No. 127732

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SAMUEL SAULS, Defendant-Appellant.	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-19-0667. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 18 CF 1153. The Honorable Thomas J. Difanis, Judge Presiding.

BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Following a jury trial, defendant Samuel Sauls was convicted of predatory criminal sexual assault of a child, and the trial court sentenced him to 20 years of imprisonment. C259.[1] The Illinois Appellate Court, Fourth District, affirmed. *People v. Sauls*, 2021 IL App (4th) 190667-U. Defendant appeals from that judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether sufficient evidence supports defendant's conviction of predatory criminal sexual assault of a child.

2. Whether, in the absence of any showing that they could contain material evidence, the trial court erred in declining to conduct an *in camera* review of documents subpoenaed from the Department of Children and Family Services (DCFS).

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On January 26, 2022, this Court allowed defendant's petition for leave to appeal. *People v. Sauls*, 184 N.E.3d 1009 (Ill. 2022) (Table).

[1] Citations to the common law record, the reports of proceedings, the People's exhibits, and defendant's brief appear as "C__," "R__," "Peo. Exh.__," and "Def. Br. __," respectively.

STATEMENT OF FACTS

In August 2018, the People charged defendant with two counts of predatory criminal sexual assault of a child in violation of 720 ILCS 5/11-1.40(a)(1). C18-19. Count 1, which led to the conviction at issue here, charged defendant with committing "an act of contact, however slight, between the sex organ of the defendant and the hand of [L.G.P.], who was under 13 years of age," in August 2017. C19.

Pretrial Proceedings

Prior to trial, defendant sought discovery of information pertaining to the victim's (L.G.P.'s) mother, Mercedes Panepinto, and L.G.P.'s mother's girlfriend. Defendant's "Supplemental Motion for Discovery and Production of *Brady* Material" sought, as relevant here, "DCFS investigations, police reports and CAC interviews regarding allegations of abuse against [L.G.P.'s mother], and Angel Walker, the live-in girlfriend of [L.G.P.'s mother], which were done in the Fall of 2018, but which have never been turned over." C86-87. The victim of the alleged abuse was not identified. *Id.* In response, the People represented that they had requested the investigation materials from DCFS without success and that the materials were "not in the possession or control of the state." C92.

Defendant then issued a subpoena *duces tecum* to DCFS, demanding "all records of investigations including but not limited to written reports, video or audio recordings created since Sept. 1, 2018 related to [L.G.P.'s

mother] . . . or Angel Walker." C128. DCFS filed a motion to quash the subpoena, C130-31, and a memorandum of law in support of its motion, C133-37, asserting that the DCFS investigation determined that the allegation of abuse was "unfounded," and the report was therefore "confidential and inadmissible under Illinois law," citing 325 ILCS 5/7.14, C134-36. DCFS alternatively argued that, if the court did not quash the subpoena, it should first review the records *in camera* before disclosing their contents. C136-37.

At a hearing on the motion to quash, defendant admitted that the allegation discussed in the report was determined to be unfounded but argued that information in the report could be "relevant in several ways," such as to show

> interest and bias of . . . the mother of the accuser and her girlfriend both of which defense, based on our research believes—well, it goes to interest and bias of the—of the mother of the children who allegedly made these or who made these allegations, and her girlfriend who we believe are playing a part in—in this, and that goes to not only interest and bias, but if there's contradictory statements, that would certainly be *Brady* material as well.

R222-23.

The trial court granted the motion to quash. It recognized that defendant wanted to look at "unfounded reports for potential impeachment of a witness that testifies at trial," R224, but held that "the law is in favor of the Department," R225.

Trial

At defendant's jury trial, Francisco Gonzalez testified that he is the father of L.G.P. and J.G.P., and the estranged husband of their mother, Mercedes. R418. Mercedes's sister, Desiree Panepinto, is defendant's wife. R419.

In August 2017, Francisco attended a birthday party for his niece, N.S., who is defendant and Desiree's daughter and L.G.P.'s cousin. R420, 422-23. At the time, defendant lived on his own, and N.S. lived primarily with her grandmother. R533-35. After the party, defendant called Francisco and Mercedes and invited L.G.P. and J.G.P. for a sleepover with N.S. R423. Francisco and Mercedes agreed and drove their girls to defendant's house. R424. The next morning, when Francisco picked up L.G.P. from defendant's house, L.G.P. told him that she did not want to go back to defendant's house, but she did not explain why. R425-27. Instead, L.G.P. "just looked down. She kept on looking down . . . and she was acting funny." R427.

Mercedes testified that L.G.P. was seven years old at the time of the offense. R528-29. Mercedes explained that when she and Francisco dropped off L.G.P. and J.G.P. at defendant's house, the girls were "really excited" to spend time with N.S. R539. Apart from defendant and N.S., no one else was present at defendant's house when the girls arrived. R540. The next day, when Mercedes and Francisco picked up the girls from defendant's house, L.G.P. was "quiet." R541. A few days later, L.G.P. spontaneously told

Mercedes that she did not "ever want to spend the night with Uncle Sam again," R542, and when Mercedes asked why, L.G.P. said she "woke up with Sam's finger in my hand" and that defendant did not have a shirt or boxers on. R543-44. L.G.P. then told Mercedes that, after she woke up with defendant's "finger in her hand," she asked to use his bathroom to wash her hands. R543. Mercedes asked L.G.P. if defendant had touched her anywhere, and L.G.P. said "no." R545. Mercedes told L.G.P. that she did not have to stay at defendant's house again. *Id.*

After that conversation, Mercedes brought up the incident to her sister, Desiree, and their mother, Rose Panepinto (who was also L.G.P., J.G.P., and N.S.'s grandmother). R545-46. Desiree and Rose "blew [Mercedes] off," did not believe that defendant could have done anything, R545, and subsequently refused to talk about it, R547. After that, Mercedes did not allow defendant to be around L.G.P., but permitted N.S. to spend the night at her house on occasion. R546-47.

On May 30, 2018, Mercedes hosted a family gathering, which Desiree and N.S. attended. R548. Defendant came to pick up N.S., and when L.G.P. saw N.S. getting into defendant's car, L.G.P. implored Mercedes that she should not allow N.S. to get in the car with defendant. R550. When Mercedes asked why, L.G.P. kept repeating that "it wasn't his finger . . . it wasn't his finger," and eventually confessed that "it was his private part" that

she awoke to find in her hand. R552. L.G.P. confirmed that she was referencing the August 2017 sleepover. R553.

Shortly thereafter, L.G.P. and Mercedes met with Dr. Mary Buetow, and L.G.P. spoke privately with Dr. Buetow and underwent a physical examination. R560-61. After L.G.P. spoke with Dr. Buetow, the hospital called the police department. R561.

Dr. Buetow testified that she is a pediatrician specializing in child abuse and neglect. R589-90. On June 26, 2018, Dr. Buetow met with Mercedes and L.G.P., and interviewed L.G.P. outside the presence of Mercedes. R599, R602-03. During the interview, L.G.P. told Dr. Buetow about the sleepover and that L.G.P., J.G.P., and N.S. all slept in defendant's room. R603-04. L.G.P. reported that she fell asleep in defendant's bed, woke up with defendant's "private part" in her hand, that her hand was wet, and that she got up and went to wash her hands. R604. L.G.P. was "very surprised and disturbed" when she woke up and saw defendant's "private part" in her hand. R605. L.G.P. also said that she never wanted to be around defendant and was having nightmares about defendant. R607. After the examination, Dr. Buetow made a report to DCFS. R609.

Chad Turner, a DCFS investigator, interviewed L.G.P. on July 17, 2018, outside the presence of Mercedes. R677. The interview was recorded and played at trial. R691; *see* Peo. Exh. 1. During the interview, L.G.P. stated that she went to defendant's house for a sleepover after N.S.'s

birthday, that her sister J.G.P. was there, and that defendant was the only adult present. Peo. Exh. 1 at 9:25-10:00. She originally fell asleep on a pallet on the floor of defendant's room, but woke up in defendant's bed. *Id*. at 11:30-11:45. J.G.P. was also on the bed. *Id*. at 12:35-12:40. When L.G.P. woke up, she initially believed that someone's finger was in her hand, but she then realized that it was defendant's "private," *id*. at 13:00-14:30, the term she used to refer to defendant's penis, *id*. at 21:30. Defendant was awake, *id*. at 15:15-15:25, and he was wearing a t-shirt but no pants or underwear, *id*. at 15:50-16:05. L.G.P. said her hand was wet with a substance she likened to a "sticky kind of water," *id*. at 27:35-27:40, so she went and washed her hands, *id*. at 14:48-15:06.

L.G.P. also testified at trial. She testified that she spent the night at defendant's house after N.S.'s birthday. R461-62. After watching movies, she, N.S., and J.G.P. fell asleep in defendant's room. R463-65. She woke up in defendant's bed and realized that defendant's "private" was in her hand, that defendant wasn't wearing pants or underwear, and that her hands were "sticky and stuff." R471. After she went to wash her hands, she fell back asleep. R471-72. L.G.P. explained that she did not immediately tell anyone about the incident because she was scared, R474, and that she worried that defendant would do the same thing to N.S., R476.

Rose, L.G.P., J.G.P., and N.S.'s maternal grandmother, testified. R749. Throughout 2017, N.S. and Desiree lived with Rose, and Rose would

often have L.G.P. and J.G.P. at her house. R752. Rose attended N.S.'s 2017 birthday party, and the following day dropped off clothes for N.S. at defendant's house. R761-62. When Rose dropped off the clothes, N.S. was the only child at defendant's house. R763. In the months after the birthday party, Rose testified, she often watched L.G.P. and J.G.P. at her house, defendant would occasionally come over while the girls were present, and L.G.P. was always happy to see defendant. R765-68.

Rose also testified that during Memorial Day weekend in 2018, most of the family gathered at her house, excluding defendant. R778-79. Rose left briefly, and when she returned "everybody was hollering." R781. L.G.P. was standing on the porch, Angel was repeatedly prompting L.G.P. to "tell them what's next . . . tell them," and Rose did not understand what caused the commotion. R781. After that night, L.G.P. and J.G.P. did not stay with Rose as often. R782.

On cross-examination, Rose admitted that Mercedes had approached her at some point before the Memorial Day weekend with "concern[s] about contact" between defendant and L.G.P. R790. Rose also admitted that she did not know whether defendant had L.G.P. and J.G.P. over for a sleepover shortly after the 2017 birthday party. R791-92.

Desiree testified for the defense that she and defendant separated in 2015, though they remained legally married. R842-43. In 2017, Desiree and N.S. lived with Rose, but N.S. would spend weekends at defendant's house.

R844-47. After N.S.'s birthday party, N.S. stayed with defendant for a few days. R852. In the months following the birthday party, Desiree would occasionally babysit L.G.P. and J.G.P., along with N.S., and L.G.P. would always be excited to see defendant. R855.

Desiree testified that in the early part of 2018, she and defendant were not "on the best of terms," because defendant claimed N.S. as a dependent on his income tax return, while Desiree believed she was entitled to claim N.S. R856. As a result, Desiree forbade defendant from seeing N.S. R859. A few months later, defendant arrived at Desiree's house uninvited asking to see N.S., and Mercedes and defendant got into an argument as Mercedes attempted to keep defendant from entering the house. R861-63. L.G.P. witnessed the altercation. R863. Desiree and defendant eventually reconciled, and L.G.P. was happy when defendant would come around. R864-65.

Finally, defendant testified in his own defense. R901. Defendant admitted that N.S. stayed with him after her birthday party, but denied that L.G.P. and J.G.P. slept over. R914-15. Defendant testified that the last time L.G.P. and J.G.P. stayed over at his house was in June or July 2017, about a month or two before the birthday party, R916, though he could not recall the specific date of the last sleepover, R953. Defendant denied ever putting his penis in L.G.P.'s hand. R928.

After deliberation, the jury found defendant guilty of predatory criminal sexual assault of a child. R1072. Defendant filed a post-trial motion arguing that the evidence was insufficient to prove his guilt beyond a reasonable doubt and that the trial court erred in granting DCFS's motion to quash the subpoena seeking the report relating to L.G.P's mother and her mother's friend. C240-245. The trial court denied the motion, R1084, and sentenced defendant to 20 years in prison, R1109.

On appeal, and as relevant here, defendant argued: "(1) the State presented insufficient evidence to prove him guilty beyond a reasonable doubt, [and] (2) the trial court deprived him of his right to material evidence by quashing his subpoena duces tecum without first reviewing in camera the requested records[.]" *Sauls*, 2021 IL App (4th) 190667-U, ¶ 47. The appellate court rejected defendant's arguments and affirmed his conviction. *Id*.

STANDARDS OF REVIEW

In reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the People and determine if any rational trier of fact could have found that the People proved the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Murray*, 2019 IL 123289, ¶ 19.

Generally, this Court reviews a trial court's rulings on pretrial discovery issues for abuse of discretion. *See People v. Williams*, 209 Ill. 2d 227, 234 (2004) ("A claim that the trial court erred in limiting discovery will

be reviewed for an abuse of discretion.") (citing *People v. Sutherland*, 223 Ill. 2d 187, 280 (2006); *see also People v. Arze*, 2016 IL App (1st) 131959, ¶ 104 (reviewing trial court's decision to deny production of medical records under abuse of discretion standard). However, defendant argues that the trial court had no discretion here because it was legally required to conduct an *in camera* review. Def. Br. at 18. Whether the trial court was required to conduct an *in camera* review is a question of law that this Court reviews de novo. *People v. Lara*, 2012 IL 112370, ¶ 16 ("Because this issue presents a question of law, we review it de novo.").

ARGUMENT

I. The Evidence Was Sufficient to Prove Beyond a Reasonable Doubt that Defendant Committed Predatory Criminal Sexual Assault.

To prove defendant guilty of predatory criminal sexual assault of a child, the People had to prove that defendant "was over 17 years old and committed 'an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused,'" and that the victim was under 13 years old. *People v. Williams*, 2022 IL 126918, ¶ 59 (quoting 720 ILCS 5/11-1.40(a)(1)). Defendant concedes that in August 2017 he was over 17 years old and that L.G.P. was under 13 years old. Def. Br. at 15. Moreover, viewed in the light most favorable to the prosecution, *Jackson*, 2020 IL 124112, ¶ 64, the evidence was sufficient to establish that defendant

committed "an act of contact" between his penis and L.G.P.'s hand "for the purpose of sexual gratification." Accordingly, this Court should affirm defendant's conviction.

It is well established that the testimony of a single witness, if credible, is sufficient to convict, *People v. Gray*, 2017 IL 120958, ¶ 36, and that the trier of fact, not the reviewing court, is the ultimate arbiter of issues regarding witness credibility and the weight of the evidence, *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Ultimately, "[w]here the finding of the defendant's guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt"; "the eyewitness testimony may be found insufficient 'only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.'" *Gray*, 2017 IL 120958, ¶ 36 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004)).

Measured against this standard, the trial evidence plainly sufficed to convict defendant of predatory criminal sexual assault. L.G.P. testified at trial that she attended a sleepover at defendant's house, R461-62, and that she awoke during the night to find defendant's penis in her hand and that her hand was wet and sticky, R471. Because "a fact-finder could reasonably accept [L.G.P.'s] testimony as true beyond a reasonable doubt," *Gray*, 2017 IL 120958, ¶ 36, L.G.P.'s trial testimony alone sufficed to prove that defendant committed "an act of contact. . . between the sex organ or anus of one person

and the part of the body of another for the purpose of sexual gratification." 720 ILCS 5/11-1.40(a)(1); *see Gray*, 2017 IL 120958, ¶ 37 (evidence sufficient even though victim was only testifying eyewitness).

And L.G.P.'s trial testimony was not the only evidence against defendant. Additional evidence reinforced her credibility and corroborated her account. That evidence showed that L.G.P. made a prompt outcry following the sleepover, and that she was consistent in her allegations against defendant from the time of her initial outcry through to her testimony at trial. In addition, both of L.G.P.'s parents testified that they dropped her off at defendant's house for a sleepover in August 2017, and that she was unusually quiet in the days that followed. R425-27; R541. Mercedes also testified that, a few days later, L.G.P. told her that she never wanted to go to defendant's house again and that she woke up during the sleepover with defendant's "finger" in her hand. R542-44. And Mercedes recounted how, on May 30, 2018, L.G.P. told her that defendant had actually put his penis in her hand. R550-52. Dr. Buetow and Chad Turner testified about their one-on-one interviews with L.G.P., during which L.G.P. told them that she awoke during the sleepover with defendant's penis in her hand. R604; R677. And, finally, the jury watched L.G.P.'s interview with Turner, in which she recounted that night's events almost exactly as she did at trial. *See generally* Peo. Exh. 1. The evidence presented at trial thus sufficiently established

defendant's guilt because a rational jury could have accepted L.G.P.'s account as the truth. *Gray*, 2017 IL 120958, ¶ 36.

Indeed, defendant effectively concedes that the evidence was sufficient when he admits that "a rational trier of fact could have found that the state proved beyond a reasonable doubt the necessary elements of Count I." Def. Br. at 15-16. Nevertheless, defendant asserts that this Court should not credit the admittedly sufficient evidence because: (1) L.G.P. inconsistently recounted certain details about the sleepover over the course of her multiple pretrial interviews and trial testimony (on such collateral points as the appearance of the bedding and pillows, which parent picked her up from the sleepover, where defendant's hands were when she woke up with his penis in her hand, or whether the television was on), and (2) L.G.P.'s parents purportedly testified inconsistently with each other regarding the timeline of the sleepover and what happened during the days that followed. Def. Br. at 16. But the jury was aware of these minor inconsistences, and it nevertheless credited L.G.P.'s account; again, a reviewing court may not substitute its judgment for the jury's credibility determination. *Gray*, 2017 IL 120958, ¶ 47 ("[T]he fact-finder is charged with deciding 'how flaws in part of the testimony affect the credibility of the whole.'") (quoting *Cunningham*, 212 Ill. 2d at 283); *see also People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) (where issue "presents a question of credibility," "[i]t was for the trial court . . . to resolve the discrepancies that appeared during trial") (citations omitted).

Moreover, the fact that L.G.P. could not recall certain small details, Def. Br. at 16, does not undermine the credibility of her account, much less to the degree that a reviewing court could conclude that it was not sufficiently credible for a jury to believe it. L.G.P. was seven years old at the time of the offense, which occurred during the middle of the night, and in a bedroom that was not hers. R528-29. L.G.P.'s recorded interview took place nearly a year later, R677, and the trial took place nearly a year after that. That L.G.P. could not recall insignificant details about defendant's bedroom is thus unsurprising. *See People v. Bastien*, 129 Ill. 2d 64, 70 (1989) (child victims are often "forgetful, [and] unable to specify dates or times" when testifying). More importantly, although L.G.P. could not remember every detail, her account of defendant's offense remained clear and consistent throughout: during each of her pretrial interviews and in her trial testimony, she stated that she awoke to find defendant's penis in her hand and then went to wash her hands because they were wet and sticky. R471; R552-53; R604; R677; Peo. Exh. 1 at 13:00-14:30, 27:35-27:40. Defendant attempts to dismiss L.G.P.'s account as "two or three easily memorized sentences," Def. Br. at 17, but a rational jury was entitled to credit L.G.P.'s unchanging account, notwithstanding her inability to recall inconsequential details. *See Gray*, 2017 IL 120958, ¶ 47 ("[W]here inconsistencies in testimony relate to collateral matters, they need not render the testimony of the witness as to material questions incredible or improbable.").

Defendant's further argument that, given the alleged "missing or conflicting details" and animosity between defendant and Mercedes, the evidence favoring the jury's verdict could not outweigh defendant's "unequivocal denials," Def. Br. at 17, fails. He made this argument to the jury, which rejected it, and, again, it is not the role of a reviewing court to reweigh the evidence or second guess the jury's credibility determinations. *Jackson*, 232 Ill. 2d at 280-81. Nor is this Court "required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *Siguenza-Brito*, 235 Ill. 2d at 229 (citations omitted); *see also id*. at 228 ("the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant").

Defendant also asserts in passing that the evidence on the sexual gratification element — requiring proof that the sexual contact was done "for the purpose of sexual gratification or arousal of the victim or the accused," 720 ILCS 5/11-1.40(a)(1)) — was insufficient. Def. Br. at 17. Not so. "The intent to arouse or satisfy sexual desires can be established by circumstantial evidence, and the trier of fact may infer a defendant's intent from his conduct." *People v. Burton*, 399 Ill. App. 3d 809, 813 (2d Dist. 2010); *see also People v. Kolton*, 219 Ill. 2d 353, 371 (2006) ("[T]he element — that a defendant acted 'for the purpose of sexual gratification' — is something that is typically inferred from the circumstances used to prove the alleged act.")

Here, a jury could reasonably infer that defendant put his penis in the hand of a sleeping child for his own "sexual gratification or arousal," especially where L.G.P.'s account strongly suggests that defendant ejaculated on L.G.P.'s hand. Thus, the People sufficiently proved not only that defendant committed an act of contact between his penis and L.G.P.'s hand, but also that he did so for the purpose of his sexual gratification.

In sum, "a fact-finder could reasonably accept [L.G.P.'s] testimony as true beyond a reasonable doubt," *Gray*, 2017 IL 120958, ¶ 36, because L.G.P. provided the same description of defendant's assault to her mother, a doctor, and a DCFS investigator, as well as at trial. That L.G.P. was unable to recall minor details on collateral points, and that her parents confused certain dates, does not "'compel[] the conclusion that no reasonable person could accept [L.G.P.'s testimony] beyond a reasonable doubt.'" *Id.* (quoting *Cunningham*, 212 Ill. 2d at 279). Accordingly, the evidence was sufficient to establish defendant's guilt beyond a reasonable doubt.

II. Defendant Was Not Entitled To Have the Trial Court Conduct an *In Camera* Review of the DCFS Report.

There is similarly no merit to defendant's argument that his due process rights were violated when the trial court declined to conduct an *in camera* review of the unfounded DCFS report (pertaining to accusations against L.G.P.'s mother and her friend) and disclose to defendant any material evidence contained therein.

A. *Ritchie* establishes a right to *in camera* review of privileged documents only after an initial showing of materiality.

Due process requires that "the government in the prosecution of a criminal case must disclose to the defendant any evidence in its possession that is material and exculpatory," *People v. Holmes*, 135 Ill. 2d 198, 207 (1990) (citing *United States v. Agurs*, 427 U.S. 97, 110-11 (1976)), including information contained in "statutorily privileged records," *People v. Bean*, 137 Ill. 2d 65, 97 (1990).[2] But "[d]efense counsel has no constitutional right to conduct his own search of the State's files." *Pennsylvania v. Ritchie*, 480 U.S. 39, 59 (1987) (noting that "it is the State that decides which information must be disclosed"). In other words, due process requires that defendants receive material, exculpatory information, but does not require that defendants gain access to all information within the government's control. *See United States v. Pou*, 953 F.2d 363, 366 (8th Cir. 1992) ("[T]here is no constitutional requirement for the prosecutor 'to deliver his entire file to defense counsel.'") (quoting *Agurs*, 427 U.S. at 111).

Ritchie is instructive, as it addressed a scenario remarkably similar to the present case. Ritchie served Pennsylvania's Children and Youth Services ("CYS") agency with a subpoena for records concerning his daughter, who had

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[2] The People thus agree with defendant, *see* Def. Br. at 26-27, that even though the DCFS report was inadmissible in court, see 325 ILCS 5/7.14, it was discoverable if it contained material and exculpatory evidence. *See People v. Kladis*, 2011 IL 110920, ¶ 26 (discoverable material "includes not only what is admissible at the trial, but also that which leads to what is admissible") (citation omitted).

accused him of rape. 480 U.S. at 43. CYS refused to comply with the subpoena, arguing that Pennsylvania law required that "all reports and other information obtained in the course of a CYS investigation must be kept confidential." *Id.* "Ritchie argued that he was entitled to the information because the file might contain the names of favorable witnesses, as well as other, unspecified exculpatory evidence." *Id.* at 44. The trial court denied Ritchie's subpoena.

On further review, the United States Supreme Court explained that a government cannot withhold material evidence simply because it is statutorily privileged if the statutory privilege is not absolute.[3] *People v. Foggy*, 121 Ill. 2d 337, 346-47 (1988) (In *Ritchie*, "[b]ecause the privilege was not absolute, the Court rejected the State's argument that the statutory privilege would preclude an examination of the agency's records."). *Id.* at 57. However, the Court denied Ritchie's further request that the records — though discoverable — be disclosed directly to him. *Id.* at 59-60. Noting that due process does not grant a defendant "the unsupervised authority to search through" the government's files, *id.*, the Court instead held that Ritchie's

[3] The Pennsylvania statute contained 11 specific exceptions to the confidentiality requirement, including an exception allowing a CYS's report's release to a "'court of competent jurisdiction pursuant to a court order.'" *Id.* at 44 (quoting 11 Pa. Stat. Ann. § 2215(a)(5)). The statute at issue here — 325 ILCS § 5/1, *et seq*. — similarly does not bar all disclosure of DCFS reports, *see* Def. Br. at 24-26, and therefore falls within *Ritchie's* holding.

rights and Pennsylvania's "compelling interest in protecting its child abuse information" were properly balanced by an *in camera* review of the records. *Id.* at 60. But the Court also explicitly held that "Ritchie, of course, may not require the trial court to search through the CYS file without first establishing a basis for his claim that it contains material evidence." *Id.* at 58 n.15. (citing *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) ("He must at least make some plausible showing of how their testimony would have been both material and favorable to his defense.").

In other words, *Ritchie* established the following procedure: where a defendant believes that the government is in possession of material information, and the government asserts that the information must be kept confidential pursuant to statute, the defendant must establish a basis for his belief that the information is material; if he does so, then the court conducts an *in camera* review and discloses any material evidence.

Defendant's contrary argument, that under *Ritchie*, his request for the DCFS report automatically triggered the trial court's obligation to conduct an *in camera* review of the report, Def. Br. at 18 — without regard for whether defendant made any showing that the report contained material evidence — rests on a misreading of *Ritchie* and has been rejected by the overwhelming majority of federal and state courts to consider the issue. *See, e.g.*, *People v. Stanaway*, 446 Mich. 643, 677 (1994)*; Zapata v. People*, 2018 CO 82, ¶ 54; *State v. Gregory*, 158 Wn. 2d 759, 792 (2006) (*overruled on other grounds by*

State v. W.R., 181 Wn.2d 757 (2014)); *State v. Peseti*, 101 Haw. 172, 186 (2003); *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992); *State v. Sanders*, 92 Ohio St. 3d 245, 261 (Ohio 2001); *Stripling v. State*, 261 Ga. 1, 6 (1991); *State v. Gagne*, 136 N.H. 101, 105 (1992); *United States v. Lee*, 660 F. App'x 8, 14 (2d Cir. 2016); *United States v. Williams*, Nos. 94-1247, 1996 U.S. App. LEXIS 11474, at *12 (2d Cir. Apr. 30, 1996); *United States v. Abdallah*, 911 F.3d 201, 217 (4th Cir. 2018); *United States v. Trevino*, 89 F.3d 187, 189-90 (4th Cir. 1996); *Smith v. Cromer*, 159 F.3d 875, 882 (4th Cir. 1998); *United States v. Stampe*, 994 F.3d 767, 771 (6th Cir. 2021) (*overruled on other grounds by Stampe v. United States*, 142 S. Ct. 1356 (2021)); *United States v. Jumah*, 599 F.3d 799, 809-10 (7th Cir. 2010); *Dietrich v. Smith*, 701 F.3d 1192, 1196 (7th Cir. 2012). This Court should therefore reject defendant's argument that *Ritchie* established an unqualified right to *in camera* review whenever a defendant seeks information subject to a statutory requirement that it be kept confidential.

The Minnesota Supreme Court's decision in *Hummel* is illustrative. There, the question was whether a trial court had erred by refusing to conduct an *in camera* review of "confidential medical records when requested by a defendant" despite "no showing of relatedness to the case." *Hummel*, 483 N.W.2d at 71. The court found *Ritchie's* holding to be "absolutely clear that some showing is required before in camera review is granted." *Id*. at 72 (citing *Ritchie*, 480 U.S. at 58 n.15). Similarly, the Colorado Supreme Court

reasoned that "*Ritchie* does not hold that trial courts must always review privileged reports in camera," but instead "expressly noted that a defendant 'may not require the trial court to search through the [privileged] file without first establishing a basis for his claim that it contains material evidence.'" *Zapata*, 2018 CO 82, ¶ 54 (quoting *Ritchie*, 480 U.S. at 58 n.15). And the Hawaii Supreme Court explained that "there are cogent reasons for disallowing general pretrial discovery of privileged information, but allowing access to such information upon a proper showing by the defendant that the information "'may . . . change[] the outcome of [the] trial.'" *Peseti*, 101 Haw. at 186.

Indeed, this Court has already recognized that a preliminary showing of materiality is relevant in determining whether a defendant may receive an *in camera* review of otherwise privileged documents. In *Foggy*, 121 Ill. 2d 337, the defendant subpoenaed a rape victim's confidential counseling records. Citing an Illinois statute that established an absolute bar to the release of counseling records, the trial court found that the defendant had no constitutional right to the records and quashed the subpoena. *Id.* at 341-42. On appeal to this Court, the defendant argued that the trial court should have conducted an *in camera* review of the documents to determine whether they contained material information. *Id.* at 342. This Court found that due process did not require an *in camera* review, in part because the counselor-patient statutory privilege was "unqualified." *Id*. at 347 ("[W]e are therefore

met with an issue unresolved by *Ritchie*: whether an absolute privilege must yield to a criminal defendant's pretrial discovery request for otherwise privileged information that may provide material for use in cross-examining witnesses.").

But contrary to defendant's characterization of *Foggy*, Def. Br. at 23-24, that the subpoenaed materials were absolutely privileged was not the only reason this Court held that the trial court was not obligated to conduct an *in camera* review. The Court also observed that "[i]t is important to note that in this case the defendant's request for an in camera inspection of the counseling records was merely general; he did not allege that information may exist in the counseling files that would be subject to disclosure." *Foggy*, 121 Ill. 2d at 349. Defendant's failure to give "any indication . . . that the victim's communications with the counselor would provide a source of impeachment," combined with the "strong policy of confidentiality," led the Court to hold that *in camera* review was not required. *Id*. at 350. In other words, this Court in *Foggy* recognized that the strength and specificity of a defendant's request for *in camera* review was relevant to whether due process required such review.

And there are good reasons why, after balancing a defendant's due process right to material information against the government's interest in prohibiting the dissemination of statutorily privileged information, the *Ritchie* Court allowed for *in camera* review of privileged documents only *after*

a defendant establishes "a basis for his claim that it contains material evidence." *Ritchie*, 480 U.S. at 58 n.15. First, "*in camera* review is frequently time-consuming and may tax limited judicial resources; therefore, it is not a remedy to be unstintedly granted." *United States v. Garcia-Martinez*, 730 F. App'x 665, 673 (10th Cir. 2018) (citing 6 Wayne R. LaFave et al., Criminal Procedure § 24.3(b), at 447 (4th ed. 2015) ("in camera inspection can impose an intolerable burden on already taxed judicial resources."); *Stripling*, 261 Ga. at 6 ("an *in camera* inspection can become a ponderous, time consuming task if utilized in every case merely on demand.") (internal quotation omitted). Were automatic *in camera* review the rule, the strain on the judicial system's limited resources would be significant, as the rule would apply not only to the DCFS confidentiality requirement asserted here, but also to any similar statutory privilege, such as privileged school records, *see People v. K.S.*, 387 Ill. App. 3d 570, 573 (1st Dist. 2008); juvenile records, *see People v. Clark,* 55 Ill. App. 3d 379, 387 (1st Dist. 1977), or IDOC records, *see People v. Deleon,* 227 Ill. 2d 322, 328 (2008). In each instance, the trial court would be obligated to conduct a potentially time consuming and burdensome *in camera* review. And, because the court's duty to disclose material evidence "is ongoing . . . as the proceedings progress," *see Ritchie*, 480 U.S. at 60, trial courts would be forced to constantly revisit or reassess the privileged evidence as new arguments or theories arose at trial. By limiting *in camera* review to those instances where a defendant can make an initial showing

that the privileged records might contain material evidence, the *Ritchie* rule directs courts' limited resources to potentially meritorious requests.

Second, a rule of automatic *in camera* review ignores that "the trial court will often lack sufficient information — e.g., whether the complainant will testify at trial or what the substance of that testimony would be — at the pretrial stage adequately to determine . . . the defendant's need for the privileged information," *Peseti*, 101 Haw. at 186, and would require the court to assume the role of an advocate, *see United States v. Zolin*, 491 U.S. 554, 571 (1989) (noting that "a blanket rule allowing *in camera* review" places a burden "upon the district courts . . . without open adversarial guidance by the parties," and turns courts into "unwitting (and perhaps unwilling) agents" of the party seeking the review); *see also Dennis v. United States*, 384 U.S. 855, 875 (1966) ("In our adversary system, it is enough for judges to judge. The determination of what may be useful to the defense can properly and effectively be made only by an advocate."); *Commonwealth v. Dwyer*, 448 Mass. 122, 144 (2006) ("Requiring judges to take on the perspective of an advocate is contrary to the judge's proper role as a neutral arbiter."). By requiring a defendant to make an initial showing of materiality, the *Ritchie* rule avoids this dilemma and confirms the trial court's proper role as arbiter rather than advocate.

Third, automatic *in camera* review fails to give proper weight to the interest in maintaining the confidentiality of records that the legislature has

determined should be kept confidential. To be sure, this interest in confidentiality must give way to a defendant's due process rights, but a defendant's due process rights are implicated only if the privileged matter contains material evidence. Without requiring a defendant to articulate some basis to believe that a privileged record might be material, the trial court's *in camera* review would "be conjectural and would risk the unnecessary disclosure of the privileged material in question," *Peseti*, 101 Haw. at 186, and frustrate legitimate interests in confidentiality.

Defendant's arguments in support of his contention that *Ritchie* created an absolute right to *in camera* review of privileged documents, Def. Br. at 20-31, are unavailing. First, defendant contends that the United States Supreme Court's statement — that "Ritchie, of course, may not require the trial court to search through the CYS file without first establishing a basis for his claim that it contains material evidence" — was merely an instruction applicable on remand in that case, and intended as a guide to "the trial court's assessment of materiality *while performing* the *in camera* review [on remand], not setting that specificity as a bar to earning *in camera* review," Def. Br. at 28 (emphasis added). But, as the cases cited above illustrate, *see* pp. 28-29, *supra*, the vast majority of courts to consider the question have held that *Ritchie's* clear statement is applicable outside of the remand context. For good reason, too, because any attempt to characterize *Ritchie*'*s* rule as merely an instruction to guide the court on remand directly

contradicts the Court's express statement that Ritchie could not receive an *in camera* review "without first establishing" materiality. *Ritchie*, 480 U.S. at 58 n.15.

Defendant's reliance on *Bean*, 137 Ill. 2d 65, is also misplaced. There, a defendant charged with murder sought the mental health records of a testifying witness. *Bean*, 137 Ill. 2d at 89-90. After reviewing the records *in camera*, the trial court disclosed some, but not all, of their contents, *id*. at 91, and the defendant later argued before this Court that the trial court had erred in declining to disclose *all* of the information, *id.* at 93. Relying on *Ritchie*, this Court rejected the defendant's argument and held that the trial court's decision to conduct an *in camera* review and disclose only those documents it deemed material did not deprive defendant of his due process rights. *Id*. at 99-101. But *Bean* does not answer the question presented here, because the *Bean* Court was not asked to determine whether the defendant was required to make an antecedent showing of materiality before the trial court conducted its *in camera* review, or whether absent a showing, the trial court could properly have quashed the subpoena seeking those documents without conducting such a review. While the *Bean* Court appeared to approve of the trial court's use of *in camera* review in that case, it was not asked to and did not opine about the showing required to trigger an *in camera* review.

And, finally, defendant's reliance on *People v. Escareno*, 2013 IL App (3d) 110152, ¶ 18, is unavailing. In that case, the appellate court held that the trial court's failure to conduct an *in camera* review was error, believing that *Ritchie* created a legal obligation on the trial court to conduct an *in camera* review whenever privileged materials are subpoenaed. *Id.* at ¶¶ 18-21. But, for the reasons explained, *Escareno's* understanding of *Ritchie* is incorrect and should not be adopted.

In sum, *Ritchie* holds that a defendant may receive an *in camera* review of confidential records, but only after making an initial showing of materiality.

B. Defendant failed to make a sufficient showing that the DCFS report contained material evidence.

Defendant failed to make the required showing of materiality, and accordingly, the trial court was not required to conduct an *in camera* review of the unfounded DCFS report.

This Court has not yet decided what showing a defendant must make to trigger a trial court's obligation to conduct an *in camera* review. Typically, when a defendant argues that the government withheld material information, the defendant must show "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). "A

'reasonable probability' is a probability sufficient to undermine confidence in the outcome.'" *Ritchie*, 480 U.S. at 57 (quoting *Bagley*, 473 U.S. at 682).

However, most courts have imposed a less onerous burden on a defendant seeking *in camera* review of privileged documents, recognizing that "trial courts cannot realistically expect defendants to articulate the precise nature of the confidential records without having prior access to them." *Gagne*, 136 N.H. at 105; *see also Stampe*, 994 F.3d at 771 ("[B]efore disclosure a defendant likely will not know the content of an undisclosed item."). Although *Ritchie* did "not give trial courts detailed guidance" on this issue, *Hummel*, 483 N.W.2d at 72, most courts have settled on the "'plausible showing'" standard. *Ritchie*, 480 U.S. at 58 n.15 (quoting *Valenzuela-Bernal*, 458 U.S. at 867, for the proposition that a defendant "must at least make some plausible showing of how their testimony would have been both material and favorable to his defense"). [4] Under this standard, a defendant

[4] Some courts have held that a defendant "must establish a reasonable probability that the records contain information that is material and relevant to his defense." *Gagne*, 136 N.H. at 105; *see also Stanaway*, 446 Mich. at 677 (*in camera* review appropriate "on a showing that the defendant has a good-faith belief, grounded on some demonstrable fact, that there is a reasonable probability that the records are likely to contain material information necessary to the defense."). Others have required "a proper showing by the defendant that the information . . . 'may change[] the outcome of [the] trial,'" *Peseti*, 101 Haw. at 186; "more than a 'vague assertion'" of materiality, *Zapata*, 2018 CO 82, ¶¶ 54-55 (internal citations omitted); or a "reasonably specific request [by the defendant] for relevant and competent information," *Stripling*, 261 Ga. at 6. Though slightly different, each test reflects a similar holding — that a defendant must make some showing of materiality that is less than the showing required in the posttrial context.

must "make a plausible showing that the privileged record at issue contained material evidence," *Dietrich*, 701 F.3d at 1196; *see also Abdallah*, 911 F.3d at 217 ("a defendant need only make some plausible showing that exculpatory material exists"). The plausible showing standard does not "require 'a particularized showing of what information'" is sought, *Stampe*, 994 F.3d at 771, but requires a defendant to nevertheless "'identify the requested confidential material with some degree of specificity.'" *Abdallah*, 911 F.3d at 217 (quoting *United States v. King*, 628 F.3d 693, 702 (4th Cir. 2011)).

Applying that standard here, defendant failed to make a plausible showing that the unfounded DCFS report contained material information; accordingly, the trial court did not abuse its discretion in quashing the subpoena without conducting an *in camera* review. *See Williams*, 209 Ill. 2d at 234; *Arze*, 2016 IL App (1st) 131959, ¶ 104 (trial court's decision to quash subpoena without conducting *in camera* review is reviewed for an abuse of discretion). Defendant's subpoena demanded "all records of investigations including but not limited to written reports, video or audio recordings created since Sept. 1, 2018 related to [L.G.P.'s mother, Mercedes] . . . or Angel Walker," C128, but made no allegation that the records pertained to L.G.P. and made no effort to explain why the documents might otherwise contain information material to the criminal proceedings against defendant. Then, at

the hearing on DCFS's subsequent motion to quash, defendant argued that the report could be "relevant in several ways," such as to show:

> interest and bias of . . . the mother of the accuser and her girlfriend both of which defense, based on our research believes—well, it goes to interest and bias of the—of the mother of the children who allegedly made these or who made these allegations, and her girlfriend who we believe are playing a part in—in this, and that goes to not only interest and bias, but if there's contradictory statements, that would certainly be *Brady* material as well.

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In other words, defendant speculated that the DCFS report might contain information showing the "interest and bias" of Mercedes and her girlfriend, but he did not explain how that information might be material to the criminal proceedings against him (such as, for example, by explaining why they might be biased against him or what they were "playing a part in"). Similarly, defendant suggested that the report might contain "contradictory statements," but provided no explanation why he believed this was so or what the statements might contradict. The trial court thus was presented with no non-speculative reason to believe that the DCFS report might plausibly contain material information.[5]

Accordingly, the trial court was well within its discretion to conclude that the DCFS report was immaterial to defendant's case. The underlying

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[5] Defendant's argument that he was required to make a greater showing of materiality than the defendant in *Ritchie*, Def. Br. at 29, is incorrect; the Supreme Court in *Ritchie* did not decide whether Ritchie had made a plausible showing of materiality but remanded to the trial court to make that

DCFS investigation was not aimed at defendant, but at defendant's victim's mother and the mother's friend. C128. Further, the report was classified as "unfounded," meaning that the investigation uncovered "no credible evidence" of abuse. 325 ILCS § 5/8.1. And, as the appellate court noted, the victim of the alleged abuse was never identified. *Sauls*, 2021 IL App (4th) 190667-U, ¶ 10. The trial court could reasonably conclude that an investigation into the allegations of a victim unrelated to defendant's case would not plausibly contain evidence material to defendant's case. For all these reasons, the report appears to be wholly immaterial to defendant's case, and absent a plausible showing to the contrary, the trial court appropriately exercised its discretion to quash the subpoena without conducting an *in camera* review.

CONCLUSION

This Court should affirm the appellate court's judgment. If this Court holds that the trial court was required to conduct an *in camera* review, either because defendant was entitled to one as of right or because the trial court abused its discretion, this Court should remand for limited purpose of allowing the trial court to review the DCFS report *in camera* for materiality. *Escareno*, 2013 IL App (1st) 110152, ¶ 21 (remanding for *in camera* review after holding that trial court erred in refusing to conduct *in camera* review). If the report contained material information, defendant would be given a new

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determination. *See Ritchie*, 480 U.S. at 58 n.15 ("Ritchie, of course, may not require the trial court to search through the CYS file without first establishing a basis for his claim that it contains material evidence.").

trial, however if the report contains "no such information, or if the nondisclosure was harmless beyond a reasonable doubt, the lower court will be free to reinstate the prior conviction." *Ritchie*, 480 U.S. at 58.

July 19, 2022

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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) 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 33 pages.

s/Mitchell J. Ness
Mitchell J. Ness

PROOF OF 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 July 19, 2022, the **Brief of Plaintiff-Appellee 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 email addresses:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

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