

No. 131527
IN THE
SUPREME COURT OF ILLINOIS

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

**APPELLEE'S REPLY IN SUPPORT OF
REQUEST FOR CROSS-RELIEF**

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**APPELLEE'S REPLY IN SUPPORT OF
REQUEST FOR CROSS-RELIEF**

I. The trial court committed plain error when it failed to appoint Joseph Gizel counsel at the fitness hearing after finding a *bona fide* doubt of his fitness.

Joseph Gizel argued that the trial court erred when it did not appoint him counsel after finding a *bona fide* doubt of his fitness existed, and allowed him to represent himself at the fitness hearing wherein Dr. Philip Pan testified regarding the conclusions contained in his report. (Resp. Br., pgs. 58-61). He further asserted that this error amounted to second-prong plain error. (Resp. Br., pgs. 51-54, 61).

Contrarily, the State suggests a much narrower view of fitness hearings, positing that such proceedings only concern fitness to stand trial and everything else is ancillary, if not entirely unrelated to fitness. Accordingly, it argues that Gizel actually was represented by counsel during the “proceedings at which the court assesse[d] fitness to stand trial.” (St. Br., pg. 22). The hearing it references is not, however, the fitness hearing where Dr. Pan testified regarding his conclusions, but a prior hearing where Gizel, acting *pro se*, “refused” to stipulate to the psychiatrist’s report and demanded Dr. Pan’s live testimony. (R. 226-37). Despite acknowledging Gizel’s refusal, the State contends that, because a public defender, who represented Gizel on the non-elected misdemeanor case that followed the elected felony case, was present at that hearing, he was represented by counsel. (St. Br., pgs. 22-23, 25). Moreover, the State asserts that the “subsequent hearing at which [Dr.] Pan testified was not a ‘true fitness hearing,’ [citation omitted] but was held to determine whether the court would impose counsel on [Gizel] despite

his fitness to stand trial.” (St. Br., pgs. 22-23). And, although Gizel’s fitness was “resolved” prior to Dr. Pan’s testimony, he was still represented by counsel during that hearing because “the assistant public defender appeared on [Gizel’s] behalf in the misdemeanor case, which was called at the same time.” (St. Br., pgs. 22-25).

Not only does the State’s position distort the proceedings below, it represents a perversion of the more expansive understanding of fitness and its attendant concerns that the United State’s Supreme Court articulated in *Indiana v. Edwards*, 554 U.S. 164 (2008). And, the notion that Gizel’s misdemeanor counsel represented him on the felony matters is disingenuous and should be rejected by this Court, where the record so plainly demonstrates the opposite. Besides, this contention—that Gizel was represented by counsel while the trial court determined his fitness to stand trial—was forfeited where the State on direct appeal not only failed to make this argument but actually conceded that Gizel was *pro se* at the fitness hearing. (See A-4 through A-5); see also *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (doctrine of forfeiture applies equally to the State in criminal proceedings); *People v. McKown*, 236 Ill. 2d 278, 308 (2010) (finding that State forfeited issue by failing to bring it “to the attention of the appellate court”).

Both before and after the doubt was *sua sponte* raised, Gizel represented himself on the felony cases and was represented by counsel on the misdemeanor case. (Compare R. 196 (“Mr. Gizel is *pro se* on his two felony matters before the Court, and he’s represented by the Public Defender’s office on the domestic.”) with R. 220 (“Three cases before the court, two are felonies. Mr. Gizel has been allowed to proceed *pro se* on the two felony cases. He is represented by the Public Defender’s

Office on the misdemeanor case.”)). The court was clearly treating Gizel like a *pro se* litigant in the proceedings leading up to and during the fitness hearing. (See R. 223 ([Public Defender]: “Are you agreeing that Mr. Gizel can represent himself for the felony hearings, and then I would represent him on the hearing in regards to the misdemeanor case?” [Court]: “Correct.”); R. 228 (“[M]y first question to you, Mr. Gizel, because you are representing yourself on these felony cases, is will you *** stipulate to the Forensic Clinical Services report?”); R. 252 (“Mr. Gizel, is there anything you wish to add by way of an opening statement or anything you wish to bring to the Court’s attention before we start the hearing?”)). After Dr. Pan concluded his testimony, the court asked Gizel, and not misdemeanor counsel, if he wanted to offer a closing argument. (R. 263). At every turn during the fitness hearing, the circuit court plainly regarded Gizel as a *pro se* litigant.

In contrast, the court treated the assistant public defender as a bystander, repeatedly acknowledging that counsel’s representation was exclusive to the non-elected misdemeanor case. (See R. 223 ([Public Defender]: “Judge, I can only go by agreement on the misdemeanor.” [Court]: “All right. Well, get Mr. Gizel out. He always agrees to it, but let’s make sure it’s on the record.”); R. 249 (“Has the defense – and that’s Mr. Gizel. And we do have the public defender on the line who at least is representing him on the misdemeanor case and certainly can stand by as a friend of the Court for purpose of these proceedings.”)). Indeed, misdemeanor counsel’s statement immediately preceding Dr. Pan’s testimony at the fitness hearing explicitly rebuts any claim that he represented Gizel on the felony matters:

[A]t this point, *as far as the felony matters, Judge, we would stand silent on any of the issues regarding any questioning in the reports.*

We've seen them, we know what the findings are, and other than that, Judge, I'd be reluctant to speak any further because Mr. Gizel has informed the Court, I believe on numerous occasions, that *he does not wish us to represent him at all regarding the felony matters.* (emphases added) (R. 252).

Tellingly, the State cannot point to a single line of record proceedings wherein misdemeanor counsel took any meaningful substantive action with regard to the circuit court's fitness inquiry. The reason is simple: Gizel was operating *pro se*.

The trial court did not appoint counsel to represent Gizel on his felony matters even though, by finding a *bona fide* doubt existed, it established that Gizel could not intelligently waive his constitutional right to counsel. See *People v. Esang*, 396 Ill. App. 3d 833, 841 (1st Dist. 2009) (citing *People v. Rath*, 121 Ill. App. 3d 548, 550-51 (3d Dist. 1984)). Considering the fact that, at this point, Gizel's fitness had been questioned, the effect of that doubt—removing his ability to waive counsel—should have been borne on the instant, elected case (and other felony matter) where Gizel had previously waived counsel and been allowed to proceed *pro se*. See *People v. Mazar*, 282 Ill. App. 3d 662, 664 (3d Dist. 1996) (“Because a proper waiver of counsel requires the defendant to have use of his mental faculties, it is error to allow a defendant to represent himself once a *bona fide* doubt regarding the defendant's competence has arisen.”); *People v. Washington*, 2017 IL App (4th) 150054, ¶ 21 (“Once this *bona fide* doubt is established, the court is required—even over the defendant's objection—to appoint counsel to represent the defendant until he or she regains fitness to stand trial.”).

Moreover, considering its statements following the examination of Gizel and subsequent psychiatric report, it is clear that the trial court's doubt finding

stemmed from its concerns that Gizel could not intelligently waive counsel due to mental illness. (See R. 220 (“[T]he record should be clear that *** the Court was the entity that ordered the examination in the case based on a *sua sponte* doubt about fitness, which is somewhat confirmed *** by the doctor’s reports in this case.”); R. 227 (“[W]e got the report back, and it was fit to stand trial. It did indicate there was some mental illness, which I think bolsters the Court’s finding of *bona fide* doubt.”); R. 232 (“I think my impressions were borne out by that report given its two distinct and opposing findings on the questions.”); R. 275 (“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.”)). And, significantly, those concerns were not allayed despite the fact that the report indicated that Gizel was fit to stand trial and neither Gizel nor his misdemeanor counsel contested that finding. (R. 227-28, 232). This is because, as recognized in *Edwards*, 554 U.S. 164 (2008), courts have a compelling interest in limiting the self-representation right, even in spite of a defendant’s fitness to stand trial, where mental illness prevents him from conducting trial proceedings on his own. (See Resp. Br., pgs. 26-29).

To the extent that fitness to waive counsel can be considered a “subsidiary issue” to the issue of fitness to stand trial, the same protections should nonetheless apply to both legal questions. (St. Br., pg. 24 (quoting R. 232)). As the State readily emphasizes throughout its brief, “the level of fitness to waive counsel was the same as to stand trial.” (*E.g.*, St. Br., pg. 9). If this is true, then its assertion that “the issue of [Gizel’s] fitness to stand trial was resolved” prior to the hearing wherein

Dr. Pan testified must be false. (St. Br., pg. 22). Put differently, if the “subsequent hearing at which [Dr.] Pan testified *** was held to determine whether the court would impose counsel” on Gizel, then, by the State’s own argument, his fitness must not have been resolved. (St. Br., pgs. 22-23). Notably, the State’s argument throughout this issue puts form over function: it ignores the practical reality, abundantly shown in the record, that Gizel being permitted to represent himself—standing silently—at the very hearing to determine whether he was fit to do so, turned this fundamental safeguard into yet another lopsided non-adversarial proceeding. (See, *e.g.*, Resp. Br., pgs. 30-37).

As Gizel previously explained, the fitness hearing is a critical stage that requires defense counsel to play a unique role, and “counsel’s duty with respect to the issue of a defendant’s fitness consists *** in taking all necessary steps to [e]nsure a fair determination of the issue.” (Resp. Br., pg. 60 (quoting *People v. Lewis*, 75 Ill. App. 3d 560, 566 (5th Dist. 1979))). This role is even more imperative when, as here, the defendant is insistent on representing himself at trial, necessitating that counsel balance competing fundamental constitutional rights. (Resp. Br., pgs. 59-61). Contrary to the State’s characterization, Gizel did not contend that counsel “should have argued against [Gizel’s] express desire to represent himself.” (St. Br., pgs. 25-26). In fact, Gizel never asserted that counsel should take any particular position, rather, counsel “must exercise professional judgment in order to sure that the defendant, if unfit, is not tried in violation of his or her right to due process of law.” (Resp. Br., pg. 60 (quoting *People v. Holt*, 2013 IL App (2d) 120476, ¶ 13)). Gizel, representing himself, could not and did not ensure

a fair determination of his own fitness to protect against the violation of his due process right; misdemeanor counsel, recognizing that the relevant forensic examination and subsequent report were geared toward Gizel's felony matters, stood silent. (R. 262 ([Court]: "Mr. Gizel, do you wish to inquire of the doctor at all?" [Gizel]: "No, your Honor." [Court]: "All right. And [public defender], do you wish to make any questions?" [Public Defender]: "No, Judge.")). With no one present to protect Gizel's fundamental rights, the fitness hearing became an unfair non-adversarial farce, and Gizel was denied due process of the law.

The State goes so far as to contend that the trial court did not have discretion to impose counsel on Gizel because he was fit to stand trial. (St. Br., pg. 26). This is not only counter to the holding of *Edwards*, 554 U.S. at 178, but it contradicts the State's own interpretation of *Edwards*—that the court is permitted to insist upon representation by counsel for a defendant fit to stand trial. (See St. Br., pg. 6). Indeed, the court should exercise its discretion only after a fitness hearing where the defendant is represented by counsel; crucially, such was not the case for Gizel.

Despite the State's flippant attitude regarding such fitness determinations, it is clear that the court and parties were faced with an unfamiliar posture and novel question—whether counsel should be imposed on Gizel despite his fitness to stand trial. (See R. 208 ([State]: "Judge, to be honest, this is the first that I've seen. I think I need to do some research. *** I've never seen this. I can look into it and find out. I apologize. I don't have an answer for you." [Court]: "I don't know if [the public defender] has any experience in this. It's a first for the Court[.]");

R. 209 (“It is new for everybody, I understand, but we want to make sure that all of Mr. Gize’s rights are protected.”)).

Consistent with the sensitivity of this novel question, the psychiatric report presented, and the court recognized, an operative distinction between fitness to stand trial and fitness to represent one’s self at trial that touched on the court’s documented concerns regarding mental illness. (See R. 207 (“Dr. Pan opines that [Gize is] fit to stand trial, but he opines that [Gize is] unfit to represent [himself] *pro se*.”); R. 227 (“So we got the report back, and it was fit to stand trial. It did indicate there was some mental illness, which I think bolsters the Court’s finding of a *bona fide* doubt[.]”); R. 232 (“I think my impressions were borne out by that report given its two distinct and opposing findings on the questions.”)).

Finally, the presence of Gize’s mental illness invoked the holding of *Edwards*, 554 U.S. 164 (2008), which established a limitation on the self-representation right in spite of fitness to stand trial where a defendant’s mental illness prevents him from conducting trial proceedings on his own. (See R. 230 (“[T]he standard is the trial judge’s observations of the defendant to determine whether he’s so severely mentally ill that he cannot competently represent himself – I’m talking about legal competence, *** mental competence.”); R. 263 (“The determination, at least for today, is whether you’re fit to stand trial, and the doctor also evaluated for fitness to represent yourself, although at the end of the day, that’s a legal conclusion which the Court must reach, but I will take the doctor’s testimony into account.”); R. 300-01 (“Finally, the Court has the idea, whether the representation may be insisted upon under [*Edwards*], the Court answers this question: In response

to the Court's questions at the hearing, *** Dr. Pan responded that Mr. Gizel's active symptoms do not affect his ability to stand trial. *** Mr. Gizel is not suffering from severe mental illness[.]"). Accordingly, these unique circumstances demanded careful consideration to ensure protection of Gizel's rights; at very least, this required that Gizel be appointed counsel.

Regardless of the terminology used by the court, it raised a *bona fide* doubt of Gizel's fitness due to concerns related to mental illness, and that doubt was not resolved until after it held a fitness hearing to question the psychiatrist who found Gizel unfit to represent himself. (See R. 276 ("On March 14, 2023, we conducted a hearing on these matters. [Dr.] Pan testified at that hearing. The Court now found and holds the defendant is fit to stand trial[.]")). Crucially, the court failed to appoint counsel to represent Gizel during this critical stage despite its doubt of his fitness. "Where a *bona fide* doubt exists as to a defendant's competency to stand trial, that defendant cannot intelligently waive his constitutional right to representation by counsel, and permitting him to represent himself is reversible error." *Esang*, 396 Ill. App. 3d at 841 (citing *Rath*, 121 Ill. App. 3d at 550-51). Though *Esang* and *Washington* concern doubt regarding a defendant's fitness to stand trial, those authorities should guide this Court's analysis here. Once the court's doubt about fitness—be it fitness to stand trial or fitness to represent oneself—is sown, it is reversible error to allow the defendant to represent himself until that doubt is extinguished. *Washington*, 2017 IL App (4th) 150054, ¶ 21. Therefore, this Court should remand for a new fitness hearing where Gizel is represented by counsel.

II. The trial court committed plain error in admitting J.G.'s forensic interview when it fell outside the time constraints of 725 ILCS 5/115-10(b)(3).

Joseph Gizel argued that the trial court erred in admitting J.G.'s forensic interview because it did not fall within the time constraint set out in 725 ILCS 5/115-10(b)(3). (Resp. Br., pgs. 62-67). Specifically, he contended that the State's evidence not only failed to establish the date of the last instance of abuse but it also indicated that the date of the last instance of abuse was prior to March 26, 2020, which would be more than three months prior to the date of the forensic interview. (Resp. Br., pgs. 64-67). Gizel further asserted that this improper admission amounted to second-prong plain error when the detailed interview bolstered the credibility and content of J.G.'s trial testimony and was relied upon by the trial court in rejecting Gizel's arguments and finding him guilty. (Resp. Br., pgs. 67-70).

The State argues that the trial court found "that the last alleged incident of sexual abuse of J.G. fell within the statutory time period." (St. Br., pg. 28). Despite repeatedly referring to this supposed determination, the State cannot support its claim with a specific citation to the record or a quotation from the trial court because no such finding actually occurred. (See St. Br., pgs. 28-30). It further asserts that the charging documents and pre-trial motions established that the abuse occurred "on or about May 17, 2015, and continu[ed] on through March 31, 2020," and insists that the record does not contradict this time period. (St. Br., pgs. 29-30). The State alternatively contends that, even if the interview fell outside the section 115-10(b)(3) time constraint, such an error would not amount to second-prong plain error because "[t]he erroneous admission of hearsay does not satisfy" the

relevant standard. (St. Br., pgs. 30-31).

Once again, the State has forfeited any argument that the trial court explicitly found that J.G.'s forensic interview fell within the section 115-10(b)(3) time constraint, by failing to advance that argument to the appellate court. (See A-6 through A-7); see also *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (doctrine of forfeiture applies equally to the State in criminal proceedings); *People v. McKown*, 236 Ill. 2d 278, 308 (2010) (finding that State forfeited issue by failing to bring it "to the attention of the appellate court"). The State's prior silence on the matter likely arose from the fact that the trial court neither referenced the relevant subsection nor considered its applicability in granting the State's motion. (R. 150-65). Indeed, the State's claim that "the trial court correctly concluded that the forensic interview on June 26, 2020, took place within 3 months of the last instance of alleged abuse" is patently missing from the trial court's ruling:

The matter comes before the Court on the State's motion to admit an out-of-court statement by a child victim under the age of 13 pursuant to 725 ILCS 5/115-10. The Court finds that *** at the time of the alleged acts, the person, J.G., was under the age of 13, at least as to the statements she made describing those acts. The Court finds that her statements in the interview constitute under [section 115-10(a)(1)] of the statute a complaint by her of such acts to another; namely, Ms. Salgado, the forensic interviewer. And the Court further finds that the *** statement made by J.G. to Ms. Salgado that the time, content and circumstances of the statement provides sufficient safeguards of reliability.

So the State's motion is granted in full. The forensic interview statement may be admitted at trial under the conditions described brought under [section 115-10(b)(1), (2)]. (R. 164-65).¹

¹ The trial court's reference to "time, content and circumstances" relates to facts of reliability set forth in subsection (b)(1), not subsection (b)(3)'s separate time constraint, which applies exclusively to victims under the age of 13.

It is clear from the record, therefore, that the court did not even address the time constraint set out in subsection (b)(3), despite its apparent bearing on the admissibility of this key piece of evidence, *i.e.*, J.G. had turned 13 at the time of the interview. (R. 161-62). Thus, the State's assertion to the contrary should be rejected as a misstatement of the facts. (St. Br., pg. 28).

The State, however, doubles down on its misstatement that the trial court made a "finding that the last alleged incident of sexual abuse of J.G. fell within the statutory time period." (St. Br., pg. 30). It does not contend that the evidence showed the alleged abuse ended on or after March 26, 2020; instead, it merely asserts that "nothing in the video or trial testimony contradicted" the State's charging theory and "nothing in the record contradict[ed] the trial court's finding." (St. Br., pgs. 29-30). Without referring to Gizel's argument regarding the State's last-minute amendment to its section 115-10 motion (see Resp. Br., pg. 65), the State inexplicably cites to the unamended document, explaining that the motion was consistent with the charging theory that Gizel's abuse "continu[ed] through March 31, 2020." (St. Br., pg. 29 (citing CI. 168)). Yet, it ignores its own language in paragraph six of the same page, which laid out statements made by J.G. during the outcry to her mother in May of 2020: "That this occurred up until *the start of COVID 19 in mid March of 2020.*" (emphasis added) (CI. 168). This statement directly contradicts the State's charging theory and explains why the State cannot now definitively argue that the last instance of abuse occurred on or after March 26, 2020. (See St. Br., pgs. 28-30).

More broadly, the trial court never considered, or even addressed, subsection

(b)(3)'s three-month time constraint because Gizel was permitted to proceed *pro se* despite suffering from mental illness that patently prevented him from mounting any challenge whatsoever to the State's section 115-10 motion. (See Resp. Br., pgs. 23-57). Gizel's total failure to preserve the section 115-10 issue, much less to test the admissibility of the interview, is demonstrative of his lack of fitness to represent himself. This is particularly true where the State, on the eve of the hearing on its motion, obscured the clear application of subsection (b)(3) by removing the contradictory language that signaled the forensic interview's untimeliness. (See Resp. Br., pgs. 64-67). It was let in without any fight from Gizel, who at every turn, was confused about the purpose of proceedings in front of him. (See R. 163-64).

Because the State on direct appeal only contested the first step of plain error analysis, *i.e.*, the existence of a clear and obvious error, the State has forfeited any argument that, if the admission of J.G.'s forensic interview was clear error, it was not so serious as to affect the fairness of Gizel's trial and challenge the integrity of the judicial process. (See A-6 through A-7); see also *McKown*, 236 Ill. 2d at 308. Nevertheless, a challenge of the admission of section 115-10 evidence implicates substantial rights and is, therefore, reviewable under second-prong plain error. See *People v. Johnson*, 363 Ill. App. 3d 1060, 1072 (2d Dist. 2005). As Gizel previously explained, the erroneous admission of J.G.'s forensic interview strongly influenced the trial court's findings of guilt by bolstering J.G.'s trial testimony and, therefore, affected the fairness of Gizel's trial. (Resp. Br., pgs. 67-70). This Court should find that the improper admission of J.G.'s forensic interview under section 115-10 constituted plain error, and remand for a new trial.

CONCLUSION

For the foregoing reasons, Joseph Gizel, Defendant-Appellee, respectfully requests that this Court reverse and remand for a new fitness hearing under Argument I, or reverse and remand for a new trial under Argument II.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 14 pages.

/s/Maximillian Hughes-Zahner
MAXIMILLIAN HUGHES-ZAHNER
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Appendix to the Reply Brief

State's Response Brief from Direct Appeal- Arguments Section

ARGUMENT

I.

THIS COURT SHOULD AFFIRM DEFENDANT'S CONVICTIONS BECAUSE THE RECORD DOES NOT ESTABLISH THAT DEFENDANT SUFFERED FROM A "SEVERE MENTAL ILLNESS" THAT AFFECTED HIS COMPETENCY TO REPRESENT HIMSELF AND REQUIRED THE TRIAL COURT TO REJECT HIS KNOWING AND VOLUNTARY WAIVER OF COUNSEL.

Defendant acknowledges that the trial court admonished him three times under Supreme Court Rule 401 (eff. July 1, 1984) and that his fitness to stand trial "was never really at issue." Def. Br. 26. But he claims, for the first time on appeal, that the trial court's determination that he was competent to represent himself was against the manifest weight of the evidence because "for the purposes of fitness to represent oneself, Mr. Gizel had a severe mental illness despite Dr. Pan's medical conclusion that his schizophrenia was not severe." Def. Br. 30.

Defendant points out that under *Indiana v. Edwards*, 554 U.S. 174, 178 (2008), a court may deny a request for self-representation by a defendant who is fit to stand trial but who suffers from such "severe mental illness" that he is "not competent to conduct the trial proceedings." Def. Br. 28. Defendant acknowledges that Dr. Pan opined at the fitness hearing that defendant was not suffering from a severe mental illness that affected his ability to represent himself. Def. Br. 29. But he argues that Dr. Pan was not a legal expert and was

likely unaware of the legal significance of the term “severe.” Def. Br. 29. Thus, he insists that he “had a severe mental illness despite Dr. Pan’s medical conclusion that his schizophrenia was not severe.” Def. Br. 30.

This issue is forfeited because defendant did not include it in a post-trial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (error preserved for appellate review if raised contemporaneously at trial and in post-trial motion). Defendant cannot overcome his forfeiture of the issue under the plain error doctrine because no clear or obvious error occurred. See *People v. Allen*, 2024 IL App (1st) 221681, ¶ 50 (the first step of plain error review is to determine whether there is a clear or obvious error). “In Illinois, the trial court must make a subjective evaluation of competence, and its finding will not be disturbed unless it is against the manifest weight of the evidence.” *People v. Phillips*, 195 Ill. App. 3d 560, 562 (1st Dist. 1990).

A defendant has a constitutional right to represent himself in criminal proceedings. U.S. Const., amends. VI, XIV; *Faretta v. California*, 422 U.S. 806 (1975); Ill. Const. 1970, art. I, § 8; *People v. Burns*, 2012 IL App (4th) 110670, ¶ 11. Competence to waive counsel is measured by the same standard as competence to stand trial. *People v. Redd*, 173 Ill. 2d 1, 23 (1996). A defendant is presumed competent to stand trial, and that presumption is rebutted by evidence that defendant is unable to appreciate the nature and purpose of the proceedings against him or help in his defense. *Id.*

To effectively exercise the right to self-representation, a defendant must have the mental competency to conduct his own defense. *Edwards*, 544 U.S. at 178. Under *Edwards*, a trial court is permitted to insist upon representation by counsel where a defendant is competent to stand trial but still “suffer[s] from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.” *Id.*

Here, the totality of the circumstances showed that defendant was not suffering from a “severe mental illness” that affected his ability to conduct trial proceedings by himself. See *People v. Stahl*, 2014 IL 115804, ¶¶ 39-40. Certainly, Dr. Pan opined that defendant was unfit to represent himself “due to disorganized and paranoid thinking.” CI223. But Dr. Pan did not diagnose defendant with a severe mental illness that affected his ability to represent himself; rather, he clarified at the hearing that defendant did *not* exhibit symptoms of a severe mental illness that would affect his ability to represent himself. R261-62. Although it does not appear that Dr. Pan ever observed defendant represent himself in court proceedings, defendant’s responses to Dr. Pan’s interview questions coupled with Judge Martin’s observations of defendant’s courtroom demeanor show that he was competent to represent himself and not suffering from a severe mental illness that would have made self-representation impossible. See *In re Glenville*, 139 Ill. 2d 242, 251 (1990) (an expert’s opinion is accorded such weight that reasonably attaches to it based on the totality of the circumstances); see also *People v. Sheley*, 2012 IL

App (3d) 090933, ¶¶ 25-26; *People v. Baugh*, 358 Ill. App. 3d 718, 734 (1st Dist. 2005). For instance, defendant's active participation during pretrial hearings and his demeanor during the fitness hearing provided a sufficient basis for Judge Martin to reject Dr. Pan's opinion that defendant's mental illness affected his ability to represent himself. See *Baugh*, 358 Ill. App. 3d at 735-36. And Judge Martin correctly noted that the standard for evaluating a defendant's waiver of counsel is not whether he can defend a case with the same skill as a lawyer. See *People v. McNutt*, 2020 IL App (1st) 173030, ¶ 110. Under these circumstances, the trial court's determination that defendant was competent to waive counsel and proceed *pro se* was not against the manifest weight of the evidence. See *Stahl*, 2014 IL 115804, ¶¶ 39-40.

Alternatively, defendant claims that the trial court violated his right to counsel and abused its discretion by failing to appoint counsel to represent him during his fitness hearing after recognizing that a *bona fide* doubt existed as to his fitness to stand trial. Def. Br. 38.

But whether the trial court's failure to appoint counsel to represent defendant at a fitness hearing violated his right to counsel presents a question of law subject to *de novo* review. *People v. Washington*, 2017 IL App (4th) 150054, ¶ 15. And the record refutes defendant's claim that a *bona fide* doubt existed as to his fitness to stand trial. After defendant's behavioral clinical examination, Dr. Pan opined that defendant was fit to stand trial, and Judge Martin stated that while there was "not a need for a true fitness hearing in

this case at this point,” he would consider Dr. Pan’s report in determining whether to accept his waiver of counsel before trial. R228. Because there was no *bona fide* doubt of defendant’s competence at the time of the fitness hearing, no clear or obvious error occurred when Judge Martin accepted defendant’s waiver of counsel and allowed him to represent himself at the fitness hearing. R233; see *People v. Mazar*, 282 Ill. App. 3d 662, 664 (3d Dist. 1996). Thus, defendant’s attempt to invoke the doctrine of plain error to excuse his forfeiture of the issue fails. See *People v. Lopes*, 2019 IL App (5th) 170258, ¶ 27.

II.

**THIS COURT SHOULD AFFIRM
DEFENDANT'S CONVICTIONS BECAUSE
THE TRIAL COURT DID NOT ABUSE ITS
DISCRETION BY ADMITTING J.G.'S OUT-OF-
COURT STATEMENTS TO THE FORENSIC
INTERVIEWER ABOUT THE ALLEGATIONS
OF ABUSE.**

Defendant claims, for the first time on appeal, that J.G.'s forensic interview fell outside the time constraints set forth in section 115-10(b)(3) of the Code of Criminal Procedure (725 ILCS 5/115-10(b)(3) (West 2020)). Def. Br. 43. Citing *People v. Johnson*, 363 Ill. App. 3d 1060 (2d Dist. 2005), defendant argues that section 115-10(b)(3) precludes the admission of J.G.'s out-of-court statements. Def. Br. 43. This issue is forfeited because defendant did not preserve it for appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (error preserved for appellate review if raised contemporaneously at trial and in post-trial motion). And defendant cannot overcome his forfeiture of the issue under the plain error doctrine because no clear or obvious error occurred. See *People v. Allen*, 2024 IL App (1st) 221681, ¶ 50 (the first step of plain error review is to determine whether there is a clear or obvious error).

A delay in reporting abuse will not automatically render a minor victim's statements during a forensic interview inadmissible so long as they are otherwise reliable. *People v. Zwart*, 151 Ill. 2d 37, 45-46 (1992). Victims of sexual abuse are often threatened not to mention the abuse to anyone, which may in many cases explain a child's delay in reporting abuse. *Id.* at 46. The

timing of a victim's statements, alone, does not render the statements unreliable. *Id.* Whether the trial court erred in admitting evidence under these guidelines is reviewed for an abuse of discretion. *Id.* at 44.

Here, the time, content, and circumstances of J.G.'s out-of-court statements to the forensic interviewer provided sufficient safeguards of reliability—the People pointed out that defendant stopped abusing his daughters in March 2020 and during J.G.'s forensic interview on June 26, 2020, she clearly accused defendant of having molested her since she was eight years old. R161-62; see *Zwart*, 151 Ill. 2d at 44. Accordingly, the court granted the People's motion, reasonably finding that J.G. was under the age of 13 at the time of the abuse, her statements constituted a complaint about the alleged abuse, and there were sufficient safeguards of reliability. R164-65. Because the trial court did not abuse its discretion under these circumstances, no clear or obvious error occurred, and defendant's attempt to invoke the doctrine of plain error to excuse his forfeiture of the issue fails. See *Lopes*, 2019 IL App (5th) 170258, ¶ 27.

No. 131527

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603,
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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 September 9, 2026, the Reply in Support of Request for Cross-Relief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply in Support of Request for Cross-Relief to the Clerk of the above Court.

/s/Jacob J. Vicik
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