No. 130127

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. CECIL SMART, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, First District, No. 1-22-0427 There on Appeal from the Circuit Court of Cook County, Criminal Division, No. 19 CR 14458 The Honorable Carol M. Howard, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

LAUREN E. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 505-5275
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
12/9/2024 10:46 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

RULE 341(c) CERTIFICATION OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE

ARGUMENT

Other-acts evidence is admissible when relevant to proving specific intent as an element of the charged crime, and when its probative value is not substantially outweighed by unfair prejudicial effect. Peo. Br. 12-19.[1] This Court should decline to adopt defendant's contrary rule, which defies longstanding principles of admissibility under the Illinois Rules of Evidence and would improperly permit a defendant to block the admission of relevant evidence by adopting a trial strategy of denying the charged conduct but remaining silent on intent. This Court should thus reverse the appellate court's judgment and hold that the admissibility of other-acts evidence turns on the traditional tests of relevancy to a non-propensity purpose and balancing probative value against unfair prejudicial effect. Applying these tests here, the circuit court did not abuse its discretion by admitting other-acts evidence probative of defendant's specific intent. Alternatively, if the circuit court erred under these tests by admitting the challenged evidence, the error was harmless, and defendant's conviction should be affirmed.

I. Other-Acts Evidence Is Not Categorically Inadmissible to Prove Specific Intent When a Defendant Denies the Charged Acts.

The categorical rule that the appellate court adopted and defendant here advocates — that "if a defendant denies the commission of the crime and

[1] The People follow the same citation conventions as in the opening brief, with the following additions: "Peo. Br. _" and "Def. Br. _" refer to the People's opening brief and defendant's brief, respectively.

does not offer any evidence or argument that his actions were or may have been accidental, incidental, or inadvertent, other acts evidence may not be admitted to prove intent," A14 ¶ 33; Def. Br. 14 — improperly allows a defendant to prevent the prosecution from presenting relevant evidence bearing on an essential element of the charges. *See Old Chief v. United States*, 519 U.S. 172, 186 (1997) (noting "the familiar, standard rule that the prosecution is entitled to prove its case by evidence of its own choice"); *People v. Walker*, 211 Ill. 2d 317, 341 (2004) (adopting *Old Chief*'s reasoning and holding that prosecution must accept a defendant's stipulation to status as a felon but otherwise may prove its case by any admissible evidence).

This Court should decline to adopt this overly broad rule, which would categorically exclude evidence without analyzing, on a case-by-case basis, the evidence's relevance to proving an element of the charges or weighing its probative value against any unfair prejudicial effect. Rather, this Court should reaffirm the longstanding common-law principles codified in the Illinois Rules of Evidence, *see People v. Dabbs*, 239 Ill. 2d 277, 283 n.1 (2010), and clarify that other-acts evidence may be admissible in a specific-intent case when that evidence is both relevant to proving intent, *see* Ill. Rs. Evid. 401, 402, without relying solely on a propensity inference, *see* Ill. R. Evid. 404(b), and when its probative value is not substantially outweighed by the danger of unfair prejudice, *see* Ill. R. Evid. 403.

A. Intent is at issue in a specific-intent crime.

Both the appellate court and defendant start from the false premise that a defendant's specific intent is not "at issue" whenever the defense remains silent on intent. *See* A16 ¶ 34; Def. Br. 12-13. Under this view, because intent is not "at issue," other-acts evidence can serve no other purpose than to support an impermissible propensity inference when the defendant denies the charged act altogether. Def. Br. 13-14, 25. Unsurprisingly, given that this analysis proceeds from a false premise, the reasoning that follows from it is equally wrong.

Instead, a defendant puts his intent at issue when he pleads "not guilty" to a specific-intent crime. *See People v. Wright*, 56 Ill. 2d 523, 531 (1974); *Mathews v. United States*, 485 U.S. 58, 64-65 (1988). Consequently, for a specific-intent crime, intent is "at issue" regardless of the defense strategy. *See People v. Grayer*, 2023 IL 128871, ¶ 23 ("specific-intent crimes require the State to prove that the defendant subjectively desired the prohibited result"); *People v. Simms*, 192 Ill. 2d 348, 377 (2000) (in contrast to general-intent crimes, "proof that the prohibited harm was intended" is necessary in specific-intent crimes); *see also United States v. Gomez*, 763 F.3d 845, 858 (7th Cir. 2014) (en banc) ("'intent is automatically at issue'" in specific-intent crimes (internal citation omitted)).

As the opening brief explained, Peo. Br. 14, a defendant's tactical decision not to contest an essential element of the crime does not remove the prosecution's burden to prove that element. *See Estelle v. McGuire*, 502 U.S.

62, 69 (1991); *United States v. Jones*, 248 F.3d 671, 675 (7th Cir. 2001); *State v. Richardson*, 891 S.E.2d 132, 171 (N.C. 2023); *Hubbard v. State*, 422 P.3d 1260, 1265 (Nev. 2018); *State v. Yoh*, 910 A.2d 853, 863-64 (Vt. 2006); *People v. Mills*, 537 N.W.2d 909, 914-15 (Mich. 1995). Accordingly, when defendant pleaded "not guilty" to the specific-intent crimes charged in Counts 2 and 3, the People bore the burden to prove his intent to touch J.P. and to cause J.P. to touch defendant "for the purpose of sexual gratification or arousal of [defendant] or J.P.," CI7-8, even if defendant did not contest intent.

This does not mean, as defendant suggests, that other-acts evidence is "presumptively" or "automatically" admissible in all specific-intent crimes. Def. Br. 13, 15-16, 20, 22, 27. Stating that an element of a charged crime is "at issue" is a distinct proposition from arguing that any given piece of evidence is admissible to prove that element, and defendant mistakenly conflates these two propositions. The admission of any evidence — including other-acts evidence — is never automatic. Rather its admissibility remains subject to the rules of evidence and, at the circuit court's discretion, may be excluded on such bases as defined in the rules. *See People v. Bush*, 2023 IL 128747, ¶ 62 ("proper approach" to treating a general category of evidence is "the same way a trial court treats the admissibility of any piece of evidence," by applying the rules of evidence).

Accordingly, it would be error to *automatically exclude* other-acts evidence by claiming, nonsensically, that intent is "not at issue" in a specific-

intent crime unless a defendant affirmatively disputes it. *See, e.g.*, *Mills*, 537 N.W.2d at 915 ("The elements of the offense are always at issue. . . . The claim that evidence that goes to an undisputed point is inadmissible has also been rejected in criminal cases."); *United States v. Sterling*, 860 F.3d 233, 247 (4th Cir. 2017) (declining to adopt categorical rule that other-crimes evidence may not be admitted to prove intent when defendant unequivocally denies committing charged acts in specific-intent crime). The key question in the admissibility analysis is not whether a defendant's intent is "at issue" in a specific-intent crime — it is, *see Simms*, 192 Ill. 2d at 377; *Gomez*, 763 F.3d at 858. Rather, consistent with longstanding Illinois evidentiary law, when the circuit court must determine whether to admit proffered other-acts evidence, the analysis focuses first on whether the evidence is relevant to show a defendant's intent without relying solely on a propensity inference. *See* Ill. Rs. Evid. 401, 402, 404(b). If so, the circuit court must then consider whether the danger of its unfair prejudicial effect substantially outweighs its probative value. *See* Ill. R. Evid. 403.

B. Under Rules 401, 402, and 404(b), other-acts evidence may be admissible when relevant to proving specific intent without relying solely on a propensity inference.

Defendant overstates the scope of Rule 404(b) by declaring that it presumptively excludes other-acts evidence except in a few narrow circumstances. *See* Def. Br. 15-19. The Illinois Rules of Evidence presumptively *include* all relevant evidence, subject to certain well-delineated exceptions. *See* Ill. Rs. Evid. 401, 402; *see also People v. Monroe*,

66 Ill. 2d 317, 321 (1977) ("The basic principle that animates our law of evidence is that what is relevant is admissible. Exceptions to that principle must justify themselves." (internal citation omitted)). Rule 404(b) operates within this inclusive framework to exclude one category of evidence and then only when offered for a single impermissible purpose.

"'Relevant evidence' means evidence having any 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." *Bush*, 2023 IL 128747, ¶ 62 (quoting Ill. R. Evid. 401). "'Probability is tested in the light of logic, experience, and accepted assumption as to human behavior.'" *People v. Pinkett*, 2023 IL 127223, ¶ 30 (quoting *People v. Patterson*, 192 Ill. 2d 93, 115 (2000)). A defendant's intent in a specific-intent crime is clearly a "fact that is of consequence to the determination of the action" because it is an element on which the prosecution bears the burden of proof. *See Simms*, 192 Ill. 2d at 377; *Gomez*, 763 F.3d at 858. So, when a piece of evidence tends to show, based on a probabilistic calculation, that the defendant possessed the requisite specific intent when he committed the charged act, that evidence is relevant. *See Pinkett*, 2023 IL 127223, ¶ 30.

Rule 404(b) requires the exclusion of a specific category of evidence when its relevancy depends entirely upon one inferential chain: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith[.]" Consequently,

other-acts evidence is inadmissible when offered to show that (1) a defendant who has acted badly before has a bad moral character, and (2) because he has a bad moral character, he is more likely to have committed the charged acts. *See Dabbs*, 239 Ill. 2d at 284. Other-acts evidence, when offered for this purpose, is generally excluded not because it is irrelevant, but because it is too prejudicial. *Id.* But Rule 404(b) recognizes that other-acts evidence may nonetheless be offered for any purpose other than to prove a defendant's bad character, including but not limited to "proof of . . . intent[.]"

Accordingly, under Rule 404(b), the appropriate inquiry is whether the other-acts evidence is relevant to prove intent — *even if it may also* tend to show the defendant's bad character. *See Dabbs*, 239 Ill. 2d at 284. In other words, the other-acts evidence may not rely *solely* on the impermissible propensity inference to establish its relevancy, but if the evidence is also relevant to another "fact . . . of consequence to the determination of the action," Ill. R. Evid. 401, Rule 404(b) is satisfied.

For example, in an aggravated criminal sexual abuse case, evidence that the defendant had shoplifted would be irrelevant to show that he acted in the charged crimes for the purpose of sexual gratification or arousal. The relevancy of this other-acts evidence could lie only in the inference that one who has committed prior crimes has a bad moral character and is thus more likely to have committed the charged crime. Rule 404(b) guards against this impermissible inference.

By contrast, evidence that a defendant had previously touched children in a sexually inappropriate way, and under similar circumstances as the charged crime, would be relevant to show that the latter touching was more likely done with the same sexually inappropriate intent as the former. Contrary to defendant's argument, *see* Def. Br. 16, 35, this *is* a permissible inference under Rule 404(b), and it is precisely the chain of logic that this Court endorsed in *People v. Wilson*. *See* 214 Ill. 2d 127, 141 (2005) (affirming admission of other-acts evidence to prove specific intent where "the uncharged crimes shared ample similarity to the charged crimes," such that the defendant's intent in committing the charged conduct could be inferred from his intent in committing the uncharged conduct).

To be sure, the evidence that this Court approved in *Wilson also* supports a propensity inference: that because the defendant touched teenaged girls in sexually inappropriate ways in the past, the defendant has a bad moral character, which makes it more likely that he also committed the charged sex crime. But the fact that a propensity inference often accompanies the admission of other-acts evidence does not require its exclusion when the evidence can *also* be used for another, valid purpose. Were the rule otherwise, Rule 404(b) would end after its first sentence and would not allow such evidence when offered for other relevant purposes.

People v. Heard also supports the proposition that other-acts evidence may be admissible when relevant for the non-propensity purpose of proving

intent. *See* 187 Ill. 2d 36, 59-60 (1999); Peo. Br. 14-15. While defendant is correct that *Heard* involved a general-intent crime, Def. Br. 23, the defendant's intent was nevertheless relevant to proving a fact of consequence other than that he acted in conformity with his bad character, *see* Ill. Rs. Evid. 401, 404(b). The fact that Heard had previously intended to harm the murder victims tended to prove that he (rather than someone else) harbored an intent to harm those victims when the shooting happened, which was relevant to proving the murderer's identity, 187 Ill. 2d at 60, *despite also* suggesting that, because Heard had harmed the victims before, he likely harmed them again.

Moreover, the appellate court in *People v. Cavazos* properly applied *Heard* when it found that, where a crime includes a specific-intent element, evidence bearing on intent is relevant regardless of the defense strategy because intent must be proved beyond a reasonable doubt. *See* 2022 IL App (2d) 120444-B, ¶ 72. Specific intent is, by definition, a fact of consequence to the determination of the action when it is an element. *See id.*; Ill. R. Evid. 401. Contrary to defendant's argument that the uncharged acts in *Cavazos* were admissible only as "part of a continuing narrative," Def. Br. 24-25, the appellate court explained that the other-acts evidence was relevant to proving the defendant's specific intent because the other acts were similar and close in time to the charged crimes. 2022 IL App (2d) 120444-B, ¶ 73.

Defendant misses the mark by insisting that Rule 404(b) incorporates some vaguely defined "materiality principle" governing admissibility, Def. Br. 19-20, for that language appears nowhere in the rules, which rely on relevancy rather than materiality. *See* Ill. Rs. Evid. 401, 402, 403. Much more recently than defendant's cited case, Def. Br. 19-20, this Court has observed that the definition of relevant evidence as evidence tending to prove a "fact that is of consequence to the determination of the action" — first used in Federal Rule of Evidence 401 and later codified in Illinois Rule of Evidence 401 — "has the advantage of avoiding the loosely used and ambiguous word 'material.'" *Monroe*, 66 Ill. 2d at 322. In any event, defendant is wrong to contend that under Rule 404(b), only evidence bearing on a "material" issue is admissible. Def. Br. 19-20. Rather, the admissibility of other-acts evidence turns on its relevance to a non-propensity purpose, which here depends on the inferential chain that connects the proffered evidence with its tendency to prove the essential element of specific intent. *See Jones*, 455 F.3d at 810-11 (Easterbrook, J., concurring) (explaining that admissibility of other-acts evidence depends on relevance, and relevance depends on inferential chain connecting other-acts evidence to specific intent).

C. Even when other-acts evidence is relevant to prove specific intent, Rule 403 guards against the admission of evidence with low probative value relative to the danger of its unfair prejudicial effect.

Rule 403 acts as the final check on the admission of relevant other-acts evidence, excluding such evidence if its "'probative value is substantially

outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.'" *Pinkett*, 2023 IL 127223, ¶ 28 (quoting Ill. R. Evid. 403). Rule 403 applies to all relevant evidence, *see, e.g., People v. Thompson*, 2016 IL 118667, ¶ 54 (police officer's lay witness identification testimony, while generally admissible, remains subject to Rule 403), and its proper application prevents the imagined "flood of prejudicial evidence into a case" that defendant decries. *See* Def. Br. 16, 20.

As discussed in the opening brief, *see* Peo. Br. 18-19, Rule 403 ensures that the danger of unfair prejudicial effect does not substantially outweigh the probative value of other-acts evidence that is relevant to a non-propensity purpose. Proper application of Rule 403 guards against the concerns voiced by courts of other jurisdictions, *see* Def. Br. 22-23, that an impermissible, unfairly prejudicial propensity inference would substantially outweigh the probative value of other-acts evidence in a given case. *See People v. Moore*, 2020 IL 124538, ¶¶ 33-38 (discussing why, under both Federal Rule of Evidence 403 and Illinois Rule of Evidence 403, unfair prejudicial effect of a prior felony conviction's specific nature substantially outweighs its probative value when stipulated fact of prior conviction offers same probative value without danger of unfair prejudice). This Court should therefore reject defendant's invitation to categorically exclude relevant evidence under Rule 404(b) as unfairly prejudicial; Rule 403 already protects against the danger

that any given piece of evidence's unfair prejudicial effect substantially outweighs its probative value.

D. Other courts follow this common-sense, rules-based approach.

Although defendant can identify a few States that take an alternative approach, *see* Def. Br. 22-23, many other jurisdictions follow the common-sense, rules-based approach outlined here: They recognize that intent is necessarily "at issue" in a specific-intent crime, regardless of the defense strategy, and admissibility of other-acts evidence offered to show intent turns on (1) whether that evidence is relevant to show intent without relying solely on a propensity inference, and (2) whether the probative value of the evidence is outweighed by its unfair prejudicial effect. Where, as here, the Illinois Rules of Evidence parallel the Federal Rules of Evidence, this Court may look to federal law, as well as state decisions interpreting similar rules, for guidance. *Thompson*, 2016 IL 118667, ¶ 40.

As discussed in the opening brief, the United States Courts of Appeals for the Seventh and Eighth Circuits both employ the approach described here. *See* Peo. Br. 17-18, 21 (citing *United States v. Hill*, 249 F.3d 707 (8th Cir. 2001), and *United States v. Gomez*, 763 F.3d 845 (7th Cir. 2014) (en banc)). Numerous other federal circuits apply nearly the same approach. *See, e.g.*, *United States v. Shumway*, 112 F.3d 1413, 1419, 1421-22 (10th Cir. 1997) (other-acts evidence was relevant to proving specific intent as element of charges to which defendant pleaded not guilty, and Rule 403 was satisfied);

United States v. Johnson, 27 F.3d 1186, 1192-93 (6th Cir. 1994) (other-acts evidence may be admissible to prove intent in specific-intent crime, subject to Rule 403 balancing); *United States v. Hadley*, 918 F.2d 848, 850-52 (9th Cir. 1990) (rejecting argument that intent was not "a material element" in specific-intent crime of sexual abuse where defendant denied sexual contact and finding challenged evidence satisfied Rules 404(b) and 403); *United States v. Mergist*, 738 F.2d 645, 649 (5th Cir. 1984) (admissibility of other-acts evidence under 404(b) depends first on its relevance to prove intent, and second on Rule 403 balancing test (citing *United States v. Beechum*, 582 F.2d 898 (5th Cir. 1978) (en banc))).

And other state high courts have endorsed similar approaches. *See, e.g.*, *Henderson v. State*, 900 S.E.2d 596, 600-02 (Ga. 2024) (Rule 404(b) excludes other-acts evidence only when its sole purpose is to show propensity, and because intent is at issue in specific-intent crime, evidence bearing on specific intent is admissible when Rule 403 also satisfied); *Hubbard*, 422 P.3d at 1264-66 (holding, in accordance with *Gomez*, 763 F.3d at 858-59, that "for specific intent crimes, intent is automatically at issue as a material element to be proven by the government," so other-acts evidence may be admissible when relevant to prove intent and Rule 403 satisfied); *Commonwealth v. Gollman*, 762 N.E.2d 847, 850-51 (Mass. 2002) (other-acts evidence bearing on intent is relevant in specific-intent crime when prior acts are sufficiently similar and probative value not outweighed by prejudicial effect).

That so many jurisdictions agree on this common-sense, rules-based approach confirms — contrary to defendant's position, *see* Def. Br. 21-23, 27 — that the defense's chosen strategy does not and should not govern the admissibility of other-acts evidence. Rather, the admissibility of other-acts evidence depends on whether the evidence is relevant to proving intent — which remains at issue in a specific-intent crime — without relying solely on an impermissible propensity inference, and whether the probative value of that evidence is not substantially outweighed by its unfair prejudicial effect.

E. The circuit court did not abuse its discretion when it admitted other-acts evidence here.

As discussed in the opening brief, Peo. Br. 23-24, the circuit court did not act unreasonably when it allowed evidence that defendant had touched the buttocks of a teenage boy a month before the charged events. *See Peterson*, 2017 IL 120331, ¶ 125 ("The question is not whether the reviewing court would have made the same decision if it were acting as the trial court. Rather, the question is whether the trial court's decision is 'arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.'" (internal citation omitted)).

While J.P.'s credible, detailed, and much-corroborated testimony *also* proved defendant's specific intent as to Count 2, *see* Def. Br. 28-30, J.P.'s testimony did not render the other-acts evidence irrelevant or otherwise inadmissible. Indeed, when the circuit court ruled on the People's motion in limine to admit other-acts evidence — which the prosecution had to disclose

well before trial, *see* Ill. R. Evid. 404(c) — the court did not know the substance of J.P.'s testimony. It thus could not speculate as to how "necessary" to prove intent the proffered evidence would be in relation to other evidence to be offered in the People's case-in-chief. This fact exposes the flaw in defendant's argument that such evidence (which the People must disclose before trial under Rule 404(c), and the court must rule on in advance) can only be offered if "necessary" depending on how the defendant wants to shape the case against him and then only in rebuttal. *See* Def. Br. 26.

In any event, while the circuit court properly ruled on the other-acts evidence's admissibility before trial as Rule 404(c) requires, such that the People could have offered it in their case-in-chief, the evidence came in at trial only *after* the People's case-in-chief concluded (as defendant points out, *see* Def. Br. 13-14, 26), and only after defendant had put his character at issue by offering character witness Robert Muzikowski's testimony, *see* R319-26 (direct examination). The witness, who knew defendant from Breakthrough, offered his opinion that defendant had a positive reputation for chastity and morality in the workplace. R323-24. When defendant opened the door by offering testimony about a pertinent character trait, the People were then entitled to offer character evidence to rebut that trait. *See People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 32 (citing Ill. R. Evid. 404(a)(1), and *People v. Lewis*, 25 Ill. 2d 442, 445 (1962)). The People properly did so by (1) asking defendant's brother on cross-examination if he

knew that defendant was fired "for driving a kid home and grabbing his butt," R427; and (2) asking defendant about his termination from Breakthrough, R455-56 — to which defendant responded with significantly more detail about the incident than he was asked for, *see* R456; and (3) offering a stipulation as to Breakthrough's reason for firing defendant, R503.

Likewise, in closing argument, defense counsel reminded the court that defendant's character witness had testified to "his opinion that [defendant's] reputation for chastity and morality were good or excellent," R532, which opened the door to the People's argument in rebuttal closing that defendant's past actions showed a pattern inconsistent with chastity and morality, R534. Thus, while the circuit court had properly admitted the other-acts evidence before trial, when defendant put his pertinent character traits at issue at trial, the People were then entitled to introduce evidence in rebuttal, including evidence relying on a propensity inference. *See* Ill. R. Evid. 404(a)(1).

Moreover, the probative value of the other-acts evidence as presented at trial was not substantially outweighed by any unfair prejudicial effect. Defendant argues that even if this Court were to adopt the People's proposed rule (as it should), it should nevertheless affirm the appellate court's judgment because the evidence introduced here did not satisfy Rule 403. *See* Def. Br. 35-37. But the circuit court did not abuse its discretion in applying this test. As discussed in the opening brief, Peo. Br. 23-24, the evidence was

relevant to show that, if defendant touched J.P. and made J.P. touch him, defendant did so "for the purpose of sexual gratification or arousal," CI7-8, because, as the circuit court reasonably found, a "hand to the buttocks" could be viewed as "sexual behavior," R113, it occurred only a month before the charged acts, *see People v. Illgen*, 145 Ill. 2d 353, 370 (1991) (probative value higher for events closer in time), and it involved another teenaged boy defendant had met through his work at Breakthrough, *see id.* at 373 (general areas of similarity suffice to show similar intent).

Any unfair prejudicial effect of this evidence is minimized by the fact that (1) the evidence was *not* offered in the People's case-in-chief, Def. Br. 13-14, 26; (2) the evidence was mentioned only a handful of times relative to the extensive, credible, and corroborated testimony of J.P., Peo. Br. 25-26; and (3) under Rule 404(a)(1), as discussed *supra*, the evidence was presented only after defendant opened the door to rebuttal on the pertinent character traits of chastity and morality, with defendant offering the most prejudicial details about his firing during his own testimony.

In sum, the circuit court did not abuse its discretion in its pretrial ruling that other-acts evidence was admissible, nor in allowing the evidence at trial when offered after defendant opened the door to character evidence.

II. Alternatively, Even If the Circuit Court Erred by Admitting Other-Acts Evidence, the Error Was Harmless.

If this Court determines — on any basis — that the circuit court erred by admitting the other-acts evidence, the error was harmless. As addressed

in the opening brief, Peo. Br. 25-26, the appellate court applied the wrong harmlessness standard in assessing the alleged evidentiary error's impact on the verdict in this bench trial. "An evidentiary error is harmless where there is no *reasonable probability* that the jury would have acquitted the defendant absent the error." *Pinkett*, 2023 IL 127223, ¶ 39 (cleaned up and internal quotations omitted; emphasis in original). But even under the higher, constitutional standard that defendant identifies, *see* Def. Br. 31 (citing *People v. King*, 2020 IL 123926, ¶ 40), the error was also harmless beyond a reasonable doubt.

There are three approaches to determine whether an error is harmless beyond a reasonable doubt: "(1) whether the error contributed to the defendant's conviction, (2) whether the other evidence in the case overwhelmingly supported the defendant's conviction, and (3) whether the challenged evidence was duplicative or cumulative." *King*, 2020 IL 123926, ¶ 40 (citing *People v. Lerma*, 2016 IL 118496, ¶ 33). The record demonstrates that the error was harmless under all three standards.

First, the other-act evidence here did not contribute to defendant's conviction. Indeed, it was not even part of the People's case-in-chief, and the circuit court credited the strength of J.P.'s testimony and his credibility and made no mention of the other-acts evidence in announcing its verdict. R535-36. In closing arguments, the court questioned both the prosecutor and defense counsel on issues related to the witnesses' credibility as to the night

the crimes occurred, the corroboration of J.P.'s testimony, and the unlikelihood that J.P. would have made up this story, *see* R511-13, 514, 516-17, 525, but asked no questions about the other-acts evidence, *see* R504-35. Defendant has pointed to nothing in the record that indicates the court gave this evidence any weight whatsoever in reaching its verdict. Def. Br. 31-35.

Second, the evidence overwhelmingly supported defendant's conviction where the court found J.P.'s testimony credible to sustain Counts 1 and 2, R536, which testimony included lengthy, detailed descriptions of defendant's actions, *see* R232-43, 259, 269-72. Further, J.P.'s mother and sister corroborated his testimony by describing significant changes in his behavior and demeanor after the sexual assault. R202-03, 296. And third, as defendant notes, *see* Def. Br. 29, evidence bearing on defendant's specific intent here ended up being cumulative at trial following J.P.'s extensive testimony. Given this, any error was harmless beyond a reasonable doubt, and defendant's conviction should be affirmed.

CONCLUSION

This Court should reverse the appellate court's judgment and remand for the appellate court to consider defendant's claim of ineffective assistance of counsel, which the appellate court did not reach.

December 9, 2024

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

LAUREN E. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 505-5275
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

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 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 4,749 words.

/s/ Lauren E. Schneider
LAUREN E. SCHNEIDER
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 9, 2024, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Illinois Supreme Court using the Court's electronic filing system, which provided service to the following:

Douglas Hoff
Kara Kurland
Office of the State Appellate Defender
First Judicial District
203 North LaSalle St., 24th Floor
Chicago, IL 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellee

/s/ Lauren E. Schneider
LAUREN E. SCHNEIDER
Assistant Attorney General