No. 131527

IN THE
SUPREME COURT OF ILLINOIS

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

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

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NATURE OF THE ACTION

The People appeal from the appellate court's judgment, which reversed defendant's convictions on five counts of predatory criminal sexual assault. No issue is raised concerning the adequacy of the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the trial court committed second prong plain error when it allowed this fit defendant to represent himself after he was admonished pursuant to Rule 401, and an expert opined that defendant did not suffer from severe mental illness.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 612(b)(2). On September 24, 2025, this Court allowed the People's petition for leave to appeal.

STATEMENT OF FACTS

I. Defendant Was Convicted of Five Counts of Predatory Criminal Sexual Assault Following a Bench Trial at Which He Represented Himself at his Request.

A. Defendant was charged with sex offenses against his daughter and elected self-representation following Rule 401 admonishments.

In June 2020, defendant was charged with (a) five counts of predatory criminal sexual assault alleging that he made contact between his penis and the sex organ, anus, mouth, and hand of his daughter, J.G., who was under 13, as well as committed an intrusion of an object into J.G.'s sex organ, CI37-41, and (b) four counts of criminal sexual assault alleging that he made

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contact between his penis and J.G.'s sex organ, mouth, and anus, as well as committed an act of intrusion of an object into J.G.'s sex organ, CI42-45.[1]

On June 29, 2020, an order of protection was entered prohibiting defendant from contacting the victim and her immediate family. CI20. Defendant contacted the victim 22 times between July 3 and July 11, 2020; as a result, he was charged with a misdemeanor offense for violating the order of protection. *See* CI82, 84.

Defendant was represented by assistant public defenders for his arraignment and two status hearings, R9, 12, 15; CI69, until, on November 13, 2020, defendant told the trial court that "I want[] to represent myself, your Honor. I don't want the Public Defender." R22. The court told defendant that the assistant public defender was "a very good attorney," and defendant responded, "I understand. I feel it's in my best interest to represent myself." R22. The court asked defendant if he knew the rules of evidence, and he responded, "No, but I am going to go to the law library and do a lot of studying." R22. The court warned defendant against waiving counsel, then continued the case for defendant to further consider his decision, explaining that if "you still want to represent yourself after thinking about what I just said, I am compelled by law to allow you to do that, even though it's a mistake on your part." R23-25.

[1] "CI_" and "R_" refer to the impounded common law record and the report of proceedings.

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On December 9, 2020, the trial court admonished defendant pursuant to Rule 401. R33. As Rule 401 requires, the court reviewed the charges and sentencing exposure with defendant, who stated he understood. R33-35. The court explained that defendant had the right to appointed counsel and, in a lengthy colloquy, attempted to convince defendant to keep counsel, including by informing him that "down the line, you could still represent yourself." R37; *see also* R40.

Defendant refused, explaining:

> I understand the charges and I understand it's a lot of [jail] time, your Honor, you know. I know that my resources ain't as much as his, but I feel it's in my best interest to defend myself because I don't think anybody really cares as much as I do; and I really fear for my safety and my health and my life.
>
> I want to do the best that I can, and I promise to learn and be quick to the point and learn what I got to learn.

R38.

The trial court stated that the "record will reflect that [defendant] has been admonished under Supreme Court Rule 401," that "defendant, in this Court's opinion, has no mental defect or deficiency. He is of sound mind. He wishes to represent himself" and thus would "be allowed to represent himself." R39-40; *see also* CI101.[2]

[2] Although defendant waived counsel for his felony charges, assistant public defenders appeared on his behalf at subsequent proceedings on the misdemeanor charge for violating an order of protection, which ran parallel to the felony charges. R46-47, 51, 56, 66, 73, 101, 104, 141, 150, 181.

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In January 2021, the court again tried to persuade defendant to accept representation, but defendant demurred. R46. In addition, the court, the prosecution, and defendant agreed that the prosecution would provide defendant all discovery personally. R47-48.

In March 2021, the People gave notice that they had submitted samples for DNA testing that would result in "a consumption of DNA." R51-52. When the court asked for defendant's response, he stated, "I don't know what to say, your Honor." R52. The court explained that this was an example of why defendant should accept representation, and defendant responded, "I understand, your Honor. I just need time to get things done." R53.

Later that month, the trial court granted the motion for consumptive DNA testing over defendant's objection. R60-61. The court advised defendant, "seriously, sir, consider getting yourself an attorney . . . you really do need one," but clarified that "it's your call. I can't force you. I'm not allowed to, otherwise I would." R65-66. In April 2021, the court, with a different judge presiding, again "highly recommend[ed]" to defendant that he accept the appointment of the public defender. R72. Defendant insisted that he was "better off" representing himself. R72. And, on June 25, 2021, the trial court, with a third judge presiding, repeated the Rule 401 admonishments after inquiring about defendant's background. R79-83; *see also* CI146. Despite the court "strongly recommend[ing]" that defendant

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accept appointment of the public defender, defendant repeated that "I strongly believe I'm best representing myself." R81.

During pretrial proceedings, the People moved to admit other crimes evidence, *see* R88; CI154, and for a hearing pursuant to 725 ILCS 5/115-10, seeking admission of testimony regarding the victim's out-of-court statement, CI162; R99. On October 7, 2021, the People tendered copies of the motions to defendant and the trial court gave defendant an opportunity to respond. R104-05; CI170.

On December 1, 2021, the trial court again asked defendant why he was representing himself, and defendant responded, "It's in my best interest." R111. The court told defendant that he "need[ed] a lawyer because the stakes here are extremely high," but defendant responded, "[m]ay I represent myself your Honor, please." R112. The court tried to convince defendant that "the best chance you have . . . is to have a skilled attorney from the Public Defender's Office representing you," and defendant insisted that "I want to represent myself, your Honor." R112. The court again admonished defendant pursuant to Rule 401 and described the dangers of proceeding pro se and the benefits of representation. R112-13; CI174.

At a hearing on January 27, 2022, the prosecution stated, and defendant confirmed, that defendant had been given the opportunity to watch video footage of forensic interviews with the victim and her older sister, A.G., but had declined. R119-21. Defendant acknowledged that he had not yet

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responded to the People's pending motions but was "catching up on everything." R122. The trial court instructed defendant that he should file any written response by March 30, 2022, the date of the hearing for the motion to admit other crimes evidence. R123.

On that date, defendant confirmed that he would not be filing written responses to the pending motions. R127. The prosecution explained that the motion to introduce other crimes evidence sought admission of evidence regarding A.G. R128. The prosecution averred that the evidence would show that defendant abused A.G. in a manner similar to his alleged abuse of J.G. and sometimes abused both daughters simultaneously in a "threesome." R129-30. Defendant responded that the alleged evidence was "arguable" and "all hearsay." R135. The trial court granted the motion to admit evidence of other crimes. R135; CI182.

On April 28, 2022, trial court postponed the hearing on the People's section 115-10 motion due to an illness in the prosecutor's family and again unsuccessfully tried to convince defendant to accept representation and admonished defendant pursuant to Rule 401. R143-46; CI190.

On May 17, 2022, the court held a hearing on the People's section 115-10 motion. R152-53. Guadalupe Salgado, a forensic interviewer from the Children's Advocacy Center (CAC), testified that on June 26, 2020, she interviewed J.G., who had just turned 13. R156-17. Defendant declined to question Salgado, acknowledging that he "did refuse" to watch the video

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interview, stating that he did not "need to see it," and asserting that he "didn't do [the crime] but I'm going to prove it." R160. The video interview was played for the court. R161.

The trial court asked defendant if he would like to present any evidence, and defendant responded, "At this time no, Your Honor." R161. Defendant also declined to present argument after clarifying that the court would be ruling "[j]ust for the motion for the video." R163-64. The court granted the prosecution's motion and admitted the video of J.G.'s out-of-court statement. R164-65; CI194.

The parties agreed to set the matter for trial, and defendant stated that he wanted a "[t]rial by judge." R165. The court admonished defendant regarding the nature of a jury trial, following which defendant confirmed that he wanted a "[b]ench trial" and executed a written jury waiver. R166-68; CI198; *see also* CI194.

On October 18, 2022, the trial court set trial for November 2, 2022. R193. On that same date, the court stated that it had "to ensure that [defendant] is competent" to waive his right to counsel and that "a BCX" or behavioral clinical examination, which courts use to evaluate whether a defendant is fit to stand trial, "could be informative on that issue." R193. The court added that it "may very well order a BCX in this case." *Id.* Then, on November 2, 2022, "to ensure that we have a complete record in this case and that we're not proceeding haphazardly on anything, including all the

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defendant's constitutional rights," the court ordered that "defendant [be] examined by Forensic Clinical Services [FCS] for fitness to stand trial." R200-01; *see also* CI212.

B. After an evidentiary hearing, the trial court found that defendant was fit to stand trial and waive counsel and did not suffer from any severe mental illness.

On December 14, 2022, the trial court noted that it had received a report from Dr. Philip Pan, who opined that defendant was fit to stand trial but unfit to represent himself. *See* CI219; R207. The report stated that defendant was "FIT TO STAND TRIAL" because he "demonstrates an adequate understanding of the nature and purpose of the proceedings against him," "is able to assist counsel in his defense," and "is not receiving psychotropic medication at this time." CI222. However, Pan further opined that defendant was "UNFIT TO REPRESENT HIMSELF PRO SE" because he "is unable to mount a defense solely on his own due to disorganized and paranoid thinking." CI223. The court explained that it had requested a "simple fitness examination" because it was his understanding that the same standard applies to waiver of right to counsel, but FCS "ask[ed] whether they wanted a report on [defendant's] fitness to waive his right to counsel." R227. The court "didn't give much thought to it" but "said, well, that's the ultimate issue we're talking about, so sure." *Id.* The trial court then set the matter for a fitness hearing. R210-11. Because the fitness issue applied across all of

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defendant's cases, both defendant and his attorney on the misdemeanor case were allowed to question the psychiatrist. R220-22.

At the March 14, 2023, fitness hearing, an assistant public defender represented defendant on the misdemeanor case and stood "silent" "as far as the felony matters" because defendant "was fairly adamant that he did not wish us to represent him at all regarding the felonies." R248, 252. The People agreed that defendant had been found fit to stand trial and expressed no opinion "as far as [defendant's] ability to go pro se." R251.

The trial court questioned Dr. Pan, who had interviewed defendant twice. R255. Pan testified that defendant was "suffering from an unspecified schizophrenia spectrum and other psychotic disorder." R256. Defendant's symptoms manifested as "odd behaviors," namely "problems with his hygiene at the jail and not showering." *Id.*; *see also* CI222. Pan's report acknowledged that defendant "explained that he does not shower in the jail . . . because, 'I keep to myself'" and because he did not want to want to get into a fight, and that defendant "insisted that . . . he maintains adequate hygiene by washing up in his sink." CI229. Pan also thought that defendant had "some . . . idiosyncratic and disorganized thinking," and Pan was "concerned about some paranoid delusional thinking." R256. But Pan's report noted that defendant's "speech was fluent and non-pressured," his "affect was calm and pleasant," and he "denied any psychotic symptoms, including: auditory/visual hallucinations, paranoia, thought

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control/insertion/withdrawal, delusional or referential thinking." *See* CI222; CI230.

In the end, Pan opined that defendant was fit to stand trial given his "understanding of what he is charged with, how trial works, [and] what the various members of the court do during trial proceedings." R257-58; *see also* CI231 (Pan's report noting that defendant was able to explain the charges against him, the nature of pleas, the difference between a jury and bench trial, and what a witness was).

Pan further stated that he did "not believe that [defendant] is able to represent himself pro se," R258, based on defendant's view that the charges would be dropped because the allegations were false:

> [B]asically, [defendant] insists that the allegations are false and he's being set up by his wife. He cited he has many witnesses on his behalf, but he wouldn't elaborate or share with me who those people are. He expressed a lot of focus that the charges would be dropped but didn't really give me any explanation or logic why they would be.
>
> When I asked him about some apparent evidence that existed on his phone, he basically just denied that this could be the case and said it was false. He was adamant that his – that one of the victims must have dropped the charges by now. And some of his logic for why his ex-wife was persecuting him just seemed very bizarre and faulty.

R258-59. According to Pan, defendant told him that he was "not going to use a jury" but was "going to go with a judge," would look up how to file a motion "at the law library," knew how to present evidence, "could cross-examine a witness," and would "work on" making arguments and issuing subpoenas

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with help from the law library. R259-60. Defendant also stated at the hearing that he understood that he had "the right to not self-incriminate myself." R264; *see also* CI232.

The trial court then asked Pan about the severity of defendant's mental illness. R262. Pan testified that defendant was "having active symptoms which do not affect his ability to stand trial." R262. According to Pan, defendant had no "severe symptoms" and was "not suffering from severe mental illness." *Id.* However, Pan also opined, defendant was "not organized enough to mount his own defense by himself." *Id.*

The People, the assistant public defender, and defendant declined to question Pan, R262, and the trial court continued the matter for a ruling, noting that "while I have not made any final conclusions," Pan seemed to be expressing "more of an opinion that [he] doesn't think it's a good idea for [defendant] to represent himself," R267.

On May 8, 2023, the trial court found that "defendant is fit to stand trial." R276. The court added that this "finding potentially ends the matter with respect to the question whether the defendant is fit to represent himself" because *Godinez v. Moran*, 509 U.S. 39 (1993), had "held that the standard for fitness to stand trial and represent one's self [*sic*] are the same." *Id.* That is, "the required competence is a competence to waive the right to counsel not the competence to represent one's self [*sic*]." R276-77. Thus, the trial court

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also found, defendant was "fit to waive his right to counsel." R299; *see also* CI257.

The trial court admonished defendant pursuant to Rule 401 for a fifth time, explaining each charge, the minimum and maximum sentences, the fact that consecutive sentencing was discretionary, and that defendant had a right to an appointed attorney. R277-99. The court found that defendant "understands the charges against him," "the possible penalties," and that "he has a right to counsel and the right to have counsel appointed." R299. And, the court found, defendant was "knowingly and voluntarily and intelligently waiving his right to counsel." *Id.*

The trial court also acknowledged the United States Supreme Court's decision in *Indiana v. Edwards*, 554 U.S. 164 (2008), where the "Court ruled that the State may insist on representation if the defendant, while competent to stand trial, suffers from, quote, severe mental illness to the point where they are not competent to conduct trial proceedings by themselves, end quote." R277. The court did not insist on representation for defendant, however, because Pan had testified that defendant was "not suffering from severe mental illness" and had merely opined that "it is not a good idea for [defendant] to represent himself." R301.

The next day, after defendant again stated his desire for a bench trial, the trial court admonished him about his right to a jury trial, and defendant executed oral and written jury waivers. R307-09; CI265.

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C. J.G., her sister, her mother, and experts testified for the prosecution about defendant's sexual offenses against his daughters.

At trial, J.G. testified that defendant began to "do stuff" to her when she was "8 or 9." R320. The abuse started with defendant calling her into his bedroom and, with her sister A.G. present, making J.G. "suck[] on his fingers." R320-21.

After that, defendant asked J.G. to perform oral sex on him "very regularly" for "[y]ears." R321-22. Defendant also put his penis into her "vagina and [her] rear end" "[r]egularly for years." R322. He made J.G. rub his penis with her hands and inserted a vibrator into her vagina. R323-24.

Defendant abused J.G. when her siblings were sleeping or when he took her out of school. R325. J.G.'s mother was a flight attendant and was often out of town. *Id.*; *see also* R343, 361-62 (J.G.'s mother and sister testifying to same).

J.G. told defendant that the abuse hurt and she did not want him to do those things. R323. Defendant got "very angry" and told her that "he d[id]n't love [her] anymore" and that J.G.'s mother knew about the abuse and that it was normal in her Japanese culture. R326. Defendant would show J.G. "father-daughter" and "Asian fetish porn." R327. He made J.G. put on lingerie or "school-girl" attire during the abuse. *Id.* J.G. did not tell anyone because she was scared that defendant "would hurt" her and that "no one [would] believe[]" her. R332.

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J.G.'s sister, A.G., testified that when she was nine, defendant began having her rub his penis with her hands, first once a month, then with greater frequency until it was approximately once a day. R362-64. When she was 10, he began making her perform oral sex on him approximately twice a week. R365. He performed anal sex on her, which "hurt a lot," approximately twice a week from when she was 10 until she was 12 or 13. R365-67. He had vaginal sex with her, which also hurt, approximately every other day from the time she was 11 until she was 15. R366-67. He also inserted sex toys into her vagina and made her wear lingerie and school-girl uniforms. R367-68. The abuse would usually happen in her parents' bedroom, including when defendant would pull her out of school. R368-69. He also occasionally made A.G. and J.G. perform sex acts on him at the same time or made them perform sex acts on each other while he watched. R369-70. When A.G. told defendant that she did not want to do these things, he told her that he did not love her, that she was a "bitch," and that it was okay because it was normal in her mother's culture. R371-72. Defendant also made her watch father-daughter pornography. R372.

The abuse ended during the COVID-19 pandemic when the girls' mother, June, stopped traveling; J.G. was 12 and A.G. was 15. R331, 379-80. June testified that in approximately May 2020, after she had been home more due to the pandemic, A.G. told her that defendant had been abusing her. R344, 379-80. She later asked J.G. if defendant had been abusing her

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as well, and J.G. responded that he had. R344. In June 2020, after figuring out "who to talk to," June took her daughters to the police station, the hospital, and the CAC. R330-31, 344-45. She also gave police consent to search their home. R345.

Salgado, the CAC forensic interviewer, testified that she interviewed J.G. in June 2020, shortly after J.G. turned 13. R426. The video recording of the interview, which was consistent with J.G.'s trial testimony, was played at trial. R432.

Police viewed the forensic interviews of A.G. and J.G. at the CAC, R387, and after obtaining June's consent, they searched the family residence but did not find any sex toys. R388-89. Defendant consented to the search of his phone, on which police found videos of sex acts with the faces of the participants off-screen. R391-92. There were also photographs of what appeared to be A.G.'s legs and breasts. R393. Approximately 10 days later, June informed police that she had found a lockbox in the bedroom closet. R394-96. Inside the lockbox were a pink vibrator, lingerie, and a school-girl uniform. R397. A forensic scientist testified that J.G. was a match for DNA found on the vibrator. R419-20.

D. Defendant presented his theory that his daughters' mother manipulated them into fabricating the abuse.

Defendant chose not to testify and did not put on witnesses, R437-41, but throughout trial, defendant presented the theory that he was a good father and that June had manipulated his daughters into lying about his

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abuse as revenge for their marital problems. In his opening statement, defendant asserted that June, now his ex-wife, had "turned the children against me" after years of marital strife, including his admission that he had an affair. R313-16.

Defendant continued this theme during his cross-examination of witnesses. For example, during his cross-examination of June, defendant elicited testimony that she told him to have sex with other women and that he admitted to her that he cheated on her. R351-52. Defendant further elicited from June that she had said in front of the children that they should have stopped at one child, R354, and that she had complained that if she and defendant were to get divorced, it would be unfair because he would get half of her inheritance from her parents, R355. Defendant also elicited testimony that he and June had a "love and hate relationship" and that he had purchased lingerie for her to wear. R355-56.

Defendant also sought to establish, during cross-examination of his daughters, that he had been a good father. J.G. acknowledged that the family watched movies together, played water games with the hose, and went to the pool and parks. R338. Further, defendant protected her when her brother was "not nice" and when her sister complained that she was practicing her instrument too loudly. R339. Defendant tried to get J.G. to admit that on the day of his arrest, she "cried" and "gave [him] a hug," but she denied it. R340.

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Similarly, A.G. acknowledged that defendant had taught her to play softball and had taken her to the pool. R384. Further, he elicited testimony that A.G. had taken photographs of herself with defendant's phone, though she denied taking the photographs introduced by the prosecution as exhibits. R380. He also elicited testimony that at least some of the photographs of A.G. in a t-shirt were "just friendly pictures." R383.

Finally, in closing argument, defendant focused on alleged inconsistencies in J.G.'s testimony and argued that June had fabricated the abuse in an attempt to avoid giving him half of her inheritance after he admitted to having an affair and asked for a divorce. R447-55. He also noted that the lockbox containing the vibrator had not been discovered until after he left the house and argued that "[a]nything could have happened to that evidence" in the interim. R451, 453.

E. The trial court found defendant guilty.

After reviewing the evidence and crediting the testimony of the prosecution witnesses, the trial court found defendant guilty of all charges: five counts of predatory criminal sexual assault of a child and four counts of criminal sexual assault. R460-69; CI266. Following a sentencing hearing, the court merged the criminal sexual assault convictions into the predatory criminal sexual assault of a child convictions, R477, and sentenced defendant to five consecutive 15-year prison terms, R500-01; CI271, 310.

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Defendant filed a motion for a new trial, CI311, which the trial court struck as untimely and, alternatively, denied, CI307. Defendant also moved to reconsider the sentence, CI313, which the trial court denied, CI307.

II. The Appellate Court Reversed.

The appellate court reversed defendant's convictions, holding that the trial court's decision to grant defendant's demand for self-representation was second prong plain error. The appellate court reasoned that a defendant fit to stand trial "still may be incompetent to conduct trial proceedings on his own if he suffers from a severe mental illness." *Gizel*, 2025 IL App (1st) 231183-U, ¶ 65. Although Pan testified that defendant did not suffer from a "severe mental illness," the appellate court stated that he had "qualified that testimony by explaining that the symptoms of defendant's mental illness included disorganized, delusional, and paranoid thinking." *Id.* ¶ 70. Finally, the appellate court determined, the trial court's decision to permit defendant to exercise his right to self-representation was second prong plain error because "'the right to counsel is so fundamental that we will review as plain error a claim that there was no effective waiver of counsel.'" *Id.* ¶ 56 (quoting *People v. Herring*, 327 Ill. App. 3d 259, 261 (4th Dist. 2002)).

This Court allowed the People's petition for leave to appeal.

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STANDARDS OF REVIEW

Where, as here, a defendant has forfeited his claim, this Court reviews it only for plain error. *People v. Johnson*, 2024 IL 130191, ¶ 40; *People v. Herron*, 215 Ill. 2d 167, 175 (2005).

A trial court's decision to grant a defendant's request for self-representation following a determination of fitness to stand trial is reviewed for abuse of discretion. *People v. McNutt*, 2020 IL App (1st) 173030, ¶¶ 85, 104; *People v. Washington*, 2016 IL App (1st) 131198, ¶ 81.

ARGUMENT

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

Defendant conceded below that he failed to preserve his claim that the trial court erred in granting his request for self-representation as he did not object in the trial court or include the issue in a posttrial motion. *See Gizel*, 2025 IL App (1st) 231183-U, ¶ 56. Thus, the claim is forfeited. *People v. Herron*, 215 Ill. 2d 167, 175 (2005); *see also* CI311 (argument not included in posttrial motion); *supra* pp. 2-11 (defendant consistently argued he should be allowed to represent himself).

The appellate court incorrectly excused defendant's forfeiture by determining that the trial court committed second prong plain error when it granted defendant's request to represent himself. *See Gizel*, 2025 IL App (1st) 231183-U, ¶ 56. "The first step in the plain error analysis is to determine whether a clear or obvious error occurred." *People v. Johnson*,

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2024 IL 130191, ¶ 44. If so, the defendant must also establish that (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against him, regardless of the seriousness of the error, or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Id.* ¶ 43.

Here, defendant's claim of plain error fails at the threshold step because the trial court committed no clear or obvious error. And, in any event, allowing a fit defendant to exercise his constitutional right to self-representation is not second prong plain error.

A. The trial court did not err in granting defendant's demand for self-representation because defendant was fit to stand trial.

The trial court did not err in honoring defendant's demand for self-representation. Defendant does not dispute that he was fit to stand trial, nor does he allege any error in the Rule 401 admonishments or otherwise challenge the validity of his attorney waiver.

And it was not error, much less clear or obvious error, for the trial court to allow defendant to exercise his right to represent himself. Defendants have a constitutional right to self-representation. *Faretta v. California*, 422 U.S. 806, 821 (1975); *People v. Haynes*, 174 Ill. 2d 204, 235 (1996) ("It is well established that the sixth amendment to the United States Constitution guarantees an accused in a criminal proceeding both the right to

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the assistance of counsel and the correlative right to proceed without counsel."). And just as a "criminal defendant may not be tried unless he is competent[,]" a defendant may not waive his right to counsel "unless he does so competently." *Godinez v. Moran*, 509 U.S. 389, 396 (1993).[3] But the fitness standard to stand trial and to waive counsel is the same, *id*. at 398-99, for "a criminal defendant's ability to represent himself has no bearing on his competence to *choose* self-representation," *id*. at 400 (emphasis in original); *see also People v. Mahaffey*, 166 Ill. 2d 1, 19 (1995) ("Competence to waive counsel is measured by the same standard as competence to stand trial . . . , and the defendant's fitness for trial therefore also established his fitness to waive counsel."). Thus, *Godinez* rejected the argument that "a defendant who waives his right to the assistance of counsel must be more competent than a defendant who does not, since there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights." 509 U.S. at 399.

It is thus never constitutional error to allow a fit defendant to knowingly waive his right to counsel. Indeed, "[t]he right of self-representation is 'as basic and fundamental as [the] right to be represented by counsel.'" *Haynes*, 174 Ill. 2d at 235 (quoting *People v. Nelson,* 47 Ill. 2d 570, 574 (1971)). "Accordingly, an accused may waive his constitutional right

[3] Federal courts refer to "competency," while Illinois courts use "fitness" as the equivalent.

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

In fact, it is ordinarily constitutional error to deny a fit defendant's demand for self-representation even if the court is convinced that the defendant's choice is unwise. "Although a court may consider a defendant's decision to represent himself unwise, if his decision is freely, knowingly, and intelligently made, it must be accepted." *People v. Baez*, 241 Ill. 2d 44, 116 (2011); *see also Haynes*, 174 Ill. 2d at 235 ("Although a court may consider the decision unwise, a defendant's knowing and intelligent election to represent himself must be honored out of 'that respect for the individual which is the lifeblood of the law.'") (quoting *People v. Silagy,* 101 Ill. 2d 147, 180 (1984)) (further quotation marks omitted).

For this reason, courts are loathe to force counsel on a defendant. Indeed, this Court has protected the right to self-representation even in capital cases in which the evidence suggested that the defendant was mentally ill. In *People v. Coleman*, 168 Ill. 2d 509 (1995), for example, the Court upheld the trial court's decision to grant a capital defendant's request

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for self-representation despite expert testimony that the defendant suffered from borderline personality disorder and paranoid thinking. *Id.* at 524-26. And in *People v. Simpson*, 204 Ill. 2d 536 (2001), the Court made clear that rules regarding the quality of attorney representation required in capital cases did "not eradicate that right [to self-representation] once a defendant makes a voluntary and intelligent decision to proceed without assistance of counsel." *Id.* at 574.

Accordingly, where, as here, a defendant is fit to stand trial, he is equally fit to waive his right to counsel, and the trial court cannot have erred in finding that the defendant was fit to waive his right to counsel and in granting his request for self-representation.

B. Under *Edwards*, States may, but need not, insist upon representation for a "gray-area" defendant.

Indiana v. Edwards, 554 U.S. 164 (2008), did not change *Godinez*'s rule that a defendant who is fit to stand trial is fit to waive counsel. Instead, *Edwards* permits — but does not require — States to insist upon representation for so-called "gray-area" defendants, i.e., defendants who are constitutionally fit to stand trial but "suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." 554 U.S. at 178. Moreover, the trial court here did not abuse its discretion when it found that defendant did not suffer from a severe mental illness, such that the court, under *Edwards*, could have refused to accept defendant's waiver of counsel.

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1. *Edwards* did not establish a higher standard of fitness or require an additional inquiry before allowing a defendant to proceed pro se.

In *Edwards*, an Indiana trial court found the defendant fit to stand trial but, due to the severity of his mental illness, rejected his request to waive counsel. 554 U.S. at 167-68. The Supreme Court acknowledged the existence of a category of "borderline-competent" or "gray-area" defendants — those who are fit because they are able to understand the proceedings and cooperate with counsel but whose mental illness might nevertheless interfere with their ability to represent themselves at trial — and held that with respect to such defendants, "the Constitution permits States to insist upon representation by counsel." *Id.* at 178. But the fact that *Edwards permits* States to insist upon representation for a gray-area defendant does not mean that States are *required* to do so, or that gray-area defendants have a constitutional right to have counsel imposed upon them. On the contrary, the Supreme Court recognized that, under *Godinez*, the Indiana court could have permitted the gray-area defendant to proceed pro se. *See id.* at 173 ("*Godinez* involved a State that sought to *permit* a gray-area defendant to represent himself. *Godinez*'s constitutional holding is that a State may do so.") (emphasis in original).

That "the Constitution *permits* States to insist upon representation by counsel" for gray-area defendants, *Edwards*, *id.* at 178 (emphasis added), does not mean the constitutional standards differ for fitness to stand trial

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and fitness to waive counsel, or require an additional inquiry before allowing a defendant to proceed pro se. Indeed, prior to the decision below, Illinois courts uniformly — and correctly — recognized that "*Edwards* 'did not hold there was a higher standard of competence requiring an additional inquiry before a trial court permitted a defendant to proceed *pro se.* Rather, *Edwards* simply held that a defendant's right to self-representation was not absolute.'" *People v. Washington*, 2016 IL App (1st) 131198, ¶ 78 (quoting *People v. Allen,* 401 Ill. App. 3d 840, 851 (1st Dist. 2010)); *see also Allen*, 401 Ill. App. 3d at 853 ("Defendant's argument suggests that *Edwards* required the trial judge to apply a higher standard than that required to determine mental fitness to stand trial, since he was proceeding *pro se.* *Edwards* establishes no such requirement.").

In other words, the appellate court held, "*Edwards* is permissive rather than prescriptive: the trial court may deny a severely mentally ill person from representing himself; however, the trial court is not required to perform an additional inquiry regarding competency before allowing a defendant to represent himself." *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 50; *see also People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 75 ("this court has never held that *Edwards* mandates an additional line of questioning before allowing a defendant to proceed *pro se*," and "unless a defendant can demonstrate he had a mental disability that incapacitated him from *understanding* the content of Illinois Supreme Court Rule 401(a)," a

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trial court must "honor his choice to represent himself, even if the choice was in all likelihood a disastrous one for the defense") (emphasis in original) (internal quotation marks and brackets omitted); *People v. Tatum*, 389 Ill. App. 3d 656, 670 (1st Dist. 2009) ("*Edwards* did not hold that there was a higher standard of competence requiring an additional inquiry before a trial court permits a defendant to proceed *pro se*.").

The Seventh Circuit applies *Edwards* in this same fashion. *See, e.g., United States v. Anzaldi*, 800 F.3d 872, 879 (7th Cir. 2015) (explaining that "[t]he Constitution does not create two standards for competence — one for standing trial and the other for self-representation," and that "*Edwards* simply means that the Constitution may have allowed the trial judge to block [the defendant]'s request to go it alone, but it certainly didn't require it"); *accord United States v. Nichols*, 77 F.4th 490, 498-99 (7th Cir. 2023); *United States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009); *see also United States v. Bernard*, 708 F.3d 583, 590 (4th Cir. 2013) ("*Edwards* itself reaffirmed that a court may constitutionally permit a defendant to represent himself so long as he is competent to stand trial").

Departing from this precedent, the appellate court here wrongly concluded that a defendant who is fit to stand trial "still may be incompetent to conduct trial proceedings on his own if he suffers from a severe mental illness." *Gizel*, 2025 IL App (1st) 231183-U, ¶ 65; *see also id.* (criticizing trial court for "[r]elying on *Godinez*" to find "that the competence to stand trial and

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the competence to waive counsel are the same"). The appellate court not only ignored *Godinez* and Illinois decisions interpreting *Edwards*, it also ignored this Court's clear statement that "[c]ompetence to waive counsel is measured by the same standard as competence to stand trial . . . , and the defendant's fitness for trial therefore also established his fitness to waive counsel." *Mahaffey*, 166 Ill. 2d at 19.

Here, because it is uncontested that defendant was fit to stand trial, the trial court could not have erred, much less clearly or obviously erred, in allowing defendant to waive his right to counsel.

2. In any event, the trial court correctly concluded that defendant did not fall within the *Edwards* rule.

Moreover, to the extent that defendant contends that the trial court erred in declining to impose counsel on him under *Edwards*, it was not an abuse of discretion for the trial court to conclude that defendant did not suffer from a severe mental illness, such that the court could have refused to accept defendant's waiver of counsel. The trial court is in the best position to assess a defendant's symptoms and capacities, and here the court further relied on Dr. Pan's expert testimony that defendant did not have severe mental illness. *See Baez*, 241 Ill. 2d at 106 (abuse of discretion "will be found only where the court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court") (internal quotation marks omitted).

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As courts consistently have recognized, *Edwards* "repeatedly cabined its holding [that courts may refuse a defendant's request to represent himself] with phrases like 'mental derangement,' 'gray-area defendant,' 'borderline-competent criminal defendant,' and, most significantly, 'severe mental illness.'" *Berry*, 565 F.3d at 391 (internal citations omitted). Thus, the Seventh Circuit has explained, severe mental illness is "'a condition precedent'" to *Edwards*'s applicability. *Nichols*, 77 F.4th at 499 (quoting *Berry*, 565 F.3d at 391); *see also Jordan v. Hepp*, 831 F.3d 837, 845 (7th Cir. 2016) (*Edwards* was addressing defendant "who needs a lawyer almost in the capacity of a guardian"). In other words, the appellate court has held, *Edwards*, "by its own terms," applies only to those cases where the defendant exhibited a "severe mental illness." *McNutt*, 2020 IL App (1st) 173030, ¶ 91; *see also People v. Joseph*, 2022 IL App (1st) 192051-U, ¶ 65 (same).

Moreover, *Edwards* instructed that the trial judge — who has the opportunity to observe the defendant in the courtroom — is "best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant," regarding each defendant's ability to represent himself at trial. 554 U.S. at 177. Thus, prior to the decision below, Illinois courts had uniformly held that the trial court is in the best position to determine whether a defendant is, in fact, a gray-area defendant who is unable to represent himself at trial, with the result that the court, under *Edwards*, has discretion to refuse the defendant's request to

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represent himself. *See*, *e.g.*, *Joseph*, 2022 IL App (1st) 192051-U, ¶ 72; *People v. Khan*, 2021 IL App (1st) 190679, ¶ 62; *People v. Lopes*, 2019 IL App (5th) 170258, ¶ 24; *Washington*, 2016 IL App (1st) 131198, ¶ 79; *see also Bernard*, 708 F.3d at 591 (trial court "was in the best position to observe [the defendant's] demeanor and make judgments about his mental abilities").

Here, the trial court relied on Dr. Pan's expert testimony and its own observations of defendant to find that defendant "is not suffering from severe mental illness." R301; *see also id.* (trial court's reliance on Pan's testimony to find that defendant "does not have severe symptoms"). This finding was not "arbitrary, fanciful, [or] unreasonable," such that it could constitute an abuse of discretion. *See Baez*, 241 Ill. 2d at 106 (internal quotation marks omitted). Critically, Pan himself testified that defendant was "not suffering from severe mental illness" and he "d[id]n't think [defendant] has severe symptoms." R262. As the trial court explained, Pan provided these opinions when the court asked him whether defendant was suffering from a severe mental illness. R300. The court elaborated: "Pan testified there are degrees of severity with respect to the diagnosis of unspecified schizophrenia spectrum and other psychiatric disorder," R300, and when the court asked him "where [defendant] falls on the spectrum," Pan testified that defendant's symptoms were not severe and he did not suffer from severe mental illness, R300-01. Accordingly, to the extent defendant believes that the court could have forced

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him to accept representation notwithstanding his valid waiver of his right to counsel, defendant would be incorrect.

Moreover, the appellate court's criticism of the trial court's determination that defendant was not suffering from a severe mental illness does not demonstrate that the trial court abused its discretion. Contrary to the appellate court's suggestion, the trial court did not "discount[] Dr. Pan's findings." *Gizel*, 2025 IL App (1st) 231183-U, ¶ 65. Rather, the trial court credited Pan's opinions that defendant's symptoms were not "severe" and that he was "not suffering from severe mental illness." R262. To be sure, when discussing defendant's ability to represent himself, Pan observed that defendant had "some . . . idiosyncratic and disorganized thinking," and that he was "concerned about some paranoid delusional thinking." R256; *see also Gizel*, 2025 IL App (1st) 231183-U, ¶ 70 (describing Pan's testimony that "the symptoms of defendant's mental illness included disorganized, delusional, and paranoid thinking rendering him unable to mount a defense on his own"). As the trial court noted, however, Pan qualified that testimony by explaining that defendant "is not *extremely* disorganized." R301 (emphasis added); *see also* R262 (Pan testifying that "I don't think he has severe symptoms, at least when I interviewed him, in that he's extremely disorganized. But as my report says, I'm concerned that he is not organized enough to mount his own defense by himself."). In any event, given that when asked by the trial court whether defendant was suffering from severe

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mental illness, Dr. Pan testified that he was not, R262, it was not an abuse of discretion for the trial court to credit this testimony and find that defendant did not have a severe mental illness, R301. And given this finding, the trial court could not, consistent with *Edwards*, have refused defendant's waiver of his right to counsel.

Indeed, the appellate court appears to have repeated Dr. Pan's error — which was noted by the trial court — of conflating fitness to waive the right to counsel, on the one hand, with the possession of sufficient legal skills and the attendant ability to provide competent self-representation, on the other. R301 (trial court's statement that "Dr. Pan essentially is opining it is not a good idea for [defendant] to represent himself . . ., but that's not the standard."); *see also Gizel*, 2025 IL App (1st) 231183-U, ¶ 66 (relying on defendant's "fail[ure] to perform even the basic tasks necessary to defend himself"). But the Supreme Court has long "made it clear that the defendant's 'technical legal knowledge' is 'not relevant' to the determination whether he is competent to waive his right to counsel." *Godinez*, 509 U.S. at 399 (quoting *Faretta*, 422 U.S. at 836). The appellate court has likewise consistently held that a lack of legal skills or knowledge is not a basis on which to find a defendant incompetent to waive counsel. *See*, *e.g.*, *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 33; *McNutt*, 2020 IL App (1st) 173030, ¶ 96; *People v. Albea*, 2017 IL App (2d) 150598, ¶ 25. And the Seventh Circuit has explained that *Edwards* did not "'introduce[] the possibility of

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taking into account the defendant's legal knowledge'" because "the Court's emphasis remained on the defendant's mental competence." *Washington v. Boughton*, 884 F.3d 692, 703 (7th Cir. 2018) (quoting *Tatum v. Foster*, 847 F.3d 459, 465 (7th Cir. 2017)); *see also Tatum*, 847 F.3d at 466 ("Throughout the [*Edwards*] opinion, the emphasis is on competence, not on particular skill."); *Berry*, 565 F.3d at 391 ("the right to self-representation cannot be denied merely because a defendant lacks legal knowledge or otherwise makes for a poor advocate.").

Nor, moreover, does Dr. Pan's testimony that, in his view, defendant was unable "to mount his own defense by himself," R262, indicate that the trial court abused its discretion when it found that defendant did not have a severe mental illness. Pan explained the basis of his "belie[f] that [defendant] is [un]able to represent himself pro se" by stating that defendant "insists that the allegations are false," maintains that "he's being set up by his wife," and would not "elaborate or share" with Pan the identity of his witnesses. R258; *see also* R259 (Pan stating that "some of [defendant's] logic for why his ex-wife was persecuting him just seemed very bizarre and faulty"). But it is hardly unusual for a defendant to pursue a theory that his former partner fabricated allegations of abuse to obtain revenge or to gain advantage in a divorce proceeding. *See*, *e.g.*, *In Int. of Brunken*, 139 Ill. App. 3d 232, 240 (5th Dist. 1985) (describing defendant's "contention that the proceedings are [ex-wife's] attempt to interfere with visitation"). And here

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defendant presented evidence in support of that theory at trial, eliciting testimony from June that she knew he had cheated on her, R351-52, and that she had complained that it would be unfair if defendant received half of her inheritance in any divorce proceeding, R355. Even if this strategy was misguided, that would not mean that defendant had a severe mental illness. *See McNutt*, 2020 IL App (1st) 173030, ¶ 91 ("we disagree that holding unusual legal positions necessarily indicates mental illness"); *Allen*, 401 Ill. App. 3d at 853 (defendant's "poor choice to pursue a defense that the evidence did not support" and mistaken understanding of "legal concept of self-defense" did not show "lack of mental competence" to represent himself).

Finally, even if Dr. Pan's testimony were amenable to multiple interpretations, it was up to the trial court to assess Pan's opinion in conjunction with the court's observations of defendant. *See Haynes*, 174 Ill. 2d 204, 231-32 (1996) (affirming trial court's finding that defendant was fit, notwithstanding defense expert's opinion otherwise); *Washington*, 2016 IL App (1st) 131198, ¶¶ 8-9, 14 (similar). By way of example, in *Mahaffey*, multiple psychiatrists diagnosed the defendant with one or more of organic delusional disorder, paranoid schizophrenia, and antisocial personality disorder with borderline intellectual functioning. 166 Ill. 2d at 14-16. The trial court nevertheless found the defendant fit, and this Court affirmed, explaining that the trial court "was not required to accept the defense expert's contrary view, for the ultimate issue was for the trial court, not the

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experts, to decide." *Id.* at 18 (internal quotation marks and brackets omitted).

Here, the trial court was likewise in the best position to assess defendant's mental capacity. And there was ample evidence on which the trial court could base its finding that defendant did not suffer from a severe mental illness such that, under *Edwards*, the trial court could override defendant's request to represent himself. In addition to providing an opinion that defendant was "not suffering from severe mental illness," R262, Dr. Pan opined that defendant was fit to stand trial based on his "understanding of what he is charged with, how trial works, what the various members of the court do during trial proceedings," R257-58; *see also* CI231 (Pan's report noting that defendant explained charges, nature of pleas, difference between a jury and bench trial, and what a witness was). And although Pan diagnosed defendant with "unspecified schizophrenia spectrum and other psychotic disorder," the only symptoms he identified were "odd behaviors," namely "problems with his hygiene at the jail and not showering." R256; *see also* CI222. But Pan acknowledged that defendant "explained that he does not shower in the jail . . . because, 'I keep to myself'" and did not want to want to get into a fight, and also that defendant "insisted that . . . he maintains adequate hygiene by washing up in his sink." CI229. Indeed, Pan reported that defendant's "speech was fluent and non-pressured," his "affect was calm and pleasant," and he "denied any psychotic symptoms, including:

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auditory/visual hallucinations, paranoia, thought control/insertion/ withdrawal, delusional or referential thinking." CI230.

For all these reasons, the trial court did not abuse its discretion in finding that defendant did not suffer from severe mental illness such that, under *Edwards*, the trial court could have overridden defendant's decision to exercise his right to self-representation.

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

Finally, even if it were error to allow this fit defendant to exercise his right to self-representation, it was not second prong plain error.[4] A trial error is second prong plain error only if it is a constitutional error and, even then, only "'in those exceptional circumstances where, despite the absence of objection, application of the rule is necessary to preserve the integrity and reputation of the judicial process.'" *Jackson*, 2022 IL 127256, ¶ 28 (quoting *People v. Herrett*, 137 Ill. 2d 195, 214 (1990)). Indeed, this court has equated second prong plain error with structural error, which is the type of error that

[4] Defendant did not contend below that the evidence was closely balanced as required to establish first prong plain error, nor could he persuasively do so: J.G.'s uncontroverted testimony established that, before she turned 13, defendant repeatedly made contact between his penis and her sex organ, anus, mouth, and hand, and inserted an object into her sex organ; the CAC video corroborated J.G.'s trial testimony; her sister, A.G., corroborated J.G.'s account with testimony that she witnessed defendant abuse J.G. and further testified that defendant abused her in a similar manner; and J.G.'s DNA was found on a vibrator in defendant's lockbox, along with lingerie and a school-girl uniform that J.G. testified defendant made her wear during the abuse. *See supra* pp. 13-15.

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"'erode[s] the integrity of the judicial process and undermine[s] the fairness of the defendant's trial.'" *Id.* (quoting *Herron*, 215 Ill. 2d at 186); *see also People v. Moon*, 2022 IL 125959, ¶ 28 (an error is structural only if it renders the criminal trial fundamentally unfair). And, this Court has explained, "[t]he purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial.'" *Id.* ¶ 29 (quoting *Weaver v. Massachusetts*, 582 U.S. 286, 294-95 (2017)).

The alleged error here — allowing a fit defendant to knowingly waive his right to counsel because he allegedly suffers from severe mental illness to the point that he is unable to competently conduct trial court proceedings — does not meet this standard. Not only is it never constitutional error to allow a fit defendant to knowingly waive his right to counsel, *see supra* p. 21, it is no way a structural error. The Supreme Court has held that improperly denying the right to self-representation is structural error, but it has never recognized a constitutional right for a fit defendant to be saved from his own knowing and intelligent choice to represent himself (even if the Court has held that States may take this extraordinary step in certain rare circumstances).

Indeed, because the "denial of self-representation at trial" is structural error, *see Moon*, 2022 IL 125959, ¶ 29 (citing *Washington v. Recuenco*, 548 U.S. 212, 218 n.2 (2006)), generally, the denial of a fit defendant's request for

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self-presentation will result in reversal of a conviction, even if the court believed that the defendant could not present an adequate defense. *See*, *e.g.*, *People v. Woodson*, 2011 IL App (4th) 100223, ¶¶ 25-26 (conviction reversed because trial court abused discretion in denying request for self-representation based "on the fact that defendant did not have sufficient legal knowledge and expertise to represent himself"); *People v. Fisher*, 407 Ill. App. 3d 585, 591 (4th Dist. 2011) ("Because the trial court in this case denied defendant his constitutional right to self-representation on the ground that the court viewed him as incapable of adequately representing himself, we reverse the conviction and remand this case for a new trial"); *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶¶ 40-42, 55 (reversing murder conviction where trial court denied defendant's demand to proceed pro se; although defendant had a diagnosis of schizophrenia, he "was not suffering from any hallucinations or paranoid delusions when he requested self-representation" and it was improper to force counsel on defendant based on a perceived "lack of legal knowledge and ability," including "the fact that defendant spoke and read only Spanish."). It cannot be the case that permitting a defendant to exercise his constitutional right to self-representation — a right that the Court has held defines the framework of a fair criminal trial — could be held to constitute an error that undermines that very framework.

The appellate court's holding to the contrary rests on two errors. First, the appellate court relied on *People v. Herring*, 327 Ill. App. 3d 259, 261 (4th

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Dist. 2002), for the proposition that any error here was second prong error because "'the right to counsel is so fundamental that we will review as plain error a claim that there was no effective waiver of counsel.'" *Gizel*, 2025 IL App (1st) 231183-U, ¶ 56. But *Herring*, which held that a violation of Rule 401(a)'s admonishment requirement was plain error, was overruled by *People v. Ratliff*, 2024 IL 129356, ¶ 46.

Second, the appellate court relied on *People v. Lego*, 168 Ill. 2d 561 (1996), for its holding that if the trial court erred in holding that a defendant was competent to waive the right to counsel, and allowed the defendant to proceed pro se notwithstanding the lack of a valid waiver, the defendant must receive a new trial. *See Gizel*, 2025 IL App (1st) 231183-U, ¶ 71 (describing *Lego* as "informative" on the question of remedy) But the alleged error here is not that the trial court erred in holding that defendant was competent to waive the right to counsel, but rather that the trial court should have held that he was not competent to represent himself, and therefore his competent waiver of representation should not have been respected. There is no dispute that defendant's waiver of his right to counsel was unequivocal, that it followed compliant Rule 401 admonishments, and that defendant was fit. Accordingly, the only question is whether the trial court should have, notwithstanding defendant's valid waiver, imposed counsel on defendant. Because it is not structural error to allow a defendant fit to stand trial to

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exercise his constitutional right to self-representation, *see supra* p. 36, there was no second prong plain error.

CONCLUSION

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

February 11, 2026

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 39 pages.

/s/ Eldad Z. Malamuth
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 11, 2026, 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 service to the following:

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2025 IL App (1st) 231183-U
Order filed: January 16, 2025

FIRST DISTRICT
FOURTH DIVISION

No. 1-23-1183

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 20 CR 07045
	)	
JOSEPH GIZEL,	)	Honorable
	)	Mark W. Martin,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lyle concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred by accepting defendant's jury waiver and allowing him to represent himself *pro se*. We vacated defendant's convictions and sentence for predatory criminal sexual assault and criminal sexual assault and remanded for a new trial at which he will be represented by counsel.

¶ 2 Following a bench trial, the court convicted defendant, Joseph Gizel, of five counts of predatory criminal sexual assault and four counts of criminal sexual assault against his minor daughter, J.G. The court merged the criminal sexual assault counts into the predatory criminal sexual assault counts and sentenced defendant to 75 years' imprisonment. On appeal, defendant argues that the trial court erred by allowing him to represent himself at trial. We vacate defendant's convictions and sentence and remand for a new trial at which he will be represented by counsel.

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¶ 3 Defendant was arraigned on August 18, 2020, and pleaded not guilty. At the time, he was represented by a public defender. At a hearing on November 13, 2020, defendant told the court he wanted to represent himself. The court warned defendant that he would be making a "huge mistake" in representing himself, as he lacked the requisite legal training and courtroom experience. The court noted the seriousness of the charges and the necessity that defendant be represented by an experienced attorney familiar with the rules of evidence and courtroom procedure. The court told defendant that it would give him two weeks to rethink his decision and it continued the case to December 9, 2020.

¶ 4 On December 9, defendant stated that he still wanted to represent himself. The court admonished defendant pursuant to Supreme Court Rule 401(a) (eff. July 1, 1984) of the nature of the charges against him, the minimum and maximum sentences, and his right to counsel. The court again emphasized the seriousness of the charges and the potential of a natural life sentence and told defendant that he would be making a "tragic and huge mistake" to represent himself against an experienced state's attorney. Defendant said he understood the Rule 401 admonishments, but that he still wished to proceed *pro se*. The court stated that it would accept defendant's waiver of counsel.

¶ 5 On March 17, 2021, the court held a hearing during which the State moved to consume DNA evidence on a vibrator that defendant allegedly used on J.G. The State intended to compare the DNA recovered from the vibrator to DNA from swabs taken from J.G. The court asked defendant for a response and he replied, "I don't know what to say." The court told defendant that he needed to be represented by an experienced attorney and that he was making a mistake by representing himself. Defendant said, "I understand, your Honor. I just need time to get things done and everything and then understand more, but I understand." The court stated that it needed

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a response from defendant to the State's motion to consume DNA from the vibrator. Defendant replied, "Can I deny right now? I want to say no. I mean, I—I want to look into—more into it." The court continued the cause to March 29.

¶ 6 At the hearing on March 29, 2021, defendant expressed confusion about the nature of the State's motion. Defendant thought that the State was requesting to extract DNA from him. The court informed defendant that the State already had his DNA and was requesting to consume DNA from the vibrator. Defendant asked for a continuance. The court told defendant that the case already had been continued to March 29 for the express purpose of giving him time to formulate his response. Defendant said, "I object. I deny. I don't agree. I mean, what else am I supposed to say, your Honor?" The court granted the State's motion.

¶ 7 On April 23, 2021, the parties appeared before the court to set a date for defendant to review discovery. The court again recommended that defendant agree to the appointment of the public defender. Defendant refused, stating that he felt "safer" representing himself. The cause was continued to June 25.

¶ 8 On June 25, 2021, defendant again informed the court that he intended to represent himself. The court asked defendant his age, educational background, work experience, and criminal history. Defendant responded that he was 47 years old, had graduated high school, worked as a mover for 15 years, and previously served time for aggravated battery. The court again gave defendant Rule 401(a) admonishments and warned him that he was facing a potential life sentence and that he should allow the public defender to represent him. Defendant stated that it would be in his "best interest" to represent himself. The State informed the court that it had tendered a significant amount of discovery to defendant and they were awaiting DNA test results. The State asked for a date to show defendant the video of J.G.'s interview with a forensic investigator and to file a section 115-

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10 (725 ILCS 5/115-10 (West 2020)) motion for the admission of hearsay evidence and a section 115-7.3 (725 ILCS 5/115-7.3 (West 2020)) motion for the admission of evidence of other sexual offenses committed by defendant against his other daughter, A.G. The court continued the cause to July 28.

¶ 9 On July 28, 2021, the State was granted leave to file its section 115-7.3. motion to admit evidence of defendant's other sex crimes committed against A.G. to show propensity. The motion stated that defendant had forced A.G. to engage in oral, vaginal, and anal sex from the ages 9 to 15 and had similarly forced J.G. to perform the same acts from ages 8 to 12. The motion further asserted that defendant forced J.G. and A.G. to engage in threesomes with him on multiple occasions. He used sex toys on both girls and purchased lingerie for them to wear.

¶ 10 After the State filed the section 115-7.3 motion, the court continued the cause to September 2 for defendant to file a response and for the State to also file its section 115-10 motion.

¶ 11 On September 2, 2021, the court asked defendant if he had filed a response to the section 115-7.3 motion and he said no. The court asked defendant if he intended to file a response, and defendant responded, "I'm not sure, your Honor. No." The State asked for a new date to file its section 115-10 motion. The court continued the cause to October 6.

¶ 12 On October 6, 2021, the State filed its section 115-10 motion, seeking the introduction of J.G.'s hearsay statements to her mother and to the forensic investigator. The court asked defendant if he had filed a response to the State's previously filed section 115-7.3 motion, and he responded no. The court said, "You should do that." Defendant responded, "Yes, your Honor." The court told defendant to file his response to the section 115-7.3 motion by October 27.

¶ 13 On October 27, 2021, the State tendered defendant copies of the section 115-7.3 and 115-10 motions and the DNA results from the vibrator. The court asked defendant if he wanted to look

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over the section 115-7.3 motion and file a response. Defendant answered affirmatively. The court also informed defendant that it would set a date for a hearing on the section 115-10 motion after defendant reviewed the discovery that had been tendered to him. The cause was continued to December 1.

¶ 14 On December 1, 2021, defendant again informed the court that he wished to represent himself. The court asked defendant about his criminal history, and defendant stated he had never before been convicted of a crime (which was contrary to his statement on June 25, 2021, that he had been convicted of aggravated battery). The court again gave defendant the Rule 401(a) admonishments and warned that he was making a huge mistake by attempting to represent himself, given his unfamiliarity with legal procedures and the rules of evidence. Defendant reiterated that he wished to proceed *pro se*. The court said that if the case goes to trial, stand-by counsel would not be appointed to represent him. Defendant said he understood. The cause was continued to January 27.

¶ 15 On January 27, 2022, the State informed the court that discovery was complete. The State also told the court that it had attempted to show defendant videos of the forensic interviews with J.G. and A.G., but that he had refused to watch them. The State also said that defendant had not filed any responses to the section 115-7.3 and 115-10 motions. The court asked defendant if he had refused to watch the forensic videos, and he said yes. The court asked defendant if he had filed a written response to the State's motions, and he responded, "not yet." The court asked why, and defendant said, "I'm catching up on everything and I got a lot going on and I'll catch up on it."

¶ 16 On March 30, 2022, the parties appeared for the hearings on the State's section 115-7.3 and 115-10 motions. The court asked defendant whether he had filed any responses to the motions, and defendant said no. The court stated that it would first conduct a hearing on the section 115-7.3

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motion and it again asked defendant whether he had prepared a written response to the motion. Defendant replied, "No, your Honor. I wasn't prepared. I don't have those things." The court told the State to present the motion.

¶ 17 The State argued for the admission of the evidence of defendant's sexual abuse of A.G. to show his propensity to commit sex crimes and to show his motive and intent. After the State finished its argument, the court asked defendant for his response. Defendant stated, "That's all arguable. It's all hearsay, and I don't know where they got this and that from; but I am unprepared at the moment to mention anything further." The court then granted the State's section 115-7.3 motion. The hearing on the section 115-10 motion was continued to May 17, 2022.

¶ 18 On May 17, the State informed the judge that it was amending the section 115-10 motion, seeking only to have the video of the forensic interview with J.G. admitted and not J.G.'s statements to her mother. The court asked defendant whether he was ready to proceed. Defendant responded, "Your Honor, I was told it was continued to December 18th, and I would want to ask for a three-week continuance. I'm not ready." The State responded that the hearing was set for May 17 (not December 18) and asked that the motion for a continuance be denied. The court asked defendant why he was not ready. Defendant replied, "I wasn't feeling well for the past couple weeks and I'm a little bit behind. I'm just asking for three weeks." The court denied defendant's motion for a continuance and told the State to call its witness.

¶ 19 The State called Guadalupe Salgado, who testified that she formerly worked as a forensic interviewer for the Children's Advocacy Center and conducted an interview with J.G. on June 26, 2020. Salgado identified People's Exhibit 1 as the video of the interview. The State asked to publish the video. The court asked defendant whether he had any objections. Defendant responded, "Again, I'm just not ready, your Honor. I want a continuance so I can be ready more." The court

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asked defendant whether he wanted to ask Salgado any questions prior to the viewing of the video, and he replied, "I'm not ready. I have so much to dispute about it, but I'm not ready." The State informed the court that defendant had been given the opportunity to view the video on December 16 and refused. Defendant responded, "I did refuse it and with good reason, and I will be ready in good time. The defendant needs time. I am just not ready now. I did refuse it and I don't need to see it. I didn't do it but I'm going to prove it." The court then viewed the video.

¶ 20 The video depicts Salgado and J.G. sitting in a room, speaking with each other. Salgado asks J.G. to describe what defendant did to her. J.G. states that beginning when she was eight years old, defendant forced her to do "sexual things." J.G. later specifies that defendant forced her to engage in vaginal and anal sex, and to perform oral sex on him. At least three times, defendant forced her to engage in a threesome with A.G. He also showed her pornography, made her wear lingerie, and once inserted a glittery, pink vibrator into her vagina. If she resisted, defendant would get angry and yell at her and grab her arms. J.G. had been scared to tell anyone of the abuse because defendant was a very large man with a temper; sometimes he would punch the walls of his house when angry. Defendant last abused her in March 2020.

¶ 21 After the video was played, the State rested. The court asked defendant whether he wanted to present any evidence in opposition to the State's motion and he said no. The State then argued for admission of the video at trial, arguing that the time, content and circumstances of J.G.'s statements during the interview provide sufficient safeguards of reliability. Following the State's argument, the court asked defendant for a response. Defendant stated he was "not prepared to do this at the moment." The court granted the State's section 115-10 motion.

¶ 22 The State asked to set the case for trial. The court explained to defendant the difference between a jury trial and a bench trial. Defendant requested a bench trial and signed a jury waiver.

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The court asked defendant if he intended to call any witnesses and he said yes. The court then asked how many witnesses he intended to call and defendant said he was unsure because he was "having a hard time getting ahold of people." The State asked that defendant give it a list of witnesses. The court told defendant that it would give him one month to send a letter to the State containing a list of his witnesses. The court continued the cause to July 5 for defendant to file his answer and to provide the State with his witness list.

¶ 23 On July 5, 2022, the parties appeared and the court asked defendant whether he had filed his answer and witness list. Defendant said no, explaining, "I have a good reason. I've been moved five times in the past four weeks. I got moved to Cermak, which is the medical unit, because I don't come out of my cell. I remain in my cell."

¶ 24 The court responded that defendant had been given sufficient time to submit his answer, provide the witness list, and make any pretrial motions. The court set the case for trial on October 18, 2022.

¶ 25 On October 18, the State sought a continuance because one of its witnesses was unavailable. The court questioned whether a behavioral clinical exam (BCX) ever had been performed on defendant. Defendant stated he had never been interviewed by forensic clinical services. The court continued the cause to November 2 for a status hearing and further discussion of whether to order a BCX for defendant.

¶ 26 On November 2, 2022, the court conducted the status hearing and stated that it had a *bona fide* doubt of defendant's fitness. The court ordered that defendant undergo a fitness examination by forensic clinical services. The cause was continued to December 14, 2022.

¶ 27 On December 14, the court stated that it had received a letter filed that day from Doctor Philip Pan, a psychiatrist with forensic clinical services who had examined defendant on

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November 21, 2022 and December 13, 2022. In the letter, Dr. Pan stated that he diagnosed defendant with unspecified schizophrenia spectrum and other psychotic disorder. Dr. Pan noted that defendant "evidences some very odd if not bizarre behaviors, such as not showering and his appearance during the interviews. He exhibits some idiosyncratic and disorganized thinking, as well as restricted affect." Due to defendant's "delusional thinking," he had been prescribed antipsychotic medication but he is not receiving medication at this time.

¶ 28 Dr. Pan concluded that defendant was fit to stand trial because he "currently demonstrates an adequate understanding of the nature and purpose of the proceedings against him. He is able to assist counsel in his defense." However, Dr Pan concluded that defendant was unfit to represent himself *pro se* as he is "unable to mount a defense solely on his own due to disorganized and paranoid thinking."

¶ 29 The court ordered a fitness hearing, which was held on March 14, 2023. Dr. Pan was the only witness and the court conducted the examination. Dr. Pan testified that he interviewed defendant twice, on November 21 and December 13, and concluded that defendant suffered from unspecified schizophrenia spectrum and other psychotic disorder. When asked the symptoms of this disorder, Dr Pan testified, "Well, he's got some very odd behaviors. He's had a lot of problems with his hygiene at the jail and not showering. There is some *** idiosyncratic and disorganized thinking. And I'm concerned about some paranoid delusional thinking." Defendant had been prescribed antipsychotic medication but refused to take it. The medication was discontinued. Dr. Pan determined that defendant was fit to stand trial even without medications because his answers to the interview questions indicated his understanding of the charges against him and how a trial works.

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¶ 30 Dr. Pan testified that there is a series of questions forensic clinical services use to determine the ability of a defendant to represent himself, including whether he knows how to file a motion, make an opening statement and closing argument, and issue a subpoena. Defendant expressed uncertainty as to how to perform any of those functions.

¶ 31 Dr. Pan concluded that while defendant was fit to stand trial with counsel, he was not fit to represent himself. Dr. Pan explained:

> "[B]asically, Mr. Gizel insists that the allegations are false and he's being set up by his [ex-wife]. He cited he has many witnesses on his behalf, but he wouldn't elaborate or share with me who those people are. He expressed a lot of focus that the charges would be dropped but didn't really give me any explanation or logic why they would be. *** He was adamant that *** one of the victims must have dropped the charges by now. And some of his logic for why his ex-wife was persecuting him just seemed very bizarre and faulty."

¶ 32 The court questioned Dr. Pan as to the severity of defendant's mental illness. Dr. Pan testified that the symptoms of defendant's mental illness were not so severe as to affect his ability to stand trial, but Dr. Pan concluded that the illness caused defendant to be so disorganized as to render him incapable of representing himself. The court followed up by asking Dr. Pan, "So is it your conclusion that he is not suffering from severe mental illness?" Dr. Pan responded, "Yes." The court asked the parties whether they wished to question Dr. Pan. Both the State and defendant said no. The court admitted Dr. Pan's psychiatric report into evidence. The report largely mirrored Dr. Pan's testimony at the hearing.

¶ 33 On May 8, 2023, the trial court first found defendant fit to stand trial based on Dr. Pan's testimony and report that defendant understood the nature of the proceedings against him and was able to assist counsel in his defense. Turing to the issue of whether defendant was fit to represent

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himself and conduct trial proceedings on his own, the trial court stated that in *Godinez v. Moran*, 509 U.S. 389 (1993), the Supreme Court held that "the standard for fitness to stand trial and represent one's self are the same." Accordingly, the trial court determined that as Dr. Pan found that defendant was fit to stand trial with counsel, "[t]his finding potentially ends the matter with respect to the question whether the defendant is fit to represent himself [under] *Godinez*."

¶ 34 The trial court then cited the Supreme Court's holding in *Indiana v. Edwards*, 554 U.S. 164 (2008), that the state court may deny a defendant's request to represent himself during trial where he suffers from a "severe" mental illness rendering him incompetent to conduct trial proceedings by himself and that trial judges are in the best position to make this assessment. Before making a final ruling on the issue of whether defendant was competent to represent himself at trial here, the trial court carefully admonished defendant pursuant to Rule 401(a) and in doing so described each of the counts against defendant, the possible penalties, and his right to be represented and have an attorney appointed. Defendant stated that he understood and wished to waive his right to counsel.

¶ 35 The trial court then returned to the issue of whether defendant was competent to waive his right to counsel and conduct trial proceedings on his own. The court again found that under *Godinez*, the competence to stand trial and the competence to waive counsel are determined under the same standard, meaning that since Dr. Pan found defendant competent to stand trial, he necessarily was competent to waive counsel and proceed *pro se* during trial. The court further determined that under *Edwards*, the defendant may be found incompetent to waive counsel only if he is suffering from a "severe" mental illness. Noting Dr. Pan's testimony that defendant's mental illness was not severe, the court ruled that defendant was mentally competent to represent himself at trial and therefore it accepted his waiver of counsel.

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¶ 36 The bench trial commenced on May 9, 2023. The State gave an opening statement recounting how the evidence would show that defendant forced J.G. to engage in vaginal, anal, and oral sex from ages 8 to 13. Defendant gave a rambling opening statement focusing on his unhappy marriage. He did not directly address the sexual assault charges against him or indicate what he expected the evidence to show.

¶ 37 The State called J.G., who testified she was 15 years old and that her date of birth was May 17, 2007. J.G. testified that when she was eight or nine years old, defendant called her into his bedroom and asked her to perform a threesome with him and her sister, A.G. She remembers sucking on defendant's fingers on that occasion, but otherwise cannot remember what else occurred. For years afterward, defendant regularly forced J.G. to perform oral sex on him and to engage in vaginal and anal sex. This usually occurred in defendant's bedroom, but also sometimes in a closet or in the garage. Defendant also required J.G. to wear lingerie and rub his penis with her hands and he put a vibrator in her vagina and showed her pornography. J.G.'s mom was a flight attendant who was not at home on the many occasions when this sexual abuse occurred. J.G. was scared to tell anyone about the sexual abuse because she was fearful that defendant would hurt her and that no one would believe her.

¶ 38 The State showed J.G. several photographs, which she identified as depicting the lingerie defendant forced her to wear and the vibrator he used on her. The State offered the photographs into evidence without any objection from defendant. The court admitted the photographs.

¶ 39 J.G. testified that that in May 2020, when she was 13, her mom asked her whether defendant was abusing her and she said yes. On June 25, 2020, J.G. went to the hospital where an exam was performed on her. On June 26, J.G.'s mom took her to the Child Advocacy Center, where she spoke with a forensic investigator.

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¶ 40 During cross-examination, defendant initially asked J.G. when the sexual acts allegedly occurred, and she said day and night. He then asked J.G. a series of vague, compound questions regarding her day-to-day life with him. Objections were sustained to all these questions. Eventually, defendant elicited testimony from J.G. that sometimes he played ball with her and took her to the movies and the swimming pool and dropped her off at sleepovers and intervened to stop her siblings from teasing her too much. Defendant did not ask J.G. any other questions regarding her testimony on direct examination that he had sexually abused her for years.

¶ 41 The State called Jun Akaishi, who testified she is defendant's ex-wife. They had four children together, J.G. and A.G and two sons. During their marriage, Akaishi worked as a flight attendant while defendant stayed home with the children. In May 2020, A.G. told her about how defendant had been sexually abusing her. Akaishi then spoke with J.G., who told her that she also had been sexually abused by defendant. On June 25, 2020, Akaishi went to the police and then took A.G. and J.G. to the hospital for an examination. The next day, Akaishi took them to the Child Advocacy Center for forensic interviews. On July 6, 2020, Akaishi discovered a lockbox in her home containing a pink vibrator. She called the police, and they came to the house and collected the lockbox and took buccal swabs of her, J.G., and A.G.

¶ 42 During cross-examination, defendant elicited testimony from Akaishi that during their marriage, she sometimes agreed to his having sex with other women. However, she testified that she never intended for him to engage in sexual acts with their children. Akaishi further testified that since she made more money than defendant, she requested that he quit his job to stay home with the children while she continued to work. When asked to characterize their relationship, Akaishi testified that it was a "love and hate relationship." Sometimes she wore lingerie for him. Defendant did not ask her any questions about his alleged sexual abuse of J.G. and A.G.

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¶ 43 On redirect-examination, Akaishi testified that she did not wear the lingerie that was found in defendant's lockbox.

¶ 44 The State called A.G. as an other-crimes witness. A.G. testified that she was 18 years old and her date of birth was July 9, 2004. The sexual abuse from defendant began when she was nine years old. Defendant asked her to touch his penis over his clothes with her hand. Subsequently, continuing for several years, defendant forced her to rub his bare penis with her hands and to engage in oral, anal, and vaginal sex. These acts usually happened in his bedroom. Defendant also put sex toys in her vagina and required her to wear a school-girl costume with stockings. He showed her pornography. Sometimes defendant would engage in a threesome with A.G and J.G., during which he would force them to perform oral sex on him and/or on each other. The State showed A.G. photographs, which she identified as depicting the school-girl costume, sex toy, and lock box. She also identified photographs from defendant's phone focusing on her cleavage. The State sought to admit the photographs from defendant's phone into evidence. When asked if he had any objections, defendant stated, "I'll just defend myself against them, your Honor." The photographs were admitted.

¶ 45 A.G. testified that in May 2020, she told her mom about defendant's abuse. On June 25, 2020, she went to the hospital for an examination. On June 26, she had a forensic interview at the Child Advocacy Center.

¶ 46 On cross-examination, defendant asked A.G. whether she had taken the photographs of herself on his phone and she said no. Defendant elicited testimony from A.G. that he had taken her to the pool as a child and taught her how to play softball. Defendant asked A.G. whether he had allowed her to go on sleepovers. She replied, "Yes, but on conditions." When asked what conditions, A.G. testified, "That I would have sex with you before."

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¶ 47 The State called Detective Frank Moreno, who testified that defendant was arrested on June 25, 2020, and consented to a search of his phone. Moreno discovered videos of sex acts. The videos depicted the participants' bodies but not their faces and therefore Moreno could not discern their identities. Moreno also discovered photographs of A.G. focusing on her cleavage. On July 7, Akaishi called him to say that she had discovered defendant's lockbox in the closet of the master bedroom. The lockbox contained a pink vibrator, school-girl uniform, and lingerie. Defendant did not cross-examine Moreno.

¶ 48 The State called Le'Kai Adams, a forensic scientist with the Illinois State Police. Adams was tendered as an expert in the field of forensic biology and DNA analysis. Defendant made no objection. Adams testified that she tested DNA found on the pink vibrator and found a match with J.G.'s DNA.

¶ 49 The State called Guadalupe Salgado, who identified People's Exhibit 21 as the video of her interview with J.G. on June 26, 2020. The State sought to publish the interview. Defendant made no objection. The video was played for the court. Defendant did not cross-examine Salgado.

¶ 50 The State rested its case. The court asked defendant whether he had any motions. Defendant asked, "Motions as far as what, your Honor?" The court explained that it could not advise defendant on the motions to file, although it noted that typically a criminal defendant will file a motion for a directed finding. Defendant stated that he did not have any motions.

¶ 51 The court then asked defendant whether he had any witnesses to call. Defendant responded that there were witnesses he wished to call, but he did not have any of their phone numbers. The court asked defendant if he had issued any subpoenas for witnesses and he said no. The court asked, "So you do not wish to present any defense witness testimony, correct?" Defendant responded, "I do. I'm late on doing it. It was a mistake, your Honor." The trial court asked

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defendant whether he had filed an answer to discovery listing the witnesses he wanted to call. Defendant said no. The trial court asked defendant whether he had any physical or documentary evidence, and he said no. The court then explained that defendant had the right to testify as well as the right to remain silent and rely on the State's inability to prove the charges. Defendant stated he did not wish to testify. The court accepted defendant's waiver of the right to testify and asked whether the defense rested. Defendant said yes.

¶ 52 The State gave a closing argument recounting the evidence of defendant's guilt. Defendant made a rambling closing argument in which he accused Akaishi of falsely planting evidence that he had sexually abused his children. The court sustained multiple objections that defendant's argument was not based on the evidence at trial.

¶ 53 The court convicted defendant on all nine counts and set June 7, 2023, for the presentation of posttrial motions and sentencing. On June 7, defendant informed the court that he had not filed any posttrial motions. The cause proceeded to sentencing. The State presented a victim impact statement from Akaishi and argued factors in aggravation. The court asked defendant whether he had any evidence in mitigation, and he responded that he had been unable to contact any witnesses. The court allowed defendant to proffer what the witnesses would say. Defendant asserted that four of his witnesses (his mother, aunt, and two sisters) would testify to his unhappy marriage and that they each offered to talk to Akaishi to "help ease tension in the home." A fifth witness, Salvatore Martirano, also would testify to the "trauma" defendant endured during the marriage.

¶ 54 The court gave defendant the opportunity to present arguments in mitigation. Defendant stated he was a great father and that he did not commit the charged crimes. The court gave defendant the opportunity to make a statement in allocution. Defendant repeated the argument that he was a great father and innocent of the charges. The court sentenced defendant to 75 years'

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imprisonment and advised him of his appellate rights and of the need to file a post-sentencing motion within 30 days if he wished to challenge his sentence. The cause was continued to July 5.

¶ 55 On July 5, 2023, the court asked defendant if he had filed a motion to reconsider the sentence, and defendant responded, "Your Honor, I don't even know how to do that." He asked for another week to file the motion, but the court expressed its concern that the motion would be untimely. Defendant was provided with a preprinted motion for new trial and motion to reconsider sentence, which he filled out. The court struck the motion for new trial as untimely and denied the motion to reconsider sentence. Defendant now appeals.

¶ 56 Defendant argues that the trial court should not have permitted him to represent himself *pro se* because he was not mentally competent to do so. Our review is for an abuse of discretion. *People v. McNutt*, 2020 IL App (1st) 173030, ¶ 85. The State argues, and defendant concedes, that he forfeited review by failing to raise this issue in the trial court. Defendant asks us to review his claim under the second prong of the plain error rule. Ill. S. Ct. R.615(a) (eff. Jan. 1, 1967). "This court has consistently held that the right to counsel is so fundamental that we will review as plain error a claim that there was no effective waiver of counsel although the issue was not raised in the trial court." *People v. Herring*, 327 Ill. App. 3d 259, 261 (2002). We therefore address defendant's claim on appeal.

¶ 57 The sixth amendment of the United States Constitution (U.S. Const., amend VI) guarantees criminal defendants the right to proceed without counsel. However, a defendant's waiver of counsel must be knowing, intelligent, and voluntary. *McNutt*, 2020 IL App (1st) 173030, ¶ 78. Supreme Court Rule 401(a) provides that for there to be a knowing, intelligent, and voluntary waiver, defendant must be admonished of the nature of the charges, the minimum and maximum sentences, and the right to counsel. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). We have long held that

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when determining whether defendant understands the admonishments, the court considers his age, level of education, mental capacity, and his prior experience with legal proceedings. *People v. Ward*, 208 Ill. App. 3d 1073, 1083 (1991). In the instant case, the trial court gave defendant his Rule 401(a) admonishments several times in the years prior to trial, specifically warning him each time that he would face severe disadvantages during trial if he waived his right to counsel. Defendant repeatedly stated that he understood the admonishments but felt that it would be "safer" for him to proceed *pro se*. No issue is raised on appeal concerning the giving of the Rule 401(a) admonishments or the form of the inquiry. The issue is whether defendant's request to waive counsel should have been denied based on his mental infirmities.

¶ 58 In *Indiana v. Edwards*, 554 U.S. 164 (2008), the United States Supreme Court considered whether there was a "mental-illness-related limitation on the scope" of the right of self-representation. *Id.* at 171. In *Edwards*, a state court found the defendant to be mentally competent to stand trial when represented by counsel, but not mentally competent to represent himself *pro se*, and so it denied his self-representation request. *Id.* at 169. The issue on appeal was whether the Constitution required the state court to allow the defendant to represent himself at trial. *Id.*

¶ 59 The Court noted that prior cases had held that a criminal defendant was competent to stand trial if he had a rational and factual understanding of the proceedings against him and also possessed the capacity to rationally consult with his attorney. *Id.* at 170 (citing *Dusky v. United States*, 362 U.S. 402 (1960) (*per curiam*), and *Drope v. Missouri*, 420 U.S. 162 (1975)). However, neither *Dusky* nor *Drope* directly addressed whether it was constitutional for a state to deny the defendant the right to proceed *pro se* and conduct trial proceedings on his own if he was not mentally competent to do so. *Id.* at 170.

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¶ 60 The Court further noted that *Godinez v. Moran*, 509 U.S. 389 (1993) was the sole case in which it had considered mental competence and self-representation together. *Edwards*, 554 U.S. at 171. *Godinez* involved a criminal defendant who asked a state trial court to allow him to represent himself and change his pleas from not guilty to guilty. The trial court determined that the defendant met *Dusky*'s mental competence standard and granted his requests to represent himself and change his pleas to guilty. *Godinez*, 509 U.S. at 392-93. The appeals court vacated the defendant's guilty pleas, finding that the Constitution required the trial court to ask whether the defendant was competent to waive his right to counsel, which was a higher mental competency standard than the standard set forth in *Dusky*. *Id.* at 393-94. The Supreme Court reversed the appeals court, rejecting "the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the *Dusky* standard." *Id.* at 398.

¶ 61 *Edwards* concluded that *Godinez* only addressed the defendant's ability to proceed on his own to enter a guilty plea, and did not answer the question whether a state trial court may deny a defendant the right to conduct trial proceedings if not mentally competent to do so. *Edwards*, 554 U.S. at 173. *Edwards* proceeded to address the issue, reasoning:

> "[T]he nature of the problem before us cautions against the use of a single mental competency standard for deciding both (1) whether a defendant who is represented by counsel can proceed to trial and (2) whether a defendant who goes to trial must be permitted to represent himself. Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual's functioning at different times in different ways." *Id.* at 175.

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¶ 62 The Court noted that a defendant may be mentally competent to stand trial when represented by counsel yet may be unable to perform the "basic tasks" necessary for his defense without the help of counsel. *Id.* at 175-76. The "spectacle" that could result from a mentally incompetent person representing himself could prove humiliating to him and abridge or diminish the dignity underlying his self-representation right. *Id.* at 176. Therefore, the Court held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178.

¶ 63 The Court did not endorse any particular test for determining whether a mentally ill defendant is competent to stand trial but not so competent as to conduct trial proceedings by himself. However, the Court did favorably reference a portion of the American Psychiatric Association's *amicus* brief, which stated, "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." *Id.* at 176.

¶ 64 In the instant case, our review of the record indicates that the trial court erred by accepting defendant's waiver of counsel because he was not competent to conduct trial proceedings by himself. Dr. Pan explained at the fitness hearing that defendant's unspecified schizophrenia spectrum and other psychotic disorder manifested itself in paranoid, delusional thinking as exhibited by his incorrect belief that the charges had been dropped by one of the victims. He also exhibited disorganized thought processes, manifested by his inability to identify which witnesses he should call in his defense. He expressed uncertainty when asked a series of questions designed to determine his ability to represent himself. Dr. Pan concluded that although defendant was

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competent to stand trial when represented by counsel, his mental illness rendered him so disorganized in his thinking as to render him incapable of representing himself at trial.

¶ 65 The trial court discounted Dr. Pan's findings. Relying on *Godinez*, the court found that the competence to stand trial and the competence to waive counsel are the same, meaning that since Dr. Pan had found defendant fit to stand trial with counsel, he necessarily was competent to waive counsel and conduct trial proceedings *pro se*. The trial court's finding runs counter to *Edwards*, which held that *Godinez* only addressed a defendant's ability to appear on his own to enter a guilty plea, and that *Godinez* did *not* address the issue here, *i.e.*, whether a state trial court may deny defendant the right to conduct trial proceedings *pro se* if he is not mentally competent to do so. *Edwards* held that there is no single competency standard for deciding both whether a defendant who is represented by counsel can proceed to trial and whether a defendant who goes to trial must be allowed to represent himself. *Id.* at 175. See also *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 49 (noting that under *Edwards*, "the standard for deciding whether defendant was competent to conduct trial proceedings on his own is not the same standard for whether he was fit to stand trial."). The standard for determining whether defendant is fit to stand trial with counsel requires the court to consider whether he had a rational and factual understanding of the proceedings against him and the capacity to rationally consult with his attorney. *Edwards*, 554 U.S. at 170. Even if defendant possesses such an ability to rationally understand the proceedings and consult with his attorney, he still may be incompetent to conduct trial proceedings on his own if he suffers from a severe mental illness symptomized by disorganized thinking and deficits in sustained attention and concentration that prevent him from performing the basic tasks needed to present his own defense. *Id.* at 176.

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¶ 66 Dr. Pan's testimony that defendant's mental illness was manifested by paranoid, delusional, and disorganized thinking preventing him from performing the basic tasks needed to present his own defense was sufficient under *Edwards* to show that defendant was incompetent to represent himself and conduct trial proceedings on his own even though he was fit to stand trial with counsel. Dr. Pan's testimony was not contradicted by any other witness or other medical evidence and in fact was supported by defendant's conduct during pre-trial proceedings and at trial, when he failed to carry out even the most basic tasks needed to present his own defense. Specifically, defendant failed to file any responses or make any coherent arguments against the State's pretrial motions to consume DNA from the pink vibrator and to the section 115-7.3 and 115-10 motions, explaining that he was unprepared even though he had been granted continuances for eight months to prepare for the motions. Defendant failed to file an answer or a witness list or any pretrial motions, again explaining that he was unprepared despite being given multiple continuances over several months to prepare. During trial, defendant's opening statement did not address the charges against him or what he expected the evidence to show. His cross-examination of the witnesses largely consisted of irrelevant questions unrelated to the charges. He actually elicited testimony from J.G. and A.G. prejudicial to him, in particular, that he sexually assaulted J.G. day and night and that he required A.G. to have sex with him before going on sleepovers. He made no objections to the admission of the photographs of A.G. on his phone, or of the pink vibrator and lingerie, or to the videotape of J.G.'s forensic interview with Guadalupe Salgado, nor did he cross-examine Salgado. Defendant offered no evidence at trial. His closing argument was not based on evidence at trial. He filed no posttrial or post-sentencing motions.

¶ 67 We acknowledge that "a lack of legal sophistication, knowledge, or experience—manifested in the form of unsupported legal theories, unsuccessful strategies, and unwise tactical

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decisions—is not a basis on which to find a defendant incompetent to waive counsel or his waiver of counsel ineffective." *McNutt*, 2020 IL App (1st) 173030, ¶ 96. This is not that case. Defendant did not exhibit any legal theories, strategies, or tactical decisions of any sort, whether supported or unsupported. Rather, the record shows that from December 9, 2020, when defendant was permitted to proceed *pro se*, until July 5, 2023, when the post-sentencing hearing was held, defendant did not file any pleadings or motions with the court, make any cohesive arguments in response to the State's motions, or mount a defense at trial. This is not a case where defendant mounted a poor defense because of a lack of legal training; this is a case where defendant mounted no defense due to mental illness.

¶ 68 Dr. Pan's diagnosis of defendant's mental illness, coupled with defendant's failure to perform the basic tasks necessary for his defense, differentiates this case from other cases where we held that the defendant was competent to represent himself without counsel. For example, in *McNutt*, 2020 IL App (1st) 173030, ¶ 91, ¶ 102, we held that the trial court did not abuse its discretion in finding that defendant was competent to represent himself where there was no evidence he suffered from mental illness and he performed basic tasks necessary for his defense. Specifically, he filed motions for substitution of judge and to suppress evidence, objected to the State's request for a DNA consumption order, struck two jurors during jury selection, made timely objections to the admission of evidence at trial, testified on his own behalf, and participated in the jury instructions conference. *Id.* ¶ 102. In *People v. Allen*, 401 Ill. App. 3d 840, 852 (2010), we held that the trial court committed no abuse of discretion in allowing defendant to represent himself, where a psychiatrist found him fit for trial and he proceeded to perform basic tasks necessary to his defense such as cross-examining witnesses, entering exhibits into evidence, objecting to witnesses' testimony, and submitting jury instructions. *Id.* By contrast, defendant here

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was diagnosed with unspecified schizophrenia spectrum and other psychotic disorder manifesting in disorganized and paranoid thinking, which prevented him from performing the types of basic tasks necessary to his defense that were accomplished by the defendants in *McNutt* and *Allen*.

¶ 69 The State notes that in granting defendant's waiver, the court also determined that his mental illness was not severe enough under *Edwards* to deny his request for self-representation and it asks us to affirm that ruling. For purposes of whether a criminal defendant's mental illness is so severe as to render him incompetent to waive representation even if he can play the lesser role of represented defendant, *Edwards* held that the severity of the illness must be measured by whether it renders him incapable of conducting trial proceedings on his own. *Edwards*, 554 U.S. at 178. In the instant case, after testifying to defendant's unspecified schizophrenia spectrum and other psychotic disorder, Dr. Pan stated that he did not think defendant has symptoms so severe as to render him unfit for trial when represented by counsel. Dr. Pan further testified, though, that defendant's mental illness manifested itself in an extremely disorganized and paranoid thought process impairing his ability to represent himself. No other witness testified to the contrary. Dr. Pan's uncontradicted testimony regarding how defendant's mental illness affected his thinking so as render him unable to "mount his own defense by himself" was sufficient, under *Edwards*, to show that his mental illness was severe enough to render him incompetent to waive counsel. And, as discussed, Dr. Pan's testimony was supported by defendant's conduct before, during, and after trial, when he failed to perform even the basic tasks necessary to defend himself.

¶ 70 We recognize that the "mere fact that a psychiatrist expresses the opinion that the defendant is unfit does not require a similar finding by the trial court; it is the trial court's function to assess the credibility and weight to be given to a psychiatric expert's testimony." *People v. Baugh*, 358 Ill. App. 3d 718, 732 (2005). However, this is not a case where the trial court accepted

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defendant's waiver of counsel because it found the psychiatric testimony incredible and/or outweighed or contradicted by other evidence or by defendant's demeanor and interactions with the court. Rather, the court's ruling that defendant was capable of representing himself during trial proceedings was based on its determination that Dr. Pan's finding of fitness to stand trial necessitated a finding of fitness for self-representation under *Godinez*. As discussed, the trial court's ruling misconstrues *Godinez* and runs counter to *Edwards*. The trial court also focused on Dr. Pan's testimony that defendant's symptoms were not indicative of "severe mental illness." As discussed, though, Dr. Pan qualified that testimony by explaining that the symptoms of defendant's mental illness included disorganized, delusional, and paranoid thinking rendering him unable to mount a defense on his own. Dr. Pan's uncontradicted testimony was sufficient under *Edwards* to show that defendant's mental illness was severe enough to render him incapable of self-representation and, when coupled with defendant's complete failure to perform even the most basic tasks necessary to his defense, compels us to conclude that the court abused its discretion and committed plain error by granting his request to proceed *pro se*.

¶ 71 Next, we consider the remedy for the trial court's error. *People v. Lego*, 168 Ill. 2d 561 (1996) is informative. In *Lego*, the defendant was charged with murder. *Id.* at 563. He waived his right to counsel, represented himself at trial, and was convicted and sentenced to death. *Id.* The defendant subsequently filed a postconviction petition alleging that an impaired mental condition had rendered him incapable of validly waiving the assistance of counsel. *Id.* At the hearing on the petition, the defendant provided the depositions of two experts who diagnosed him with a mental illness rendering him incapable of appreciating the dangers of waiving his right to counsel. *Id.* The postconviction court denied the petition. *Id.* Our supreme court found that the defendant's expert testimony was unrefuted by the State and established that his waiver of his right to counsel was

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not knowing and intelligent and, as such, was invalid. *Id.* at 578-79. Therefore, the supreme court reversed the judgment of the circuit court denying postconviction relief, vacated the judgment of conviction and the sentence of death, and remanded for a new trial. *Id.* at 579. In the present case, for all the reasons discussed earlier in this order, defendant's waiver of the right to counsel was invalid under *Edwards* because his mental illness was severe enough to render him incapable of self-representation. In accordance with *Lego*, which held that an invalid waiver of counsel necessitates the vacating of the conviction and sentence and a remand for a new trial, we vacate defendant's judgment of conviction and sentence here and remand for the appointment of counsel and a new trial. If defendant again insists on representing himself, the court should order a new BCX as to defendant's fitness to proceed *pro se* and conduct a hearing on his fitness to proceed *pro se* with his appointed counsel and in accordance with this decision. If defendant is found fit to proceed *pro se*, then the court shall appoint stand-by counsel. If he is found unfit, the court shall decline defendant's request to proceed *pro se* and appoint counsel or co-counsel to represent him.

¶ 72 The evidence was sufficient to prove defendant guilty beyond a reasonable doubt and therefore there is no double jeopardy impediment to a new trial. See *People v. Naylor*, 229 Ill. 2d 584, 610-611 (2008). As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 73 Vacated and remanded.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS

v.

Joseph Gizel
Defendant

Case Number 20CR0704501
Date of Birth 11/16/1973
Date of Arrest 06/25/2020
IR Number 1121994 SID Number 29866250

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Years	Months	Class	Consecutive	Concurrent
001	720 ILCS 5/11-1.40(a)(1)	PRED CRIM SEX ASLT/VICTIM <13	15		X	X	
002	720 ILCS 5/11-1.40(a)(1)	PRED CRIM SEX ASLT/VICTIM <13	15		X	X	
003	720 ILCS 5/11-1.40(a)(1)	PRED CRIM SEX ASLT/VICTIM <13	15		X	X	
004	720 ILCS 5/11-1.40(a)(1)	PRED CRIM SEX ASLT/VICTIM <13	15		X	X	
005	720 ILCS 5/11-1.40(a)(1)	PRED CRIM SEX ASLT/VICTIM <13	15		X	X	

On Count _____ defendant having been convicted of a class _____ offense is sentenced as a class _ offender pursuant to 730 ILCS 5/5-4.5-95(b).

On Count _____ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of _____ years and 1106 days, as of the date of this order. Defendant is ordered to serve 3 years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case numbers(s) _____ _____ _____ _____

AND: consecutive to the sentence imposed under case number(s) _____ _____ _____ _____

IT IS FURTHER ORDERED THAT STD, DNA, LIFETIME REGISTRATION AS SEX OFFENDER, 3 YEARS TO NATURAL LIFE MSR. TO BE SERVED AT 85%. COUNT 6 MERGES INTO COUNT 3, COUNT 7 MERGES INTO COUNT 1, COUNT 8 MERGES INTO COUNT2, COUNT 9 MERGES INTO COUNT 5. COUNTS 10 THRU 24 MS NOLLE PROS_____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

Dated July 5, 2023
Certified by: _____ Deputy Clerk Lund

ENTERED
Judge Marc W. Martin - 2105
JUL 05 2023
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

_____ Judge Martin, Marc William

2105 Judge's No.

IRIS Y MARTINEZ, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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Sheet #	CRIMINAL DISPOSITION SHEET	Branch/Room/Location	Court Interpreter
3	Defendant Sheet #1	D3, Courtroom 110 2121 Euclid Avenue, Rolling Meadows, IL, 60008	

Case Number	Defendant Name	Attorney Name	Session Date	Session Time
20CR0704501	Gizel, Joseph	ROSALES, MELINDA 30295	5/8/2023	09:30 AM -

CB/DCN#	IR #	EM	Case Flag	Bond #	Bond Type	Bond Amt
019972246	1121994		VOBB		C	$1,000,000.00

CHARGES	** IN CUSTODY 8/18/2020 ** COURT ORDER ENTERED	CODES
C1 720 ILCS 5/11-1.40(a)(1) PRED CRIM SEX ASLT/VICTIM <13 6-60	ENTERED Judge Marc W. Martin - 2105 MAY 08 2023 IRIS Y. MARTINEZ CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL	
C2 720 ILCS 5/11-1.40(a)(1) PRED CRIM SEX ASLT/VICTIM <13 6-60	AIC (CCJ - 18)	
C3 720 ILCS 5/11-1.40(a)(1) PRED CRIM SEX ASLT/VICTIM <13 6-60	DC (CP/a se)	
C4 720 ILCS 5/11-1.40(a)(1) PRED CRIM SEX ASLT/VICTIM <13 6-60	RULE 401 ADMONISH ACCD	
C5 720 ILCS 5/11-1.40(a)(1) PRED CRIM SEX ASLT/VICTIM <13 6-60	B/A 5-9-23	
C6 720 ILCS 5/11-1.20(a)(3) CRIM SEX ASLT/FAMILY MEMBER<18 1	CI FILES A FF FOR TRIAL	
C7 720 ILCS 5/11-1.20(a)(3) CRIM SEX ASLT/FAMILY MEMBER<18 1	95% FF D REPRESENTED HIMSELF	
C8 720 ILCS 5/11-1.20(a)(3) CRIM SEX ASLT/FAMILY MEMBER<18 1	85% A KNOWINGLY, VOLUNTARILY	
C9 720 ILCS 5/11-1.20(a)(3) CRIM SEX ASLT/FAMILY MEMBER<18 1	85% + INTELLIGENTLY WAIVES RIGHT TO COUNSEL	

JUDGE:	JUDGE'S NO:	RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK:	VERIFIED BY:
	2125		

DC FILE TRANSCRIPT

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THE COURT: All right. You could have a seat.

The elected case 20 CR 7045 is set for a bench trial scheduled to begin tomorrow. For well over two years, Mr. Gizel has been representing himself on the felony case. There is two felony cases before the Court; only one is set for trial tomorrow.

On December 9, 2020, Judge Goebel admonished the defendant pursuant to Illinois Supreme Court Rule 401 and accepted the defendant's waiver of counsel.

On June 25, 2021, Judge Betar again admonished defendant pursuant to Illinois Supreme Court Rule 401 and accepted the defendant's waiver of counsel.

On March 30, 2022, Judge Betar granted the State's motion to admit proof of other crimes. Mr. Gizel represented himself at that hearing.

On May 17, 2022, Judge Betar conducted a hearing pursuant to 725 ILCS 5/115-10. Mr. Gizel represented himself at that hearing. Judge Betar granted the State's motion.

The Court also accepted the defendant's jury waiver on that day, although, we will do a

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fresh jury waiver, if we get that far.

On November 1, 2022, the presiding judge assigned this call to this Court. Although, I had presided over matters involving Mr. Gizel on earlier court dates when standing in for Judge Betar, this case is and has been in a trial posture.

Mr. Gizel has been firm in his desire to represent himself. He's also indicated that he still wishes to waive his right to a jury trial. As a prelude to the bench trial in this serious case and based on its personal observations and interactions with Mr. Gizel, the Court requested a forensic clinical services examination for fitness.

Mr. Gizel cooperated with that examination. Not only did forensic clinical services evaluate Mr. Gizel for fitness to stand trial, the examining doctor also rendered an opinion on fitness of the defendant to represent himself.

On December 14, 2022, the Court received a forensic clinical services report prepared by Dr. Pan. Dr. Pan's opinion is that Mr. Gizel suffered from unspecified schizophrenia spectrum and other psychotic disorders. He opined the defendant was fit to stand trial. Dr. Pan further opined that the

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defendant was unfit to represent himself pro se.

On March 14, 2023, we conducted a hearing on these matters. Mr. Pan testified at that hearing. The Court now found and holds the defendant is fit to stand trial, no opposition in the form of a second opinion or impeachment of Dr. Pan's opinion has been presented in any manner whatsoever.

On this record, there simply is no reasonable basis to conclude that the defendant is unfit. This finding potentially ends the matter with respect to the question whether the defendant is fit to represent himself in Godinez versus Moran, G-o-d-i-n-e-z, 509 US 39.

The United States Supreme Court held if a defendant is to represent himself at a criminal trial -- strike that.

The Court held that the defendant is fit to represent himself in the trial, and he's also competent to represent himself. The Godinez court held that the standard for fitness to stand trial and represent one's self are the same.

According to the Court, the required competence is a competence to waive the right to

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counsel not the competence to represent one's self.

In Indiana versus Edwards, 554 US 164, United States Supreme Court ruled that the State may insist on representation if the defendant, while competent to stand trial, suffers from, quote, severe mental illness to the point where they are not competent to conduct trial proceedings by themselves, end quote.

The Edwards court also noted that trial judges are in the best position to make this assessment. Before making a final ruling on this issue, the Court shall revisit Illinois Supreme Court Rule 401.

Rule 401 governs the waiver of right to counsel provides that any waiver shall be in open court. The Court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first addressing the defendant personally in open court informing him of and determining that he understands the following:

1. The nature of the charge;.

2. The minimum and maximum sentence proscribed by law including, when applicable, the penalty to which the defendant may be subjected

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because of prior convictions or consecutive sentences; and.

3. That he has a right to counsel; and if he is indigent, to have counsel appointed to him by the Court.

So at this point, Mr. Gizel, I ask that you stand, approach the podium. I am going to advise you of the three things required by Rule 401.

Mr. Gizel, do you understand that in Count 1 of 20 CR 7045, that's the case set to start tomorrow. You are charged with predatory criminal sexual assault of a child.

It's alleged to have occurred between May 17, 2015 continuing on and through March 31, 2020 in Cook County. It's alleged that you were 17 years of age or older and you knowingly committed an act of sexual penetration to wit: Contact between your penis and a person with the initials of JG's sex organ and JG was under 13 years of age in violation of 720 Act 5 Section 11-1.40(A)1 of the Illinois Compiled Statute as amended.

The statute of limitations for this prosecution is extended pursuant to Chapter 720 of the Illinois Compiled Statues Act 5 Section 3-6 J

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THE COURT: Are you making that decision of your own free will?

THE DEFENDANT:z I am.

THE COURT: Do you have any questions about your right to counsel?

THE DEFENDANT: No.

THE COURT: Any questions about your right to appointed counsel?

THE DEFENDANT: No.

THE COURT: Let the record reflect that Mr. Gizel has been informed of the nature of the charges, the possible penalties and his right to counsel, pursuant to Rule 401, the Court finds Mr. Gizel understands the charges against him and understands the possible penalties.

He also understands he has a right to counsel and the right to have counsel appointed. Mr. Gizel is knowingly and voluntarily and intelligently waiving his right to counsel.

The Court will return to Dr. Pan's opinion and testimony because Mr. Gizel has been found fit to stand trial. He correspondingly fit to waive his right to counsel.

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With all due respect to Dr. Pan, the Court finds he applied the wrong standard. As stated in Godinez, the required competence to stand trial and the required competence to waive the right to counsel are the same. This standard is not whether defendant is competent to represent himself.

It is clear that Dr. Pan asked the defendant on the issue of fitness to represent himself, focussed on self-representation, competency as opposed to the counsel, to have the right to counsel.

Finally, the Court has the idea, whether the representation may be insisted upon under Indiana versus Edward, the Court answers this question: In response to the Court's questions at the hearing, Dr. Pan testified there are degrees of severity with respect to the diagnosis of unspecified schizophrenia spectrum and other psychiatric disorder.

The Court asked Dr. Pan to expound on where Mr. Gizel falls on the spectrum and whether the mental disorder would interfere with Mr. Gizel's fitness to stand trial.

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Dr. Pan responded that Mr. Gizel's active symptoms do not affect his ability to stand trial. Mr. Gizel does not have severe symptoms. Mr. Gizel is not suffering from severe mental illness and that Mr. Gizel is not extremely disorganized.

In light of this testimony, the Court concludes that Mr. Gizel is fit to waive his right to counsel at bottom. Dr. Pan essentially is opining it is not a good idea for Mr. Gizel to represent himself.

Most in this room would agree with that, but that's not the standard. The Court accepts Mr. Gizel's waiver of his right to counsel. Mr. Gizel should be permitted his right to self-representation at the trial commencing tomorrow.

The Court will ask our court reporter to prepare a transcript of today's proceedings and cause it be filed as part of the record in this cause pursuant to Illinois Supreme Court Rule 401.

Anything else?

MS. LANTZ: No, Judge.

THE COURT: We will see you tomorrow for trial.

MS. LANTZ: Judge, do we want to do a jury waiver today?

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FILED
D3
JUL 05 2023
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.) **Case No.** 2020CR0704501
Joespn Gizel) **Judge:** MARTIN
) **Attorney:** Pro Se

NOTICE OF APPEAL

ENTERED
Judge Marc W. Martin - 2105
JUL 05 2023
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

An Appeal is taken from the order of judgement described below:

APPELLANT'S NAME: Gizel, Joseph
APPELLANT'S ADDRESS: IDOC
APPELLANT'S ATTORNEY: Office of the State Appellate Defender
ATTORNEY'S ADDRESS: 203 North LaSalle Street, 24th Floor, Chicago, IL 60601
ATTORNEY'S EMAIL: 1stDistrict@osad.state.il.us
OFFENSE: PRED CRIM SEX ASLT/VICTIM ≤13 [720 ILCS 5/11-1.40(a)(1)]
JUDGEMENT: FG Counts 1-5, 15 yrs IDOC consecutive each count.
DATE OF JUDGEMENT: 6/7/23
SENTENCE: 75 yrs IDOC
IF NOT A CONVICTION, NATURE OF ORDER APPEALED FROM: _____

Gizel, Joseph / X Joseph Gizel
APPELLANT/APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the Appellant; order the Clerk to prepare the Record on appeal, and to appoint the State Appellate Defender as counsel on appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is now unable to pay for the Record or to retain counsel on appeal.

Gizel, Joseph / X Joseph Gizel
APPELLANT/APPELLANT'S ATTORNEY

ORDER

IT IS ORDERED that the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished to appellant without cost, within 45 days of receipt of this Order.
Dates to be Transcribed: 5/9/23, 5/10/23, 6/7, 23, 7/5/23

Date: _____ Enter: _____
JUDGE

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