No. 131340

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. WILLIAM P. HEINTZ, Defendant-Appellee.	) On Appeal from the Appellate of) Illinois, Third Judicial District,) No. 3-23-0161.)) There on Appeal from the Circuit) Court of the Twenty-First Judicial) Circuit, Kankakee County, Illinois) No. 20 CF 469.)) The Honorable) Kathy Bradshaw Elliot,) Judge Presiding.

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

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NATURE OF THE CASE

A Kankakee County jury found defendant William P. Heintz guilty of aggravated domestic battery, unlawful restraint, and domestic battery, and the trial court sentenced him to three years in prison. R957; R1031.[1] On direct appeal, the appellate court reversed and remanded for new trial, holding that the trial court erred in barring (1) evidence of the victim's violent conduct that postdated the charged offenses pursuant to Illinois Rule of Evidence 405(b)(2) and (2) evidence of defendant's acquittal of domestic battery in a prior case. The People appeal from the appellate court's judgment. No question is raised on the charging instrument.

ISSUES PRESENTED

1. Whether the trial court did not abuse its discretion in barring evidence of the victim's violent conduct that postdated the charged offenses, given that (1) Illinois Rule of Evidence 405(b)(2) only permits admission of "specific instances of the alleged victim's *prior* violent conduct" to prove the victim's allegedly violent character; and (2) defendant failed to make the required threshold showing that the victim was the initial aggressor.

2. Alternatively, whether any error in barring the propensity evidence was harmless.

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[1] Citations to the common law record, report of proceedings, and the appendix to this brief appear as "C__," "R__," and "A__," respectively.

3. Whether the trial court did not abuse its discretion in barring evidence of defendant's acquittal of a charge related to an act of domestic violence, where the People introduced evidence of defendant's conduct underlying that offense pursuant to 725 ILCS 5/115-7.4, defendant presented extensive evidence rebutting that account, and the jury was not misled into speculating that defendant may have been convicted in connection with that incident.

4. Alternatively, whether any error in barring the acquittal evidence was harmless.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b)(2). On March 26, 2025, the Court allowed the People's petition for leave to appeal.

STATEMENT OF FACTS

Defendant was charged with attempted murder, aggravated domestic battery, unlawful restraint, and domestic battery, C77-78, following an altercation with his former girlfriend, Brianna Szalaj, on August 6, 2020, *see* R817-27. The charges alleged that defendant stood on Szalaj's neck while running water over her face, strangled Szalaj, kept Szalaj from leaving her bathroom, and struck Szalaj about her body with his hands. C77. Defendant claimed self-defense. R731

I. Pretrial Motions

Prior to trial, both parties sought leave to introduce evidence of other acts of violence committed during the couple's relationship.

The People moved *in limine* to admit testimony pursuant to 725 ILCS 5/115-7.4, which permits, in a domestic violence prosecution, "evidence of the defendant's commission of another offense or offenses of domestic violence," which may be considered for any purpose for which it is relevant. *See* C118. The trial court permitted evidence of four additional occasions on which defendant had battered Szalaj, including an altercation on July 3, 2020, for which defendant was charged with domestic battery but ultimately acquitted. *See* R91; R106-07. Defense counsel informed the court that he did not object to the admission of the evidence of the July 3, 2020 altercation, R91, and did not request permission to introduce evidence that defendant was acquitted of that charge.

Defendant moved *in limine* to admit several videos recorded by his home surveillance system to show Szalaj's "violent character" pursuant to Illinois Rules of Evidence 404 and 405. C125. The videos depicted events that occurred months after the August 2020 incident that was the basis for the charges at issue in this appeal. One set of videos, taken in November 2020, showed Szalaj throwing a beer can at defendant's face. R722.[2] The other set of videos, taken in February 2021, showed Szalaj knocking defendant to the ground, hitting him with her purse, and punching him. *Id.*

[2] Although defendant's motion *in limine* did not describe the videos, he later described their contents in a proffer to the court during trial. *See* R722.

The trial court denied the motion and barred introduction of the videos because the recorded actions post-dated the charged offenses. R62.

II. Trial

A. Opening Statements

In opening statement, the People explained that defendant and Szalaj had an off-and-on relationship marked by defendant's controlling nature. R226. Defendant's history of violent acts against Szalaj culminated in the charged offenses, in which he attacked and threatened her because she would not give him access to her cell phone. R223-26.

In turn, defense counsel argued that Szalaj was the primary aggressor in the relationship, repeatedly fabricating allegations of domestic violence to manipulate and control defendant. R228-29. Defense counsel stated that Szalaj unsuccessfully tried to have defendant fired by making a false allegation at their shared workplace. R230. Counsel then turned to the July 3, 2020, incident, stating,

> Brianne got him arrested for misdemeanor battery in Iroquois County, but he – that was just misdemeanor domestic and [defendant] posted bond and that was it. Incidentally, he went to trial on that case in Iroquois County.

R231. The People objected, and the trial court sustained the objection. *Id.* Trial counsel continued, "So Brianna is now 0 for 2. She's tried twice, and she's failed to get [defendant]." *Id.* The People again objected, but the trial court overruled the objection. *Id.* Defense counsel then stated, "She imagined she had Bill under her thumb pleading with him, 'Please, let me

have my job. Don't make me go to jail,' but neither of those attempts worked." R232.

B. The People's Case

Szalaj testified she met defendant through work in 2017. R236. The two quickly began a relationship and soon she "pretty much lived with" defendant in his home in Iroquois County, though she still owned a house in Kankakee County. R237-38. However, the couple began to argue and fight, accusing each other of infidelity. R238. Over the course of the relationship, defendant and Szalaj repeatedly broke up and reconciled. R238-240. In August 2020, defendant and Szalaj were no longer a couple. R274.

On August 5, 2020, Szalaj returned to her home after 10 p.m. and found defendant waiting in her kitchen. R275-77.[3] He demanded her phone, and she refused. R277. Defendant then grabbed Szalaj's upper lip, causing her skin to tear and bleed. R278. She fled upstairs to the bathroom and locked the door, but defendant kicked the door down. *Id.* He threw Szalaj into the bathtub, stepped on her neck and then her chest, and began to run water over her face. R279-80. Defendant had Szalaj's phone and repeatedly told her that, "if [she] would give him [the] password, he would stop." R281.

Eventually, Szalaj was able to reach up and turn off the water. *Id.* Defendant became more forceful and stepped on her neck again. *Id.* Szalaj

[3] Szalaj initially indicated she came home the night of August 6, 2020, but subsequent testimony clarified that incident began on the night of August 5 and continued into the morning of August 6. *See* R290; R297.

told him she could not breathe, but defendant did not stop, and Szalaj blacked out. *Id.* When she regained consciousness, defendant was beating her and punching her in the face. R281-82. He turned the faucet on again and held her head under the running water. *Id.* Still demanding her password, defendant pulled out a knife and threatened to kill Szalaj. *Id.* Szalaj told defendant to "just get it over with," and raised her hand. *Id.* Defendant cut her thumb. *Id.* Defendant held Szalaj in the bathroom for hours. R282-83.

When defendant finally let Szalaj out of the bathroom, he followed her around the house. R283. At about 3:30 a.m., Szalaj screamed for help out of a bedroom window. *Id.* Defendant said they would "discuss it later," and told her to go to bed. R284. She went to sleep at around 4:00 a.m. *Id.* Defendant was still there when she woke at 7:00 a.m., and he continued to follow her around the house. R285. Defendant still had her phone, so Szalaj logged onto her work computer and sent a message to a coworker to send the police. R285-86. When the police arrived, defendant fled. R287.

An officer arrested defendant as he drove away from the area. R542-44. Szalaj's blood was found on defendant's shirt. R544-45; R579. Defendant initially told the arresting officer that he did not have Szalaj's phone but later admitted it was in his vehicle. R546.

Police officers took photographs of Szalaj's injuries. R288; R296. Szalaj had a black eye; a bleeding lip; red marks from defendant's boot on her

neck; a cut on her thumb; and bruises on her chest, back, shoulders, legs, and arms. R228-89; R296-302. She also had blood on her pants. R290. The officers also photographed her bathroom's broken door and the blood in the bathtub. R290-91.

Six days after the attack, Szalaj found defendant's knife under her bed and alerted the police, who collected it. R292. The knife had blood on its handle, and DNA testing could not exclude Szalaj as the source. R582-87. Defendant's DNA was also found on the knife. R585.

Szalaj testified that she continued to interact with defendant "off and on" following August 6, 2020. R302. Defendant usually initiated contact, although Szalaj occasionally initiated meetings. *Id.* He would usually reach out to Szalaj in anticipation of trial, and he told her she needed "to work with him on the trial," or there would be negative consequences for Szalaj's ongoing child custody proceedings with her ex-husband. R302-03.

Consistent with the rulings on the motions *in limine*, Szalaj also testified about four additional occasions when defendant had abused her. In February 2019, Szalaj and defendant argued after she confronted him about email messages between him and an ex-girlfriend. R240-41. Defendant pointed a gun at Szalaj and threatened to kill her, before beating her in the back of the head with the gun. R242-43. In July 2019, defendant punched Szalaj "all over [her] body" because she would not let him access her phone. R248-49. He again pointed a gun at Szalaj and threatened to kill her but

ultimately apologized and blamed her for the incident because "it would have never got escalated to the severity that it was" had she just given him her phone. R250. In February 2020, defendant destroyed Szalaj's phone when she would not tell him her password. R252-53. Szalaj went to take money from defendant's wallet as payment for the phone, and defendant attacked her. R253. Defendant threw her to the ground, pushed her face into the floor, and pinned her body with his knees. *Id.* That attack broke her ribs. *Id.*

The fourth incident occurred on July 3, 2020. R257. The couple argued as they drove to defendant's home after a holiday party. R258. Once inside the house, the argument continued until defendant pushed Szalaj out of the house and locked the doors. R260. Szalaj's dog, phone, and work things remained inside the house. *Id.* She reentered the house through a basement window and confronted defendant in an upstairs room. R261. Defendant yelled at her and began to "forcefully . . . remove" her from the room. R262. As defendant pushed her down the hallway, the two fell down the stairs and into a gun cabinet, which shattered. R263. Defendant then pushed Szalaj outside and slammed her head into the ground. *Id.* Szalaj fled to her car and called 911 through the car's emergency button. R263; R378. Defendant placed his hands on the car window and continued to yell at Szalaj. R263. He later held Szalaj's dog up to the car window, having previously threatened to release the dog so it would run away. R260; R264.

Following this incident, Szalaj had bruises all over her body. R265. Szalaj subsequently obtained an order of protection against defendant. R243. Outside the presence of the jury, defense counsel sought leave to introduce evidence of defendant's acquittal of the criminal charges arising from the July 3, 2020 incident; the trial court barred the evidence as irrelevant. R308-10. The court offered to reconsider if defendant could cite a case holding such evidence admissible, R310, but defendant did not revisit the issue during trial.

Defendant's ex-wife testified that defendant had shoved her down in 2004, during their marriage. R597. Following their separation, he repeatedly showed up at locations she would go to, shortly after she had arrived. R603. He also threatened her. *Id.* In 2020, she began receiving anonymous text messages that she believed to be from defendant because they were similar to messages he had sent in the past. R608-12.

The People also presented expert testimony concerning patterns of domestic violence. R423. The expert explained that domestic violence often operates in a cycle of escalation, explosion, and return to a honeymoon-like period. R448-56. Thus, it is common for victims of abuse to return to their abusers. R452.

C. Defense Case

Defendant testified that he and Szalaj were still in a relationship on August 5, 2020, and planned to meet at her home that night. R811. When he arrived after midnight on August 6, 2020, Szalaj was sleeping, and defendant

woke her. R818. He began to question her and asked to see her phone when she became evasive. R819. He "grabbed" her phone because he was "concerned." R820. He realized she had changed her password and asked her why. R821. In response, Szalaj grabbed defendant's phone, "threw a beer in [his] face," and fled to the bathroom. *Id.* Defendant "chased her" and "hit [the door] with some force," "causing the doorjamb to "pop[ ]." R821; R871. After defendant forced the door open, Szalaj began to punch him and tried to knee him in the groin. R822. He grabbed her arms to try and protect himself and Szalaj fell into the bathtub during the struggle. R822-23. He restrained her there, but when he let her up, she began punching again. R825. They fell back into the tub and defendant put his boot on Szalaj's chest to restrain her until she "settle[d] down." R825.[4]

Eventually Szalaj stopped fighting, defendant let her up, and they went to bed. R827-88. Szalaj's punches had injured defendant, though he "[did not] recall any marks" being left. R827. Szalaj had numerous visible injuries, but they stemmed from the July 3, 2020 incident, though defendant believed the August 6, 2020 encounter had "aggravated" the prior injuries. R829; R869. When the police arrived the next morning, defendant "panicked" because "[d]ue to the Iroquois incident, there was a no contact order." R832. He fled out the back door. *Id.*

[4] Defendant initially testified that he put his knee on Szalaj's chest, but clarified that he used his booted foot following further questioning from defense counsel. R825.

After August 2020, defendant and Szalaj saw and communicated with each other repeatedly. R833. In March 2021, Szalaj texted defendant, "I will destroy you." R839. At the time, "there was a case pending between [them] in Iroquois." R840. She also texted, "I have yet to use my powers"; "I have all the power. . . . You do not"; and "You will learn real quick that I don't play games." R841-42.

Defendant also presented evidence about additional incidents between the couple. He testified that in February 2019, Szalaj started an argument about his ex-girlfriend and threw a drink in his face. R761-62. He did not touch her during the argument. R762. That same month, Szalaj "struck" defendant from behind while he and a friend talked to a bartender. R767. In March 2019, Szalaj "sucker punched" him in the face while he was driving, after an argument about his ex-girlfriend. R767-68. Defendant admitted to arguing with Szalaj in July 2019 because she would not be "transparent," but he denied hitting or threatening her. R771. He similarly denied shattering her phone and attacking her in February 2020. R772-73. In the spring of 2020, Szalaj instigated an investigation of defendant at their shared workplace. R773. Defendant was suspended during the investigation but ultimately was not formally disciplined. R773-75.

Regarding the July 3, 2020, incident, defendant testified that Szalaj hit him during an argument on the drive home from a party. R781. When they arrived at defendant's house, he ran inside and locked the door. R782. Szalaj

entered through a basement window and continued the argument. *Id.* Defendant tried to walk away, but Szalaj pushed him into a gun cabinet. R783. He tried to physically remove her from his home as she fought him. R784-85. At the threshold, the two tripped, and defendant fell on top of Szalaj. R786. Defendant stood and reentered the house. *Id.* Szalaj "tried to grab [defendant's] dog" and then ran to her car. R786-87. Defendant went to Szalaj's car to ask her to release his dog. R804. Later, he "anticipated that the police were going to come" and fled to a neighbor's house. R806-07. Defendant subsequently received notice that Szalaj had obtained an order of protection against him. R807-08.

Defendant also presented three videos taken by his motion-activated doorbell camera. R787-90. He was able to retrieve numerous videos from July 3, 2020, but "only downloaded the three that [defendant] felt pertinent to the situation." R791-92. The first video showed defendant standing, facing the camera, with Szalaj still on the ground. R798. Although the camera begins recording when it detects motion, the selected video did not show defendant pushing Szalaj out of the door and falling, which immediately preceded the actions in the video. R850-51. The second video, which captured events that took place a couple of minutes later, showed defendant entering the door alone. R800-01. The final video showed defendant walking up to Szalaj's car as she talked to the 911 operator. R803-05.

Defendant's family friend also testified that Szalaj hit defendant from behind while he waited for drinks in February 2019. R678.

D. Closing Arguments

The People argued in closing that defendant sought to control Szalaj and, when she would not submit, he resorted to violence. R903.

Defense counsel argued that Szalaj's pattern of returning to defendant after his violent acts defied common sense. R914. According to counsel, Szalaj was the controlling and violent partner in the relationship. R916. Counsel further asserted, "She tried to get [defendant] fired. She'd gotten him arrested in Iroquois. And she was going after him again. Because it's all about power, control, manipulation, keeping [defendant] where she wants him." R924.

In rebuttal, the People responded, "Is it common sense for you to go back to someone who got you suspended, who got you arrested twice, who got you fired from your job, who had you put in jail, who tried to knee you in the groin? Is that common sense?" R932.

E. Verdict, Post-trial Motion, and Sentencing

The jury found defendant guilty of aggravated domestic battery, unlawful restraint, and domestic battery. R957. It found him not guilty of attempted murder. R956.

Defendant filed a post-trial motion arguing, among other things, that the trial court erred by barring evidence of his acquittal of the Iroquois County charges. C230-32. Defendant argued for the first time that he was

entitled to introduce evidence of the acquittal pursuant to *People v. Ward*, 2011 IL 109690. C231; R976-78. The court held that *Ward* was distinguishable and denied the motion. R988-89.

The trial court sentenced defendant to three years of imprisonment on each guilty count, to run concurrently. C211.

III. Appellate Court Decision

On appeal, defendant argued that the trial court abused its discretion in barring evidence of (1) Szalaj's violent conduct that postdated the charged offenses and (2) his acquittal of domestic battery following the July 3, 2020 incident. *People v. Heintz*, 2024 IL App (3d) 230161-U, ¶ 20; *see also* A6. Defendant further argued the trial court erred in allowing his ex-wife to testify, allowing evidence of a firearms protection order against defendant, and entering a final criminal order of protection against defendant. Brief of Defendant-Appellant, *People v. Heintz*, No. 3-23-0161 (Ill. App. Ct.).[5]

The appellate court vacated defendant's convictions and remanded for a new trial, holding that the trial court abused its discretion in barring the evidence of Szalaj's conduct postdating the charged offenses. A7-10, ¶¶ 22-29. Noting that Rule 405(b)(2) allows evidence of the victim's violent conduct to be introduced as propensity evidence, the appellate court reasoned that the timing of the violent conduct is irrelevant to its probative value regarding the

[5] The People have requested that the Clerk of the Appellate Court, Third District, file certified copies of the appellate court briefs in this Court pursuant to Rule 318(c).

victim's violent character. A8-9, ¶¶ 22-26. Thus, it held that Rule 405(b)(2) permits the admission of evidence of a victim's violent conduct postdating the charged offenses, and that the trial court thus erred in barring evidence of Szalaj's post-offense conduct. A8-9, ¶ 26. The appellate court further held that the error was not harmless. A9-10, ¶ 28.

Finding that the issue was likely to recur on remand, the appellate court further held that the trial court abused its discretion in barring evidence of defendant's acquittal of the domestic battery charges arising from the July 3, 2020 incident. A10, ¶ 31. Relying on *People v. Ward*, 2011 IL 108690, the appellate court held that a trial court "abuses its discretion where it permits evidence of a separate offense while precluding evidence of the previous acquittal." A11, ¶ 33. The appellate court did not address defendant's remaining claims.

STANDARDS OF REVIEW

"The admissibility of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion." *People v. Brand*, 2021 IL 125945, ¶ 36. Under this "most deferential standard" of review, an abuse of discretion will only be found where the trial court's decision is so "'arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.'" *Id.* (quoting *People v. Peterson*, 2017 IL 120331, ¶ 125).

When interpreting the Rules of Evidence, review is *de novo*. *People v. Smith*, 2022 IL 127946, ¶ 25.

ARGUMENT

This Court should reverse the appellate court's judgment. The trial court did not abuse its discretion by barring evidence of Szalaj's post-offense conduct. Rule 405(b)(2)'s plain language unambiguously limits evidence of a victim's propensity for violence to *prior* violent acts. The only reasonable interpretation of the word "prior" within the rule is "prior to the charged conduct." Were "prior" to instead mean "prior to trial," as the appellate court held, it would impermissibly render the word superfluous. Nor would interpreting Rule 405(b)(2) to provide for the admission of conduct prior to the charged offense produced absurd results. Therefore, the Court should not deviate from the plain language of the rule.

Alternatively, any error in barring evidence of Szalaj's post-offense conduct was harmless because there is no reasonable probability that the jury would have acquitted defendant had it heard the evidence. The evidence of guilt was overwhelming, and the proposed evidence was cumulative of other evidence of Szalaj's violent conduct.

Nor did the trial court abuse its discretion in barring evidence that defendant was acquitted of charges arising from the July 3, 2020 incident, because it was irrelevant to the question before the jury. An acquittal is not a finding of innocence, and therefore was not relevant to show that defendant did not commit the underlying offenses. Nor was evidence of the acquittal required to show the full context of Szalaj's testimony where defendant was allowed to present other evidence regarding the July 3, 2020 incident.

Finally, the acquittal was not relevant as curative evidence because the jury did not hear evidence that defendant had been tried for any crime following the incident and any suggestion that he had been came from defendant's (and his counsel's) own statements. Alternatively, any error was harmless because there is no reasonable probability that admission of the acquittal evidence would have changed the jury's verdict.

I. The Trial Court Did Not Abuse Its Discretion by Barring Evidence of the Victim's Post-Offense Conduct, and Any Error in Excluding This Evidence Was Harmless.

A. Rule 405(b)(2) only permits evidence of conduct prior to the offense.

The trial court did not abuse its discretion by barring the evidence of Szalaj's post-offense conduct because Rule 405(b)(2) only permits, as proof of an alleged victim's violent character where a claim of self-defense is raised, "specific instances of the alleged victim's *prior* violent conduct." Ill. R. Evid. 405(b)(2) (emphasis added).

To begin, character or propensity evidence is generally disfavored because "the law distrusts the inference" that because an individual has done something before, they are more likely to do it again. *People v. Manning*, 182 Ill. 2d 193, 214 (1998). Consequently, Rule 404 bars character evidence except in limited circumstances, "including where evidence of a pertinent trait of character of the alleged victim of the crime is offered by an accused." *See* Ill. R. Evid. 404(a)(2). The victim's propensity for violence is pertinent for two purposes: (1) to show defendant's perception of the victim and explain his

reaction to the victim, or (2) to show that the alleged victim's propensity for violence makes it more likely that the victim was the initial aggressor. *People v. Lynch*, 104 Ill. 2d 194, 199-200 (1984).

Where character evidence is admissible under Rule 404, Rule 405 governs the means by which a party may prove an individual's character. Ill. R. Evid. 405; *see also People v. Smart*, 2025 IL 130127, ¶¶ 44-45. Rule 405(b)(2) provides that a defendant may present evidence of "specific instances of the alleged victim's prior violent conduct" in homicide and battery cases where he "raises the theory of self-defense and there is conflicting evidence as to whether the alleged victim was the aggressor." Ill. R. Evid. 405(b)(2).

The interpretation of this Court's rules of evidence are governed by the same principles that govern statutory interpretation. *People v. Deroo*, 2022 IL 126120, ¶ 19. The primary goal "is to ascertain and give effect to the intention of the drafters," and "[t]he most reliable indicator of that intent is the language used, which should be given its plain and ordinary meaning." *Id.* Each word and clause of the rule, "if possible, must be given reasonable meaning and not rendered superfluous." *See In re Det. of Lieberman*, 201 Ill. 2d 300, 308 (2002); *see also People v. Tompkins*, 2023 IL 127805, ¶ 52. Where the plain language of the rule "is clear and unambiguous, we must apply the language used without further aids of construction." *Deroo*, 2022 IL 126120, ¶ 19.

Rule 405(b)(2)'s plain language clearly and unambiguously limits evidence of a victim's propensity for violence to conduct *prior* to the charged offenses. The rule explicitly limits evidence of a victim's purported violent actions to "specific instances of the alleged victim's *prior* violent conduct." Ill. R. Evid. 405(b)(2) (emphasis added).[6] The word "prior" has a well-established plain meaning: "[p]receding in time or order." *Prior*, Black's Law Dictionary (12th ed. 2024); *see People v. Castillo*, 2022 IL 127894, ¶ 27 (consulting Black's Law Dictionary to determine plain meaning of statutory term).

The question, then, is whether the evidence must precede the charged offense, or instead must precede the trial on the charged offenses. The only reasonable answer is that the rule refers to the victim's conduct preceding the charged offense. The rule cannot be reasonably read to mean prior to trial, as the appellate court held here, because all trial evidence is necessarily limited to evidence that existed prior to trial. Thus, to read Rule 405(b)(2) to permit evidence of the victim's conduct at any point prior to trial would impermissibly render the word "prior" superfluous. *See Tompkins*, 2023 IL 127805, ¶ 52. Consequently, the evidence of Szalaj's conduct after the charged offenses was inadmissible under the plain language of Rule 405(b)(2), and the trial court did not abuse its discretion in barring it.

[6] Alternatively, a victim's violent character can be established through opinion or reputation evidence. Ill. R. Evid. 405(a).

The appellate court below did not independently analyze the plain language of Rule 405(b)(2), but instead adopted the reasoning of *People v. Delgrave*, 2023 IL App (1st) 192479, where a panel of the First District held that Rule 405(b)(2) allowed evidence of a victim's violent conduct that postdated the charged offense. A8-9, ¶¶ 25-27. But *Delgrave* was wrongly decided. In fact, *Delgrave* acknowledged that Rule 405(b)(2)'s use of the word "prior" could reasonably be read to limit "evidence of the alleged victim's prior acts of violence to those acts that predate the charged incident." 2023 IL App (1st) 192479, ¶¶ 78-79. *Delgrave* declined to follow that plain reading of the rule, however, finding that it would be inconsistent with the "spirit" of *Lynch*, which had held that a victim's violent conduct could be used both to show the defendant's state of mind and the victim's propensity for violence. *Id.* ¶¶ 79-80 (citing *Lynch*, 104 Ill. 2d at 200*). Delgrave* reasoned that a victim's violent conduct is probative of the victim's violent character regardless of when that conduct occurred. *Id.* ¶ 81.

But *Delgrave* was not free to rewrite Rule 405(b)(2) to correct a perceived omission. The drafters of the rule could have adopted a more expansive definition, but they did not. *Delgrave* noted that statutes governing propensity evidence against a defendant — sections 115-7.3 and 115-7.4 of the Code of Criminal Procedure, 725 ILCS 5/115-7.3 & 115-7.4 — allow evidence of a defendant's other misconduct, without temporal limitation. 2023 IL App (1st) 192479, ¶¶ 73-77. But sections 115-7.3 and

115-7.4 allow evidence of the defendant's misconduct without regard to the timing of that conduct precisely because the statutes do not include a limitation like "prior" or another similar word. *See* 725 ILCS 5/115-7.3 (allowing "evidence of the defendant's commission of another [sexual abuse] offense or offenses"); *see also* 725 ILCS 5/115-7.4 (allowing "evidence of the defendant's commission of another offense or offenses of domestic violence"). In contrast, Rule 405(b)(2) does include a temporal limitation, and thus it follows that its drafters intended a different result. *See In re K.C.*, 186 Ill. 2d 542, 549-50 (1999) ("It is well established that, by employing certain language in one instance and wholly different language in another, the legislature indicates that different results were intended.")

Moreover, a court should not deviate from the plain and unambiguous language of a rule or statute unless enforcing that plain language would lead to absurd results. *See People v. Casas*, 2017 IL 120797, ¶ 18; *see also People v. Pullen*, 192 Ill. 2d 36, 42 (2000). Enforcing Rule 405(b)(2)'s plain language limiting it to a victim's violent conduct predating an offense would not lead to absurd results. On the contrary, such a limitation acknowledges that a victim's conduct after a violent attack may be a result of the trauma of the attack itself, rather than a preexisting predisposition to violence. This is a particularly potent concern in circumstances like this one, where the victim's post-offense conduct is directed at her attacker. Consequently, enforcing

Rule 405(b)(2)'s plain language would not lead to absurd results, and this Court need not look past the rule's unambiguous terms.

Finally, honoring the plain language of Rule 405(b)(2) would not conflict with *Lynch*. There, the defendant was charged with murder and argued that he acted in self-defense. *Lynch*, 104 Ill. 2d at 197. This Court held that the victim's three convictions for battery, all of which predated the charged offense, were admissible to show the victim's propensity for violence and to support the defendant's contention that the victim was the aggressor. *Id.* at 199-201. The Court's did not discuss or consider conduct that occurred after the crime. *See id.* at 200-201. Consequently, enforcing Rule 405(b)(2)'s plain language, which limits the admissibility of a victim's violent conduct to pre-offense acts, would be consistent with *Lynch*.

In sum, the plain language of Rule 405(b)(2) clearly and unambiguously limits evidence of a victim's propensity for violence to conduct that occurred *prior* to the charged offenses. Consequently, the appellate court erred in holding otherwise.

B. There was not conflicting evidence over who was the aggressor.

The trial court did not abuse its discretion in barring the propensity evidence for a separate and independent reason: Szalaj was not the initial aggressor during the charged offenses, as she testified and as defendant's

own account confirmed.[7] Before a defendant may introduce evidence of a victim's propensity for violence, he must present "some evidence" that the victim was the initial aggressor and that the defendant acted in self-defense. *Lynch*, 104 Ill. 2d at 204; *see also* Ill. R. Evid. 405(b)(2).

Here, although Szalaj and defendant gave conflicting version of the conduct that prompted the charge offenses, under neither version was Szalaj the initial aggressor or did defendant act in self-defense. Szalag testified that defendant grabbed and tore her lip without provocation. R278. Thus, according to Szalaj's testimony, defendant plainly was the initial aggressor: He was also the initial aggressor under his own version of events. He testified that he woke Szalaj in the middle of the night and began questioning her about her activities before "grabb[ing]" her phone. R818-20; *see People v. De Oca*, 238 Ill. App. 3d 362, 367 (1st Dist. 1992) (observing that "mere utterance of words" can be enough to render a defendant the initial aggressor). Defendant claimed that Szalaj then threw a beer in his face, but a thrown drink, to the extent it amounted to "unlawful force" against defendant, placed him in no imminent danger of harm, with the result that he could not establish that he acted in self-defense *See People v. Lee*, 213 Ill. 2d 218, 225 (2004) (to establish self-defense, a defendant must prove, among

[7] Although the trial court based its decision on the timing of the conduct, *see* R62, this Court reviews the judgment, not the reasoning, of the trial court and may affirm on any basis evident from the record. *People v. Johnson*, 208 Ill. 2d 118, 128-29 (2003).

other things, that "unlawful force was threatened against" the defendant, and there was an "imminent" "danger of harm").

Furthermore, although a defendant may use force in self-defense against an initial aggressor, they are not justified in using force as retaliation or after the aggressor has withdrawn from the fight. *See People v. Brown*, 406 Ill. App. 3d 1068, 1079 (4th Dist. 2011); *see also People v. Sloan*, 2024 IL 129676, ¶ 16. According to defendant's testimony, that is exactly what happened here. After Szalaj threw her drink in his face, she fled upstairs to the bathroom. R821. Defendant "chased" her and broke into the bathroom by "hit[ting the door] with some force." R871. Only then did Szalaj begin to punch him. R822. Thus, even assuming that the throwing of a drink could justify defendant acting in self-defense, that justification dissipated when Szalaj fled and closed herself in the bathroom. She posed no further threat to defendant until he followed her and forced his way into the bathroom. Thus, because defendant — by his own testimony — became the aggressor after Szalaj's retreat and could not establish that he acted in self-defense, the trial court did not err in concluding that Szalaj's post-offense conduct was inadmissible under Rule 405(b)(2) regardless of whether the phrase "prior violent conduct" is limited to pre-offense conduct.

C. Alternatively, any error was harmless.

Even assuming that the trial court erred in barring the propensity evidence, any error was harmless because the evidence of defendant's guilt

was overwhelming and the proposed evidence was cumulative of other evidence of Szalaj's violent conduct.

An "'evidentiary error is harmless where there is no *reasonable probability* that the jury would have acquitted the defendant absent the error.'" *Smart*, 2025 IL 130127, ¶ 90 (quoting *People v. Heineman*, 2023 IL 127854, ¶ 95) (emphasis in original). When determining whether an evidentiary error is harmless, a reviewing court considers (1) whether the error might have contributed to the conviction, (2) whether the properly admitted evidence of guilt is overwhelming, and (3) whether the improperly admitted evidence is cumulative to other admitted evidence. *People v. Becker*, 239 Ill. 2d 215, 240 (2010).

Here, the evidence of defendant's guilt was overwhelming. Szalaj testified that defendant broke into her home and demanded her phone. R275-77. When she refused, he grabbed her lip, ripping her skin. R278. She fled to the bathroom, but he chased her down, broke down the door, and threw her into the tub. R279-80. There, he stepped on her neck, ran water over face, and beat her because she would not give him access to her phone. R280-82. He threatened her, cut her thumb with his knife, R282, and fled when police arrived, R287. Szalaj's testimony was corroborated by photos of her injuries: she had a black eye; a bleeding lip; red marks from defendant's boot on her neck; a cut on her thumb; and bruises on her chest, back, shoulders, legs, and arms. R228-89; R296-302. Her blood was found in the

tub and on her clothes, defendant's clothes, and his knife. R290; R544-45; R579; R582-87. When arrested, defendant still had her phone. R546.

For his part, defendant's evidence was limited to an implausible and legally insufficient claim of self-defense. He admitted to interrogating Szalaj about her whereabouts and taking her phone. R819-20. He claimed that Szalaj responded by throwing a drink in his face, after which he "chas[ed] her" down and forced open the bathroom door. R821; R871. He held Szalaj down in the tub by placing his booted foot on her chest. R825. He testified that he did so only because she had started hitting him after he forced his way into the bathroom. R821-25. But, as explained, defendant's version, even if credible, could not establish self-defense because any danger Szalaj posed ceased once she fled to the bathroom. *See supra* pp. 24.

In any event, defendant's account was not credible for a variety of reasons. To start, he admitted that he demanded access to Szalaj's phone, though he implausibly maintained that he did so because he was "concerned" for her. R820. He claimed that he was in danger from Szalaj, but admitted that he chased after her. R821; R871. Although she fell into the bathtub, he claimed was unable to escape the bathroom. R822-23 Indeed, rather than leave while Szalaj struggled to get out of the tub, he acknowledged that he pressed down on her chest with his booted foot. R825. Not only was defendant's testimony internally inconsistent, it was not supported by the forensic evidence. Although Szalaj's blood was found on his knife, he denied

threatening her with it. R582-87. He claimed Szalaj continuously hit him, but he had no injuries. R827. And while he acknowledged that Szalaj had many dark bruises, he asserted that they were over a month old. R829; R869. Thus, the evidence of defendant's guilt was overwhelming, and his testimony did not call that evidence into question.

Moreover, the evidence of Szalaj's post-offense conduct was cumulative, further demonstrating that any error in barring its admission was harmless. Defendant presented evidence about four different times Szalaj allegedly was violent towards him. R678; R761-62; R767-78; R781. He also presented evidence that Szalaj had threatened him by text. R839-42. Even without the evidence of Szalaj's post-offense conduct, therefore, the jury would have been well aware of the volatile nature of defendant's relationship with Szalaj. Accordingly, both because the evidence of defendant's guilt was overwhelming, and because the excluded evidence of Szalaj's post-offense conduct was cumulative, there is no reasonable probability that the jury would have acquitted defendant had the evidence been admitted. Any error in excluding it therefore was harmless.

II. The Trial Court Did Not Abuse Its Discretion by Barring Irrelevant Evidence of Defendant's Prior Acquittal, and Any Error in Excluding This Evidence Was Harmless.

A. The trial court properly barred evidence of the acquittal because it was irrelevant.

The trial court did not abuse its discretion in barring evidence of defendant's prior acquittal of charges stemming from the July 3, 2020 incident because it was not relevant to any question before the jury.

A court "must not admit irrelevant evidence." *Smart*, 2025 IL 130127, ¶ 43; *see also* Ill. R. Evid. 402. Evidence is relevant if it has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401. Evidence that defendant attacked Szalaj in July 2020 was admissible to show his propensity to commit acts of domestic violence. *See* 725 ILCS 5/115-7.4; *People v. Kelley*, 2019 IL App (4th) 160598, ¶ 77 (evidence admitted under this statute may be admitted as proof of a defendant's propensity to commit domestic violence). To introduce this evidence, the People were not required to prove defendant guilty of the offenses arising out of the July 2020 incident beyond a reasonable doubt; they needed only to present evidence sufficient to establish "more than a mere suspicion" that defendant committed the offenses. *People v. Thingvold*, 145 Ill. 2d 441, 456 (1991); *People v. Baldwin*, 2014 IL App (1st) 121725, ¶ 73. The People met this requirement through Szalaj's testimony that defendant assaulted her on July 3, 2020. R263. Szalaj testified that, following an

argument, defendant pushed her down a hallway in his home; the two fell down some stairs and into a gun cabinet, which shattered; and defendant then pushed Szalaj outside and slammed her head into the ground. R261-63.

Defendant, in turn, provided his account of the incident — in which Szalaj implausibly caused her own injuries — and also presented video surveillance recordings. R787-90. Thus, defendant and Szalaj provided conflicting accounts of the July 2020 incident, which might explain why defendant was acquitted of the offenses arising out of that incident. But the fact that defendant was acquitted of the July 2020 offense did not render it more or less probable that he committed them. As the trial court explained, R309, an acquittal is not a finding of innocence but instead is a finding that the People failed to prove the defendant guilty beyond a reasonable doubt. *See People v. Jackson*, 149 Ill. 2d 540, 550 (1992); *see also Dowling v. United States*, 493 U.S. 342, 349 (1990) ("[The acquittal did] not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt.") (internal quotations and citation omitted but alteration in original)). Consequently, defendant's acquittal was not relevant to establishing whether he, in fact, committed any offenses on July 3, 2020. *See Matter of Est. of Hook*, 207 Ill. App. 3d 1015, 1029 (5th Dist. 1991) ("[A]cquittal in the murder trial cannot serve as evidence that [defendant] did not cause his death."); *see also Ward*, 2011 IL 108690, ¶ 47 ("[A] verdict of not guilty may have been attributed to a number of factors and does not

conclusively establish defendant's actual innocence.") (internal quotation marks omitted).

To be sure, in *Ward*, this Court held that, under some circumstances, evidence of an acquittal should be admitted to prevent undue prejudice when a victim testifies that the defendant previously committed other crimes, and it is suggested to the jury that the defendant was convicted of those crimes. *See* 2011 IL 108690, ¶ 38. The appellate court relied on *Ward* to find error here, *see* A11, ¶ 33, but *Ward* is distinguishable. In *Ward*, the defendant was charged with criminal sexual assault. 2011 IL 108690, ¶ 1. At trial, the People presented other-crimes evidence pursuant to 725 ILCS 5/115-7.3, consisting of testimony from another woman that the defendant had sexually assaulted her. *Id.* The prior victim's testimony was "graphic" and "detailed a considerably more violent attack than" the charged crime. *Id.* ¶¶ 27, 43. During her testimony, the prior victim noted that she had testified in the defendant's prior trial. *Id.* ¶ 41. The defendant took the stand, testified that the sex was consensual, and sought — but was denied — permission to introduce evidence that he was acquitted of the charges arising from the prior incident. *Id.* ¶¶ 1, 37.

On appeal, this Court held that the defendant should have been allowed, under the circumstances, to present the acquittal evidence. *Id.* ¶ 27. The Court explained that the defendant had a clear statutory right under section 115-7.3 to present evidence rebutting the other-crimes evidence. *Id.*

And pursuant to the statute, the trial court was required to apply a balancing test to the other-crimes and rebuttal evidence, including the evidence of acquittal, by weighing the probative value of the evidence against the potential prejudice to defendant. *Id.* ¶ 35. Applying this test, the Court held that the defendant's acquittal was necessary to give a "fully realistic context" to the prior victim's testimony where the jury did not hear all of the evidence leading to the prior acquittal and was likely to speculate as to what other evidence against the defendant arose at the prior trial. *Id.* ¶¶ 38-40. And by excluding the acquittal evidence, the Court continued, defendant was prejudiced given the graphic nature of the other-crimes evidence and the danger that the jury would speculate that the defendant had been convicted in the prior trial. *Id.* ¶¶ 41-43. Thus, the Court held, "under the facts and circumstances of this case," the trial court abused its discretion in excluding the acquittal evidence. *Id.* ¶ 48.

Here, by contrast, there was no abuse of discretion in excluding the acquittal evidence because, as explained, defendant's acquittal of the offenses arising out of the July 2020 incident was not relevant to whether he committed those offenses. *See supra* pp. 29. And, unlike in *Ward*, the trial court permitted defendant to introduce detailed evidence that placed Szalaj's testimony about the July 2020 incident into "fully realistic context." Defendant presented not only his own account of those events, but also the video surveillance recordings that, he maintained, supported his account.

In addition, in *Ward*, this Court applied section 115-7.3 to determine whether the other-crimes and rebuttal evidence was admissible. *See* 2011 IL 108690, ¶ 35. Here, by contrast, the People relied on section 115-7.4 to admit the evidence about the July 2020 incident. C118. And unlike section 115-7.3, section 115-7.4 does not authorize the defendant to present "evidence to rebut that proof [of another offense] or an inference from that proof." *Compare* 725 ILCS 115-7.3 *with* 725 ILCS 115-7.4; *see also Ward*, 2011 IL 108690, ¶ 27 (relying on this language from section 115-7.3). Consequently, the balancing test this Court applied in *Ward* does not apply to the proposed acquittal evidence.

Moreover, even if a balancing test like the one used in *Ward* applied, admission of defendant's acquittal of the July 2020 offense was not necessary because defendant was not prejudiced by the exclusion of the acquittal evidence. *Cf. Ward*, 2011 IL 108690, ¶¶ 41-43 (holding that excluded acquittal evidence prejudiced defendant). In *Ward* this Court reasoned that the jury — knowing that the defendant had been tried for a crime but not knowing the result of that trial — might speculate about the prior trial, infer that the defendant was convicted, and place undue weight on the prior victim's testimony. *Id.* But here, by contrast, the jury heard no evidence that defendant was tried on charges prompted by the July 2020 incident. Therefore, there was no reason to believe the jury would speculate that he was convicted of such charges, and no prejudice to cure. Indeed, the

suggestion that defendant went to trial based on the July 2020 incident came from the *defense*: defense counsel remarked during opening statements that "[defendant] went to trial on that case in Iroquois County." R231. But defense counsel also stated in opening statements that "Brianna is now 0 for 2. She's tried twice, and she's failed to get [defendant]," R231, thereby effectively informing the jury that defendant won the Iroquois County case. Szalaj and defendant made fleeting references in their testimony to an "Iroquois County case," R274 and "a case pending between [them] in Iroquois," R840, but the brief comments were most likely understood by the jury to refer to the protective order Szalaj obtained against defendant, which both Szalaj and defendant testified to. R243; R807-08. Thus, there was no suggestion that defendant was tried on charges prompted by the July 2020 incident to prejudice him, and even if there were, he invited that suggestion and cannot complain about it. *See, e.g.*, *People v. Parker*, 223 Ill. 2d 494, 507-08 (2006).

In sum, because the evidence of defendant's prior acquittal was not relevant to whether defendant attacked Szalaj on July 3, 2020, or necessary to cure any undue prejudice resulting from the People's evidence, the trial court's decision to bar the acquittal evidence was not an abuse of discretion.

B. Alternatively, any error was harmless.

Regardless, any error in excluding the acquittal evidence was harmless because there is no reasonable probability that the jury would have acquitted defendant if that evidence had been admitted.[8]

As noted above, the evidence of defendant's guilt was overwhelming, it was not undermined by defendant's implausible and legally insufficient claim of self-defense, and evidence about the July 3, 2020 incident was cumulative of other evidence of Szalaj's violent conduct toward defendant. *See supra* pp. 25-27. In addition, the omission of the acquittal evidence did not contribute to defendant's conviction. *See Becker*, 239 Ill. 2d at 240. After defense counsel remarked in opening statements that defendant had gone to trial on charges prompted by the July 2020 incident, counsel was permitted to argue that Szalaj had tried to "get" defendant and failed. R231. Thus, although counsel was barred from introducing evidence of the acquittal, he was able to communicate to the jury that defendant was not convicted. And defendant was able to present both his own testimony and the video surveillance from July 3, 2020, which called into question Szalaj's testimony about the incident. R787-90. This evidence was more powerful than evidence that defendant was

[8] Although the People raised a harmless error argument in the appellate court, *see* People's Brief, *People v. Heintz*, No. 3-23-0161 (Ill. App. Ct.) at 15, the appellate court did not reach the issue because its ruling on the Rule 405(b)(2) issue was dispositive, *see* A7-10, ¶¶ 22-29. If this Court were to reverse the appellate court's decision on that issue, then it should reach the issue of the acquittal evidence and conclude that the purported error in barring the acquittal provides no alternative basis for granting a new trial because any error in admitting the acquittal evidence was harmless.

acquitted, which would merely have suggested that the People failed to carry their burden of proof, not that he was innocent. *See supra* p. 28-30. Indeed, had the trial court allowed the acquittal evidence, the jury likely would have been instructed that it did not show defendant's innocence. *See Ward*, 2011 IL 108690, ¶ 47.

Given the weight of the evidence against defendant, and the minimal role of the July 3, 2020 incident in the case against him, there is no reasonable probability that the acquittal evidence would have changed the jury's verdict. Accordingly, any error in excluding that evidence was harmless.

III. This Court Should Remand to the Appellate Court to Consider Defendant's Unresolved Claims.

Upon finding that the trial court erred in barring the evidence of Szalaj's post-offense conduct, the appellate court considered defendant's claim about the acquittal evidence but declined to consider his remaining claims. *See supra* pp. 14-15. Consequently, if this Court were to reverse the appellate court's judgment, the Court should remand to the appellate court for consideration of these claims. *See People v. Lowery*, 178 Ill. 2d 462, 473 (1997) ("where trial errors were raised but not ruled upon in the appellate court, it is appropriate for this [C]ourt to remand the cause to the appellate court for resolution of those remaining issues").

CONCLUSION

This Court should reverse the appellate court's judgment and remand for consideration of defendant's remaining claims.

June 24, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) 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 36 pages.

/s/ Nicholas Moeller
Nicholas Moeller
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 24, 2025 the foregoing Brief and Appendix of Plaintiff-Appellant People of the State of Illinois was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered e-mail addresses:

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APPENDIX

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2024 IL App (3d) 230161-U

Order filed November 21, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
	)	Kankakee County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-23-0161
v.	)	Circuit No. 20-CF-469
	)	
WILLIAM P. HEINTZ,	)	Honorable
	)	Kathy S. Bradshaw-Elliott,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justices Brennan and Hettel concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Evidence of an altercation between defendant and the alleged victim postdating the charged offenses was admissible. (2) The trial court erred in precluding evidence defendant was acquitted of a previous battery. Vacated and remanded.

¶ 2 Defendant, William P. Heintz, appeals from his convictions for aggravated domestic battery, unlawful restraint, and domestic battery. He argues, in part, the trial court erred in (1) failing to admit evidence of the alleged victim's subsequent attacks on defendant and

(2) permitting evidence of a previous battery against the victim but not evidence defendant was acquitted of that charge. We vacate and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a) (West 2020)), aggravated domestic battery (*id.* § 12-3.3(a-5)), unlawful restraint (*id.* § 10-3(a)), and domestic battery (*id.* § 12-3.2(a)(1)). The charges alleged that, on August 6, 2020, defendant stood on Brianne Szalaj's neck while running water over her face, strangled Szalaj, kept Szalaj from leaving the bathroom, and struck Szalaj about her body with his hands. Defendant claimed self-defense.

¶ 5 The State moved *in limine* to admit testimony of defendant's alleged previous domestic batteries. The court permitted evidence of four incidents, including a July 3, 2020, incident for which defendant was charged but later acquitted. Defendant moved *in limine* to introduce home surveillance videos of two incidents from November 5, 2020, and February 9, 2021, purporting to show Szalaj's violent character. Both videos were recorded on the same camera inside defendant's home. The footage from November 5, 2020, beginning at 1:15 a.m., showed Szalaj yelling at defendant before she splashed beer in his face, poured the rest of the beer on his head, and threw the empty can at his face.

¶ 6 The February 9, 2021, footage, beginning at 11:17 p.m., showed Szalaj strike defendant with her purse as he fell to the ground. Szalaj continued to strike defendant with her purse while he was on the ground. After a struggle, partially obscured by a chair in the foreground, Szalaj punched defendant twice in the head while he was still on the ground. Defendant then stood up and walked into another room. Szalaj began to follow defendant and appeared ready to punch him as they exited the camera's view. Out of view, defendant appeared to either push or hit Szalaj back.

After they argued for a brief period, Szalaj ripped the camera down. The court denied the motion, believing conduct by the victim postdating the charged offenses was inadmissible under *People v. Evans*, 2018 IL App (4th) 160686, ¶¶ 30-34.

¶ 7 During opening arguments at trial, defense counsel mentioned defendant was arrested and tried in Iroquois County for misdemeanor domestic battery. The court sustained the State's objection before defense counsel was able to state to the jury that defendant was acquitted of that charge.

¶ 8 Szalaj testified that on the night of August 5, 2020,[1] she arrived home to find defendant there, even though she did not expect to see him that night. Defendant had access to Szalaj's house because his vehicle was programmed to open her garage door. Defendant asked Szalaj for her cell phone, and she refused to give it to him. Defendant grabbed her face, ripping skin and causing bleeding. She ran into the bathroom, and defendant kicked down the door. Defendant threw Szalaj into the bathtub, stepped on her neck with his boot, and ran water over her face. Szalaj briefly blacked out during the incident. Defendant punched her in the face while she was in the bathtub. Defendant pulled out a knife and threatened to kill her. He continued to run water over her face and held her head with his hand. Defendant flipped the knife open. Szalaj told defendant, "just get it over with," and put her hand up. Defendant cut her thumb. Szalaj testified the abuse in the bathroom continued for hours.

¶ 9 At approximately 3:30 a.m., Szalaj went to her bedroom, opened her window, and cried out for help. Defendant told Szalaj they could discuss what happened later, and they fell asleep at approximately 4 a.m. Szalaj awoke at approximately 7 a.m., and defendant was still there. She

[1]While Szalaj initially indicated she came home the night of August 6, 2020, additional testimony indicates this was a misstatement, and the incident began on the night of August 5 and continued until the morning of August 6.

logged into her work computer and messaged a coworker to send the police to her home. When the police arrived, defendant was upstairs attempting to fix the bathroom door. Defendant fled. Photographs depicting Szalaj's injuries were introduced into evidence. Additional photographs were admitted into evidence showing the bathroom door, blood on Szalaj's pants, blood in the bathroom, and blood in the bathtub.

¶ 10 Six days later, Szalaj notified the police she found a knife under her bed. A photograph of the knife was admitted into evidence, as well as a photograph showing where it was discovered. Szalaj testified she did not touch the knife.

¶ 11 After August 6, 2020, Szalaj and defendant continued to have contact "off and on." Defendant primarily initiated the contact and Szalaj initiated contact at times, despite having an order of protection against defendant. Szalaj also stayed overnight at defendant's house. Defendant mostly contacted Szalaj when a trial date was approaching to say she needed to work with him on the trial, and that if she did not, "it would take a toll on [her] kids."

¶ 12 Per the ruling *in limine*, Szalaj discussed the four prior incidents wherein defendant struck her in the head with a gun, stood over her while striking her multiple times about her body, broke her cell phone before screaming at her, and put his knees on her chest and face. On July 3, 2020, defendant slammed her face into the ground after forcing her from his home. Outside the presence of the jury, defense counsel stated they intended to introduce evidence of defendant's previous acquittal related to the events of July 3, 2020, through cross-examination. The court prohibited the introduction of this evidence because "the cases all read it doesn't mean that he's innocent. It just means that he was found not guilty."

¶ 13 A registered emergency room nurse testified she treated Szalaj on August 12, 2020. Szalaj told the nurse she was involved in a domestic dispute where she was grabbed by the lip and started

bleeding. Szalaj reported losing consciousness. Szalaj informed the nurse the bathroom door was kicked down, and she was punched and kicked. The nurse noted bruising under Szalaj's eye.

¶ 14 A Bourbonnais police officer testified he responded to a welfare request on August 6, 2020. When he arrived, Szalaj came running outside asking for help. As the officer was talking with Szalaj, he heard the back door slam. Szalaj stated it was defendant running out the back door. Szalaj had a black eye. The officer took photographs of Szalaj's injuries, which were admitted into evidence. Defendant was arrested later that day following a traffic stop. An officer observed red stains on the upper part of defendant's T-shirt and button-up shirt. Officers were unable to locate the knife at the time, but it was later recovered. A forensic scientist testified a bloodstain on the handle of the knife contained Szalaj and defendant's DNA. No blood was recovered from the blade of the knife. The State rested.

¶ 15 A friend of defendant testified that in February 2019, he saw Szalaj approach defendant from behind and "crack[ ] him in the back of the head." Defense counsel again raised the issue of introducing evidence of the not-guilty verdict from Iroquois County. The court maintained its earlier ruling.

¶ 16 Defendant testified he began a relationship with Szalaj in 2016. The night of the incident, he and Szalaj had planned to meet. She text messaged him when she was driving home. As they were talking at Szalaj's house, Szalaj threw a beer can at defendant's head. She ran to the bathroom and slammed the door. Defendant "bumped" into the door, and the "doorjamb popped." Szalaj became violent when defendant entered the bathroom—punching and kneeing defendant. Szalaj fell backwards into the bathtub while defendant was trying to restrain her. Defendant put his knee on Szalaj's chest to protect himself. He denied putting his foot or knee on her neck. Szalaj eventually agreed to stop fighting, and they went to bed and fell asleep. Szalaj never opened the

window to scream for help. When they awoke, defendant saw Szalaj had injuries. Defendant was injured as well but the police did not take photographs of his injuries. Defendant testified a photograph of Szalaj following this incident included old and new injuries, including from July 3.

¶ 17 Defendant denied battering Szalaj before the subject incident. As to the July 3, 2020, incident, he testified he was driving home when Szalaj slapped him. When they arrived at defendant's home, he ran inside and locked the door. Szalaj entered the home through the basement. They began to argue. As defendant attempted to walk away, Szalaj shoved him into a gun cabinet. Defendant attempted to physically remove Szalaj from his house. Szalaj continued fighting defendant before they tripped over a door threshold. The jury was not informed defendant was acquitted of charges stemming from this incident. Defendant further alleged Szalaj threw a beer can at his head in February 2019, struck him in the back of the head while he was talking to a bartender, and "sucker punched" him while he was driving in March 2019, resulting in a black eye.

¶ 18 The jury found defendant guilty of aggravated domestic battery, unlawful restraint, and domestic battery. It acquitted him of attempted first degree murder. Defendant filed a posttrial motion. Relevant to this appeal, defendant argued the court erred in precluding evidence of the incidents postdating the charged offenses and in denying the admission of defendant's previous acquittal. The court denied the motion and sentenced defendant to three years' imprisonment. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argues, in part, the trial court erred by barring (1) evidence of instances of Szalaj's violent conduct which postdated the charged offenses and (2) admission of his acquittal of domestic battery in Iroquois County. We consider each argument in turn.

¶ 21 A. Alleged Victim's Conduct Postdating Charged Offenses

¶ 22 Illinois Rule of Evidence 405(b)(2) (eff. Jan 1, 2011) states, "In criminal homicide or battery cases when the accused raises the theory of self-defense and there is conflicting evidence as to whether the alleged victim was the aggressor, proof may also be made of specific instances of the alleged victim's prior violent conduct." Rule 405(b)(2) codified existing Illinois common law, as set forth in *People v. Lynch*, 104 Ill. 2d 194, 200 (1984); see also Ill. R. Evid. Committee Commentary (adopted Jan. 1, 2011). Even though propensity evidence is generally disfavored, the alleged victim's violent history may be admissible either (1) to explain defendant's perception of the victim at the time of the incident or (2) the alleged victim's propensity for violence tends to support defendant's version of the facts. *Lynch*, 104 Ill. 2d at 200. As the two recorded incidents postdate the charged offenses in the instance case, we need only consider the second scenario.

¶ 23 Under the second basis, when there is a question as to whether the alleged victim was the aggressor, "evidence as to what occurred is often incomplete and conflicting." *People v. Yeoman*, 2016 IL App (3d) 140324, ¶ 29. The jury therefore may need all the available facts, including evidence of the alleged victim's aggressive and violent character. *Id.* Evidence of defendant's propensity for violence is generally inadmissible not because it is irrelevant, but because it is unfairly prejudicial. *Lynch*, 104 Ill. 2d at 201. Evidence of the alleged victim's propensity for violence in a self-defense case, however, carries the same relevance but sheds the risk of unfairly prejudicing defendant. *Id.*

¶ 24 Initially, the videos of the incidents postdating the charged offenses show Szalaj committing battery against defendant.[2] Battery is generally considered "*prima facie* probative

[2]Throwing liquid on another individual in an insulting or provoking nature constitutes battery. See *People v. Walker*, 291 Ill. App. 3d 597, 604 (1997).

enough of aggressive and violent tendencies to be admissible" under Rule 405. *Id.* at 203. At trial, Szalaj and defendant provided conflicting accounts of the events of August 5 and 6, 2020. Because the testimony and other evidence created a question of who was the aggressor, Szalaj's alleged batteries of defendant were relevant and admissible to aid the jury in resolving this question. Even so, the issue remains whether this evidence was admissible given the alleged incidents took place *after* the charged conduct.

¶ 25 The First District recently addressed this issue in *People v. Degrave*, 2023 IL App (1st) 192479, ¶ 50. There, the victim testified at a bench trial that the defendant assaulted her following an argument, resulting in a broken nose. *Id.* ¶ 15. Photographs of the victim's injuries and medical testimony that her nose was broken were admitted into evidence. *Id.* ¶ 22. The victim also testified as to four other times the defendant had been violent to her. *Id.* ¶¶ 26-30. The defendant testified the victim had jumped on his back and pulled at his shirt following an argument, causing him to struggle to breathe and throw his right elbow back to get her off his back. *Id.* ¶ 37. The defendant sought to admit evidence of four incidents to support his argument that the victim was the initial aggressor, and that he was defending himself. *Id.* ¶ 41. The court allowed defendant to testify about three incidents, all predating the charged offense (*id.* ¶ 42) but barred him from testifying about the fourth incident, which postdated the charged offense. *Id.* ¶ 46.

¶ 26 The First District held it was error to preclude evidence of the incident postdating the charged offense. *Id.* ¶ 99. The court determined Rule 405 permits evidence of specific instances of the alleged victim's prior conduct, "regardless of whether those specific instances occurred before or after the incident in question." *Id.* ¶ 87. The court noted that nothing in *Lynch* suggests the incidents at issue must predate the charged offense and there would be no reason for such a limitation given it is propensity evidence. *Id.* ¶ 81. Whether the incident occurred before or after

the charged offense does not affect whether evidence of the incident tends to prove the alleged victim's violent character. See *id.* The court noted other-crimes evidence is admissible to prove defendant's propensity to commit the charged crime, regardless of whether the other acts occurred before or after the charged offense. *Id.* ¶ 87. The court therefore opined it was "all but impossible to believe that the supreme court, in adopting Rule 405(b)(2), intended to give *less* rights to criminal defendants to present their case than the State would receive in the very same [situation]." (Emphasis in original.) *Id.* ¶ 86. Stated another way, just as the State can introduce evidence of a defendant's conduct after the charged offense, so too should a defendant be able to introduce evidence of a victim's conduct after the charged offense to show propensity. We agree and adopt the reasoning of *Degrave*. Therefore, we find that the court erred in precluding the evidence of instances of Szalaj's violent conduct postdating the charged offenses.

¶ 27 In coming to this conclusion, we note that the Fourth District has reached the opposite conclusion in *Evans*, 2018 IL App (4th) 160686, ¶¶ 30-34, which the *Degrave* court declined to follow. As we agree with the analysis in *Degrave*, we likewise decline to follow *Evans*. See *Degrave*, 2023 IL App (1st) 192479, ¶¶ 64-67.

¶ 28 Moreover, we cannot find the error was harmless. An evidentiary error is harmless if (1) the evidence overwhelmingly supports the conviction, (2) there is no reasonable probability the error contributed to the verdict, or (3) the error concerns evidence which is only cumulative of other evidence properly presented at trial. *People v. Sanders*, 2021 IL App (5th) 180339, ¶ 67. Here, the evidence was not overwhelming where it largely concerned a credibility contest between defendant and Szalaj and their mutual acts of domestic violence. While there may have been sufficient evidence presented to support defendant's convictions, "that is not the same thing as overwhelming evidence." (Internal quotation marks omitted.) *People v. Rosado*, 2017 IL App (1st) 143741, ¶ 41.

Given the lack of overwhelming evidence, additional evidence of Szalaj's violent character, particularly video evidence, may have impacted the outcome. The evidence was also not cumulative despite the testimony of previous incidents of violence committed by the alleged victim. See, *e.g.*, *Degrave*, 2023 IL App (1st) 192479, ¶ 89 (evidence of an incident postdating the charged offense was not cumulative despite introduction of evidence of three prior acts of violence committed by the alleged victim). Szalaj's other alleged acts of violence predating the charged offense were presented through the testimony of defendant and defendant's friend and did not share significant factual similarity with the charged offenses, unlike the recorded incidents.

¶ 29 We therefore vacate defendant's convictions and remand for a new trial. On remand, the court is instructed to permit evidence of the November 2020 and February 2021 incidents.

¶ 30 B. Evidence of Acquittal

¶ 31 Despite our ruling, we find it necessary to consider defendant's argument regarding the trial court's bar of the evidence of defendant's acquittal because it is likely to recur on remand. See *Pielet v. Pielet*, 2012 IL 112064, ¶ 56. The trial court is charged with determining what evidence is relevant and admissible. *People v. Garcia*, 2012 IL App (2d) 100656, ¶ 17. We review a court's decision to admit or bar evidence for an abuse of discretion. *Id.* An abuse of discretion occurs when the court's ruling is unreasonable. *People v. Ward*, 2011 IL 108690, ¶ 21.

¶ 32 Evidence of offenses other than those at issue is generally inadmissible in order to "protect against the jury convicting a defendant because he or she is a bad person deserving punishment." *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). "Such evidence is not considered irrelevant; instead, it is objectionable because such evidence has too much probative value." (Internal quotation marks omitted.) *Id.* "Defendant is entitled to have his guilt or innocence evaluated solely on the basis of the charged crime." *Id.* To admit evidence of a separate offense, the State is not

required to prove defendant's guilt of that offense beyond a reasonable doubt, but instead, must only show "more than a mere suspicion." *People v. Davis*, 248 Ill. App. 3d 886, 893 (1993). Therefore, even if defendant is acquitted of the other crime, evidence of that crime may still be admissible at a subsequent trial. *People v. Baldwin*, 2014 IL App (1st) 121725, ¶ 73.

¶ 33 The function of a jury is "to assess the credibility of witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw reasonable inferences from the evidence." (Internal quotation marks omitted.) *Ward*, 2011 IL 108690, ¶ 34. To perform this function, the jury should be given "as much relevant, admissible evidence as possible." *Id.* "Due to the inherently high, and often overly persuasive, probative value of such propensity evidence, the need to avoid unfair prejudice by providing a full context for the other-crimes testimony is readily apparent." *Id.* ¶ 46. Barring evidence of an acquittal only "further enhance[s] the already high danger of undue prejudice." *Id.* Therefore, generally, the court abuses its discretion where it permits evidence of a separate offense while precluding evidence of the previous acquittal. *Id.* ¶ 48; *Rosado*, 2017 IL App (1st) 143741, ¶ 36; *People v. Bedoya*, 325 Ill. App. 3d 926, 943 (2001).

¶ 34 Here, the trial court abused its discretion when it precluded evidence of defendant's acquittal. Permitting evidence of the July 3, 2020, incident, without allowing evidence of defendant's acquittal, carried a serious "risk of misleading or overpersuading the jury" and "[f]airness required disclosure." *Bedoya*, 325 Ill. App. 3d at 943. The risk was particularly present here given the extent of evidence introduced regarding the July 3 incident, proximity in time to the charged offenses, and factual similarities between the two incidents. Further, some of Szalaj's injuries depicted in the photographs following the charged offenses may have been the result of the July 3 incident, only amplifying the risk the jury would find defendant guilty for improper reasons.

¶ 35 While defendant makes no argument regarding the sufficiency of the evidence, we must determine whether double jeopardy prohibits defendant's retrial. The double jeopardy clause prohibits a second, or successive, trial for the same offense after an acquittal. *People v. Filipiak*, 2023 IL App (3d) 220024, ¶ 20. Therefore, defendant may not be retried for the attempted first degree murder charge for which he was acquitted.

¶ 36 However, the double jeopardy cause does not prohibit retrial where the evidence, including improperly admitted evidence, was sufficient to sustain the conviction. *People v. Drake*, 2019 IL 123734, ¶ 21. We review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original and internal quotation marks omitted.) *Id.* Taken together, to prove aggravated domestic battery and domestic battery, the State was required to prove defendant knowingly caused great bodily harm to a family or household member without legal justification. 720 ILCS 5/12-3.3(a-5), 12-3.2(a)(1) (West 2020).

¶ 37 Here, Szalaj and defendant were in a relationship. Szalaj testified defendant began attacking her in the bathroom for no justifiable reason. The incident resulted in Szalaj sustaining a black eye and other injuries, which was sufficient to show great bodily harm. See, *e.g.*, *People v. Kinnerson*, 2020 IL App (4th) 170650, ¶¶ 71-74. To prove unlawful restraint, the State was required to prove defendant unlawfully restrained another without legal justification. 720 ILCS 5/10-3(a) (West 2020). Szalaj testified defendant restrained her in the bathroom for hours, which was sufficient to prove unlawful restraint. Because the evidence was sufficient to sustain defendant's convictions for aggravated domestic battery, unlawful restraint, and domestic battery, the double jeopardy clause does not prohibit retrial as to these charges.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we vacate the judgment of the circuit court of Kankakee County and remand for further proceedings.

¶ 40 Vacated and remanded.

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