, and the appellate court held that this was not error because *Krankel* is "only" triggered by *pro se* claims of ineffective assistance of counsel and counsel's statement was not a "clear admission" of ineffectiveness. (RVII. 143) *People v. Bates*, 2018 IL App (4th) 160255, ¶¶ 100-104. However, the same principles requiring a trial judge to inquire into *pro se* claims of ineffective assistance of counsel mandate an inquiry when counsel raises his or her own ineffective assistance.

The appellate court's holding in this case that a preliminary inquiry is not triggered by trial counsel's post-trial claim of his own ineffectiveness is contrary to the purpose of the common-law procedure, is a waste of judicial resources, and leads to absurd results. The procedure developed in *Krankel* and its progeny allows the trial court to determine whether to appoint independent counsel to argue a *pro se* post-trial claim of ineffective assistance of trial counsel. *People v. Patrick*, 2011 IL 111666, ¶ 39. In so doing, the *Krankel* procedure deals with the inherent conflict that arises when trial counsel argues his own ineffectiveness. The common-law procedure "is intended to promote consideration of *pro se* ineffective assistance

claims in the trial court and to limit issues on appeal." *Id.* at ¶ 41. This procedure has been subsequently expanded and clarified by this Court in order to promote increased consideration by the trial court of post-trial claims that trial counsel was ineffective. The application of this procedure to include claims raised by trial counsel himself is a logical, non-burdensome, judicially economical method to advance the goals of *Krankel*. Because the trial court failed to conduct any preliminary inquiry into Bates's trial counsel's claim that he was ineffective, this Court should remand for a preliminary inquiry. Alternatively, if this Court finds that trial counsel's statements establish possible neglect of the case without any further inquiry by the trial court, then this Court should remand for the appointment of new, conflict-free counsel to argue the claim.

Whether a trial court conducted an adequate inquiry into a defendant's claim of ineffective assistance of counsel is a question of law that is reviewed *de novo*. *People v. Moore*, 207 Ill. 2d 68, 75 (2003) (reviewing *de novo* whether the trial court erred by failing to inquire into and rule on the defendant's *pro se* motion alleging ineffective assistance of counsel).

A. The common law procedure articulated in *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny addresses the inherent conflict of interest that occurs when counsel argues his own ineffectiveness.

This Court has long recognized the inherent conflict in an attorney attacking his or her own performance. When a defendant challenges trial counsel's representation, therefore, a special procedure applies to determine whether new counsel should be appointed. The Sixth Amendment of the United States Constitution and article I, section 8, of the Illinois Constitution guarantee criminal defendants the right to effective assistance of counsel. U.S. Const., amends. VI,

XIV; Ill. Const., art. I, sec. 8; *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984); *People v. Albanese*, 104 Ill. 2d 504 (1984). "The right to effective assistance of counsel is a fundamental right and entitles the person represented to the undivided loyalty of counsel." *People v. Stoval*, 40 Ill. 2d 109, 111 (1968). As a result, representation by counsel with a conflict of interest violates the right to effective assistance of counsel. *Cuyler v. Sullivan*, 446 U.S. 335, 348-50 (1980).

A conflict of interest arises when defense counsel is forced to argue his or her own ineffectiveness. *See, e.g., People v. Moore*, 207 Ill. 2d 68, 78 (2003); *People v. Keener,* 275 Ill. App. 3d 1, 5 (2d Dist. 1995) ("[a] *per se* conflict of interest arises when attorneys argue motions in which they allege their own ineffectiveness"); *United States v. Del Muro*, 87 F. 3d 1078, 1080 (9th Cir. 1996) (when defendant's "allegedly incompetent trial attorney was compelled to produce new evidence and examine witnesses to prove his services to the defendant were ineffective, he was burdened with a strong disincentive to engage in vigorous argument and examination, or to communicate candidly with his client. The conflict was not only actual, but likely to affect counsel's performance"). As this Court has recognized:

> An attorney cannot be expected to argue his own ineffectiveness....To advance [the defendant]'s argument that he had mishandled the trial proceedings would have required the lawyer to argue his own incompetence. . . .To avoid the criticism that he was incompetent would have required that he compromise his obligation as an attorney to represent [the defendant] zealously. The lawyer thus faced an inherent conflict of interest.

People v. Lawton, 212 Ill. 2d 285, 295-96 (2004).

To prevent such a conflict from arising when a defendant makes a *pro se* claim against trial counsel, this Court has adopted a procedure that requires a trial court to inquire into the factual basis for the claim to determine whether

it has potential merit and thus requires the appointment of new counsel to present the claim. *See People v. Willis*, 2013 IL App (1st) 110233, ¶ 71 (acknowledging that the *Krankel* procedure was developed in an attempt to rectify the conflict of interest faced by trial counsel arguing his or her own ineffectiveness).

This procedure had its beginning in this Court's decision in *People v. Krankel*, 102 Ill. 2d 181 (1984). In *Krankel*, the defendant filed a *pro se* post-trial motion alleging that his appointed counsel was ineffective for failing to investigate and present an alibi defense. *Id.* at 187. In response to this motion, defense counsel argued that the defendant should be represented by another attorney. *Id.* at 188. The trial court allowed the defendant to argue in support of his *pro se* motion, and then denied the motion. *Id.* at 189. Before this Court, the parties agreed that the trial court should have appointed new counsel "to represent [the defendant] at the post-trial hearing in regard to his allegation that he had received ineffective assistance of counsel." *Id.* This Court agreed and remanded the case for a "new hearing on the defendant's motion for a new trial with appointed counsel other than his originally appointed counsel." *Id.*

In subsequent years, this Court has expanded and clarified its holding in *Krankel*. Specifically, this Court clarified that new counsel is not automatically required when a *pro se* claim of ineffectiveness is brought to the trial court's attention. *People v. Nitz*, 143 Ill. 2d 82, 134-5 (1991). Before appointing counsel, the trial court must hold a preliminary investigation to evaluate the claim. *Id.*; see also *People v. Willis*, 2013 IL App (1st) 110233, ¶72 ("[t]he trial court can not simply ignore or fail to address a claim of ineffective assistance of counsel without consideration of the claim's merits"). During the preliminary inquiry, the trial

court will consider the "facts and circumstances" (*Moore*, 207 Ill. 2d at 78) surrounding the purportedly ineffective representation in an "objective and neutral fashion." *People v. Jolly*, 2014 IL 117142, ¶ 39.

In *Moore*, this Court explained the contours of the preliminary hearing, which can be conducted by the trial court in various ways, including questioning trial counsel or the defendant, or relying solely on the court's own knowledge of the circumstances. *Moore*, 207 Ill. 2d 68. Specifically, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing" the defendant's claim. *Id.* at 78. Trial counsel "may simply answer questions and explain the facts and circumstances surrounding" the allegations. *Id.* Alternatively, a brief discussion between the trial court and the defendant may also be sufficient. *Id.* at 78-79. In addition, the trial court can examine the claim in light of the court's own knowledge of defense counsel's performance. *Id.*

If the preliminary inquiry shows that trial counsel may have neglected the defendant's case, the trial court must appoint new counsel to independently evaluate the allegations of ineffectiveness and present the matter to the trial court, free of a conflict of interest. *Moore*, 207 Ill. 2d at 78. But if the inquiry shows that the claim lacks merit or concerns matters of trial strategy, the trial court may deny the motion without appointing new counsel. *Id.* If the trial court conducts no inquiry into the defendant's *pro se* claim of ineffective assistance, then the case should be remanded so that the trial court can conduct a preliminary inquiry. See, *e.g.*, *id.* at 77, 79 (remanding for a *Krankel* inquiry where the trial court did not inquire into the factual basis for the defendant's *pro se* claim of ineffective

assistance, but instead appointed appellate counsel); *People v. Robinson*, 157 Ill. 2d 68, 85-86 (1993) (remanding for a *Krankel* inquiry where the trial court did not inquire into the factual basis for the defendant's *pro se* claim of ineffective assistance and "refused to allow the defendant to specify his complaints and to present supporting evidence and documentation").

The goal of the common law procedure developed in *Krankel* and its progeny is two-fold: (1) to facilitate the trial court's full consideration of *pro se* claims of ineffective assistance of trial counsel, and (2) "to limit issues on appeal." *Patrick*, 2011 IL 111666, ¶ 39; *Ayres*, 2017 IL 120071, ¶ 21. Through the preliminary inquiry, "the circuit court will create the necessary record for any claims raised on appeal." *Ayres*, 2017 IL 120071, ¶ 21. Absent such a record about trial counsel's purported ineffectiveness, appellate review is precluded. *Id.* Indeed, "the purpose of *Krankel* is best served by having a neutral trier of fact initially evaluate the claims at the preliminary *Krankel* inquiry without the State's adversarial participation, creating an objective record for review." *Jolly*, 2014 IL 117142, ¶ 39. Furthermore, "the inquiry is not burdensome upon the circuit court, and the facts and circumstances surrounding the claim will be much clearer in the minds of all involved when the inquiry is made just subsequent to trial or plea, as opposed to years later on appeal." *Id.*

In order to facilitate these goals, *Krankel*'s reach has repeatedly been expanded. *Krankel* involved a *pro se* post-trial claim of ineffectiveness. *Krankel*, 102 Ill. 2d at 187. This Court has subsequently expanded *Krankel* to require preliminary inquiries after *pro se* claims of ineffectiveness arising after sentencing (*People v. Sims*, 167 Ill. 2d 483 (1995), after a guilty plea, and after a revocation

hearing. *Patrick*, 2011 IL 111666. Moreover, the *pro se* claim of ineffectiveness need not have been raised in a formal written motion. *People v. Banks*, 237 Ill. 2d 154, 213 (2010) (preliminary inquiry required after *pro se* oral claim of trial counsel's ineffectiveness). A defendant's claim in a letter or note to the court that trial counsel was ineffective is also sufficient to trigger a preliminary inquiry. *People v. Munson*, 171 Ill. 2d 158, 200 (1996). In *Ayres*, this Court found that an undeveloped and conclusory assertion that of "ineffective assistance of counsel" was sufficient to trigger a preliminary inquiry. *Ayres*, 2017 IL 120071, ¶ 26.

B. Addressing counseled claims under this common-law procedure is in line with the purpose of *Krankel* and its progeny.

The *Krankel* procedure was developed to avoid the inherent conflict that occurs when counsel argues his own ineffectiveness. *Nitz*, 143 Ill. 2d at 135; *Patrick*, 2011 IL 111666, ¶ 39 ("*Krankel* serves the narrow purpose of allowing the trial court to decide whether to appoint independent counsel to argue a defendant's *pro se* posttrial ineffective assistance claims"); *Willis*, 2013 IL App (1st) 110233, ¶ 71 ("The conflict of interest faced here by defense counsel is exactly the conflict a *Krankel* inquiry attempts to rectify"). To that end, the preliminary inquiry is a non-adversarial investigation which is held in an "objective and neutral fashion" (*Jolly*, 2014 IL 117142, ¶ 39), to unearth the "facts and circumstances" of the ineffectiveness claim. *Moore*, 207 Ill. 2d at 78. As part of this non-adversarial inquiry, "some interchange between the trial court and trial counsel . . . is permissible and usually necessary in assessing what further action, if any, is warranted." *Moore*, 207 Ill. 2d at 78. The procedure permits trial counsel to "simply answer questions and explain the facts and circumstances surrounding the" allegations. *Id.*

This factual interchange between trial counsel and the trial court at the preliminary inquiry remains the same regardless of whether the claim is originally voiced by the defendant *pro se* or by trial counsel. As a non-adversarial inquiry, it is not trial counsel's role to argue the claim. Rather, trial counsel is essentially a witness, answering factual questions about the claim and surrounding circumstances, which very well might include admitting to deficient performance. In so doing, trial counsel helps the trial court to determine whether counsel's actions were a matter of trial strategy or whether new counsel should be appointed. See *Moore*, 207 Ill. 2d at 78. Regardless of how the claim of trial counsel's ineffectiveness is brought before the trial court, once the trial court is aware of the claim, it must hold an inquiry to determine whether the claim shows "possible neglect of the case" or whether the claim lacks merit or pertains only to matters of trial strategy. *People v. Williams*, 147 Ill. 2d 173, 251 (1991).

Trial counsel, as an officer of the court, "is always under an obligation to be truthful to the court. He has the duty of good faith and candor in dealing with the judiciary [and] . . . is obligated to answer the court's questions." *City of Chicago v. Higginbottom*, 219 Ill. App. 3d 602, 628 (1st Dist. 1991) (internal citations omitted). As such, trial counsel has a duty to answer the trial court's questions during the preliminary hearing, regardless of whether counsel or the defendant brought counsel's actions to the attention of the trial court. This duty applies whether trial counsel provided effective or ineffective assistance of counsel.

Applying the common-law procedure developed from *Krankel* to claims of ineffectiveness raised by trial counsel is also consistent with the purpose of *Krankel* and subsequent cases. *Krankel* was intended to "promote consideration of *pro*

se ineffective assistance of counsel claims in the trial court" in order to "limit issues on appeal." *Patrick*, 2011 IL 111666, ¶ 41. Folding claims made by trial counsel into the *Krankel* procedure furthers this goal by providing a mechanism for the trial court to consider whether the claim has merit and requires further consideration with the appointment of conflict-free counsel. It is an existing framework, familiar to the trial courts, that is not burdensome to the trial court. *Jolly*, 2014 IL 117142, ¶ 39. Further, requiring a preliminary inquiry to address post-trial claims of trial counsel's ineffectiveness, regardless of whether the claim was raised *pro se* or by trial counsel, allows the facts and circumstances surrounding the claim to be fleshed out and made part of the record, thereby potentially limiting these issues from being re-raised on appeal.

The Appellate Court, First District, has consistently held that a preliminary inquiry is required when trial counsel brings his ineffectiveness to the court's attention as well as when counsel's ineffectiveness is raised *pro se*. In *Willis*, 2013 IL App (1st) 110233, ¶ 1, the sixteen-year old defendant was convicted of first degree murder and aggravated battery with a firearm. Trial counsel filed a motion for a new trial that included a claim that he had been ineffective for failing "to use due diligence to insure [witness] Frederick Williams would be available to testify at trial." *Willis*, 2013 IL App (1st) 110233, ¶ 62. Trial counsel explained that witness Williams was material to the defense strategy and his failure prejudiced the defendant because the jury did not hear Williams's testimony. *Id.* At the hearing on the post-trial motion, the State noted that trial counsel's claim created a conflict of interest. *Id.* In response, trial counsel struck the ineffectiveness claim from his motion and the motion was ruled on without any inquiry or further mention

of the claim. *Id.*

On appeal, the defendant argued that under *Krankel* and *Moore*, the trial court should have preliminarily inquired into counsel's claims of ineffectiveness. *Id.* at ¶ 63. The appellate court acknowledged that it was an "unusual" circumstance for trial counsel to raise the issue of his own ineffectiveness and for counsel to later withdraw this allegation. *Id.* at ¶ 69. No matter who brings the claim to the trial court's attention, the "trial court cannot simply ignore or fail to address a claim of ineffective assistance of counsel without consideration of the claim's merits." *Id.* at ¶ 72. Finding that a preliminary inquiry was required under these circumstances, the court explained that the conflict faced by trial counsel was "exactly the conflict a *Krankel* inquiry attempts to rectify." *Id.* at ¶ 71. The court also rejected the State's contention that the defendant must voice his dissatisfaction with trial counsel's performance in order to trigger a *Krankel* hearing, noting that it could not "reasonably expect" the juvenile defendant to raise the issue of trial counsel's ineffectiveness. *Id.* at ¶ 70. The court remanded for the trial court to conduct a preliminary inquiry, as required by *Krankel*. *Id.* at ¶ 74.

Similarly, in *People v. Williams*, 224 Ill. App. 3d 517, 524 (1st Dist. 1992), the First District remanded for a preliminary inquiry where trial counsel raised his own ineffectiveness in the post-trial motion. In *Williams*, the defendant was convicted of first degree murder. *Williams*, 224 Ill. App. 3d at 518. During the hearing on the motion for new trial, trial counsel informed the court he had alibi witnesses who he failed to call to testify at trial. *Id.* at 521-23. On appeal, the defendant argued that the trial court failed to conduct a preliminary inquiry, as required by *Krankel*. *Id.* at 523. The appellate court remanded for a preliminary

inquiry, noting that the trial court's comments indicated that it was aware of trial counsel's possible neglect and "[f]undamental fairness requires a further investigation of counsel's performance." *Id.* at 524. According to the appellate court, "[w]here this is a clear basis for an allegation of ineffectiveness of counsel, a defendant's failure in explicitly making such an allegation does not result in a waiver of a *Krankel* problem." *Id.*; see also *People v. Hayes*, 229 Ill. App. 3d 55, 65 (1st Dist. 1992)(remanding for *Krankel* inquiry where trial court failed to conduct an adequate inquiry into defense counsel's post-trial admission of ineffectiveness). The First District's consideration of a post-trial claim of ineffectiveness raised by trial counsel under the common-law procedure derived from *Krankel* is an appropriate, efficient method of handling these claims.

The reasons given for excluding counsel-raised claims from *Krankel* do not hold up under scrutiny. In *People v. McGath*, 2017 IL App (4th) 150608, ¶ 52, the Fourth District narrowly construed *Krankel* to only require an inquiry into *pro se* claims of ineffectiveness. In trial counsel's written post-trial motion, counsel alleged that a witness was not called "although she could have provided testimony contradicting testimony of [a State witness]." *McGath*, 2017 IL App (4th) 150608, ¶ 17. During the hearing on the post-trial motion, trial counsel provided the court with an offer of proof as to the witness's testimony. *Id.* at ¶ 18.

On appeal, McGath argued that the trial court should have conducted a *Krankel* hearing when trial counsel admitted his own ineffectiveness in the post-trial motion. *Id.* at ¶ 48. The Fourth District rejected this argument, holding that,

> where a defendant fails to raise a *pro se* posttrial claim of ineffective assistance of counsel, the trial court need not – and ought not – conduct a *Krankel* hearing. We reiterate that a *Krankel* hearing is a term of art to describe the hearing the court must conduct when a defendant *pro se* has raised a posttrial claim regarding his counsel's ineffective assistance. *Id.* at ¶ 51.

The appellate court concluded that because it was McGath's counsel, and not McGath himself, who raised the post-trial claim of counsel's ineffectiveness, "there was no reason for the trial court to conduct a *Krankel* hearing." *Id.* at ¶ 52.

In the case below, the Fourth District reaffirmed *McGath*'s holding that "*Krankel* and its progeny apply *only* to posttrial claims raised by a defendant *pro se*." *Bates*, 2018 IL App (4th) 160255, ¶ 101 (citing *McGath*, emphasis in original). The appellate court explained, "[w]e do not agree with the holding in *Willis* because, as the Illinois Supreme Court has repeatedly held, a *Krankel* hearing is required when the *defendant* who has been convicted brings a claim *pro se*, asserting ineffective assistance of counsel. *Bates*, 2018 IL App (4th) 160255, ¶ 101 (emphasis in original).

Excluding claims of trial counsel's ineffectiveness that are brought to the trial court's attention by counsel from the purview of *Krankel* ignores this Court's rationale for *Krankel* and leads to absurd results. This Court's cases analyzing whether a preliminary inquiry should have been held have never hinged on who raised the claim or how it was brought before the trial court. See *Patrick*, 2011 IL 111666, ¶ 29 ("*a pro se* defendant is not required to file a written motion, but just only bring the claim to the trial court's attention"). Rather, the reasoning behind *Krankel* is to deal with ineffective assistance of counsel claims as soon as possible, rather than waiting and addressing these claims on appeal. See *Ayres*, 2017 IL 120071, ¶ 21 ("the facts and circumstances surrounding the claim will

be much clearer in the minds of all involved when the inquiry is made just subsequent to trial or plea, as opposed to years later on appeal").

It would be absurd to deny a defendant a preliminary inquiry into a potentially legitimate claim of counsel's ineffectiveness simply because trial counsel informed the trial court about his failure instead of the defendant. To so hold would encourage trial counsel to abdicate his duty of good faith and candor to the court, and use his client as a go-between, all in order to ensure that the defendant receives his constitutional right to the effective assistance of counsel. The inequities of such a limitation are further revealed when the *Krankel* procedure is considered, as the trial court may choose to question trial counsel during the preliminary hearing and counsel would be required to answer questions about his representations. Whether trial counsel initially informs the trial court of his possibly unprofessional actions or provides this information to the court in response to direct questions, counsel is permitted to discuss his performance with the court during the preliminary inquiry. In other words, regardless of who brings the ineffectiveness claim to the trial court's attention, the *procedure* remains the same.

Allowing trial courts to ignore a counseled claim of ineffectiveness simply because it was raised by trial counsel instead of *pro se* is contrary to *Krankel*'s goal of limiting claims on appeal. Judicial economy and integrity are best served by promoting more preliminary inquiries instead of fewer. *See Patrick*, 2011 IL 111666, ¶ 41. Memories are fresh in the trial court when all the parties involved have just recently litigated the issues. The defendant, trial counsel, the prosecutor, the judge, and witnesses will be more familiar with the case during the trial phase than they will in the distant future, and certainly more familiar than appellate

counsels for either party. Pushing ineffectiveness claims made by trial counsel down the road to the appeal or a post-conviction proceeding makes the resolution of such claims more difficult and time-consuming. If not addressed post-trial, then the necessary record for any claim to be raised on appeal will not be made. *See Jolly*, 2014 IL 117142, ¶ 38 ("[b]y initially evaluating the defendant's claims in a preliminary *Krankel* inquiry, the circuit court will create the necessary record for any claims raised on appeal").

If claims made by trial counsel do not trigger a preliminary inquiry, then the defendant will be forced to wait years for the claim to be eventually addressed in a different setting. By that time, the court, the parties, and the defendant will have a diminished memory of the facts and circumstances surrounding the claim of ineffectiveness. Thus, addressing counseled claims in the trial court in the same manner as *pro se* claims protects the integrity of the judicial process because it is more likely to result in the court system getting it right. It also saves valuable resources in time and money by addressing the claims sooner rather than later, thus furthering judicial economy. And there is precedent of this Court analyzing claims of ineffectiveness raised by trial counsel under the *Krankel* procedure. In *People v. Sims*, 167 Ill. 2d 483, 518 (1995), trial counsel filed a motion to reconsider sentence, in which he claimed that he had given erroneous advice to the defendant. On appeal, the defendant argued that the trial counsel should have appointed new counsel to argue the motion to reconsider sentence. *Sims*, 167 Ill. 2d at 517-18. This Court applied *Krankel* and found that the defendant was not entitled to substitute counsel to argue the motion to reconsider, where the ineffectiveness claim involved a strategic decision made by trial counsel during the sentencing

hearing and there was no support for the defendant's claim that the advice was erroneous. *Id.* at 519-20. The *Sims* Court recognized implicitly what this Court should now make explicit: that claims raised by counsel trigger *Krankel* inquiries. If this Court determines that the *Krankel* procedure does not apply when trial counsel raises his own ineffectiveness post-trial, then this Court must provide some other procedural mechanism to address such a situation.

C. Where trial counsel suggested he was ineffective during Bates's trial, this case should be remanded for a preliminary inquiry under *Krankel*.

Applying this Court's precedent, the circuit court's lack of a preliminary inquiry was reversible error. After the verdict was issued but before sentencing, trial counsel Ronald Kesinger[1] filed a motion for new trial. At the hearing, trial counsel informed the trial court that he was unprepared for the "trial within a trial" on the significant other-crimes evidence concerning the assault of C.H., 11-CF-888, that was presented by the State. (RVII. 138) Trial counsel did not represent Bates on 11-CF-888, so he was not ready to challenge the evidence. Specifically, counsel explained that:

> There's basically three contentions, reasons for this motion for a new trial. I think the first, which is – just called for a new trial all over the place is the fact that we had a trial within a trial when you allowed testimony in another case which occurred after this one, which actually occurred on October 6th, 2011, when the event for which he was being tried occurred on September 19th, 2011. The thing that really bothers me, and I think could bother the Appellate Court if it went that way is that Mr. Bates had another attorney Ryan Cadigin, I was not that attorney. So all the testimony about the hearing that – the event that occurred afterwards [11CF888], **I was generally aware**, of course, but I couldn't possibly do as good

[1] Ronald Kesinger is currently not authorized to practice law due to disciple. https://iardc.org/ldetail.asp?id=491390496 (last viewed February 19, 2019).

> a job in defending my client since it wasn't my case. So I think that perhaps we all should have thought of that, State's Attorney as well. But I think that is first and foremost a reason for a new trial.
>
> **I was taken by surprise at the depth of the evidence and testimony** brought by the State's attorney, meaning, brought the victim – alleged victim, forensic scientists**, I had no chance to review that.** As you know, **had I been thinking about that case, I would have asked for review by our own experts.** So that alone, I think, is reason for a new trial. * * *

(RVII. 138-9) (emphasis added)

During Bates's trial in this case, the State presented significant other-crimes evidence from case 11-CF-888. The State called seven witnesses and introduced 18 photographs about the C.H. assault. (RXII. 101-111, 44-8, 85-100, 112-17, 126-8; RXIII. 26-49, 69-80; St. Ex. 19-36) However, of the seven witnesses the State called to testify about 11-CF-888, trial counsel did not cross-examine a single one about the other-crimes evidence. (RXII. 111, 49-52, 100, 117, 129; RXIII, 50-63, 81) Without making any inquiry into or mention of trial counsel's post-trial admission, the trial court denied the motion for new trial, holding that "the Court believes it was correct in each and every one of its rulings for the reasons I stated at the time I made them, there's no need for me to rehash them, they're already on the record." (RVII. 143)

Before the appellate court, Bates relied on *Willis* and argued that the trial court failed to make any inquiry into trial counsel's post-trial admission of ineffectiveness. Bates asked the appellate court to remand for a preliminary inquiry under *Krankel*. The appellate court rejected Bates's argument, emphasizing that "*Krankel* and its progeny apply *only* to posttrial claims raised by a defendant *pro se*." *Bates*, 2018 IL App (4th) 160255, ¶ 101 (emphasis in original).

Bates also determined that *Willis* was factually distinguishable for three

reasons: 1) trial counsel in *Willis* included the claim of his ineffectiveness in the post-trial motion; 2) Bates's trial counsel's "dialogue" at the hearing was not a clear admission of ineffectiveness where he did not explicitly state his performance was objectively unreasonable; and 3) the defendant in *Willis* was 16-years old. *Id.* at ¶ ¶ 103-4.

The appellate court's attempt to distinguish *Willis* is flawed. First, this Court has long held that no formal method of raising the claim of ineffective assistance of counsel is required. See *Patrick*, 2011 IL 111666, ¶ 29 (defendant is not required to raise the claim in a written post-trial motion). A defendant's claim of trial counsel's ineffectiveness may be raised orally (*Banks*, 237 Ill. 2d at 213), or in a letter or note to the court. *Munson*, 171 Ill. 2d at 200. All that is required of a *pro se* defendant is that the claim be brought to the attention of the trial court. *Ayres*, 2017 IL 120071, ¶ 11.

Second, Bates's trial counsel's statements to the trial court constituted a clear admission that he had neglected Bates's case. *See Nitz*, 143 Ill. 2d at 134-5 ("If, however, the defendant's allegations of incompetence indicate that trial counsel neglected the defendant's case, the court should appoint new counsel to argue defendant's claims of ineffective assistance of counsel"). This Court has held that a defendant's *pro se* barebones claim of "ineffective assistance of counsel" was sufficient to trigger the trial court's duty to inquire, and it has never held that there were magic words that needed to be conveyed to trigger an inquiry. *Ayres*, 2017 IL 120071, ¶ ¶ 15, 26. In this case, trial counsel informed the trial court that he did not review the State's discovery about the other-crimes evidence from 11-CF-888: "I was taken by surprise at the depth of the evidence and testimony

brought by the State's attorney . . . I had no chance to review that . . . had I been thinking about that case, I would have asked for review by our own experts." (RVII. 138-9) Trial counsel's words clearly informed the trial court that he did not review the statement made by C.H. or the forensic evidence in 11-CF-888 prior to Bates's jury trial. (RVII. 138-9)

It is a rare situation for trial counsel to admit to not having reviewed all of the State's discovery materials prior to trial. In defining what constitutes ineffective assistance of counsel under the Sixth Amendment, the United States Supreme Court noted that "[c]ounsel . . . has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Strickland v. Washington*, 466 U.S. 668, 688 (1984). The Court considered whether counsel's assistance was reasonable in light of "[p]revailing norms of practice as reflected in American Bar Association standards and the like, e.g., ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980("The Defense Function"),[that] are guides to determining what is reasonable, but they are only guides." *Id.*

Relevant to the case at bar, the ABA Standards provide that trial counsel has a duty to prepare for court proceedings, including reviewing available documents and statements, conducting relevant legal research, and factual investigation. ABA Standards for Criminal Justice 4-4.6(a) (4th ed. 2015)[2]. The ABA Standards also outline trial counsel's duty to investigate and engage investigators, pointing out that "[c]ounsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and

[2] The ABA Standards for Criminal Justice are available at https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition-TableofContents/ (last visisted February 21, 2019).

expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise." ABA Standards for Criminal Justice 4-4.1(c) (4th ed. 2015). Counsel should also "evaluate all expert advice, opinions, or testimony independently, and not simply accept the opinion of an expert based on employer, affiliation or prominence alone." ABA Standards for Criminal Justice 4-4.4(b) (4th ed. 2015) Specifically, trial counsel "should seek to learn enough about the substantive area of the expert's expertise . . . as well as to cross-examine any prosecution expert on the same topic." *Id.* at 4-4.4(e); See also *Strickland*, 466 U.S. at 691 ("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary"); *People v. Domagala*, 2013 IL 113688, ¶ 38 (trial counsel's duty to investigate stems from "counsel's basic function to make the adversarial testing process work in the particular case")(internal citation omitted).

Trial counsel's statement that he was "surprised" by the State's evidence against Bates and failure to review C.H.'s statement and the forensic evidence from 11-CF-888 is an admission that his representation fell below prevailing professional norms. (RVII. 138-9) Under *Ayres*, even a non-detailed statement asserting that counsel was ineffective was sufficient to trigger the trial court's duty to inquire. 2017 IL 120071, ¶ 26. Here, trial counsel went further, providing the trial court with factual information about the facts and circumstances of his representation instead of a mere legal conclusion that he was ineffective. Because trial counsel's words explained *how* his representation fell below professional norms, his statements triggered the trial court's duty to inquire.

Third, the court below distinguished *Willis* from the case at bar based on the young age of the defendant in *Willis*. Although he was tried as an adult, the defendant in *Willis* was 16-years old at the time of the offense. *Willis*, 2013 IL App (1st) 110233, ¶ 1. The appellate court below wrongly suggested the duty to inquire applies only when the defendant is a juvenile. Age has never been a factor in this Court's *Krankel* precedents.

Moreover, in attempting to draw a distinction based on the age of the defendant, the appellate court overlooked the more salient point, the nature of the claim. There are some claims, such as the one in this case, that involve behavior on trial counsel's part about which the defendant would have no first-hand knowledge, because they are based on trial counsel's actions outside of the courtroom and defendant's presence. For example, in this case, trial counsel admitted that he did not review all of the discovery before proceeding to trial. (RVII. 138-9) Bates, or any defendant, would have no way of knowing that his trial counsel did not review all of the evidence against him unless trial counsel had previously admitted that he failed to do so.

Once trial counsel admitted to the trial court that his performance was deficient, it is a miscarriage of justice for the trial court to ignore counsel's admission and to fail to inquire further. Moreover, since there was no preliminary inquiry held into Bates's trial counsel's statements, there is no record to assess the claim. The trial court's failure to inquire and further develop the record effectively denied Bates the ability to fully present a claim that trial counsel was ineffective.

Because Bates's trial counsel clearly brought the claim that he provided ineffective assistance of counsel during Bates's trial to the trial court's attention,

the trial court had a duty to hold a preliminary inquiry. The trial court in this case did not adequately examine the factual matters underlying the ineffectiveness claim. In fact, the court did not inquire at all. Rather, after trial counsel admitted his lack of preparation with regards to the copious other-crimes evidence presented at the trial, the trial court failed to mention counsel's admission. The prosecutor merely argued that the other-crimes evidence was properly admitted into evidence and that trial counsel had "all the DNA evidence from both cases." (RVII. 142-3)

Trial counsel's comments in this case did not reveal that his decisions pertained only to matters of trial strategy. On the contrary, trial counsel's allegation admitted that he proceeded to trial fully unprepared with respect to a significant amount of the State's case. A lack of preparation is not trial strategy. See *People v. Morgan*, 187 Ill. 2d 500, 545 (1999) ("There can be no legitimate 'strategy' where counsel has failed to make any investigation into mitigating circumstances"). Thus, it was incumbent upon the trial court to inquire or to appoint new counsel so that an investigation would not be hampered by the conflict. *People v. Bull,* 185 Ill. 2d 179, 210 (1998) ("[t]he operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the *pro se* defendant's allegations of ineffective assistance of counsel"); *People v. Robinson*, 157 Ill. 2d 68, 86 (1993) ("the trial court must at least examine the factual matters underlying the defendant's claim"). Since the trial court did not conduct any inquiry to satisfy the minimum requirements of *Krankel* and its progeny, this Court should reverse and remand for a preliminary inquiry. See *Moore*, 207 Ill. 2d at 79 (remanding for a preliminary inquiry into defendant's claim of trial counsel's ineffectiveness where the trial court did not conduct a preliminary inquiry).

D. Alternatively, this Court should remand this cause for the appointment of new counsel and a hearing into trial counsel's claim of ineffective representation during Bates's trial.

In the alternative, trial counsel's statements about his failure to prepare obviated the need for a preliminary inquiry, as they provided sufficient factual detail to show possible neglect of Bates's case. As this Court explained in *Ayres*, "[t]he purpose of the preliminary inquiry is to ascertain the underlaying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support his claim." *Ayres*, 2017 IL 120071, ¶ 24. This preliminary inquiry must be sufficient to determine the factual basis of the ineffectiveness claim. *Banks*, 237 Ill. 2d at 213. At the inquiry, the trial court may question trial counsel, the defendant, or may rely on its own knowledge of counsel's performance at trial. *Moore*, 207 Ill. 2d at 78-9. At the conclusion of the inquiry, the trial court will have the "necessary information to determine whether new counsel should be appointed to argue the claim of ineffective assistance of counsel." *Banks*, 237 Ill. 2d at 213.

Here, despite the lack of a preliminary inquiry, trial counsel's statements alone require the appointment of counsel. Trial counsel explained that he was "surprise[d] at the depth of the [other-crimes] evidence and testimony brought by the State," and that he "had no chance to review" C.H.'s statement and the forensic evidence from 11-CF-888. (RVII. 138-9) Trial counsel also admitted that "had [he] been thinking about [11-CF-888], [he] would have asked for review by [his] own experts." (RVII. 139) Additional inquiry is unnecessary to uncover the factual basis of the claim, as trial counsel's statements sufficiently revealed its basis. Standing alone, trial counsel's statements indicate possible neglect of the

case, satisfying the preliminary inquiry requirement and necessitating the appointment of new counsel. *See Moore*, 207 Ill. 2d at 78-9 ("if the allegations show possible neglect of the case, new counsel should be appointed").

This case is much stronger than a typical *Krankel* complaint, which is made *pro se,* by a non-attorney. When a claim of ineffectiveness is raised by trial counsel, it is made by an officer of the court, who possesses a duty of candor to the court, and who is presumed to be familiar with the norms of professional conduct for attorneys. As such, when trial counsel's statements to the trial court indicate possible neglect of a case, as they do in this case, they trigger the appointment of new counsel. If trial counsel's admissions to the trial court concern a matter of trial strategy or otherwise lack merit, then the appointment of new counsel is unnecessary. *See Moore*, 207 Ill. 2d at 78 ("If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel"). Here, trial counsel's statements to the trial court indicated possible neglect and made further inquiry to understand the factual basis of the claim unnecessary.

Because trial counsel's statements to the trial court indicated possible neglect of the case and it would be inappropriate for trial counsel to present any argument about his representation (*Moore*, 207 Ill. 2d at 79), this Court should remand for the appointment of new, conflict-free counsel to present the claim that Bates's trial counsel was ineffective.

CONCLUSION

For the foregoing reasons, Quentin Bates, defendant-appellant, respectfully requests that this Court remand for a preliminary inquiry, or, alternatively, remand for the appointment of new, conflict-free counsel to present the claim that Bates's trial counsel was ineffective.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Emily E. Filpi, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding 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 32 pages.

/s/Emily E. Filpi
EMILY E. FILPI
Assistant Appellate Defender

APPENDIX TO THE BRIEF

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS

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Report of Proceedings ("R")

IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS
SEVENTH JUDICIAL CIRCUIT

Date of Sentence: 4/1/16
Defendant DOB: 06/19/82
Victim DOB: 07/04/90

PEOPLE OF THE STATE OF ILLINOIS)
)
VS.) CASE NO. 11-CF-953
)
QUENTIN BATES,)
Defendant)

FILED
APR 11 2016 18
Clerk of the Circuit Court

JUDGMENT-SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below:

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
I	HOME INVASION	9/19/11	720 ILCS 5/12-11(a)(1)	(F/X)	30 Years	3 Years
To run concurrent with counts II, III and served at (50%) 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3						
II	AGGRAVATED CRIMINAL SEXUAL ASSAULT	9/19/11	720 ILCS 5/11-1.30(a)(1)	(F/X)	40 Years	3 Years
To run consecutive to count III and served at 50%, 75%, (85%) 100% pursuant to 730 ILCS 5/3-6-3						
III	AGGRAVATED CRIMINAL SEXUAL ASSAULT	9/19/11	720 ILCS 5/11-1.30(a)(1)	(F/X)	30 Years	3 Years
To run consecutive to count II and served at 50%, 75%, (85%) 100% pursuant to 730 ILCS 5/3-6-3						

The Court finds that the defendant is:

☐ Convicted of a Class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4.5-95(b).

☑ **The Court finds that the defendant is entitled to receive credit for time actually served in custody of 1,628 days as of the date of this order from 10/18/11-4/1/16. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.**

_X_ The Defendant remained in continuous custody from the date of this order.

___ The Defendant did not remain in continuous custody from the date of this order (Less _____ days from a release date of _____ to a surrender date of _____).

☐ The Court further finds that the conduct leading to conviction for the offense(s) enumerated in count(s)_____ resulted in **great bodily harm** to the victim (730 ILCS 5/3-6-3(a)(2)(iii)).

☐ The Court further finds that the defendant meets the eligibility requirements for possible placement in the **Impact Incarceration Program**. (730 ILCS 5/5-4-1(a)).

☐ The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. (730 ILCS 5/5-4-1(a)).

☐ The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ___Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible and shall be awarded additional sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4) for _____total number of days of program participation, if not previously awarded.

☐ The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

☐ IT IS FURTHER ORDERED that the sentence(s) imposed on count(s)_____ be (concurrent with)(consecutive to) the sentence imposed in Case Number _____ in the Circuit Court of _____ County.

☐ IT IS FURTHER ORDERED that _____

The Clerk of the Court shall deliver a certified copy of this order to the Sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is effective immediately.

DATE: 4/1/16

ENTER: _____
Honorable John P. Schmidt

Approved by Conference of Chief Judges 6-20-14 (rev. 10/23/15)

IN THE CIRCUIT COURT OF SANGAMON COUNTY

CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellee, -vs- QUENTIN BATES, Defendant-Appellant	)	Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois. No. 11-CF-953 Honorable John P. Schmidt, Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name: Quentin Bates

Appellant's Address: Sangamon County Jail
200 S. Ninth Street
Springfield, IL 62701

Appellant(s) Attorney: Office of the State Appellate Defender

Address: 400 West Monroe Street, Suite 303
P.O. Box 5240
Springfield, IL 62705-5240

Offense of which convicted: Home Invasion, 2 Counts Aggravated Sexual Assault

Date of Judgment or Order: April 1, 2016

Sentence: 30 years; 30 years; 40 years

Nature of Order Appealed: Conviction and sentence

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(05/31/16) C:00527

2018 IL App (4th) 160255

NO. 4-16-0255

FILED
September 27, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. QUENTIN BATES, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Sangamon County No. 11CF953 Honorable John P. Schmidt, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Justices DeArmond and Turner concurred in the judgment and opinion.

OPINION

¶ 1 In November 2011, the State charged defendant with (1) home invasion, (2) aggravated criminal sexual assault (penis to mouth), and (3) aggravated criminal sexual assault (penis to vagina). 720 ILCS 5/12-11(a)(1) (West 2010); *id.* § 11-1.30(a)(1). The State alleged that in September 2011, defendant, while armed with a knife, broke into A.P.'s dwelling and sexually assaulted her.

¶ 2 In October 2013, the State filed notice of intent to use evidence of other sex offenses. 725 ILCS 5/115-7.3(b) (West 2012). In pertinent part, the State alleged that, in October 2011, defendant, while armed with a knife, broke into C.H.'s dwelling and sexually assaulted her. In November 2013, the trial court granted the State's motion.

¶ 3 In January 2016, the State filed a motion *in limine* to exclude evidence of A.P.'s past sexual conduct. 725 ILCS 5/115-7(a) (West 2016). In response, defendant argued that semen

found on A.P.'s vaginal swab that came from an unidentified male should not be excluded. The trial court granted the State's motion *in limine*.

¶ 4 In January 2016, a Sangamon County jury convicted defendant on all charges. In March 2016, defendant filed a motion for a new trial. The trial court denied the motion for a new trial and sentenced defendant to 30 years for home invasion, 40 years for aggravated criminal sexual assault (penis to vagina), and 30 years for aggravated criminal sexual assault (penis to mouth), with the sentences to run concurrently.

¶ 5 Defendant appeals, arguing (1) he received ineffective assistance of counsel, (2) he was denied his constitutional right to confront witnesses, (3) he should receive a new trial because the State mentioned other sexual assaults that occurred in the area, (4) the amount of evidence presented regarding C.H. deprived him the right to a fair trial, and (5) the trial court erred by failing to conduct a *Krankel* hearing (see *People v. Krankel*, 102 Ill. 2d 181, 188-89, 464 N.E.2d 1045, 1048-49 (1984)). We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 A. The Indictment

¶ 8 In November 2011, the State charged defendant with (1) home invasion, (2) aggravated criminal sexual assault (penis to mouth), and (3) aggravated criminal sexual assault (penis to vagina). 720 ILCS 5/12-11(a)(1) (West 2010); *id.* § 11-1.30(a)(1). The State alleged that in September 2011, defendant, while armed with a knife, broke into A.P.'s dwelling and sexually assaulted her.

¶ 9 B. The State's Notice of Intent

¶ 10 In October 2013, the State filed notice of intent to use evidence of other sex offenses. 725 ILCS 5/115-7.3(b) (West 2012). The State's motion stated the following:

"It is alleged in this case that on September 19, 2011, the victim, A.P., *** awoke to find a black male holding a knife. The male threatened her with the knife and then placed his penis in her mouth. He also choked her with his hands and placed his penis in her vagina. *** It was determined that the male had entered through a bedroom window. While [the victim] was seeking treatment at the hospital, swabs were taken from the victim and sent to the Illinois State Police Forensic Science Crime Laboratory. Testing of one of the swabs revealed the presence of semen. DNA testing was conducted on this specimen and it was determined that the defendant *** could not be excluded as a contributor of the identified male DNA[.]

The defendant is also charged in Sangamon County Circuit Court case number 11-CF-888 with Home Invasion, two counts of Aggravated Criminal Sexual Assault, and Residential Burglary.

In 11-CF-888 it is alleged that on October 6, 2011, the victim, C.H., was asleep in bed *** and awoke to find a black male holding a knife to her throat. The male *** put his mouth on her neck, breasts, and vagina *** and choked her. *** It was determined that he had entered the residence through a window. While seeking treatment at the hospital, swabs were taken from the victim and sent to the Illinois State Police Forensic Crime Science Laboratory. Testing on one of the swabs revealed the presence of DNA which was a match to the DNA of the defendant[.]

The probative value of the proposed evidence outweighs any undue prejudice *** as demonstrated by the proximity in time between the two

incidents, the degree of factual similarity between the two incidents, as well as other relevant factors and circumstances."

¶ 11 Defendant argued the two crimes were dissimilar and that introduction of evidence from this second crime would be unfairly prejudicial. In November 2013, the trial court granted the State's motion, concluding that there was a "strong similarity" between the two crimes and that the probative value outweighed any prejudicial effect. Accordingly, the court allowed the State to introduce this other-crime evidence as long as it was otherwise admissible. The court later denied defendant's motion to reconsider.

¶ 12 C. The State's Motion *in Limine*

¶ 13 In January 2016, the State filed a motion *in limine* to exclude evidence of A.P.'s past sexual conduct. 725 ILCS 5/115-7(a) (West 2016). In this motion, the State conceded that "DNA evidence was found on the victim *** and her clothing that was traced to having originated from three separate individuals besides Defendant and A.P. Further, A.P. acknowledges having had prior sexual relations with individuals prior to the night of the alleged offense in the present case."

¶ 14 In response, defendant conceded that the two samples of DNA evidence found on A.P.'s clothing were from consensual sexual partners and that this evidence should be excluded. However, defendant argued that the third DNA sample, which was semen from an unidentified male found on A.P.'s vaginal swab, should not be excluded because "the victim says she was *** vaginally assaulted."

¶ 15 Later that month, the trial court granted the State's motion *in limine*, concluding that the "evidence is coming in solely to show prior sexual history and that is clearly *** prohibited by the Rape Shield Statute." See *id.*

¶ 16 Defendant would later make an oral motion to reconsider, arguing that the other DNA found on A.P.'s vaginal swab was evidence that an individual other than defendant was responsible for assaulting A.P. The trial court denied this motion.

¶ 17 D. The Jury Trial

¶ 18 In January 2016, this case proceeded to a jury trial.

¶ 19 1. *The Evidence of the Attack on A.P.*

¶ 20 A.P. testified that on the night of September 19, 2011, she was asleep in her apartment in Springfield, Illinois. She awoke to find a black male with his face covered approaching her. The man put his hands around her neck and touched her side with a knife. The man grabbed A.P., turned her over, and put his penis into her vagina. The man eventually threw her to the ground and told her to perform oral sex upon him. The man subsequently turned A.P. over, put his penis back into her vagina, and eventually ejaculated on her back. A.P. testified that she never got a good look at the man because his face was covered.

¶ 21 When the man left, A.P. called the police. Police officers testified that they found a knife in the bedroom. A.P. was taken to a hospital, and nurse Theresa Duncan testified that she swabbed A.P.'s mouth, vagina, vaginal area, and outer anal area for bodily fluids. Duncan noted that defendant's DNA was later discovered on the anal swab. She stated that it would be normal to find sperm cells on an anal swab even if there was not anal penetration.

¶ 22 Cory Formea, a forensic scientist for the Illinois State Police Crime Lab, testified that sperm cells were found on A.P.'s anal swab. He concluded that defendant could not be excluded as the contributor of the DNA and that this DNA profile would occur in "one in [every] 840 trillion blacks[.]" Formea conceded that defendant's DNA was not found on A.P.'s oral or vaginal swab. Brian Johnston, a detective for the Springfield Police Department, testified that he

investigated the attack on A.P.

¶ 23 2. *The Evidence of the Attack on C.H.*

¶ 24 Mike Flynn, an investigator for the Springfield Police Department, stated that he investigated the attack on C.H. He stated that C.H. was asleep in her home on October 6, 2011, and was sexually assaulted. Flynn testified that he believed that the person responsible for the attack on C.H. may have been responsible for the attack on A.P. because of the similarity between the two attacks.

¶ 25 C.H. testified that on the night of October 6, 2011, she awoke to find a black male holding a knife to her throat. The man licked her breasts and vagina and stole money from her. After he left, C.H. called the police and went to the hospital.

¶ 26 A nurse testified that she examined and swabbed C.H.'s neck, chest, breasts, and genitals at the hospital. Dana Pitchford, a forensic scientist for the Illinois State Police, noted that saliva was found on C.H.'s chest swab. She testified that the male DNA found in the saliva matched defendant's DNA. She elaborated that "this profile would be expected to occur in approximately one in 2.8 quintillion black[s]."

¶ 27 3. *The Interrogation Video*

¶ 28 On the first day of trial, outside the presence of the jury, defendant made an oral motion to exclude the video of his interrogation for the alleged sexual assault of C.H. Defendant argued that the video had no probative value and was prejudicial. The trial court denied the motion.

¶ 29 On the second day of trial, before the video was played to the jury, the State informed the trial court that it had modified the video to "take out certain items that were objectionable by the defense." Defendant consented to the introduction of this modified video.

¶ 30 During the modified interrogation video, Flynn and Brian Johnston accused defendant of sexual assault. They informed him that they had a solid case against him because his DNA was found on an alleged victim of sexual assault. They stated they believed he was responsible for the alleged assault on C.H. and implied that he was responsible for other sex crimes. The video also contained allegedly prejudicial information such as (1) defendant's admission that he was on welfare, (2) defendant's explicit description of his sexual history, (3) defendant's admission that he had cheated on romantic partners, (4) the police accusations that defendant was guilty, and (5) the mentioning of other sexual assaults that had occurred throughout the state.

¶ 31 However, at all times on the modified interrogation video, defendant remained adamant that he did not sexually assault anyone. Instead, after describing his numerous sexual conquests, defendant argued that he would never rape anyone because he can get all the sex he ever needed. Defendant repeatedly and vigorously denied ever committing rape or sexual assault.

¶ 32 4. *The Defense*

¶ 33 Defendant declined to testify on his own behalf. James Ravellette, a forensic scientist, testified that defendant's DNA was not found on A.P.'s vaginal or oral swab. On cross-examination, Ravellette conceded that defendant could not be excluded as the contributor of the DNA from A.P.'s anal swab. Moreover, Ravellette conceded that the DNA profile on the anal swab would only occur in one out of every 840 trillion individuals "[i]n the African[-]American population[.]"

¶ 34 5. *The Guilty Verdict*

¶ 35 The jury convicted defendant of home invasion and of both counts of aggravated criminal sexual assault.

¶ 36 E. The Motion for a New Trial and Defendant's Sentence

¶ 37 In March 2016, defendant filed a motion for a new trial, arguing the trial court erred by (1) allowing in evidence of C.H.'s attack and (2) granting the State's motion to exclude any reference to the unknown semen found on A.P.'s vaginal swab.

¶ 38 In April 2016, the trial court conducted a hearing on the motion, and defendant argued that the court should grant a new trial because there was "a trial within a trial" regarding the issue of whether defendant assaulted C.H. While making this argument, defendant's attorney stated the following:

> "[W]e had a trial within a trial when you allowed testimony [regarding C.H.'s case]. The thing that really bothers me *** is that [defendant] had another attorney [in the case where the State charged defendant with assaulting C.H.]. I was not [the] attorney [in that case]. So all the testimony about [C.H.'s assault] *** I was generally aware, of course, but I couldn't possibly do as good a job defending my client since it wasn't my case. So I think that perhaps we all should have thought of that, State's Attorney as well. But I think that is first and foremost a reason for a new trial.
>
> I was taken by surprise at the depth of the evidence and testimony brought by the State's Attorney *** [regarding the other] alleged victim, forensic scientists, I had no chance to review that. As you know, had I been thinking about that case, I would have asked for review by our own experts. So that alone, I think, is reason for a new trial."

¶ 39 The trial court denied the motion for a new trial and sentenced defendant to 30 years for home invasion, 40 years for aggravated criminal sexual assault (penis to vagina), and

30 years for aggravated criminal sexual assault (penis to mouth), with the sentences to run concurrently.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 Defendant appeals, arguing (1) he received ineffective assistance of counsel, (2) he was denied his constitutional right to confront witnesses, (3) he should receive a new trial because the State mentioned other sexual assaults that occurred in the area, (4) the amount of evidence presented regarding C.H. deprived him of the right to a fair trial, and (5) the trial court erred by failing to conduct a *Krankel* hearing. We address these issues in turn.

¶ 43 A. Ineffective Assistance of Counsel

¶ 44 Defendant argues that he received ineffective assistance of counsel because his attorney failed to object to the introduction of the modified interrogation video. Alternatively, defendant argues that he received ineffective assistance of counsel because his attorney failed to file a motion to suppress the interrogation video prior to the start of trial. We disagree.

¶ 45 1. *The Applicable Law*

¶ 46 To establish ineffective assistance of counsel, a defendant must show that counsel's performance was (1) deficient and (2) prejudicial. *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 10, 93 N.E.3d 664. When, as here, a claim of ineffective assistance of counsel was not raised in the trial court, our review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24, 42 N.E.3d 885.

¶ 47 To establish deficient performance, a defendant must show that his attorney's performance fell below an objective standard of reasonableness. *Id.* Judicial review of counsel's performance is highly deferential. *People v. McGath*, 2017 IL App (4th) 150608, ¶ 38, 83 N.E.3d

671. A defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327, 948 N.E.2d 542, 547 (2011). Trial strategy includes decisions such as what matters to object to and when to object. *People v. Ramsey*, 2017 IL App (1st) 160977, ¶ 36, 86 N.E.3d 1068. "[C]ounsel's strategic choices are virtually unchallengeable." *Manning*, 241 Ill. 2d at 333.

¶ 48 To establish prejudice, the defendant must show that, but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *People v. Houston*, 229 Ill. 2d 1, 4, 890 N.E.2d 424, 426 (2008). In the context of failure to file a motion to suppress, prejudice arises when a defendant demonstrates (1) that the unargued suppression motion would have been meritorious and (2) that a reasonable probability exists that the outcome of the trial would have been different had the evidence been suppressed. *People v. Henderson*, 2013 IL 114040, ¶ 15, 989 N.E.2d 192. A reasonable probability is defined as a probability which undermines confidence in the outcome of the trial. See *id.* Failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Fellers*, 2016 IL App (4th) 140486, ¶ 23, 77 N.E.3d 994.

¶ 49 2. *This Case*

¶ 50 First, defendant fails to demonstrate that his attorney's performance was deficient. *Manning*, 241 Ill. 2d at 327. Regarding the failure to file a motion to suppress and the failure to object to the modified video, counsel could have reasonably concluded that defendant's repeated denials and justifications for why he would not have committed sexual assault vastly outweighed the collateral prejudice. We acknowledge that the modified video had potentially prejudicial elements such as (1) defendant's admission that he was on welfare, (2) defendant's explicit description of his sexual history, (3) defendant's admission that he had cheated on romantic

partners, (4) the police accusations that defendant was guilty, and (5) the mentioning of other sexual assaults throughout the state. However, despite these potentially prejudicial elements, the video contained defendant's frequent and vehement denials that he ever committed sexual assault. These denials could certainly have been viewed by the jury as undermining the State's case and had the potential to be particularly significant because defendant chose not to testify at trial. Thus, defendant's vehement denials that he committed these crimes came before the jury solely as a result of the admission of the modified video.

¶ 51 Further, as opposed to in-court testimony, such denials were not subject to the State's cross-examination or impeachment at trial. Defense counsel's strategic use of the modified video is shown by his closing argument, which reads as follows:

> "The video that we saw of [defendant] was obviously brought to make him look bad, discredit him. But the thing that I noticed about that two-hour tape was that he was very consistent. He didn't know he was going to be arrested. He was very consistent. He maintained that he didn't know anything about this event that the police officers were inquiring about. And they used all the techniques that police officers can and often do. And after over two hours, I didn't see that he made any admission or any suggestion that he was involved in this event. So I think it should be clear to you that even though [defendant] did not testify, clearly *** you can see that at an early time in the investigation that he knew nothing of this incident with either lady."

¶ 52 As to why counsel initially objected at trial but failed to file a pretrial motion to suppress, we first note that trial strategy includes decisions such as when to object. *Ramsey*, 2017 IL App (1st) 160977, ¶ 36. Moreover, as compared to a motion to suppress filed weeks in

advance, counsel may have made this oral objection in order to gain a last-minute concession from the State. In that regard, counsel was apparently successful because the State voluntarily removed otherwise irrelevant and prejudicial material from the video the day before it was scheduled to be played to the jury. For the reasons stated, we conclude that defendant fails to demonstrate that his counsel's performance was deficient.

¶ 53 Second, defendant fails to establish prejudice. Defendant's link to the sexual assault on C.H., which was admissible to show defendant's propensity to commit similar crimes, was indisputable. Moreover, the DNA evidence linking defendant to A.P.'s assault was overwhelming. However, by the State's introduction of the interrogation video, the jury was able to hear defendant's repeated and emphatic claims of innocence. Furthermore, such statements were not subject to the State's cross-examination or impeachment. Thus, the video could be viewed as an asset to defendant's case. Accordingly, we conclude that, even if we assume that trial counsel could have excluded the entire video or specific portions of it, there is not a reasonable probability that the result of the trial would have been different. *Houston*, 229 Ill. 2d at 4. Defendant's claim of ineffective assistance of counsel fails. *Fellers*, 2016 IL App (4th) 140486, ¶ 23.

¶ 54 B. The Rape Shield Statute

¶ 55 Defendant argues that he had a constitutional right to confront A.P. and the State's expert witness about the unidentified semen found on A.P.'s vaginal swab because "there is a possibility that the person whose DNA was found on A.P.'s vaginal swab was also the source of the DNA on the anal swab and was the attacker." We disagree, concluding that this evidence would not have made a meaningful contribution to the fact-finding enterprise. *People v. Maxwell*, 2011 IL App (4th) 100434, ¶ 76, 961 N.E.2d 964.

¶ 56 1. *The Applicable Law*

¶ 57 The purpose of the rape shield statute is "to prevent the defendant from harassing and humiliating the complaining witness with evidence of *** specific acts of sexual conduct with persons other than defendant, since such evidence has no bearing on whether she consented to sexual relations with the defendant." *People v. Summers*, 353 Ill. App. 3d 367, 373, 818 N.E.2d 907, 912 (2004). The rape shield statute, in pertinent part, provides as follows:

> "In prosecutions for *** aggravated criminal sexual assault *** the prior sexual activity or the reputation of the alleged victim *** is inadmissible except (1) as evidence concerning the past sexual conduct of the alleged victim *** with the accused when this evidence is offered by the accused upon the issue of whether the alleged victim *** consented to the sexual conduct with respect to which the offense is alleged; or (2) when constitutionally required ***." 725 ILCS 5/115-7(a) (West 2016).

¶ 58 The due-process clause of the fourteenth amendment and the confrontation clause of the sixth amendment guarantee a criminal defendant the right to a meaningful opportunity to present a complete defense. U.S. Const., amend. VI, XIV; *People v. Santos*, 211 Ill. 2d 395, 412, 813 N.E.2d 159, 168 (2004). An essential component of procedural fairness is an opportunity to be heard. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). Moreover, notwithstanding the protections of the rape shield statute, a defendant's right under the confrontation clause may require the admission of a victim's prior sexual activity when such evidence is relevant and shows the alleged victim's " 'bias, prejudice or motive.' " *Santos*, 211 Ill. 2d at 415 (quoting *People v. Sandoval*, 135 Ill. 2d 159, 174-75, 552 N.E.2d 726, 733 (1990)).

¶ 59 The "constitutionally required" exception to the rape shield statute should be

construed narrowly but also fairly. (Internal quotation marks omitted.) *People v. Munoz-Salgado*, 2016 IL App (2d) 140325, ¶ 17, 61 N.E.3d 257. This statute must not be applied to obscure relevant evidence that bears directly on guilt or innocence. *People v. Johnson*, 2014 IL App (2d) 121004, ¶ 42, 36 N.E.3d 821. However, an alleged victim's sexual history is not constitutionally required to be admitted unless it would make a meaningful contribution to the fact-finding enterprise. *Maxwell*, 2011 IL App (4th) 100434, ¶ 76. The constitution does not require the admission of evidence which is only marginally relevant or which poses an undue risk of harassment, prejudice, or confusion of the issues. *Crane*, 476 U.S. at 689-90.

¶ 60 The trial court's evidentiary rulings made under the rape shield statute are reviewed for an abuse of discretion. *People v. Sandifer*, 2016 IL App (1st) 133397, ¶ 26, 65 N.E.3d 969. A trial court abuses its discretion when it acts arbitrarily or when no reasonable person would take the view adopted by the trial court. *People v. Chambers*, 2016 IL 117911, ¶ 68, 47 N.E.3d 545.

¶ 61 2. *This Case*

¶ 62 In this case, A.P. identified her attacker as a black male. Unidentified semen was found on A.P.'s vaginal swab, and defendant could not be excluded as the potential source of the DNA found on A.P.'s anal swab. Defendant's own expert witness conceded that the DNA profile found on A.P.'s anal swab would only occur in one out of every 840 trillion individuals "[i]n the African[-]American population[.]" Defendant argues that he had a constitutional right to confront A.P. and the State's expert witness about the unidentified semen found on A.P.'s vaginal swab because "there is a possibility that the person whose DNA was found on A.P.'s vaginal swab was also the source of the DNA on the anal swab and was the attacker."

¶ 63 We conclude that—under the facts of this case—the unidentified semen found on

A.P.'s vaginal swab was not constitutionally required to be admitted. 725 ILCS 5/115-7(a) (West 2016). Due to the statistical improbabilities that an unidentified person other than defendant contributed both the semen on A.P.'s vaginal swab and anal swab, this evidence would not make a meaningful contribution to the fact-finding enterprise. *Maxwell*, 2011 IL App (4th) 100434, ¶ 76.

¶ 64 Instead, at best, the unidentified semen would be marginally relevant. *Johnson*, 2014 IL App (2d) 121004, ¶ 42. Likewise, this evidence would pose an undue risk of harassment, prejudice, and confusion of the issues. *Crane*, 476 U.S. at 689-90. Finally, assuming the unidentified semen was from a consensual partner, such evidence would have "no bearing on whether [A.P.] consented to sexual relations with the defendant." *Summers*, 353 Ill. App. 3d at 373.

¶ 65 Likewise, the trial court's action did not deprive defendant of his right to confront witnesses or to present the theory of his case. Defendant confronted the State's expert witness on cross-examination by demonstrating that his DNA was not found on A.P.'s vaginal swab and that he was not a direct match on A.P.'s anal swab. Further, this is not a case where a defendant contends that he had consensual sex with a victim but argues that another unknown individual subsequently raped the victim. Instead, defendant's theory was that he had never had sex with A.P. If the jury would have believed this argument, defendant would not have been found guilty of criminal sexual assault. Accordingly, under the facts of this case, the trial court did not abuse its discretion in denying the introduction of this evidence. *Chambers*, 2016 IL 117911, ¶ 68.

¶ 66 C. Related Sexual Assaults

¶ 67 The State played an interrogation video of defendant in which the investigators insinuated that defendant may have been responsible for other crimes in the area. Likewise,

various State witnesses discussed—in passing—that other sexual assaults had occurred in the area. Defendant argues that he should receive a new trial because the State "repeatedly presented irrelevant and unduly prejudicial evidence that there were other 'related' sexual assaults that occurred around the time of the charged offense, suggesting to the jury that [defendant] was responsible for numerous assaults." Defendant concedes that he forfeited this issue but argues he prevails under the plain-error doctrine. We disagree.

¶ 68 1. *The Applicable Law*

¶ 69 To preserve an alleged error for appeal, a defendant must object at trial and file a written posttrial motion. *People v. Colyar*, 2013 IL 111835, ¶ 27, 996 N.E.2d 575. Failure to do either results in forfeiture. *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675.

¶ 70 The plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider an unpreserved error when (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Ely*, 2018 IL App (4th) 150906, ¶ 15, 99 N.E.3d 566.

¶ 71 The usual first step under either prong of the plain-error doctrine is to determine whether there was a clear or obvious error at all. *People v. Matthews*, 2017 IL App (4th) 150911, ¶ 17, 93 N.E.3d 597. When a defendant claims first-prong error, he must prove that an error occurred and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. *Id.* ¶ 26. In determining if the evidence was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of the evidence within the context of the case. *Sebby*, 2017 IL 119445, ¶ 53. If the defendant meets his burden, he has demonstrated actual prejudice, and his conviction should be reversed. *Id.* ¶ 44.

¶ 72 When a defendant claims second-prong error, he must prove that a structural error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613-14, 939 N.E.2d 403, 413-14 (2010). A structural error is an error which renders a criminal trial fundamentally unfair or unreliable in determining a defendant's guilt or innocence. *People v. Bowens*, 407 Ill. App. 3d 1094, 1101, 943 N.E.2d 1249, 1258-59 (2011). Structural errors occur in very limited circumstances. *People v. Averett*, 237 Ill. 2d 1, 13, 927 N.E.2d 1191, 1198 (2010).

¶ 73 The defendant bears the burden of persuasion at all times under the plain-error doctrine. *People v. Suggs*, 2016 IL App (2d) 140040, ¶ 61, 57 N.E.3d 1261. If the defendant fails to meet his burden, the issue is forfeited, and the reviewing court will honor the procedural default. *People v. Ahlers*, 402 Ill. App. 3d 726, 734, 931 N.E.2d 1249, 1255 (2010).

¶ 74 However, the plain-error doctrine only applies in cases involving procedural default. *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 29, 92 N.E.3d 494. The plain-error doctrine does not apply to affirmative acquiescence. *Id.* That means that, when defense counsel affirmatively acquiesces to actions taken by the trial court, any potential claim of error on appeal is waived and defendant's only available challenge is to allege that he received ineffective assistance of counsel. *People v. Young*, 2013 IL App (4th) 120228, ¶¶ 25-26, 996 N.E.2d 671.

¶ 75 2. *This Case*

¶ 76 First, the mentioning of other sexual assaults in addition to A.P. and C.H. occurred almost exclusively during the interrogation video. However, as we discussed earlier, defense counsel affirmatively acquiesced to the introduction of this video. Accordingly, defendant has waived these errors for appeal and cannot claim this error under the plain-error doctrine. *Id.*

¶ 77 Second, the evidence was not closely balanced. The similarities between C.H.'s

case and A.P.'s case were stark and overwhelming. Further, as mentioned, the DNA evidence against defendant was substantial. Last, the vague statements that other crimes occurred in the area did not come close to amounting to structural error. Accordingly, this argument is without merit, and we honor the procedural default. *Ahlers*, 402 Ill. App. 3d at 734.

¶ 78 D. The Evidence of C.H.'s Assault

¶ 79 Defendant argues that he was deprived of his right to a fair trial because the evidence of the alleged assault against C.H. "was presented with unnecessary detail, [the] probative value of the evidence was substantially outweighed by undue prejudice, and *** the other-crimes evidence constituted an improper mini-trial." We disagree.

¶ 80 1. *The Applicable Law*

¶ 81 Illinois Rule of Evidence 404(b) provides that:

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith except as provided by sections 115-7.3, 115-7.4, and 115-20 of the Code of Criminal Procedure (725 ILCS 5/115-7.3, 725 ILCS 5/115-7.4, and 725 ILCS 5/115-20). Such evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 82 Section 115-7.3 of the Code of Criminal Procedure, in pertinent part, provides as follows:

> "(a) This Section applies to criminal cases in which:
>
> (1) the defendant is accused of *** aggravated criminal sexual assault ***[.]

* * *

(b) If the defendant is accused of an offense set forth in paragraph (1) or (2) of subsection (a) *** evidence of the defendant's commission of another offense or offenses set forth in paragraph (1), (2), or (3) of subsection (a) *** may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant.

(c) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances." 725 ILCS 5/115-7.3(a)-(c) (West 2016).

¶ 83 The exception created by section 115-7.3 incorporates the rules of evidence. *Id.* § 115-7.3(b). Illinois Rule of Evidence 403 provides that 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." Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 84 A trial court's balancing determination pursuant to Rule 403 is subject to an abuse of discretion standard. *Hoffman v. Northeast Illinois Regional Commuter R.R. Corp.*, 2017 IL App (1st) 170537, ¶ 49, 99 N.E.3d 16. An appellate court reviews the trial court's admission of other-crimes evidence under an abuse of discretion standard. *People v. Braddy*, 2015 IL App

(5th) 130354, ¶ 27, 32 N.E.3d 39. A trial court abuses its discretion when it acts arbitrarily or when no reasonable person would take the view adopted by the trial court. *Chambers*, 2016 IL 117911, ¶ 68.

¶ 85 In *People v. Walston*, 386 Ill. App. 3d 598, 618, 900 N.E.2d 267, 286 (2008), the Second District evaluated the amount of evidence to be admitted under section 115-7.3. The court noted that, under section 115-7.3, the State "has a compelling reason to introduce thorough evidence to establish a defendant's propensity." *Id.* at 613. The court also gave an "expansive interpretation" regarding the amount of evidence that can be allowed under section 115-7.3. *Id.* at 625. Regarding the danger of "mini-trials," the court reasoned that the "danger of unfair prejudice [from a mini-trial] in the context of a section 115-7.3 case, as opposed to a common-law other-crimes case, is greatly diminished." *Id.* at 619. Finally, the court reasoned that any "limits under section 115-7.3 on mini-trials based on judicial economy must *** defer largely to prosecutorial discretion." *Id.* at 621.

¶ 86 2. *This Case*

¶ 87 First, we reject defendant's argument that the State presented evidence from C.H.'s case "with unnecessary detail." As stated in *Walston*, the State had "a compelling reason to introduce thorough evidence to establish a defendant's propensity." *Id.* at 613. To that point, during defendant's opening argument, defense counsel explicitly stated that the State bore the burden of proving that defendant committed the assault against C.H. and that the assault against C.H. was merely an "allegation."

¶ 88 Second, the trial court's balancing determination pursuant to Rule 403 was not an abuse of discretion. *Hoffman*, 2017 IL App (1st) 170537, ¶ 49; 725 ILCS 5/115-7.3(c) (West 2016). In this case, the State introduced comprehensive evidence of defendant's alleged attack on

C.H., including (1) C.H.'s testimony, (2) testimony from a nurse who evaluated C.H. at the hospital, (3) a forensic scientist who testified that defendant's DNA was found on C.H.'s chest swab, and (4) the interrogation video regarding C.H.'s assault. This evidence was highly probative because the jury could use this evidence for propensity purposes. 725 ILCS 5/115-7.3(b) (West 2016). Conversely, although this evidence was certainly harmful to defendant's case, we do not view it as unfairly prejudicial. *People v. Barnes*, 2013 IL App (1st) 112873, ¶ 44, 3 N.E.3d 330 (unfair prejudice means an improper basis upon which to make a decision such as emotion, sympathy, hatred, contempt, or horror). Instead, in sexual assault cases, a defendant's propensity to commit such crimes is a proper factor for the jury to consider. 725 ILCS 5/115-7.3(b) (West 2016). Considering the similarity between the sexual assault of A.P. and C.H. and the strength of the DNA evidence, we conclude that the trial court's balancing determination pursuant to Rule 403 was not an abuse of discretion. See *Hoffman*, 2017 IL App (1st) 170537, ¶ 49; 725 ILCS 5/115-7.3(c) (West 2016).

¶ 89 Last, we reject defendant's argument that an improper mini-trial occurred. As stated in *Walston*, the "danger of unfair prejudice [from a mini-trial] in the context of a section 115-7.3 case, as opposed to a common-law other-crimes case, is greatly diminished." *Walston*, 386 Ill. App. 3d at 619. Instead, this "mini-trial" was necessary to establish defendant's involvement in the attack on C.H.

¶ 90 E. *Krankel* Hearing

¶ 91 In this case, defense counsel filed a motion for a new trial and argued that the trial court erred by (1) allowing in evidence of C.H.'s attack and (2) granting the State's motion to exclude any reference to the unknown semen found on A.P.'s vaginal swab. When the matter proceeded to a hearing, defense counsel argued that the court should grant a new trial because

there was "a trial within a trial" regarding the issue of whether defendant assaulted C.H. When making this argument, defendant's attorney stated as follows:

> "[W]e had a trial within a trial when you allowed testimony [regarding C.H.'s case]. The thing that really bothers me *** is that [defendant] had another attorney [in the case where the State charged defendant with assaulting C.H.]. I was not [the] attorney [in that case]. So all the testimony about [C.H.'s assault] *** I was generally aware, of course, but I couldn't possibly do as good a job defending my client since it wasn't my case. ***.
>
> I was taken by surprise at the depth of the evidence and testimony brought by the State's Attorney, *** [regarding the] alleged victim, forensic scientists, I had no chance to review that. As you know, had I been thinking about that case, I would have asked for review by our own experts. So that alone, I think, is reason for a new trial."

¶ 92 Based upon this, defendant argues that the trial court erred by failing to conduct a *Krankel* hearing. We disagree.

¶ 93 1. *The Applicable Law*

¶ 94 When a defendant who has been convicted brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, the trial court's duty to conduct a *Krankel* inquiry is triggered. *People v. Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 73. However, the trial court is not required to *sua sponte* conduct a *Krankel* inquiry absent a clear claim of ineffective assistance of counsel. *People v. Villanueva*, 2017 IL App (3d) 150036, ¶ 50, 82 N.E.3d 565.

¶ 95 A *Krankel* hearing contains two steps. *Id.* ¶ 46. First, the trial court makes a

preliminary inquiry to examine the factual basis of the claim. *Id.* If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, the trial court is not required to appoint new counsel. *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. Second, if the allegations show possible neglect of the case, new counsel is appointed to represent the defendant in a full hearing on his claim. *Villanueva*, 2017 IL App (3d) 150036, ¶ 46. Whether a defendant was entitled to a *Krankel* hearing is a legal question reviewed *de novo*. *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 68, 50 N.E.3d 66.

¶ 96 In *People v. Willis*, 2013 IL App (1st) 110233, ¶ 1, 997 N.E.2d 947, the defendant was 16 years old when he committed first degree murder. The defendant was tried as an adult pursuant to the then-mandatory automatic transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130 (West 2010)). *Willis*, 2013 IL App (1st) 110233, ¶ 1. After he was found guilty, defense counsel filed a motion for a new trial in which he alleged that he rendered ineffective assistance of counsel. *Id.* ¶ 62. Counsel stated that he failed to use due diligence to insure that a witness would be available to testify at trial, that this witness was material, and that his client was prejudiced as a result. *Id.* At a hearing on the motion, the State noted that counsel's allegation created a conflict of interest because he would have to argue his own ineffectiveness. *Id.* As a result, counsel struck the allegation of ineffective assistance of counsel, and the case was continued. *Id.* When the court later heard arguments on the motion, neither defendant nor his attorney referred to the now-stricken allegations of ineffective assistance of counsel, and the court made no inquiry into them. *Id.*

¶ 97 On appeal, the defendant argued that the trial court erred by failing to conduct a *Krankel* inquiry. *Id.* ¶ 60. The First District agreed, concluding that "the trial court has a duty to conduct an adequate inquiry when allegations of ineffective assistance arise. [Citation.] The trial

court [cannot] simply ignore or fail to address a claim of ineffective assistance of counsel without consideration of the claim's merits." *Id.* ¶ 72. Accordingly, the court remanded the case for a proper *Krankel* inquiry. *Id.* ¶ 74. In reaching this conclusion, the court took notice of the defendant's young age, reasoning as follows:

> "Given that [the defendant] was a minor at the time of his trial, we cannot reasonably expect him to raise the issue of his trial counsel's ineffective assistance on his own. A juvenile would be expected to be more at the mercy of counsel than an adult, and less likely to be cognizant and aware of his legal rights." *Id.* ¶ 70.

¶ 98 In *McGath*, 2017 IL App (4th) 150608, ¶ 1, the defendant was convicted of unlawful delivery of a controlled substance. Counsel filed a motion for a new trial arguing, in part, that a witness favorable to the defense was present for trial and that he did not call her to testify. *Id.* ¶ 17. The defendant did not allege his counsel's ineffectiveness in a *pro se* motion. See *id.* ¶ 52. On appeal, the defendant argued that the trial court erred by failing to conduct a *Krankel* hearing because counsel essentially argued his own ineffectiveness. *Id.* ¶ 45. This court disagreed, explaining that "*Krankel* and its progeny apply *only* to posttrial claims raised by a defendant *pro se*" (emphasis in original) (*id.* ¶ 49), and "a *Krankel* hearing is a term of art to describe the hearing the court must conduct when a defendant *pro se* has raised a posttrial claim regarding his counsel's ineffective assistance." *Id.* ¶ 51. As such, this court concluded that "[b]ecause defendant did not raise a *pro se* posttrial claim of ineffective assistance of counsel, there was no reason for the trial court to conduct a *Krankel* hearing." *Id.* ¶ 52.

¶ 99 2. *This Case*

¶ 100 Defendant argues that *Willis* is applicable to his case. We reject this argument

because (1) we disagree with the holding in *Willis* and, in the alternative, (2) *Willis* is distinguishable from the facts in this case.

¶ 101 We do not agree with the holding in *Willis* because, as the Illinois Supreme Court has repeatedly held, a *Krankel* hearing is required when the *defendant* who has been convicted brings a claim *pro se*, asserting ineffective assistance of counsel. *Ayres*, 2017 IL 120071, ¶ 11 ("The common-law procedure, which has evolved from our decision in *Krankel*, is triggered when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel."); *Jolly*, 2014 IL 117142, ¶ 29 (a *Krankel* hearing is required "when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel"); *People v. Patrick*, 2011 IL 111666, ¶ 32, 960 N.E.2d 1114 ("Following *Krankel*, this court clarified that newly appointed counsel is not automatically required in every case when a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel."); *People v. Taylor*, 237 Ill. 2d 68, 76, 927 N.E.2d 1172, 1176 (2010) ("nowhere in defendant's statement at sentencing did he specifically complain about his attorney's performance, or expressly state he was claiming ineffective assistance of counsel") *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003) (a *Krankel* inquiry is required when "a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel"); *People v. Pecoraro*, 144 Ill. 2d 1, 15, 578 N.E.2d 942, 948 (1991) ("*Krankel* is a fairly fact-specific case, and the circumstances in the case at hand, where defendant retained his own private counsel and did not request that he be represented by other counsel, do not warrant the application of *Krankel*"); *Krankel*, 102 Ill. 2d at 188-89 (a hearing is required when a defendant brings a *pro se* motion alleging ineffective assistance of counsel).

¶ 102 The Illinois Supreme Court has never held that a *Krankel* hearing may be triggered by a defense counsel's representations in the absence of the defendant's *pro se* motion

raising a claim of ineffective assistance of counsel, and we view that holding from *Willis* as inconsistent with Illinois Supreme Court doctrine. See *Pecoraro*, 144 Ill. 2d at 15 ("*Krankel* is a fairly fact-specific case, and the circumstances in the case at hand *** do not warrant the application of *Krankel*"). Accordingly, we reaffirm that "*Krankel* and its progeny apply *only* to posttrial claims raised by a defendant *pro se*." (Emphasis in original.) *McGath*, 2017 IL App (4th) 150608, ¶ 49.

¶ 103 Second, even if we were to agree with the rationale of *Willis*, we conclude that it is distinguishable. In this case, unlike in *Willis*, counsel's motion for a new trial did not allege that ineffective assistance of counsel was an independent reason for a new trial. See *Willis*, 2013 IL App (1st) 110233, ¶ 62. Likewise, counsel's dialogue at the hearing did not constitute a clear admission of ineffective assistance of counsel because counsel did not explicitly state that his performance was objectively unreasonable or prejudicial. Instead, counsel vaguely argued that defendant would have benefited by having a single attorney in both cases. These vague statements regarding counsel's performance did not constitute a clear claim of ineffective assistance of counsel warranting a *Krankel* inquiry. *Taylor*, 237 Ill. 2d at 77 (vague statements are not a clear claim of ineffective assistance of counsel).

¶ 104 Further, in *Willis*, the defendant was 16 years old. In this case, by contrast, defendant is an adult with previous interactions with the criminal justice system. We conclude that, as compared to a minor, we can reasonably expect that an adult can raise any issue of his trial counsel's ineffective assistance on his own. Compare *Pecoraro*, 144 Ill. 2d at 15 (an adult defendant can be expected to retain new private counsel prior to the hearing of his posttrial motions), with *Willis*, 2013 IL App (1st) 110233, ¶¶ 69-70 (a minor cannot be reasonably expected to assert his trial counsel's ineffectiveness). Likewise, an adult is more independent of

his attorney and is more likely to be aware of his legal rights. See *Willis*, 2013 IL App (1st) 110233, ¶ 70. Accordingly, by looking at the age and experience of the defendant in this case, *Willis* is further distinguished. See *id.* ¶¶ 1, 68-70.

¶ 105 III. CONCLUSION

¶ 106 For the reasons stated, we affirm the trial court's judgment.

¶ 107 Affirmed.

No. 124143

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- QUENTIN BATES Defendant-Appellant	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-16-0255. There on appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, No. 11-CF-953. Honorable John Schmidt, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 28, 2019, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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