

No. 131527

IN THE
SUPREME COURT OF ILLINOIS

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

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ORAL ARGUMENT REQUESTED

E-FILED
8/26/2026 10:06
CYNTHIA A. GRANT
SUPREME COURT CLERK

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ARGUMENT

This Court should reverse the appellate court's judgment and affirm defendant's convictions for five counts of predatory criminal sexual assault of his daughter, J.G. The People's opening brief established that it was not second prong plain error for the trial court to grant defendant's request for self-representation. Defendant's claim fails at the threshold step of the plain error inquiry because the trial court committed no error, much less a clear or obvious error. Peo. Br. 20. Defendant concedes that he was fit to stand trial, and the standard for fitness to waive counsel is the same. *Id.* at 21. While the Constitution *permits* a State to insist upon representation for a defendant with severe mental illness, it does not require a State to do so. *Id.* at 23. Thus, the trial court cannot have erred in granting this fit defendant's request to proceed pro se.

Further, the trial court did not abuse its discretion in concluding that defendant did not have severe mental illness — a finding that would have permitted the court to insist that defendant have counsel at trial — because an expert testified that he did not, and the expert's testimony was confirmed by the court's own observations. *Id.* at 27. And even if there was error, the trial court did not commit second prong plain error when it allowed this fit defendant to make a knowing and voluntary waiver of the right to self-

representation, and defendant does not argue that the evidence was closely balanced, so as to establish first prong plain error. *Id.* at 35.

In response, defendant makes three arguments, none of which is correct. First, he misinterprets *Indiana v. Edwards*, 554 U.S. 164 (2008), as imposing a heightened fitness standard for waivers of the right to self-representation. Def. Br. 26-28. *Edwards* did not alter the established fitness standard; instead, *Edwards* permitted a limitation on a defendant's right to self-representation, explaining that a State may insist upon representation for a defendant with severe mental illness. Second, defendant is wrong to think that the fact that he failed to mount a proficient defense is proof that he had severe mental illness. *Id.* at 42. That defendant failed to demonstrate legal acumen or secure an acquittal is no basis on which to find that he had severe mental illness. Accordingly, it would not have been within the trial court's discretion to deny defendant's request to proceed pro se. And third, defendant is wrong that the court erred in granting his request for self-representation and that such an error is equivalent to structural error. *Id.* at 52-55. It is uncontroverted that defendant was (repeatedly) offered counsel, he was fit to waive counsel, and he made a knowing and voluntary waiver of the right to counsel. Rather than undermining the integrity of the judicial

process, the court's approach to allowing defendant to exercise his right to self-representation affirmed the integrity of the judicial process.

Finally, defendant's requests for cross-relief are unpreserved and do not establish second prong plain error. Defendant's claim that he was unrepresented at the "fitness hearing," *see* Def. Br. 58, is belied by the record, for he was, in fact, represented by his counsel from the misdemeanor case while the trial court determined his fitness to stand trial. Further, defendant concedes that he was (and remains) fit to stand trial. And even if the nature of the representation afforded defendant at the "fitness hearing" at which Pan testified constituted error, there was no structural error because the issue of defendant's fitness to stand trial had already been resolved in proceedings in which defendant was represented by counsel.

And defendant is wrong that the trial court erroneously admitted the victim's out-of-court statement, *see* Def. Br. 63, where the requirements of the relevant statutory hearsay exception were met. Nothing in the record contradicts the trial court's finding that the last alleged incident of sexual abuse of J.G. fell within the statutory time period. Nor would any error be second prong plain error because the erroneous admission of hearsay is neither a constitutional nor a structural error.

I. The Trial Court Did Not Commit Plain Error by Allowing Defendant to Represent Himself.

A. *Edwards* did not establish a higher standard for allowing a defendant to waive counsel.

Fitness to waive counsel is measured by the same standard as fitness to plead guilty and fitness to stand trial, and defendant does not dispute that he met this standard. *See* Peo. Br. 20. Rather, defendant asserts that *Indiana v. Edwards* held that the Constitution requires that a defendant possess a higher “level of fitness” to waive counsel if that waiver precedes standing trial than if it precedes pleading guilty. Def. Br. 26-28. Defendant is incorrect. Instead, *Edwards* articulated a limitation on the right to self-representation set forth in *Faretta v. California*, 422 U.S. 806 (1975), permitting, but not requiring, a State to impose counsel on a “gray-area” defendant.

Faretta held that criminal defendants have a constitutional right to self-representation. 422 U.S. at 821; *see also* *People v. Haynes*, 174 Ill. 2d 204, 235 (1996) (“It is well established that the sixth amendment to the United States Constitution guarantees an accused in a criminal proceeding both the right to the assistance of counsel and the correlative right to proceed without counsel.”). Later, in *Godinez v. Moran*, 509 U.S. 389 (1993), the Supreme Court held that a defendant must be fit to exercise the *Faretta* right to waive counsel, and that the fitness standard that applies to such waivers is the same fitness standard applicable to questions of fitness to stand trial or

plead guilty. *Id.* at 396; *see also People v. Marcum*, 2024 IL 128687, ¶ 43 (“This court has recognized that an accused has a right to self-representation that is as basic and fundamental as the right to be represented by counsel,” and that “as long as a defendant’s waiver of his constitutional right to counsel is voluntary, knowing, and intelligent, he may waive that right.”) (internal quotation marks and brackets omitted).

In so holding, *Godinez* expressly “reject[ed] the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from)” the standard for fitness to stand trial. 509 U.S. at 398. This is so, the Supreme Court explained, because “there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights.” *Id.* at 399. Moreover, the Court expressly rejected the argument “that a higher competency standard is necessary because a defendant who represents himself must have greater powers of comprehension, judgment, and reason than would be necessary to stand trial with the aid of an attorney.” *Id.* (internal quotation marks omitted). That argument, the Court added, “has a flawed premise; the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.” *Id.* (emphasis in original); *see also People v. Mahaffey*, 166 Ill. 2d 1, 19 (1995) (“Competence to waive counsel is measured by the same standard

as competence to stand trial . . . , and the defendant’s fitness for trial therefore also established his fitness to waive counsel.”).

Edwards did not change this established standard. *Edwards* instead considered the question “whether the Constitution required the trial court to allow” a borderline-fit defendant, “to represent himself at trial,” 554 U.S. at 169, and held that the “Constitution permits States to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness,” *id.* at 178. In other words, although *Edwards* allowed the court to insist upon counsel in this limited circumstance, it remains the case that the court could also have granted the defendant’s request for self-representation because he was fit to stand trial. See *id.* at 173 (“*Godinez* involved a State that sought to *permit* a gray-area defendant to represent himself. *Godinez*’s constitutional holding is that a State may do so.”) (emphasis in original)).

Unsurprisingly, then, courts have consistently held that *Edwards*’s rule is permissive, not prescriptive, and that it imposes a limitation on the scope of the *Faretta* right to self-representation, not a change in the fitness standard. For example, the Seventh Circuit has explained that “[t]he Constitution does not create two standards for competence — one for standing trial and the other for self-representation.” *United States v. Anzaldi*, 800 F.3d 872, 879 (7th Cir. 2015). On the contrary, “*Edwards* simply means that the Constitution *may* have allowed the trial judge to block

[the defendant]’s request to go it alone, but it certainly didn’t require it.” *Id.* (internal quotation marks omitted); *accord United States v. Nichols*, 77 F.4th 490, 498-99 (7th Cir. 2023); *United States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009). The other federal circuit courts to have considered the issue agree. *See United States v. Garrett*, 42 F.4th 114, 119 (2d Cir. 2022) (in “*Edwards*, the Supreme Court identified a narrow exception to the right to self-representation recognized in *Faretta*”); *Panetti v. Stephens*, 727 F.3d 398, 414 (5th Cir. 2013) (rejecting argument “characterizing [*Edwards*] as an extension of *Gideon* [*v. Wainwright*, 372 U.S. 335(1963)]’s right to counsel” because it was instead “a *limitation* on the *Faretta* right to self-representation”) (emphasis in original)); *United States v. Bernard*, 708 F.3d 583, 590 (4th Cir. 2013) (“*Edwards* itself reaffirmed that a court may constitutionally permit a defendant to represent himself so long as he is competent to stand trial”); *United States v. Ferguson*, 560 F.3d 1060, 1070 (9th Cir. 2009) (“*Edwards* does not *compel* a trial court to deny a defendant the exercise of his or her right to self-representation; it simply *permits* a trial court to require representation for a defendant who lacks mental competency to conduct trial proceedings.”) (emphasis in original); *United States v. DeShazer*, 554 F.3d 1281, 1290 (10th Cir. 2009) (same).

Illinois courts have likewise concluded that “*Edwards* did not hold that there was a higher standard of competence requiring an additional inquiry before a trial court permits a defendant to proceed *pro se*.” *People v. Tatum*,

389 Ill. App. 3d 656, 670 (1st Dist. 2009); *accord People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 75 (“this court has never held that *Edwards* mandates an additional line of questioning before allowing a defendant to proceed *pro se*”); *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 50 (“*Edwards* is permissive rather than prescriptive: the trial court may deny a severely mentally ill person from representing himself; however, the trial court is not required to perform an additional inquiry regarding competency before allowing a defendant to represent himself.”).

Given this weight of authority, defendant correctly concedes that “the *Edwards* Court did not contend that a defendant’s request to waive counsel and represent himself called for a higher standard of competency or required an additional inquiry — such a holding would run counter to *Godinez*.” Def. Br. 27. Rather, defendant attempts to carve out an exception to this established rule, unsupported by precedent, for “circumstances, like those present here, where a determination was necessary after the trial court established a *bona fide* doubt of the defendant’s fitness, and the fitness hearing revealed suspicions about the defendant’s fitness to conduct trial proceedings by himself.” *Id.* at 28. In other words, defendant contends that *Edwards* did not create a higher standard of competency or require an additional inquiry — except under the circumstances of his case.

But, again, *Godinez* expressly declined to tie a defendant’s competence to waive counsel to his ability to conduct a trial. Indeed, the Supreme Court

rejected the “flawed premise” of such an argument: “the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.” 509 U.S. at 399 (emphasis in original). Nor, contrary to defendant’s claim, did *Edwards* “distinguish *Godinez*” by pointing out that *Godinez* involved a waiver of counsel to plead guilty, and not a decision to proceed pro se at trial. See Def. Br. 41. *Edwards* was clear that *Godinez* had established that the level of fitness to waive counsel was the same as to stand trial: “we emphasized in *Godinez* that we needed to consider only the defendant’s ‘competence to *waive the right*.’” 554 U.S. at 164 (quoting *Godinez*, 509 U.S. at 399) (emphasis in original); see also *Godinez*, 509 U.S. at 396 (explaining that just as a “criminal defendant may not be tried unless he is competent[.]” a defendant may not waive his right to counsel “unless he does so competently”) (internal quotation marks omitted).

As a result, defendant’s argument that although generally a “trial court is not required to perform an additional inquiry regarding competency before allowing a defendant to represent himself,” once the court in defendant’s case found “a *bona fide* doubt of his fitness [and] appointed a forensic psychiatrist,” the court was then obligated to conduct an additional inquiry to determine his “fit[ness] to represent himself at trial,” Def. Br. 50, is directly contrary to the Supreme Court’s decision in *Godinez*. As explained, the trial court found, R228, 232, and defendant does not dispute,

Def. Br. 41-45, 60-61, that he was fit to stand trial. Thus, defendant was equally fit to waive his right to counsel, and the trial court could not have abused its discretion by declining to accept defendant's decision to proceed pro se. Notably, defendant does not cite a single case where a trial court has been reversed for declining to impose counsel on a fit defendant.

Not only is defendant's argument contrary to *Godinez*, but, if accepted, it would also infringe on a defendant's constitutional right to self-representation. Indeed, because the "denial of self-representation at trial" is structural error, *People v. Moon*, 2022 IL 125959, ¶ 29 (citing *Washington v. Recuenco*, 548 U.S. 212, 218 n.2 (2006)), generally, the denial of a fit defendant's request for self-presentation will result in reversal of a conviction, even if the trial court believed that the defendant could not present an adequate defense. *See, e.g., Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶¶ 40-42, 55 (reversing murder conviction because it was improper to force counsel on fit defendant based on a perceived "lack of legal knowledge and ability"); *People v. Woodson*, 2011 IL App (4th) 100223, ¶¶ 25-26 (trial court's error in denying request for self-representation based "on the fact that defendant did not have sufficient legal knowledge and expertise to represent himself" required reversal of conviction); *People v. Fisher*, 407 Ill. App. 3d 585, 591 (4th Dist. 2011) ("Because the trial court in this case denied defendant his constitutional right to self-representation on the ground that the court viewed him as incapable of adequately representing himself, we

reverse the conviction and remand this case for a new trial.”). Thus, defendant’s proposed rule contravenes not only *Godinez* but also *Faretta*.

In sum, under *Godinez*, the standard for fitness to waive counsel is the same as the standard to plead guilty or stand trial. *Edwards* did not change this standard; rather, it recognized that a State is permitted, but not required, to deny a “gray-area” defendant’s request for self-representation. Here, because defendant was fit to stand trial, he was fit to waive counsel, and the trial court did not commit constitutional error by allowing him to exercise that right.

B. To the extent that *Edwards* permits a trial court to insist upon counsel for a “gray area” defendant, defendant did not fall within the *Edwards* rule.

Although *Edwards* permits a trial court to deny a severely mentally ill defendant’s request for self-representation, the trial court had no discretion to impose counsel on defendant because he did not suffer from severe mental illness. *See* Peo. Br. 27.¹ Defendant does not contest that *Edwards* only applies to defendants with severe mental illness. Instead, he erroneously argues that he had severe mental illness based on two mistakes: (1) he

¹ Defendant points out that some appellate courts have reviewed findings that a defendant has severe mental illness for purposes of *Edwards* under the manifest weight of the evidence standard. *See* Def. Br. 44. For the same reasons that the trial court did not abuse its discretion in finding that defendant was not severely mentally ill, the court’s finding was not against the manifest weight of the evidence: the “opposite conclusion” was not “clearly evident,” and the finding was not “unreasonable, arbitrary, or not based on the evidence presented.” *People v. Chatman*, 2024 IL 129133, ¶ 34 (internal quotation marks omitted).

ignores Dr. Pan’s testimony that he did not have severe mental illness, *see* Def. Br. 38-41; and (2) he equates severe mental illness with an inability to present a proficient defense, *see id.* at 42.

Edwards “repeatedly cabined its holding [that courts may refuse a defendant’s request to represent himself] with phrases like ‘mental derangement,’ ‘gray-area defendant,’ ‘borderline-competent criminal defendant,’ and, most significantly, ‘severe mental illness.’” *Berry*, 565 F.3d at 391 (internal citations omitted). Thus, *Edwards*, “by its own terms,” applies only to those cases where the defendant exhibited a “severe mental illness.” *People v. McNutt*, 2020 IL App (1st) 173030, ¶ 91. Moreover, *Edwards* instructed that the trial judge — who can observe the defendant in the courtroom — is “best able to make more fine-tuned mental capacity decisions” regarding each defendant’s ability to represent himself at trial. 554 U.S. at 177; *see People v. Joseph*, 2022 IL App (1st) 192051-U, ¶ 72 (trial court is in the best position to determine whether defendant is a gray-area defendant); *People v. Khan*, 2021 IL App (1st) 190679, ¶ 62 (same); *People v. Lopes*, 2019 IL App (5th) 170258, ¶ 24 (same); *People v. Washington*, 2016 IL App (1st) 131198, ¶ 79 (same).

Here, the trial court relied on Dr. Pan’s expert testimony, as well as the court’s own observations of defendant, to find that defendant “is not suffering from severe mental illness.” R301. The court did not abuse its discretion in so finding because Pan testified that, in his expert opinion,

defendant was “not suffering from severe mental illness.” R262; *see also id.* (Pan’s statement that he “d[id]n’t think [defendant] has severe symptoms”). The court explained why Pan’s testimony supported this finding: “Pan testified there are degrees of severity with respect to the diagnosis of unspecified schizophrenia spectrum and other psychiatric disorder,” R300, and when asked “where [defendant] falls on the spectrum,” Pan testified that defendant “does not have severe symptoms” and “is not suffering from severe mental illness,” R300-01. Accordingly, contrary to defendant’s suggestion, the trial court’s finding that he was not severely mentally ill did not “contradict[] Dr. Pan’s findings,” Def. Br. 38; instead, the court credited Dr. Pan’s testimony, R262.

In addition to Pan’s testimony, the trial court relied on its own observations of defendant throughout the lengthy pretrial proceedings. While defendant asserts that Judge Martin, who presided over the fitness hearing, did not assume responsibility for the case until September 6, 2022, *see* Def. Br. 37, this understates Judge Martin’s role: Judge Martin presided over the pretrial hearing on April 23, 2021, wherein the court considered defendant’s request for self-representation and receipt of Rule 401 admonishments, R71-72, as well as the pretrial hearings on September 2 and October 27, 2021, wherein the court considered the People’s pretrial motions and defendant’s responsibilities as a pro se litigant, R93-94, 105-06. And although Judge Martin did not preside over the hearings during which the

court provided defendant the Rule 401 admonishments, Judge Martin reviewed the transcripts of those hearings. *See* R197-200, 206. Then, following the September 6, 2022 hearing, Judge Martin presided over hearings on October 18, November 2, and December 14, 2022, as well as on January 5, January 18, and February 8, 2023. R184, 189, 195, 213, 219, 225, 239. Each of these hearings occurred before the March 2023 hearing at which the court found that defendant was not severely mental ill.

For these reasons, the trial court's finding that defendant was not severely mentally ill, and therefore that the court lacked authority to impose counsel on defendant, was consistent with Dr. Pan's testimony and the trial court's own observations, and the finding was not an abuse of discretion.

Defendant also mistakenly equates severe mental illness with a defendant's inability "to conduct trial proceedings on his own." *See* Def. Br. 42; *accord id.* at 28 (arguing that "'severe mental illness' acts as a term of art" that indicates a defendant cannot "conduct trial proceedings without the help of counsel"). Applying this newly minted definition, defendant reasons that his failure to contest the People's pretrial motions established that he was severely mentally ill. *Id.* at 30. Defendant is incorrect. To be sure, defendant exhibited confusion about whose DNA was the subject of the People's motion to consume, did not file a written response to the People's motion to admit other crimes evidence, and declined to watch the forensic interview of J.G. *Id.* at 30-33. But even if these were errors as a matter of

legal strategy, they did not show that defendant was severely mentally ill, especially given Dr. Pan's testimony.

On the contrary, federal courts, including the Supreme Court, have consistently “made it clear that the defendant’s ‘technical legal knowledge’ is ‘not relevant’ to the determination whether he is competent to waive his right to counsel.” *Godinez*, 509 U.S. at 399 (quoting *Faretta*, 422 U.S. at 836); accord *Washington v. Boughton*, 884 F.3d 692, 703 (7th Cir. 2018) (*Edwards* did not “‘introduce[] the possibility of taking into account the defendant’s legal knowledge’” because “the Court’s emphasis remained on the defendant’s mental competence”) (quoting *Tatum v. Foster*, 847 F.3d 459, 465 (7th Cir. 2017)); *Berry*, 565 F.3d at 391 (“the right to self-representation cannot be denied merely because a defendant lacks legal knowledge or otherwise makes for a poor advocate.”). And Illinois courts likewise have uniformly held that a lack of legal skills or knowledge is not a basis on which to find a defendant unfit to waive counsel, *see, e.g., Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 33; *McNutt*, 2020 IL App (1st) 173030, ¶ 96; *People v. Albea*, 2017 IL App (2d) 150598, ¶ 25, and have similarly held that these deficiencies do not establish severe mental illness for purposes of applying the *Edwards* rule, *see McNutt*, 2020 IL App (1st) 173030, ¶ 91 (severe mental illness not demonstrated by “unsupported legal theories, unsuccessful strategies, and unwise tactical decisions”); *People v. Allen*, 401 Ill. App. 3d 840, 853 (1st Dist. 2010) (defendant’s mistaken understanding of legal concepts and “poor choice

to pursue a defense that the evidence did not support” did not show “lack of mental competence” to represent himself). Accordingly, defendant’s handling of the pre-trial motion practice does not show that the trial court abused its discretion when finding he was not severely mentally ill.

For similar reasons, defendant’s handling of the trial itself does not establish an abuse of discretion. Defendant argues that his emphasis on his “unhappy marriage” and efforts to persuade the trial court that “his ex-wife set him up” should have led the court to conclude that he was “delusional and paranoid.” Def. Br. 34-36. However, it is not unusual for a defendant to argue that a former partner fabricated allegations of abuse to obtain revenge or to gain advantage in a divorce proceeding. *See, e.g., In Int. of Brunken*, 139 Ill. App. 3d 232, 240 (5th Dist. 1985). Moreover, defendant presented evidence in support of that theory at trial, eliciting from his ex-wife that she knew he had cheated on her, R351-52, and that she had complained that it would be unfair if defendant received half of her inheritance in a divorce proceeding, R355. Thus, defendant articulated and supported a sensible theory of defense. And, in any event, even if his legal theory were misguided, that would not mean that he was severely mentally ill. *See McNutt*, 2020 IL App (1st) 173030, ¶ 91; *Allen*, 401 Ill. App. 3d at 853.

Defendant’s failure to make good on his statements that he had “arguments against the State’s evidence” or “witnesses he intended to call at trial” also does not establish that the trial court abused its discretion when

finding that he did not suffer from severe mental illness. *See* Def. Br. 33. Such statements are reasonably viewed as bluster or, like defendant's continued requests for more time to respond to pretrial motions or decision not to view the video of the forensic video, a tactic to avoid or delay facing the consequences of his actions. Likewise, defendant's assertion that he was "adamant A.G. would drop the charges against him" when "none of the charges he faced were based on acts committed against A.G.," *id.* at 34, does not undermine the trial court's finding. Defendant *was* charged with acts he committed against A.G. in a second case, *People v. Gizel*, No. 20 CR 0704701 (Cook Cnty. Cir. Ct.), and the charges in that case were dismissed following defendant's conviction in this case. R33-35, 520. Thus, it was not unreasonable for defendant to believe that he would face diminished legal jeopardy if A.G. had retracted her accusations against him. And, again, even if defendant was mistaken about this, that would not mean that he was severely mentally ill.

In sum, the trial court did not abuse its discretion when it found that defendant was not severely mentally ill. Pan testified, and the trial court's observations confirmed, that defendant did not have severe mental illness or severe symptoms. Nor did defendant's conduct at trial evince severe mental illness. And given this finding, the trial court could not, consistent with *Edwards*, have imposed counsel on defendant.

C. Allowing a defendant fit to stand trial to exercise the right to self-representation is not second prong plain error.

Finally, even if it were error to allow this fit defendant to exercise his right to self-representation, it was not second prong plain error. Trial error is second prong plain error only if it is a constitutional error and, even then, only “in those exceptional circumstances where, despite the absence of objection, application of the rule is necessary to preserve the integrity and reputation of the judicial process.” *People v. Jackson*, 2022 IL 127256, ¶ 28 (quoting *People v. Herrett*, 137 Ill. 2d 195, 214 (1990)); *see also* Peo. Br. 35. This Court has equated second prong plain error with structural error, which is the type of error that “erode[s] the integrity of the judicial process and undermine[s] the fairness of the defendant’s trial.” *Jackson*, 2022 IL 127256, ¶ 28 (quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)).

The alleged error here — allowing a fit defendant to knowingly waive his right to counsel despite the fact that he allegedly suffers from severe mental illness to the point that he is unable to competently conduct trial court proceedings — does not meet this standard. Not only is it never constitutional error to allow a fit defendant to knowingly waive his right to counsel, *see supra* Section I.A, it is not structural error. Indeed, although the Supreme Court has held that the improper denial of the right to self-representation is structural error, *see supra* p. 10, it has never recognized a constitutional right for a fit defendant to be saved from his own knowing and

intelligent choice to represent himself, much less held that the failure to deny a fit defendant the right to proceed pro se is structural error, *see* Peo. Br. 36.

Nevertheless, defendant argues that the alleged error here constitutes structural error because of “the centrality of the right to counsel.” Def. Br. 52. However, not all errors involving counsel are second prong plain error. On the contrary, this Court recently held that a violation of Rule 401(a)’s admonishment requirement regarding waiver of counsel was not plain error. *People v. Ratliff*, 2024 IL 129356, ¶ 46.

Similarly, defendant is wrong that the alleged error is “presumptively prejudicial, and therefore structural” because its “effects” are “simply too hard to measure.” Def. Br. 52-53. This is not a basis to find second prong plain error because a trial court’s decision whether to impose counsel on a fit defendant is discretionary. Being less effective than an attorney may is a downside of self-representation, but a fit defendant nevertheless has the right to represent himself. Thus, any error by trial court was of a discretionary dimension, not constitutional, much less one that undermines the integrity of the judicial process. And any error thus was not second prong plain error.²

² Moreover, the overwhelming evidence against defendant strongly suggests that representation by counsel would not have impacted the result. J.G.’s uncontroverted testimony established that, before she turned 13, defendant repeatedly made contact between his penis and her sex organ, anus, mouth, and hand, and inserted an object into her sex organ. *See* Peo. Br. 13. The CAC video corroborated J.G.’s trial testimony; her sister, A.G., also corroborated J.G.’s account with testimony that she witnessed defendant abuse J.G. and that defendant abused her in a similar manner. *See id.* at 14-15. In addition, J.G.’s DNA was found on a vibrator in defendant’s lockbox,

The two lines of precedent defendant relies on — cases holding, first, that is structural error to allow a defendant to waive counsel without securing a knowing and voluntary waiver and, second, that the complete denial of counsel is structural error — are readily distinguishable. Def. Br. 52-53. Defendant argues neither that his waiver was not knowing and voluntary nor that he was denied counsel completely. Rather, he concedes that he was offered counsel and made a knowing and voluntary waiver of his right to counsel. *See* Def. Br. 21, 53. Accordingly, defendant’s cases are inapposite.

In fact, rather than supporting defendant, his cases demonstrate that the trial court did not abuse its discretion when it respected defendant’s request for self-representation. Each case confirms that the “*Edwards* rule is permissive, not mandatory,” *People v. Johnson*, 267 P.3d 1125, 1130 (Cal. 2012) (cited Def. Br. 54-55), and thus merely permits, but does not require, the trial court to impose counsel on a defendant who is fit to stand trial but nonetheless severely mentally ill, *see Chadwick v. State*, 309 S.W.3d 558, 562 (Tex. Crim. App. 2010) (cited Def. Br. 55) (“States *may* insist that a defendant who is competent to stand trial — but incompetent to conduct his or her own defense — be represented by counsel”) (emphasis added); *State v. Jason*, 779 N.W.2d 66, 74 (Iowa Ct. App. 2009) (cited Def. Br. 55) (“*Edwards* itself

along with lingerie and a school-girl uniform that J.G. testified defendant made her wear during the abuse. *See id.* at 15.

reaffirmed that a court may constitutionally permit a defendant to represent himself so long as he is competent to stand trial.”) (internal quotations omitted)); *State v. Connor*, 973 A.2d 627, 650 (Conn. 2009) (cited Def. Br. 55) (“*Edwards* did not alter the principle that the federal constitution is not violated when a trial court permits a mentally ill defendant to represent himself at trial, even if he lacks the mental capacity to conduct the trial proceedings himself, if he is competent to stand trial and his waiver of counsel is voluntary, knowing and intelligent.”).

In sum, it was not second prong plain error for the trial court to decline to impose counsel on defendant, and none of defendant’s arguments demonstrate otherwise.

II. Defendant’s Claims for Cross-Relief Are Unpreserved and Meritless.

A. The trial court did not commit plain error by allowing defendant to represent himself at the “fitness hearing” the court held after already finding defendant fit to stand trial.

In his first request for cross-relief, defendant argues that his conviction should be reversed because the trial court allowed him to represent himself “at the fitness hearing.” Def. Br. 58. Defendant concedes that he failed to preserve this issue because he did not raise it at the fitness hearing or in a posttrial motion. *Id.* at 61. Accordingly, defendant can receive relief on this claim only if he can satisfy the plain error standard, which he cannot do. *See* Peo. Br. 19-20. There was no clear or obvious error because defendant was,

in fact, represented by his counsel from the misdemeanor case while the trial court determined his fitness to stand trial. Further, defendant concedes that he was (and remains) fit to stand trial. Finally, even if there was error, there was no second prong plain error.

Assuming that a defendant must be represented by counsel in the proceedings at which the court assesses fitness to stand trial, *see People v. Washington*, 2017 IL App (4th) 150054, ¶ 21, there was no error here because defendant *was* represented by counsel during those proceedings. In proceedings at which defendant was represented by his counsel in the misdemeanor case, the trial court found defendant fit to stand trial after reviewing Pan's report, transcripts from prior hearings in the case, and the agreement by all parties, including defense counsel in the misdemeanor case, that defendant was fit to stand trial. *See* R226-32. At that point, the issue of defendant's fitness to stand trial was resolved. *See People v. Smith*, 2017 IL App (1st) 143728, ¶ 86 (fitness can be determined based on court's review of stipulated report and "the defendant's due process rights will be satisfied if the court's determination of fitness is based not only on a stipulation but also on additional evidence of his fitness, such as the expert's report or its own observations of the defendant"). The subsequent hearing at which Pan testified was not a "true fitness hearing," R228, but was held to determine

whether the court would impose counsel on defendant despite his fitness to stand trial.

The record demonstrates that defendant was represented by counsel while his fitness to stand trial was at issue. Given “the seriousness of the case” and its desire to ensure that “we’re not proceeding haphazardly,” the trial court stated that it “would like the defendant examined by Forensic Clinical Services for fitness to stand trial.” R201. The court “wanted the Public Defender to participate [and] to coordinate the Forensic Clinical Services interview,” and the People and the assistant public defender agreed to work together to facilitate the interview. R202.

After the trial court received Dr. Pan’s report, the Court set a future hearing after the parties had the opportunity to review the report and noted that “a public defender does represent [defendant] on one of these matters,” namely the misdemeanor case. R208. The court explained that it had “to make a determination, and I would have the public defender represent [defendant] at that hearing in that they do at least have an appearance on file for one of his cases, and this finding applies across the board.” R209. The court considered also having “a fitness hearing . . . to determine whether he's competent to waive his right to counsel.” R210. At a subsequent hearing, the court reiterated that with respect to the fitness determination, “[t]here are

three cases pending before the court. We're not going to separate them all out." R220; *see also id.* ("my order applies across all three cases").³

At the next court hearing, the trial court found that defendant was fit to stand trial. It had reviewed Pan's report and "the transcripts of both [Rule 401] admonishments" that judges who had previously presided over the case provided defendant. R226-27.⁴ The trial court determined that "on the issues of fitness at trial, there is no issue because he was found fit." R228. The assistant public defender made clear that "on the misdemeanor it would be my position, as attorney of record, to stipulate to the report because I do believe that he is fit and I am representing him on the misdemeanor." R232. The Court agreed that "there's really no issue on fitness," there was "just the subsidiary issue of fitness to waive his right to counsel." R232. The court made clear that because "neither [defendant] nor the Public Defender are seeking a second opinion or presented anything to indicate that he's found unfit, so there is really not a need for a true fitness hearing in this case at this point." R228.

³ The three cases were this underlying case, the misdemeanor case, and the felony case involving alleged abuse of A.G. *See supra* p. 17.

⁴ In those transcripts, the trial court, with Judge Steven Goebel presiding, granted defendant's request for self-representation in December 2020, stating that "defendant, in this Court's opinion, has no mental defect or deficiency. He is of sound mind. He wishes to represent himself" and thus would "be allowed to represent himself." R39-40; *see also* R79-83 (trial court, with Judge Samuel Betar presiding, accepting defendant's waiver of counsel following Rule 401 admonishments).

On the “subsidiary issue” of whether to impose counsel on defendant, R228, the trial court was prepared to make this determination based on Pan’s report, but defendant refused to stipulate to it and insisted on his live testimony, and the Court granted this request, R229-30.

In sum, during the proceedings to determine defendant’s fitness to stand trial, defendant was represented by counsel. The court considered the issue as to all three of defendant’s pending cases, including the misdemeanor case in which the assistant public defender represented defendant. Thus, defendant was represented by counsel at the proceedings in which the trial court assessed his fitness to stand trial.

The subsequent hearing was not a “true fitness hearing” but was convened to address whether the court should impose counsel on defendant. Moreover, even at that subsequent “fitness hearing,” the assistant public defender appeared on defendant’s behalf in the misdemeanor case, which was called at the same time. R245, 248. The assistant public defender acknowledged that he had received Dr. Pan’s expert report and he “kn[e]w what the findings [were].” R250-52. The trial court then offered the assistant public defender an opportunity to question Dr. Pan and to make a closing argument. R262-64. The public defender declined both offers but so, too, did the People. *Id.*

These decisions by the public defender were reasonable. Defendant is incorrect that the assistant public defender, or a separate attorney appointed

to represent defendant in the felony matters, should have argued against his express desire to represent himself. *See* Def. Br. 60. To be sure, “defense counsel is not obligated to adopt the defendant’s position” that he is fit and must “independently assess whether the client is fit to stand trial.” *People v. Holt*, 2014 IL 116989, ¶¶ 52, 56. But there was no doubt as to defendant’s fitness; on the contrary, he agrees that he was fit to stand trial. *See* Def. Br. 41-45, 60-61. Again, a defendant who is fit to stand trial may choose to exercise his right to self-representation, and the trial court has no constitutional obligation to overrule that choice. *See supra* Section I.A. Thus, in effect, defendant is arguing that the assistant public defender should have urged that the trial court impose counsel on him, even though it was not within the court’s discretion to do so. *See supra* Section I.B. But the assistant public defender cannot have erred, and defendant cannot have been prejudiced, by counsel’s failure to urge the trial court to provide relief it lacked the authority to grant.

Moreover, even if the nature of the representation afforded defendant at the “fitness hearing” at which Pan testified constituted error, it was not second prong plain error. As discussed, trial error is second prong plain error only if it is a constitutional error and, even then, only if it is structural error. *See supra* p. 18. No structural error occurred here with respect to representation at the “fitness hearing” at which Pan testified because, as noted, the issue of defendant’s fitness to stand trial had already been resolved

in proceedings in which defendant was represented by counsel. *See supra* pp. 23-25. Moreover, to the extent the trial court considered the “fitness hearing” a Rule 401 hearing to ensure that defendant had made a knowing and voluntary waiver, defendant had been represented by counsel at a previous hearing in which he was admonished under Rule 401. *See* R38-41. Accordingly, even if it had been error not to appoint counsel for purposes of the “fitness hearing,” there was no constitutional error because defendant was represented by counsel at the prior hearings at which the court determined defendant’s fitness to stand trial and waive counsel.

Finally, defendant concedes that (1) he was fit to stand trial and (2) if this Court were to remand for a retrospective fitness hearing with appointed counsel, he would be found fit to stand trial. *See* Def. Br. 41-45, 60-61. It is inconceivable that an error defendant concedes had no effect on the outcome of his fitness hearing undermined the fundamental fairness of the proceedings. *See Jackson*, 2022 IL 127256, ¶ 28. Thus, any error in the representation afforded defendant at the fitness hearing was not second prong plain error.

B. The trial court did not commit plain error by admitting J.G.’s out-of-court statement.

Nor is defendant entitled to reversal because the trial court allowed the People to present J.G.’s out-of-court statement to the forensic investigator. *See* Def. Br. 62. According to defendant, the statement was made approximately one week after the expiration of the relevant statutory

period (3 months following the last alleged instance of sexual assault), rendering it inadmissible hearsay. *Id.* at 63-65. But defendant concedes that he failed to preserve this issue because he did not raise it in opposition to the People's motion to admit the statement or in a posttrial motion. *Id.* at 69. Accordingly, as with defendant's first request for cross-relief, he may obtain relief on this claim only if he can satisfy the plain error standard, which he cannot do. *See* Peo. Br. 19-20. There was no clear or obvious error because nothing in the record contradicts the trial court's finding that the last alleged incident of sexual abuse of J.G. fell within the statutory time period. Moreover, even if there were error, the admission of hearsay is not second prong plain error.

To begin, there was no clear or obvious error in admitting J.G.'s statement. Pursuant to an exception to the rule against hearsay, certain out-of-court statements are admissible in prosecutions of sexual abuse of children under age 13. 725 ILCS 5/115-10. As relevant here, an out-of-court statement is admissible if it "was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later." 725 ILCS 5/115-10(b)(3). Although J.G. spoke to the forensic investigator shortly after she turned 13 in May 2020, *see* R161-62, the trial court did not abuse its discretion by determining that she gave her statement within 3 months of the commission of the offense. *See People v. Butler*, 2025

IL 130988, ¶ 31 (“This court reviews for an abuse of discretion whether the admissibility requirements of section 115-10 . . . were satisfied.”)

The forensic interview of J.G. occurred on June 26, 2020, R426, so to be admissible under the exception, the last alleged instance of abuse had to occur on March 26, 2020, or later, *see* Def. Br. 64; *see also People v. McDade*, 345 Ill. App. 3d 912, 915 (1st Dist. 2004) (charge of continuous course of predatory criminal sexual assault “not complete until the last act was accomplished”). Defendant was charged with abuse that occurred “on or about May 17, 2015 and continuing on through March 31, 2020.” CI37-45. Consistent with the charge, the People’s section 115-10 motion stated that the prosecution was alleging abuse of J.G. by defendant “on or about May 17, 2015 and continuing through March 31, 2020.” CI168. Defendant made no argument contesting those dates, and as discussed below, nothing in the video or trial testimony contradicted those allegations. Thus, the trial court correctly concluded that the forensic interview on June 26, 2020, took place within 3 months of the last instance of alleged abuse.

Defendant acknowledges that “that the State’s charging theory was that [he] abused J.G. from May 17, 2015, until March 31, 2020.” Def. Br. 66. But he complains that, during her forensic interview, J.G. did not “state the last time [defendant] sexually abused her was March 31, 2020.” *Id.* at 66-67. This observation is irrelevant, given defendant’s concession that J.G. “gave

no specific date with regard to the last time [he] allegedly sexually abused her,” *id.* at 64, much less a date outside the statutory time period.

Nor does the record support defendant’s suggestion that the last date on which defendant sexually abused J.G. was either March 13, 2020 (the date the COVID-19 national emergency began), or March 21, 2020 (the effective date of the Illinois stay-at-home order). *Id.* at 66. Instead, J.G.’s testimony makes clear that defendant’s abuse did not immediately cease upon the announcement of the COVID-19 emergency or the later stay-at-home order. Defendant points to J.G.’s statement that the abuse stopped “[a]bout March, because I kept saying ‘no.’ And then [defendant] stopped asking.” *Id.* at 64. But this testimony is consistent with the State’s theory that defendant continued to abuse J.G. after the start of the stay-at-home period and stopped only when J.G. became more confident in fending off defendant. Other trial evidence similarly supported, or at least was not inconsistent with, the State’s theory that the abuse continued until March 31, 2020. That evidence showed that defendant was living at home with J.G. until he was arrested on June 25, 2020. R391. Thus, nothing in the record contradicts the trial court’s finding that the last alleged incident of sexual abuse of J.G. fell within the statutory time period, and the court therefore did not clearly or obviously err in admitting J.G.’s statement.

Moreover, even if the trial court had erred in admitting J.G.’s statement because her interview occurred a few days outside the statutory

time period, that would not be second prong plain error. Again, a trial error is second prong plain error only if it is a constitutional error and, even then, only if it is a structural error. *See supra* p. 18. The erroneous admission of hearsay does not satisfy this standard. *See People v. Patterson*, 217 Ill. 2d 407, 424 (2005) (admission of grand jury testimony in violation of confrontation clause was “more accurately described as a trial error” rather than a structural defect in the trial) (internal quotation marks omitted); *People v. Temple*, 2014 IL App (1st) 111653, ¶ 51 (“admission of prior consistent statements [and] hearsay testimony from police officers going beyond the scope of explaining police procedure . . . do not fall under the umbrella of structural error”).

Moreover, “error that is amenable to harmless error analysis is not a structural error.” *People v. Logan*, 2024 IL 129054, ¶ 80. And “[e]rroneous admission of evidence is subject to a harmless error analysis.” *People v. Heineman*, 2023 IL 127854, ¶ 95. Thus, the trial court’s decision to admit J.G.’s statement was not clear or obvious error but, even if it was, it was not second prong plain error.

CONCLUSION

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

August 26, 2026

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 32 pages.

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 26, 2026, the foregoing **Plaintiff-Appellant's Reply Brief and Response to Request for Cross-Relief** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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