No. 130447

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>-vs-<br><br>DEVIN JOHNSON,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Appellate Court of Illinois, No. 4-22-1021.<br><br>There on appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 21-CF-48.<br><br>Honorable Frank R. Fuhr, Judge Presiding. |

# BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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## NATURE OF THE CASE

Devin Johnson was found guilty of attempted murder after a jury trial and was sentenced to 50 years in prison. This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

## ISSUE PRESENTED FOR REVIEW

Whether the trial court denied Devin Johnson a fair trial when it refused to rule on his motion for directed verdict made at the close of the State's evidence, as required by statute, prejudicially interfering with Johnson's exercise of his fundamental rights to testify, to remain silent, and to effective assistance of counsel.

## STATUTE INVOLVED

725 ILCS 5/115-4(k) (2022):

When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant.[1]

[1] Johnson will refer to the "motion of the defendant" authorized by this statute as a "motion for directed verdict." *See, e.g., People v. Withers*, 87 Ill. 2d 224, 228-29 (1981) (describing such a motion as "a motion for a directed verdict"); S. Ct. Rule 240 ("Directed Verdicts").

## STATEMENT OF FACTS

The State charged Devin Johnson with attempted murder and aggravated battery with a firearm, alleging that he knowingly fired a gun at Kelvin Bell with intent to kill. (C 20-21, 105) At trial, the State introduced statements from Johnson acknowledging that he was holding the gun when it fired, but denying that he intended to fire the gun or to kill Bell. *People v. Johnson*, 2023 IL App (4th) 221021-U, ¶¶ 15, 17. The primary question for the jury was whether Johnson's denials were credible in light of the State's circumstantial evidence. *Id.* at ¶¶ 27-39.

After the State rested, and before Johnson and his counsel chose whether to present evidence in his defense, Johnson moved for a directed verdict. (R 612-13) The trial court did not rule on the motion at that time, announcing it would issue a ruling after the jury returned its verdict. (R 614-16, 625-26) Johnson then waived his right to testify and his counsel chose to present no evidence. (R 614-15, 628) After the jury found Johnson guilty on both counts, the court denied Johnson's motion for directed verdict. (C 247-50) In his post-trial motion, which the court denied, Johnson argued the court erred in refusing to rule on his motion for directed verdict before requiring him to choose whether to testify. (C 258; R 684-85)

Johnson raised the same claim on appeal, arguing the trial court violated 725 ILCS 5/115-4(k) when it refused to rule on his motion for directed verdict made at the close of the State's evidence before proceeding further, which denied him a fair trial by prejudicially interfering with his exercise of his rights to testify, to remain silent, and to effective assistance of counsel. *Johnson*, 2023 IL App (4th) 221021-U, ¶ 41. After finding Johnson

forfeited this claim, the appellate court limited its review to whether the trial court's actions constituted plain error. *Id.* at ¶ 43. Citing conflicting appellate-court case law on whether a judge may reserve ruling on a motion for directed verdict made at the close of the State's evidence, the court found no "clear or obvious error," and thus no plain error. *Id.* at ¶¶ 46-54.

This Court allowed Johnson's petition for leave to appeal.

*State's Evidence*

At the jury trial, the State presented evidence that Bell's cell phone was last used at 1:24 a.m. on January 24, 2021. (PE 14.1-14.2; R 243, 519-22) One of Johnson's neighbors on the 900 block of 42nd Avenue in Rock Island testified to hearing a gunshot at 1:26 a.m. (R 369-72) Alisha Johnson, Johnson's wife, called 911 around 2 a.m. and said she and Johnson had just returned home and found Bell had been shot in front of their house. (R 475-78; PE 7 0:09-1:32) The police arrived at 2:04 a.m. and found Bell in the front passenger seat of Johnson's car with a gunshot wound to his right temple. (PE 2.1; R 251-55) Bell was moving but could not talk. (R 255, 261-62) Bell was taken to the hospital with life-threatening injuries. (R 357-58) Bell had cocaine in his bloodstream and a blood-alcohol content of .116. (R 360-61)

The police found a hole in the front passenger window of the car. (R 255-56) They also found an unfired .40-caliber bullet under the front passenger door and a .40-caliber casing a few feet in front of the car. (PE 2.4 2:20:15, PE 3.5, PE 3.15, PE 3.22; R 290, 310, 319-24, 404-07) An officer testified that a semi-automatic handgun with a bullet in the chamber will eject that bullet when the "slide" is "charge[d]," and will eject a casing after firing a shot. (R 396-98)

At the scene, Alisha told an officer that she and Johnson had gone to a store to buy cigarettes, and Johnson told the officer that Bell was in the car when they left, calling someone to get a ride. (PE 2.2 2:05:10) Johnson later told the officer that he drove home with Bell after a night of drinking, then went inside while Bell stayed in the car to call someone for a ride. (PE 2.2 2:26:09-2:27:00) Johnson said Bell was on the phone when he and Alisha left for the store. (PE 2.2 2:28:40)

Street-camera videos taken between 1:30 and 2 a.m. that night showed Alisha driving her car with Johnson in the passenger seat, as they drove south past the 7-11 store near 11th Street and 46th Avenue, then drove back north minutes later and stopped at 7-11. (PE 12, PE 13.1-13.6; R 444-58)

In separate interviews at the police station, Alisha and Johnson initially gave statements consistent with their statements at the scene. (R 438-44, 507-08; PE 8 1:57-3:45) When the detective told Johnson the street-camera videos showed they went somewhere before stopping at 7-11, Johnson said they went to a different store first, but it was closed. (PE 8 9:09-9:42)

In his second interview, Johnson told the police that he and Bell were sitting in Johnson's car outside his house when he saw someone approach, shoot Bell, and run away. (PE 9 5:15-7:45) Thinking Bell was dead, Johnson went inside and left with Alisha, talking as they drove about how to "keep [Johnson] out of this situation." (PE 9 10:20-13:55; R 515-16)

During her third interview, Alisha gave the police a video from her phone that was recorded by a camera she had placed in their bedroom without informing Johnson. (R 493)

The detectives showed Johnson a clip from Alisha's bedroom video. (PE 10 1:00-1:07; R 572) Johnson then acknowledged he had a gun during the incident, but said "there was no intent" to shoot Bell. (PE 10 2:58) Johnson said he and Bell had been on a "cocaine and alcohol binge" for two days and Bell "wouldn't get out" of the car after Johnson told him to. (PE 10 3:45-4:20; R 573) Johnson said "the gun was on safety," and he thought Bell would get out once he saw the gun. (PE 10 4:44-4:58) Johnson did not know why an unfired bullet was found outside the car. (PE 10 5:20-5:30) Johnson agreed that he "upped the gun to scare him." (PE 10 5:50-6:00) Johnson "panicked" after he realized Bell had been shot because he "didn't mean to do it." (PE 10 6:52, 20:06) Johnson then "tossed" the gun "in the river" near 11th Street while Alisha was driving. (PE 10 8:07-12:00)

At trial, Alisha testified that Johnson woke her up on January 24, 2021, when "[h]e ran in the room hysterical" and "screaming." (R 546-47) The silent bedroom video showed Johnson moving around the room, falling to the floor, gesturing, and kneeling, as Alisha got out of bed. (PE 15 0:01-0:49) Johnson dropped a gun on the floor and told Alisha to take it. (R 547-48; PE 15 0:01-0:15) Alisha put the gun under the bathroom sink. (PE 15 1:10; R 548) Johnson changed clothes and gave the clothes he had been wearing to Alisha, who put them in the washing machine. (PE 15 5:50-7:00; R 548) After Johnson exited the back door of the house, Alisha went out the front door to get in her car and look for him. (R 549) Alisha saw Bell in Johnson's car, but he was moving "so [she] didn't think nothing of it." (R 550) Alisha found Johnson about a block away and he got in the car. (R 550-51) They stopped at 7-11, where Johnson bought cigarettes, then drove home. (R 553) Alisha

called 911 after they arrived. (R 555-56)

*Motion for Directed Verdict, Jury Verdict, and Post-Trial Proceedings*

After the State rested, Johnson's counsel moved for a directed verdict, arguing the State's evidence was insufficient on both counts. (R 612-13) The trial court declined to rule on the motion, saying it was "going to take it under advisement." (R 614) Johnson then waived his right to testify. (R 614-15)

Before discussing the jury instructions, the prosecutor asked the court if it denied Johnson's motion for directed verdict or took it under advisement. (R 615-16) The court confirmed it "[t]ook it under advisement." (R 615-16) After the instruction conference, and before the jury returned, the prosecutor again asked if the court was "going to rule on the motion" for directed verdict. (R 625) The court replied, "After the verdict." (R 625-26)

Johnson's counsel rested without presenting evidence. (R 628)

The jury found Johnson guilty of attempted murder by personally discharging a firearm, and aggravated battery with a firearm. (C 247-49; R 675)

The court denied Johnson's motion for directed verdict in a written order the next day. (C 250)

Among the claims in his post-trial motion, Johnson argued the court violated 725 ILCS 5/115-4(k) by failing to rule on his motion for directed verdict at the close of the State's case, and instead taking it under advisement. (C 258) Counsel argued this prejudiced Johnson by giving him a "false impression" of the State's evidence and causing "uncertainty," which "affected his decision on whether or not to testify." (C 258) At the motion

hearing, counsel argued the court's decision to reserve ruling on the motion for directed verdict created a "guessing game" for the defense as to how strong the State's evidence was. (R 682) Counsel reported that because of the court's decision to take the motion under advisement, and based on counsel's advice, Johnson "chose not to testify." (R 682)

The court denied Johnson's post-trial motion. (R 684-85) As to the motion for directed verdict, the judge found defense counsel "could have asked me to rule, especially if it was … crucial … as to whether or not [Johnson] was going to exercise his right to testify or his right to remain silent." (R 684-85) The court found counsel chose not to request a ruling on the motion for directed verdict as "a matter of trial strategy." (R 685)

The court sentenced Johnson to a prison term of 50 years for attempted murder. (C 283; R 716)

*Direct Appeal*

On appeal, Johnson argued, among other things, that the trial court denied him a fair trial when it failed to rule on his motion for directed verdict made at the close of the State's evidence before he had to decide whether to testify, prejudicially interfering with his exercise of that right. *Johnson*, 2023 IL App (4th) 221021-U, ¶ 41. Johnson argued this claim was preserved, but alternatively argued the court's error constituted first-prong plain error because clear or obvious error occurred and the evidence was closely balanced. *Id.* at ¶¶ 42, 44.

The appellate court did not resolve the question of whether the trial court erred. 2023 IL App (4th) 221021-U, ¶¶ 43-54. Instead, the court initially found that Johnson's trial counsel forfeited this claim by failing to

object to the judge's decision to reserve ruling on the motion for directed verdict. *Id.* at ¶ 43. Then, after reviewing appellate-court cases addressing the meaning of Section 115-4(k), the court found "this issue is not reviewable under the plain error doctrine" because "at the time the trial court took the motion under advisement, the law was not sufficiently settled on the issue of whether it was error for a trial court to reserve its ruling on a motion for a directed verdict made at the close of the State's evidence," such that the court could not find "clear or obvious error." *Id.* at ¶¶ 46-54. The appellate court limited its analysis to the question of "clear or obvious error," and did not alternatively address whether the error was prejudicial because the evidence was closely balanced. *Id.*

The appellate court affirmed Johnson's conviction and sentence on December 19, 2023. 2023 IL App (4th) 221021-U, ¶ 2.

This Court allowed Johnson's petition for leave to appeal on May 29, 2024.

## ARGUMENT

**The trial court denied Devin Johnson a fair trial when it reserved ruling on his motion for directed verdict made at the close of the State's evidence, which prejudicially interfered with Johnson's exercise of his fundamental rights to testify, to remain silent, and to effective assistance of counsel.**

In recorded statements introduced by the State, Devin Johnson denied that he knowingly fired the gun and denied that he intended to kill Kelvin Bell. In its effort to persuade the jury that Johnson was guilty of attempted murder and aggravated battery with a firearm, the State argued that Johnson's denials were not credible in light of its circumstantial evidence, including his prior statements and his actions after the shooting. The primary questions for the jury concerned the mental-state elements of the charged offenses, and their answers to those questions largely depended upon their assessment of Johnson's credibility.

But before those questions went to the jury, Johnson moved for a directed verdict, and did so immediately after the State rested. This had constitutional significance in two ways. First, this motion asserted Johnson's rights to a jury trial and to be convicted only upon proof beyond a reasonable doubt. *People v. Withers*, 87 Ill. 2d 224, 228 (1981) (citing *People v. Bruner*, 343 Ill. 146, 156 (1931)); *Jackson v. Virginia*, 443 U.S. 307, 317-20 (1979). And second, it protected Johnson's exercise of his rights to testify and to silence, as well as his right to effective assistance of counsel, by ensuring he and counsel had all of the available information relevant to Johnson's decision whether to testify and counsel's decision whether to present other evidence. *People v. Patrick*, 233 Ill. 2d 62, 69-70, 75 (2009); *People v. Rascher*,

223 Ill. App. 3d 847, 854-55 (4th Dist. 1992). Because a motion for directed verdict made at the close of the State's evidence is rooted in the defendant's fundamental rights, the Code of Criminal Procedure, 725 ILCS 5/115-4(k), requires a judge to rule on the motion before moving to the defense case.

Here, however, the trial court declined to rule on Johnson's motion before proceeding further, and instead announced it would rule only after the jury returned its verdict. Johnson thus had to decide whether to waive his fundamental right to testify, and his counsel had to decide whether to present other evidence, without knowing what charges, if any, would go to the jury. As Johnson will show in subsection A. below, this not only violated Section 115-4(k), but also denied Johnson his ability to make an informed waiver of his right either to testify or to remain silent, and deprived Johnson's counsel of information necessary to providing effective assistance.

And as Johnson will show in subsection B.1., this error was particularly prejudicial in this case. Johnson faced a difficult decision after the State rested: rely upon the credibility of his prior denials in the face of the State's other evidence, or take the stand to try to expand upon his denials and explain his actions, despite the risks. Johnson asked the court to determine the legal sufficiency of the State's evidence before making that decision, protecting his exercise of his fundamental rights. The court's refusal to answer that question before proceeding to the defense case denied Johnson a fair trial.

Johnson made a timely motion for directed verdict, then raised this claim in his post-trial motion. Because Johnson's claim is preserved, the State has the burden to prove the error was harmless beyond a reasonable

doubt. The State cannot meet this burden because such interference in a defendant's exercise of his fundamental rights is serious error that is generally prejudicial. *Patrick*, 233 Ill. 2d at 69-70; *Rascher*, 223 Ill. App. 3d at 855. Nor was the error rendered harmless by overwhelming evidence of guilt. Johnson denied intending to fire the gun or to kill Bell, and no evidence refuted those denials. The jury's findings as to Johnson's subjective mental state depended upon their assessment of the credibility of his denials in light of the State's other evidence. Because the court's error concerned Johnson's and counsel's decisions whether to offer testimony or other evidence that would have necessarily impacted the jury's credibility determination, the State cannot show beyond a reasonable doubt that the court's error played no role in the outcome. *People v. King*, 2020 IL 123926, ¶ 40.

Alternatively, as discussed in subsection B.2., if this Court finds that Johnson's trial counsel forfeited this argument, it should address the unpreserved claim under the plain-error doctrine and find that the trial court's error denied Johnson a fair trial, either because the evidence on the mental-state elements was closely balanced, or because the court's interference with Johnson's exercise of his fundamental rights challenged the integrity of judicial process. *People v. Sebby*, 2017 IL 119445, ¶ 48.

This Court should reverse Johnson's conviction and remand to the circuit court for a new trial.

**Standard of Review**

Whether 725 ILCS 5/115-4(k) requires a court to rule on a motion for directed verdict made at the close of the State's evidence before a defendant must choose whether to testify is a question of statutory interpretation that

is reviewed *de novo*. *People v. Bradford*, 2016 IL 118674, ¶ 15. This Court also reviews *de novo* the question of whether a trial court's action violated the defendant's constitutional rights. *People v. Sneed*, 2023 IL 127968, ¶ 61. And the questions of whether a claim is forfeited and, if so, whether plain error occurred, are likewise questions of law that are reviewed *de novo*. *See People v. Salamon*, 2022 IL 125722, ¶ 56 (forfeiture); *People v. Marcum*, 2024 IL 128687, ¶ 28 (plain error).

### A. Under Section 115-4(k) and our constitutions, a court must rule on a motion for directed verdict made at the close of the State's evidence before requiring the defendant to waive his fundamental right either to testify or to remain silent, and before requiring defense counsel to choose whether to present other evidence.

Section 115-4(k) of the Code of Criminal Procedure states:

> When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may *and on motion of the defendant shall* make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant.

725 ILCS 5/115-4(k) (2022) (emphasis added). Initially, one thing is clear: when the State's evidence is insufficient to support a conviction on a given count, and if the defendant moves for a directed verdict, the court must grant that motion. The question here is whether this statutory language plainly means that when a defendant moves for a directed verdict at the close of the State's evidence, the court must rule on the motion before proceeding to the defense case. An analysis of the purposes of this statute and the consequences of construing it one way or another shows the answer to that question is "yes." *People v. Bradford*, 2016 IL 118674, ¶ 15.

Nearly a century ago, this Court invalidated a statute declaring jurors

to be the arbiters of both the facts and the law, finding this violated the defendant's constitutional right to a trial by jury. *People v. Bruner*, 343 Ill. 146, 156 (1931). Since *Bruner*, and as codified in Section 115-4, questions of law are decided by the court, while jurors are tasked with answering questions of fact and applying the law received from the court to those facts. *Id.*; 725 ILCS 5/115-4(a) (2022).

No criminal defendant may be convicted except upon proof beyond a reasonable doubt of every element of the charged offense. *Jackson v. Virginia*, 443 U.S. 307, 315 (1979) (citing *In re Winship*, 397 U.S. 358, 364 (1970); U.S. Const., amend. XIV); *People v. Murray*, 2019 IL 123289, ¶ 28 (citing Ill. Const. 1970, art. I, § 2). While jurors ultimately determine whether the State has met this burden of proof, the constitutional sufficiency of the State's evidence is, initially, a question of law. *Jackson*, 443 U.S. at 317-20. That is, "the application of the beyond-a-reasonable-doubt standard to the evidence is not irretrievably committed to jury discretion," as demonstrated by the "settled" principle that a defendant may move for a directed verdict. *Id.* at 318 n.10.

When this Court clarified in *Bruner* that courts, not juries, answer questions of law, it established the right of a defendant to move for a directed verdict as a means of vindicating his right to a jury trial. *People v. Withers*, 87 Ill. 2d 224, 228 (1981) (citing *Bruner*, 343 Ill. at 160-62 (finding that a statute violated a defendant's right to a jury trial, then overruling precedent holding that motions for directed verdict were barred by that statute)). The legislature codified these constitutional principles in Section 115-4(k), which does two things. First, it confirms that a court *may* direct a judgment of

acquittal *sua sponte* where it finds the State's evidence insufficient as a matter of law. 725 ILCS 5/115-4(k). But it also declares that where the defendant requests such a finding, the court *must* rule on that motion. *Id.*

Nothing in the plain language of the statute allows a judge to reserve ruling on a defendant's motion for directed verdict. Illinois courts, however, have found that where the defendant moves for a directed verdict only after the close of *all* the evidence, including the defense case, a judge may wait for the jury to return its verdict before ruling on the motion. *See, e.g., People v. Trump*, 62 Ill. App. 3d 747, 748 (3d Dist. 1978). Reserving ruling on a motion for directed verdict made at the close of all the evidence has no prejudicial impact on the defendant because he has already decided whether to waive his constitutional right either to testify or to remain silent, and his counsel has already decided whether to present other evidence. *Id.*

The situation is quite different when the defendant moves for a directed verdict at the close of the State's case, and that difference is rooted in the defendant's constitutional rights. A defendant who does so is exercising his rights to a jury trial and to be convicted only upon proof beyond a reasonable doubt by asking the court to weigh the sufficiency of the State's evidence as a matter of law. *Withers*, 87 Ill. 2d at 228 (citing *Bruner*, 343 Ill. at 156, 160-62); *Jackson*, 443 U.S. at 318 n.10. And he is doing so immediately before two crucial decisions: his personal decision whether to waive his right to testify, and his counsel's strategic decision whether to present any other defense evidence. U.S. Const., amends. V, VI, XIV; Ill. Const. 1970, art. I, §§ 2, 8; *see People v. Knapp*, 2020 IL 124992, ¶ 46 ("the decision whether to testify in one's own defense during a criminal trial is a

fundamental constitutional right that belongs solely to the defendant").

Inherent in a defendant's right to testify, and his right to effective assistance of counsel, is the right to have all of the information to which he and counsel are entitled before they must make those crucial decisions. *People v. Patrick*, 233 Ill. 2d 62, 69-73 (2009). A defendant's decision whether to testify may be his most important personal decision during the trial. *See id.* at 72 ("Whether the defendant takes the stand changes the entire complexion of the case.") (quotation omitted). He must weigh the possible benefits of testifying against the significant risks, including the possibility of impeachment and the admission of evidence the jury otherwise would not have heard. *Id.* at 69. And while this decision belongs to the defendant, it is "generally made after consultation with counsel," whose advice hinges on similar considerations. *Id.* Counsel must likewise make important strategic decisions concerning what questions to ask the defendant, and whether to present any other evidence, all in light of the risk that the defense case may open the door to otherwise inadmissible evidence or may even help the State's case in some way. *Id.*; *see also* Federal Rule of Criminal Procedure (FRCP) 29, Advisory Committee Notes to 1994 Amendments (1994 Notes) (noting that defense counsel who chooses to present evidence always runs "the risk that such evidence will support the government's case").

And, of course, the defendant and counsel make these decisions in light of the strength of the State's case. The first question the defense may ask about the State's evidence is whether it is sufficient as a matter of law, and that question can only be answered by the court. When a defendant moves for a directed verdict, he is exercising his constitutional rights to a jury trial and

to be convicted only upon proof beyond a reasonable doubt. And when he moves for a directed verdict *before* presenting his case, he is protecting his rights to testify, to silence, and to effective assistance of counsel by ensuring that the crucial decisions both he and counsel are about to make are fully informed.

That is why Section 115-4(k) plainly requires a court to rule on a defendant's motion for directed verdict made at the close of the State's evidence before the defense chooses whether to present evidence. Any other reading would allow a court to require a defendant to waive his fundamental right to testify or to remain silent, and to require defense counsel to decide whether to present evidence, while depriving them of information they need to make informed and intelligent decisions. *See Patrick*, 233 Ill. 2d at 69-71 (when a court requires a defendant to choose whether to testify before ruling on a motion concerning "the actual strength of the State's evidence," it impermissibly "restricts the defense in planning its case"); *Brooks v. Tennessee*, 406 U.S. 605, 612-13 (1972) (such a rule impermissibly "restricts the defense[,] particularly counsel," depriving defendant of the "guiding hand of counsel" and violating his right to due process). That is, construing the statute any other way would produce an unjust result the legislature could not have intended. *See Bradford*, 2016 IL 118674, ¶¶ 15, 25 (in ascertaining the plain meaning of a statute, a court may look to "the consequences of construing the statute one way or another," and must "presume ... the legislature did not intend to create ... unjust results").

*Patrick* concerned whether a judge may defer ruling on a defendant's motion *in limine* to bar the State from impeaching him with a prior

conviction, as opposed to a motion for directed verdict. 233 Ill. 2d at 68. But the constitutional rights at issue are the same, and *Patrick*'s reasoning has equal force in this context. Indeed, Illinois courts that have considered Section 115-4(k) in light of the defendant's constitutional rights have reached the same conclusion: a judge must rule on a motion for directed verdict made at the close of the State's evidence before proceeding further. *See Trump*, 62 Ill. App. 3d at 748 ("the defendant ought not to be forced to decide whether to produce evidence in his defense without knowing that the prosecution's evidence was sufficient").

In *Rascher*, the defendant moved for a directed verdict at the close of the State's evidence. *People v. Rascher*, 223 Ill. App. 3d 847, 849 (4th Dist. 1992). The trial court announced it would rule on the motion only after the jury verdict. *Id.* The defendant chose not to testify and counsel chose not to present evidence. *Id.* The judge then denied the motion after the jury returned a guilty verdict. *Id.*

*Rascher* found the trial court violated Section 115-4(k) when it declined to rule on the motion for directed verdict before proceeding to the defense case. 223 Ill. App. 3d at 854-55. And *Rascher* found this to be particularly serious error in light of the constitutional rights at stake in that moment:

> To postpone the ruling makes the trial a guessing game for the defendant. The defendant should not have to guess as to whether the State's evidence was sufficient nor as to whether the trial court expects the defendant to testify. A trial court should not reserve ruling on a motion for directed verdict at the close of the State's evidence.

*Id.*

As the appellate court here noted, some courts have held that a judge

may reserve ruling on a motion for directed verdict made at the close of the State's evidence. *See People v. Johnson*, 2023 IL App (4th) 221021-U, ¶¶ 47, 52 (citing *People v. Faulkner*, 64 Ill. App. 3d 453, 457 (4th Dist. 1978); *People v. Watkins*, 206 Ill. App. 3d 228, 243 (1st Dist. 1990); *People v. Ramirez*, 244 Ill. App. 3d 136, 150 (1st Dist. 1993)). None of those courts, however, read Section 115-4(k) in light of its original purpose and the defendant's constitutional rights. Without consideration of the rights the statute was designed to protect, those courts found that the absence of language expressly *barring* a judge from reserving ruling on a motion for directed verdict made at the close of the State's evidence necessarily means the judge has authority to do so. *Faulkner*, for example, found no "[*per se*] rule prohibiting a court from reserving ruling" on a motion for directed verdict made at the close of the State's evidence, but made no mention of Section 115-4(k), much less the impact on the defendant's rights of reserving ruling. 64 Ill. App. 3d at 457; *see also Watkins*, 206 Ill. App. 3d at 243 (with no further analysis, concluding that "section 115-4(k) does not mandate ... that the trial court make its ruling at the close of the State's evidence. It is sufficient if the ruling is made at the close of all evidence.").

Contrary to these courts, Section 115-4(k) is not merely about granting judges the authority to direct verdicts. Rather, this statute codified *Bruner*, which established a defendant's right to file a motion for directed verdict, both to *vindicate* his rights to a jury trial and to be convicted only upon constitutionally sufficient evidence, and to *protect* his rights to testify, to remain silent, and to the effective assistance of counsel. *Withers*, 87 Ill. 2d at 228 (citing *Bruner*, 343 Ill. at 156, 160-62); *Jackson*, 443 U.S. at 318 n.10.

That is why the legislature expressly stated that where the defendant takes action to assert and to protect his rights by moving for a directed verdict, the court "shall" rule on the motion. 725 ILCS 5/115-4(k); *see Bradford*, 2016 IL 118674, ¶ 15 (in ascertaining the plain meaning of a statute, a court may look to "the reason for the law, the problems to be remedied, [and] the purposes to be achieved").

Courts like *Watkins* saw the absence of an express bar to reserving ruling as presumptively allowing such action. But because such action interferes with the defendant's exercise of his fundamental rights, it is the absence of language expressly *granting* courts the authority to reserve ruling that is decisive here. To read into Section 115-4(k) the authority to reserve ruling on a motion for directed verdict made at the close of the State's evidence, requiring the defendant and his counsel to decide whether to testify and to present evidence without the information they need to make fully informed decisions, would be to read language into the statute that contradicts the legislature's intent. *See People v. Giraud*, 2012 IL 113116, ¶ 6 (a court may not read into a statute any "exceptions, limitations, or conditions that conflict with the [legislature's] expressed intent"). Instead, in light of "the reason for the law" and "the consequences of construing the statute" any other way, the meaning of Section 115-4(k) is clear: when a defendant moves for a directed verdict at the close of the State's evidence, the court shall rule on that motion before moving to the defense case. *Bradford*, 2016 IL 118674, ¶ 15.

Reading the statute in light of other relevant provisions reinforces this conclusion. *See Bradford*, 2016 IL 118674, ¶ 15 ("other relevant provisions"

may provide guidance in determining the plain meaning of a statute). The Code of Civil Procedure, for example, expressly allows a judge to reserve ruling on a motion for directed verdict made at the close of *all* evidence. 735 ILCS 5/2-1202(a) (2022). But where the defendant moves for a directed verdict at the close of the plaintiff's case, the legislature makes no such allowance. 735 ILCS 5/2-1110 (2022).[2] Instead, this statute requires a "ruling on the motion," and only allows a court to proceed to the defense case if its ruling "is adverse to the defendant." *Id.*; *see also People v. Williams*, 2017 IL App (1st) 152021, ¶ 30 (if a civil plaintiff has made a "prima facie case ..., the court should deny the [mid-trial] motion for a directed finding and proceed as if the motion had not been made"). This shows that the legislature knows how to grant courts the authority to reserve ruling on a motion for directed verdict, making it all the more telling that it omitted any such language from Section 115-4(k).

This Court may also look to authorities from other jurisdictions on this question. *See Schultz v. Illinois Farmers Ins. Co.*, 237 Ill. 2d 391, 402 (2010) (considering case law from other jurisdictions in resolving the plain meaning of an Illinois statute). For example, the high court of Maryland has held that

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[2] A civil defendant may not make such a motion at a jury trial, a rule designed "to prevent a trial judge from assuming the duties of the trier of fact in a jury case." *City of Evanston v. Ridgeview House, Inc.*, 64 Ill. 2d 40, 57 (1976). A criminal defendant, by contrast, has a right to challenge the constitutional sufficiency of the State's evidence at the close of the State's case, regardless of whether a judge or jury is the trier of fact, because that motion poses a question of law, not of fact. *Bruner*, 343 Ill. at 156, 160-62. And his right to make such a motion, and to obtain a ruling before presenting his case, is rooted in constitutional rights civil defendants do not possess. If a judge may not reserve ruling on a mid-trial motion for directed verdict in a civil case, this must also be true in a criminal case, given the rights of the defendant at stake.

a judge may not reserve ruling on a motion for directed verdict because the rule governing such motions, like Illinois's, contains no language expressly allowing that. *Johnson v. State*, 452 Md. 702, 718-21 (2017). In Massachusetts, similarly, the governing rule expressly bars a judge from reserving ruling on a mid-trial motion for directed verdict so the defendant will have all of the information to which he is entitled "before he decides to rest or to introduce proof." *Commonwealth v. Yasin*, 483 Mass. 343, 351 (2019) (citing Mass. R. Crim. P. 25(a)).

Johnson is unaware of any jurisdiction that allows a judge to reserve ruling on a mid-trial motion for directed verdict unless the governing rule expressly allows such action. The evolution of the federal rule is instructive. Prior to 1994, federal judges were barred from reserving ruling on a motion for directed verdict made at the end of the government's case. FRCP 29, 1994 Notes; *see, e.g., United States v. Thomas*, 987 F.2d 697, 704-05 n.4 (11th Cir. 1993) (noting that this rule was crafted to ensure defendants had the benefit of a ruling before having to decide whether to present evidence). Since 1994, the rule expressly allows a judge to reserve ruling on such a motion. FRCP 29. But the reason for that change is significant: in federal court, the government may appeal the judge's decision to grant the defendant's motion for directed verdict, but may do so only *after* obtaining a guilty verdict from the jury in order to avoid double jeopardy. FRCP 29, 1994 Notes. The current rule balances those interests by allowing a court to reserve ruling on a motion for directed verdict made at the close of the government's case, but limiting the court to considering only the government's case-in-chief when it later rules on the motion. FRCP 29(b); *see also Johnson*, 452 Md. at 718

(noting that 18 states follow this federal rule, but that the Maryland legislature, which was presumably aware of the federal rule, never made a similar amendment).

In Illinois, however, the State may never appeal from a trial court's judgment granting a defendant's motion for directed verdict, even if the motion was granted after the jury found the defendant guilty. *People v. Van Cleve*, 89 Ill. 2d 298, 307 (1982). The State thus has no countervailing interest to balance against the defendant's constitutional interests in receiving a ruling on his motion before deciding whether to testify. Because reserving ruling in an Illinois trial adversely impacts a defendant's rights, while requiring a ruling has no similar adverse impact on the State, Section 115-4(k) plainly requires a court to rule on a defendant's motion for directed verdict made at the close of the State's evidence before requiring him to choose whether to testify. *See Yasin*, 483 Mass. at 350-51, 355 (in a jurisdiction, like Illinois, where the prosecution may not appeal from the granting of a mid-trial motion for directed verdict, finding the prejudicial impact of reserving ruling on such a motion falls solely upon the defendant).

Section 115-4(k) states that when a defendant moves for a directed verdict, either at the close of the State's case or at the close of all evidence, the court "shall" rule on the motion. 725 ILCS 5/115-4(k). This codified *Bruner*, which established that a criminal defendant has a right to move for a directed verdict, which is rooted in his rights to a jury trial and to be convicted only upon proof beyond a reasonable doubt. *Withers*, 87 Ill. 2d at 228 (citing *Bruner*, 343 Ill. at 156, 160-62); *Jackson*, 443 U.S. at 318 n.10. And when a defendant moves for a directed verdict at the close of the State's

evidence, he is exercising his right to obtain a ruling on this question concerning the strength of the State's evidence before he must choose whether to testify and before his counsel must choose whether to present evidence, so that he and counsel have all of the information to which they are entitled before making those decisions. *Patrick*, 233 Ill. 2d at 69-71. Construing the statute any other way would allow a court to withhold this crucial information from the defendant and his counsel, when the court has all the information it needs to rule and there is no countervailing interest of the State in allowing the court to reserve ruling. *Id.*; *Yasin*, 483 Mass. at 350-51. Reading Section 115-4(k) in light of its underlying purpose and the constitutional rights at stake, its meaning is plain: a court must rule on a defendant's motion for directed verdict made at the close of the State's evidence before proceeding to the defense case. *Rascher*, 223 Ill. App. 3d at 854-55.

But if this Court finds that Section 115-4(k) remains ambiguous after this analysis, it should adopt *Rascher*'s reading of the statute, rather than *Watkins*'s, because it is more protective of defendants' rights. *People v. Gaytan*, 2015 IL 116223, ¶ 39. This rule of lenity "teach[es] that ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United States v. Davis*, 588 U.S. 445, 464 (2019); *see also Fitzsimmons v. Norgle*, 104 Ill. 2d 369, 374 (1984) (where a statute can reasonably be read in more than one way, the rule of lenity requires a court to construe the statute strictly in favor of the accused). Given the fundamental rights at stake for the defendant, with no countervailing interest of the State, any ambiguity in Section 115-4(k) should be resolved in favor of requiring a court

to rule on a defendant's mid-trial motion for directed verdict before making him choose whether to testify.

### B. The trial court's violation of Section 115-4(k) prejudicially interfered with Johnson's exercise of his rights to testify, to silence, and to effective assistance of counsel, denying him a fair trial.

#### 1. Forfeiture and Harmless Error

Johnson's counsel moved for a directed verdict at the close of the State's evidence. (R 612-13) That triggered the trial court's duty to rule on the motion before proceeding to the defense case. 725 ILCS 5/115-4(k) (2022). The court, however, did not rule on the motion and instead reserved ruling. (R 614-15) The State twice asked the court if it would rule on the motion before the jury returned, and the court confirmed it would rule only after the jury returned its verdict. (R 615-16, 625-26)

After the trial court declined to rule on Johnson's motion for directed verdict, Johnson waived his right to testify and his counsel chose not to present any other defense evidence. (R 614-15, 628) Due to the court's action, Johnson and his counsel had to make these crucial decisions without all of the information to which they were entitled – specifically, without an answer to the question of law Johnson's motion posed to the court concerning the "actual strength of the State's evidence." *People v. Patrick*, 233 Ill. 2d 62, 69-70 (2009). As Johnson's counsel argued in his post-trial motion, the court's refusal to issue a timely ruling on the motion for directed verdict created "uncertainty" for the defense as to whether the State had offered constitutionally sufficient evidence on both counts. (C 258) This gave Johnson and counsel a "false impression" that affected Johnson in his decision

whether to testify, including by leading counsel to advise Johnson not to take the stand. (C 258; R 682) The court's erroneous decision to reserve ruling on Johnson's motion for directed verdict thus prejudicially interfered with his exercise of his fundamental rights, including his right to effective assistance of counsel, denying him a fair trial. *Patrick*, 233 Ill. 2d at 69-71, 75; *Brooks v. Tennessee*, 406 U.S. 605, 612-13 (1972).

Contrary to the trial court and the appellate court, Johnson's counsel did not forfeit this claim "by failing to object when the trial court indicated it would reserve its ruling." *People v. Johnson*, 2023 IL App (4th) 221021-U, ¶¶ 20, 43. Counsel moved for a directed verdict immediately after the State rested. That motion alone triggered the court's duty to rule before proceeding to the defense case, as required by Section 115-4(k).

In *Patrick*, this Court found the claim was preserved under similar circumstances. In that case, defense counsel filed a pre-trial motion to bar the State from impeaching the defendant with prior convictions if he chose to testify. 233 Ill. 2d at 66. The court announced it would not rule on the motion until after the defendant testified. *Id.* This Court found that counsel's motion *in limine* alone triggered the judge's duty to make a timely ruling, thus preserving for review the claim that the judge erred in reserving his ruling. *Id.* at 66, 74-75; *see also People v. Rascher*, 223 Ill. App. 3d 847, 854 (4th Dist. 1992) (the judge's duty to rule on the motion for directed verdict made at the close of the State's evidence was triggered by the motion alone).

A defendant has a right to move for a directed verdict, which is rooted in his constitutional rights to a jury trial and to be convicted only on proof beyond a reasonable doubt. *People v. Withers*, 87 Ill. 2d 224, 228 (1981)

(citing *People v. Bruner*, 343 Ill. 146, 156, 160-62 (1931)); *Jackson v. Virginia*, 443 U.S. 307, 317-20 (1979). Likewise, a defendant has a right to obtain all of the relevant information to which he is entitled before he waives his fundamental right either to testify or to remain silent, and before his counsel must advise him on that question and decide whether to present any other evidence. *Patrick*, 233 Ill. 2d at 69-71; *Rascher*, 223 Ill. App. 3d at 854-55. When Johnson moved for a directed verdict at the close of the State's evidence, he "merely sought a determination" of whether the State's evidence was constitutionally sufficient, and he was entitled to an answer to that question before waiving any of his rights. *Patrick*, 233 Ill. 2d at 74.

Johnson likewise did not forfeit this claim by choosing not to testify. (R 614-15) In *Phillips*, the companion case to *Patrick*, this Court found that by choosing not to testify, the defendant forfeited his claim that the judge erred in reserving ruling on his motion to bar the State from impeaching him with prior convictions. 233 Ill. 2d at 77-79. The *Phillips* majority reached this conclusion because the defendant could only be prejudiced if he chose to testify and *if the court then erred* in allowing the impeachment. *Id.* at 79. That is, the error was not certain to occur even if the defendant testified, and the claim was thus "wholly speculative" without the defendant's testimony. *Id.* at 78.

Here, by contrast, the error occurred when the court reserved ruling on Johnson's mid-trial motion for directed verdict, in violation of Section 115-4(k) and Johnson's constitutional rights. That was error regardless of whether Johnson chose to testify because his testimony would not have triggered the error, as occurs when a court improperly allows impeachment of

the defendant with prior convictions. Indeed, if anything, Johnson and his counsel risked forfeiting this claim by *presenting* defense evidence, given that a defendant who presents any evidence waives his ability to claim the court erred in its disposition of his mid-trial motion for directed verdict. *People v. Slaughter*, 29 Ill. 2d 384, 389 (1963). But in any event, the prejudicial impact of the court's error here was in its effect on Johnson's decision to testify, on counsel's advice to Johnson, and on counsel's decision to present other evidence. *Rascher*, 223 Ill. App. 3d at 854-55; *Patrick*, 233 Ill. 2d at 75; *see also Patrick*, 233 Ill. 2d at 81-88 (Burke, J., joined by Freeman, J., concurring in part and dissenting in part) (noting that this Court unanimously found the *Patrick* defendant was prejudiced by the judge reserving ruling on the motion because of its impact on the defendant's decision to testify, then disagreeing with the majority's finding that the *Phillips* defendant forfeited the claim by not testifying, despite the fact that he suffered the same prejudice).

Similarly, and contrary to the appellate court's reasoning, this is not a case where the defendant sat "idly by[,] knowingly allowing an irregular proceeding to go forward." *Johnson*, 2023 IL App (4th) 221021-U, ¶ 43 (quoting *People v. Jackson*, 2022 IL 127256, ¶ 15). In *Jackson*, the judge polled the jury after their verdict, but inadvertently questioned only 11 of the 12 jurors. 2022 IL 127256, ¶ 5. Defense counsel did not object and did not raise this error in the post-trial motion. *Id.* at ¶ 6. On appeal, the defendant raised the polling error for the first time, but conceded the claim was forfeited. *Id.* at ¶ 7.

*Jackson* did not involve a judge's refusal to rule on a defense motion. Here, by contrast, defense counsel moved for a directed verdict, squarely

presenting the court with a question of law only it could answer. Inherent in that motion was an assertion of Johnson's rights to a jury trial and to be convicted only upon proof beyond a reasonable doubt. And because counsel made the motion before the defense case, the motion was also made to protect Johnson's rights to testify, to silence, and to effective assistance of counsel. That motion alone triggered the court's duty under Section 115-4(k) to make a ruling before proceeding further. Counsel thus did not sit idly by. Rather, through his motion, he asked the court to rule on the constitutional sufficiency of the State's evidence.

Johnson preserved this claim by moving for a directed verdict after the State rested, then arguing in his post-trial motion that the judge erred in reserving ruling. (C 258; R 612-13, 682) Because this preserved claim concerns an error of "constitutional magnitude," Johnson is entitled to a new trial unless the State can prove the error was "harmless beyond a reasonable doubt." *Patrick*, 233 Ill. 2d at 75 (citing *Chapman v. California*, 386 U.S. 18, 24 (1967)). The State cannot meet this burden.

This is true, first, because the State cannot show that the judge's error played no role in the outcome of this trial. *People v. King*, 2020 IL 123926, ¶ 40. As *Patrick* made clear, a judge's refusal to rule on a motion concerning the strength of the State's case before requiring the defendant to choose whether to testify is serious error. *See* 233 Ill. 2d at 75 (defendant was "substantially prejudiced" by the judge reserving ruling because he and counsel were "unjustifiably required" to make crucial tactical decisions without information vital to those decisions); *see also Rascher*, 223 Ill. App. 3d at 855 ("To postpone the ruling makes the trial a guessing game for the

defendant.").

The error was equally serious here. The primary question for this jury was Johnson's mental state – whether he knowingly fired the gun and, if so, whether he did so with intent to kill. And the jury's answers to those questions primarily depended upon their assessment of Johnson's credibility. *See People v. Villa*, 2011 IL 110777, ¶ 58 (error not harmless, in part, due to "the role the jury's credibility determination necessarily played" in the verdict). In his last statement to the police, Johnson acknowledged he was holding the gun when it fired, but denied that he intended to pull the trigger and denied that he intended to kill Bell. (PE 10 2:58, 4:44, 5:50, 6:52, 20:06) In seeking a conviction for attempted murder despite those denials, the State relied upon circumstantial evidence and Johnson's prior inconsistent statements to the police.

A defendant's decision whether to testify is always crucial. But under these circumstances, Johnson's decision was particularly complicated. On one hand, Johnson's testimony was not strictly necessary because his final statement to the police presented his defense that the shooting was an accident. But on the other hand, Johnson's final statement to the police was not very detailed and did not offer an explanation for his prior inconsistent statements. The outcome of this trial depended upon the jury's assessment of Johnson's credibility, and taking the stand offered him a crucial, perhaps decisive, opportunity to expand upon his defense and to explain his prior statements. At the same time, given the risks of testifying, there was no guarantee that taking the stand would have helped his defense. Johnson was already entitled to a ruling on his mid-trial motion for directed verdict before

deciding whether to testify, but the judge's erroneous decision to reserve ruling was especially prejudicial in this case. *See Patrick*, 233 Ill. 2d at 75 (error not harmless where defendant's "decision whether to testify was critical" because his defense was entirely focused upon the mental-state element, even though defendant's "testimony was not absolutely necessary" in light of other evidence that "corroborated his theory"). Because the judge's error thus "might have contributed to the conviction," the State cannot meet its burden to prove the error was harmless beyond a reasonable doubt. *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008).

This is also true because the State's evidence that Johnson's conduct could have *only* constituted attempted murder, as opposed to an accident or the lesser offense of aggravated battery, was not overwhelming. *King*, 2020 IL 123926, ¶ 40. Johnson told the police that both he and Bell were intoxicated during the incident, as corroborated by the fact that Bell had cocaine in his bloodstream and a blood-alcohol content of .116. (PE 10 3:45-4:20, 18:35; R 360-61, 573) The jurors could consider the evidence that both men were intoxicated in determining the nature of the conflict. *See, e.g., People v. Collins*, 213 Ill. App. 3d 818, 826 (1st Dist. 1991) (finding the State failed to prove defendant had the mental state for first-degree murder, in part, because defendant shot the decedent during an alcohol-fueled fight). And, crucially, the jurors could consider the evidence of Johnson's intoxication in determining whether he acted with the mental state charged by the State, or some less culpable mental state. *See People v. Grayer*, 2023 IL 128871, ¶ 24 (because "intoxication affects an individual's subjective mental state, a defendant's state of voluntary intoxication may be one of

many relevant circumstances for the trier of fact to consider"). The fact that both Johnson and Bell were intoxicated, impairing their judgment, weighs against any assertion that the State's evidence overwhelmingly demonstrated Johnson could only have had the mental state necessary for attempted murder – intent to kill. *See People v. Trinkle*, 68 Ill. 2d 198, 202-04 (1977) (to obtain a conviction for attempted murder, the State must prove defendant had the mental state for intentional murder, and only intentional murder, not knowing murder or some lesser offense).

But even setting the evidence of intoxication aside, the State's evidence on the mental-state elements was not overwhelming. In both his recorded phone call and his third statement to the police, Johnson said he pointed the gun at Bell only to scare him. (PE 10 4:50-6:30; PE 17) Johnson said he believed the gun "was on safety" and denied that he knowingly fired the gun with intent to kill. (PE 10 2:58, 4:44, 6:15, 6:57, 20:06; PE 17 at 2, 5) The State had no evidence objectively refuting these statements.

Instead, the State cited circumstantial evidence in urging the jury to infer that, contrary to Johnson's statements, he intended to kill Bell. But while the unfired bullet found under the car constituted evidence that Johnson may have operated the slide of the gun, that was equally consistent with his statement that he was only using the gun to scare Bell. (R 319-24, 396-98)

Similarly, the State's evidence that Johnson tried to conceal his involvement in this offense may have reflected a consciousness of guilt, but it was not inherently reflective of a consciousness of having committed the *charged offenses*. Someone who accidentally or recklessly pulled the trigger of

a gun, firing a bullet that hit another person, would know he had done something wrong, and may try to conceal his involvement. And if anything, Johnson's behavior in the bedroom immediately after the incident was more consistent with someone panicking after doing something he did not mean to do than with someone trying to hide his involvement after an intentional shooting. (R 546-48; PE 10 6:52, 20:06; PE 15) Johnson's post-incident actions and statements did not constitute overwhelming evidence that he knew he had committed attempted murder. *See, e.g., People v. Day*, 76 Ill. App. 3d 571, 585 (1st Dist. 1979); *People v. Stowe*, 2022 IL App (2d) 210296, ¶ 73 (general evidence of consciousness of guilt is not necessarily indicative of defendant's knowledge that he is guilty of the charged offense).

Not every case involving serious bodily injury caused by the defendant is attempted murder. *People v. Mitchell*, 105 Ill. 2d 1, 9 (1984). And while a gun is a deadly weapon, the defendant's act of firing a gun does not alone establish he had the mental state for intentional murder. *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 39. In this case, the judge himself, after hearing all of the evidence, said, "I don't know how this happened," and implied the incident stemmed from "playing with guns." (R 715-16) The question here is not whether the State presented sufficient evidence, it is whether the State's evidence was so overwhelming that no reasonable jury could have reached any conclusion other than that Johnson intended to kill Bell. Where the jury was tasked with determining Johnson's mental state in light of his credibility, the circumstantial evidence, and the fact that both Johnson and Bell were intoxicated, the record does not allow for a finding that no reasonable jury could have reached a different conclusion. The State,

therefore, cannot show beyond a reasonable doubt that the judge's erroneous refusal to rule on Johnson's mid-trial motion for directed verdict, which prejudicially impacted Johnson and his counsel in planning their case, could have played no role in the outcome. *Rolandis G.*, 232 Ill. 2d at 43; *Patrick*, 233 Ill. 2d at 75-76.

**2. Plain Error**

Alternatively, even if this Court finds Johnson's trial counsel failed to preserve this claim, it may consider whether the judge's actions constituted plain error. Under the plain-error doctrine, a court may review an unpreserved claim where "a clear or obvious error occurred," and either 1) the evidence was closely balanced, such that "the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or 2) the error was "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." *People v. Sebby*, 2017 IL 119445, ¶ 48 (quotations omitted); S. Ct. Rule 615(a).

The first step in a plain-error analysis is determining whether a "clear or obvious error" occurred. *Sebby*, 2017 IL 119445, ¶ 49. The appellate court's analysis began and ended here. *People v. Johnson*, 2023 IL App (4th) 221021-U, ¶¶ 45-54. That court found the split in authority among the appellate-court cases addressing whether a judge may reserve ruling on a mid-trial motion for directed verdict precluded a finding of clear or obvious error in this case. *Id.* The appellate court was incorrect for two reasons.

First, the mere fact that some appellate courts found a judge has discretion to reserve ruling on a mid-trial motion for directed verdict does not

alone mean this question was not "well-settled." *Johnson*, 2023 IL App (4th) 221021-U, ¶ 54. If this Court agrees that Section 115-4(k) plainly requires a judge to rule on a defendant's motion for directed verdict made at the close of the State's evidence before proceeding further, that is what the statute always meant, regardless of any contrary authority. *People v. Moore*, 177 Ill. 2d 421, 436-37 (1997).

In *M.W.*, for example, one question was whether the trial court clearly erred in failing to give notice of the petition for adjudication of wardship to the minor's father. *In re M.W.*, 232 Ill. 2d 408, 429-30 (2009). The State argued, in part, that no clear error occurred because the lack of notice in that case did not violate the relevant statutes. *Id.* at 416-17.[3] This Court rejected that argument, and did so based solely upon the plain meaning of the statutes. *Id.* at 416-17, 431-32.

The same reasoning applies here. None of the cases finding a judge has discretion to reserve ruling performed the required statutory analysis or considered the defendant's rights, and one of those courts, *Faulkner*, made no mention of Section 115-4(k) at all. *People v. Faulkner*, 64 Ill. App. 3d. 453, 457 (4th Dist. 1978); *People v. Watkins*, 206 Ill. App. 3d 228, 243 (1st Dist. 1990); *People v. Ramirez*, 244 Ill. App. 3d 136, 150 (1st Dist. 1993). If this Court agrees that Section 115-4(k) plainly bars a judge from reserving ruling, then, contrary to the appellate court, the statute is not ambiguous. *Johnson*, 2023 IL App (4th) 221021-U, ¶ 46. And if the statute's plain meaning is clear,

[3] This Court did not address any authorities cited by the State, but presumably the State cited authority for its argument pursuant to Supreme Court Rule 341(h)(7).

the fact that three appellate courts found the meaning to be different, with no analysis, does not mean the question was not settled, it just means those courts were incorrect. *See, e.g., Moore*, 177 Ill. 2d at 436-37 (where the plain meaning of the statute at issue was clear, counsel was unreasonable for failing to raise a claim based on that clear meaning, despite contrary appellate-court precedent, because that contrary precedent was "illogical and ... unreasonable"). Under these circumstances, *Rascher* and *Trump* were correct and properly settled this question of law.

But even if this Court does not find this question was settled statewide, it was settled by *Rascher* and *Trump* for this particular trial court. When there is a conflict between districts of the appellate court, a trial court "is bound by the decisions of the appellate court of the district in which it sits." *In re: 2021 Judicial Redistricting*, M.R. 30858 (December 8, 2021) (citing *Aleckson v. Village of Round Lake Park*, 176 Ill. 2d 82, 92 (1997)). When this case was initiated in the Rock Island County Circuit Court in 2021, (C 20), that court was part of the Third District, where *Trump* was the controlling authority on this question. *See Johnson*, 2023 IL App (4th) 221021-U, ¶ 51 (noting *Trump* stated the position of the Third District Appellate Court); *In re: 2021 Judicial Redistricting*, M.R. 30858 ("in a redistricted circuit, the appropriate appellate district shall be the district in which the circuit was located at the time that the circuit court action was initiated"). And when this case went to trial in 2022, (R 124), the trial court was part of the Fourth District, where *Rascher* was that appellate court's most recent statement on this question, and thus controlling. *See Andrews v. Metro. Water Reclamation Dist. of Greater Chicago*, 2019 IL 124283, ¶ 46

(where a conflict arguably exists within a court's precedent, the "most recent" statement from that court "is controlling"). Either way, therefore, this trial court was bound by *Trump* or *Rascher*, and its contrary decision to reserve ruling on Johnson's mid-trial motion for directed verdict, in violation of Section 115-4(k) and Johnson's constitutional rights, was clear and obvious error.[4]

The trial court's clear error denied Johnson a fair trial under either prong of the plain-error doctrine. This is true under the first prong because the evidence on the mental-state elements of the charged offenses was closely balanced. The only direct evidence on those elements consisted of Johnson's statements denying that he knowingly pulled the trigger and denying that he intended to kill Bell. (PE 10 2:58, 4:44-7:10, 20:06; PE 17 at 2, 5) The jury was tasked with weighing the credibility of Johnson's statements about his subjective mental state in light of the other evidence. That evidence included the fact that both Johnson and Bell were intoxicated, which the jury could consider in determining the nature of the incident and Johnson's mental state. *People v. Grayer*, 2023 IL 128871, ¶ 24; *People v. Collins*, 213 Ill. App. 3d 818, 826 (1st Dist. 1991).

The State, for its part, had no evidence directly refuting Johnson's denials. Instead, the State emphasized the circumstantial evidence, including evidence of consciousness of guilt. That evidence did not so outweigh

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[4] The maps showing Rock Island County was in the Third District prior to 2022 and is now in the Fourth District are available on this Court's website: https://www.illinoiscourts.gov/public/illinois-judicial-redistricting/#:~:text=Effective%20January%201%2C%202022%2C%20Public,they%20were%20established%20in%201964.

Johnson's denials that the mental-state elements were no longer close questions. For example, while the unfired bullet constituted evidence that Johnson racked the gun, such an act would have been equally consistent with his statement that he was only using the gun to scare Bell. (R 319-24, 396-98) Similarly, the evidence that Johnson tried to conceal his involvement in this incident may have reflected his awareness that he had done something wrong, but it did not necessarily demonstrate he had the mental state for intentional murder. *People v. Stowe*, 2022 IL App (2d) 210296, ¶ 73; *see also People v. Mohr*, 228 Ill. 2d 53, 69 (2008) (evidence of guilt was not overwhelming, even where defendant "gave inconsistent statements ... about his activities on the night [the decedent] was killed"). After hearing all of the evidence, the judge was left saying, "I don't know how this happened." (R 715-16) And the appellate court, likewise, never found the State's proof on the mental-state elements was overwhelming. *Johnson*, 2023 IL App (4th) 221021-U, ¶¶ 34-35, 44-54. That is because the record shows the question of whether the State had proven beyond a reasonable doubt that Johnson acted with the mental state for intentional murder was a close one, such that the trial court's error denied Johnson a fair trial.

In further alternative, even if this Court finds the evidence was not closely balanced, it should remand for a new trial because the error here was so serious that it affected the fairness of Johnson's trial and challenged the integrity of the judicial process, thus constituting second-prong plain error. *Sebby*, 2017 IL 119445, ¶ 48.

Initially, Johnson acknowledges he did not request review under the second prong of the plain-error doctrine in the appellate court or in his

petition for leave to appeal (PLA) in this Court. This may lead the State to argue Johnson has forfeited any second-prong plain-error review by this Court. The State would be incorrect.

This is true, first, because the plain-error doctrine is a mechanism for excusing forfeiture *when the State argues forfeiture*. The State may choose not to argue forfeiture, or may fail to do so. Either way, when the State does not argue the defendant has forfeited a specific claim, the State forfeits that claim of forfeiture, and this Court reviews the claim as if it was preserved. *People v. McKown*, 236 Ill. 2d 278, 308 (2010); *People v. De La Paz*, 204 Ill. 2d 426, 433 (2003). Likewise, when the State *does* argue the claim is forfeited, the defendant may request plain-error review for the first time in his reply brief. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010); *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000). Johnson thus had no burden to request plain-error review in his PLA or in this brief.

Even if this Court is inclined to find forfeiture, however, it should conduct second-prong plain-error review as a matter of judicial economy. If this Court declines to grant relief solely due to appellate counsel's failure to raise second-prong plain error in prior filings, Johnson would have the basis for a meritorious claim of ineffective assistance of appellate counsel in a post-conviction petition. *See, e.g., Moore*, 177 Ill. 2d at 437. Given this reality, the same rationale behind the "constitutional-issue exception" to forfeiture applies and this Court should consider this claim on direct appeal. *See People v. Cregan*, 2014 IL 113600, ¶ 18 ("the interests in judicial economy favor addressing [a forfeited] issue on direct appeal rather than requiring defendant to raise it in a separate postconviction petition").

And this Court should find that second-prong plain error occurred. A defendant's motion for directed verdict, when made at the close of the State's evidence, is rooted in his fundamental rights – namely, his rights to a jury trial and to be convicted only upon proof beyond a reasonable doubt. *People v. Withers*, 87 Ill. 2d 224, 228 (1981) (citing *People v. Bruner*, 343 Ill. 146, 156, 160-62 (1931)); *Jackson v. Virginia*, 443 U.S. 307, 317-20 (1979). And like any motion concerning the strength of the State's case made before the defense case, the motion also protects the defendant in his exercise of other fundamental rights, including his right to testify, his right to silence, and his right to effective assistance of counsel. *People v. Patrick*, 233 Ill. 2d 62, 69-73 (2009); *People v. Rascher*, 223 Ill. App. 3d 847, 855 (4th Dist. 1992). A judge's refusal to rule on such a motion before requiring the defendant and his counsel to choose whether to present evidence impermissibly restricts the defense and is thus an error of constitutional magnitude. *Patrick*, 233 Ill. 2d at 69-70, 75.

Such interference in the defendant's exercise of his fundamental rights constitutes "structural error" under Illinois law – that is, a "presumptively prejudicial" error that must be remedied because it denied the defendant a fair trial. *People v. Moon*, 2022 IL 125959, ¶¶ 24, 28, 30 (quotation omitted). This is true because forcing a defendant to waive one of his fundamental rights while depriving him of information to which he is entitled that is crucial to that decision renders the trial fundamentally unfair and unreliable as a means to determine the defendant's guilt. *Id.* at ¶ 28. Here, the trial court's inaction prevented Johnson from making a knowing and voluntary waiver of his right to testify. And it prevented Johnson from vindicating his

right to a jury trial, which is the source of his right to file a mid-trial motion for directed verdict, just as it is the source of a defendant's right to waive a jury. *Bruner*, 343 Ill. at 156, 160-62; *People ex rel. Daley v. Joyce*, 126 Ill. 2d 209, 222 (1988) (jury waiver). This is the kind of error that rises to the level of second-prong plain error. *See, e.g., People v. Bracey*, 213 Ill. 2d 265, 270-73 (2004) (where the judge's inaction prevented defendant from making a knowing waiver of his right to a jury trial, remanding for a new trial regardless of forfeiture and regardless of the strength of the State's evidence).

By failing to rule on Johnson's motion for directed verdict at the close of the State's evidence, the trial court violated Section 115-4(k). Contrary to the courts below, this statutory violation prejudicially interfered with Johnson's fundamental rights, including his rights to a jury trial, to be convicted only upon proof beyond a reasonable doubt, to testify or to remain silent, and to effective assistance of counsel. It likewise prevented Johnson from making a knowing waiver of his right to testify. As a matter of preserved constitutional error or plain error, therefore, this Court should reverse Johnson's conviction and remand to the circuit court for a new trial.

## CONCLUSION

For the foregoing reasons, Devin Johnson, Defendant-Appellant, respectfully requests that this Court reverse his conviction and remand to the circuit court for a new trial.

Respectfully submitted,

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Deputy Defender

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1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

## 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 or words contained in 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, is 41 pages.

/s/ Gilbert C. Lenz
GILBERT C. LENZ
Assistant Appellate Defender

## APPENDIX TO THE BRIEF

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

| | | |
|---|---|---|
| PEOPLE | ) | |
| Plaintiff/Petitioner | ) | Reviewing Court No: 4-22-1021 |
| | ) | Circuit Court No: 2021CF48 |
| | ) | Trial Judge: Frank R Fuhr |
| v | ) | |
| | ) | |
| | ) | |
| JOHNSON, DEVIN JACOB | ) | |
| Defendant/Respondent | ) | |

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
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ROCK ISLAND COUNTY, ILLINOIS

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

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| | ) | |
| JOHNSON, DEVIN JACOB | ) | |
| Defendant/Respondent | ) | |

## COMMON LAW RECORD - TABLE OF CONTENTS

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**Report of Proceedings ("R")**

IN THE CIRCUIT COURT OF ROCK ISLAND COUNTY, ILLINOIS
14th JUDICIAL CIRCUIT

FILED in the CIRCUIT COURT of ROCK ISLAND COUNTY GENERAL DIVISION

MAY 27 2022

Clerk of the Circuit Court

PEOPLE OF THE STATE OF ILLINOIS )
)
Vs. )
)
**Devin Johnson** )
**Date of Birth: 08/26/1981** )
Defendant

**Date of Sentence: May 24, 2022**
**Case No: 2021 CF 48**

## JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

| COUNT | OFFENSE | DATE OF OFFENSE | STATUTORY CITATION | CLASS | SENTENCE | MSR |
|---|---|---|---|---|---|---|
| **1** | **Attempted First Degree Murder** | **01/24/2021** | **720 ILCS 5/9-1(a)(2)** | **X** | **50 Years** | **3 Years** |

To run (concurrent with) (consecutively to) count(s)_____and served at 50%, 75%, **85%**, 100% pursuant to 730 ILCS 5/3-6-3 ___ Per PRB, MSR up to 12 Mos.

The said victim's age at the time of the offense was 40.

This Court finds that the defendant is:
_____Convicted of a class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4.5-95.
_____Convicted of a Class 3 or 4 offense (other than a violent crime as defined in Section 3 of the Rights of Crime Victims & Witnesses Act)
_____ 4 or more months remaining _____ fewer than 4 months remaining 730 ILCS 5/5-4-1(c-7) (effective 7/1/21 P.A. 101-652)

That the said defendant shall receive credit for time served from January 24, 2021 until the date of delivery to the Illinois Department of Corrections. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until the defendant is received at the Illinois Department of Corrections.

____X__The Court further finds that the conduct leading to conviction for the offense enumerated in **count 1** resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii))

_____The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a))

_____The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. (730 ILCS 5/5-4-1(a))

_____The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ____Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and if eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4). THEREFORE IT IS ORDERED that the defendant shall be awarded one day of sentence credit for each day in which the Defendant is engaged in the activities, _____days, if not previously awarded. (effective 7/1/21 P.A. 101-652)

_____The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 90 days of additional sentence credit, if not previously awarded.

_____The Court further finds that the Defendant served _____days engaged in a self-improvement program, volunteer work, or work assignments, and shall receive 0.5 days of sentence credit for each day the Defendant was engaged in activities for a total of _____. (730 ILCS 5/3-6-3(a)(4.2)

_____The Court further finds that the Defendant has been advised of and given a copy of the financial obligations and statutory fines, fees and assessments pursuant to SCR 452.

_____IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.

_____IT IS FURTHER ORDERED that _____
*The Clerk of the Court shall deliver a certified copy of this order to the sheriff.* The Sheriff shall take the defendant into custody and deliver the defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is effective immediately.

DATE: 5-26-22 _____
HONORABLE FRANK FUHR

SMC/lab
SC TW

C 283

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

**People of the State of Illinois**
**Plaintiff-Appellee**

VS.

**CASE #: 2021CF48**

**Devin Johnson**
**Defendant – Appellant**

NOTICE OF APPEAL

An appeal is taken from the Order or Judgment described below.

1. Court to which appeal is taken: **Fourth Judicial District, 201 West Monroe Street, Springfield, IL 62704**
2. Name of appellant and address to which notice shall be sent.
   NAME: **Devin Johnson Y52085**
   ADDRESS: **Western Illinois Correctional Center 2500 Rt 99 South Mount Sterling IL 62353**
3. Name and address of Appellant's Attorney on appeal.
   NAME: **Catherine Hart**
   ADDRESS: **400 W Monroe Ste. 303 Springfield, IL 62704**
   TELEPHONE: **217-782-3654**
   If appellant is indigent and has no Attorney, does he want one appointed? **Yes**
4. Date of order or judgment: **11/23/2022**
5. Offense of which convicted: **Murder/Stron Prob Kill/Injure**
6. Sentence: **50 Years DOC**
7. If appeal is not from a conviction, nature of order appealed from: Denial of Amended Motion to Reconsider Sentence

**SIGNED:** Jammy Rhinehart

**C 307**

FILED
12/7/2022 9:33 AM
TAMMY WEIKERT, CIRCUIT CLERK
ROCK ISLAND COUNTY, IL

No. 4-22-1021

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>-vs-<br><br>DEVIN JACOB JOHNSON,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois<br><br>No. 21-CF-48<br><br>Honorable Frank R. Fuhr, Judge Presiding. |

# AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

| | |
|---|---|
| Appellant(s) Name: | Mr. Devin J. Johnson |
| Appellant's Address: | Western Illinois Correctional Center<br>2500 Rt. 99<br>Mt. Sterling, IL 62353 |
| Appellant(s) Attorney: | Office of the State Appellate Defender |
| Address: | 400 West Monroe Street, Suite 303<br>Springfield, IL 62704 |
| Offense of which convicted: | Attempt First Degree Murder and Aggravated Battery with a Firearm |
| Date of Judgment or Order: | November 23, 2022 |
| Sentence: | 50 years in prison |
| Nature of Order Appealed: | Conviction, Sentence, and Motion to Reconsider Sentence |

/s/ Catherine K. Hart
CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

2023 IL App (4th) 221021-U

NO. 4-22-1021

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 19, 2023
Carla Bender
4th District Appellate
Court, IL

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Rock Island County |
| DEVIN JACOB JOHNSON, | ) | No. 21CF48 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Frank R. Fuhr, |
| | ) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice DeArmond and Justice Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, holding: (1) the trial evidence was sufficient to prove defendant guilty beyond a reasonable doubt of attempted first degree murder, (2) the trial court's reservation of its ruling on defendant's motion for a directed verdict did not amount to clear or obvious error, and (3) the 50-year sentence of imprisonment imposed by the court was not excessive.

¶ 2 Defendant, Devin Jacob Johnson, appeals his conviction for attempted first degree murder. Defendant argues that: (1) the trial evidence was insufficient to prove him guilty of either attempted first degree murder or aggravated battery with a firearm, (2) he was denied a fair trial when the trial court failed to rule on his motion for a directed verdict at the close of the State's evidence, and (3) his 50-year sentence was excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with attempted first degree murder (720 ILCS 5/8-4(a), 8-4(c)(1)(D), 9-l(a)(2) (West 2020)) in that he, with the intent to commit first degree murder, performed a substantial step toward the commission of the offense in that he "pointed a handgun at the head of Kelvin Bell and shot Kelvin Bell in the temple, knowing that such act would create a strong probability of death or great bodily harm to Kelvin Bell, and that in committing said offense, the defendant personally discharged a firearm that proximately caused great bodily harm, permanent disability, or permanent disfigurement to Kelvin Bell." Defendant was also charged with aggravated battery with a firearm (*id.* § 12-3.05(e)(1)) in that, while committing a battery, he personally discharged a handgun, thereby causing great bodily harm to Bell.

¶ 5 The matter proceeded to a jury trial. The evidence at the trial established that Bell sustained a gunshot wound to the right side of his head in the early morning hours of January 24, 2021, while sitting in defendant's vehicle that was parked just outside of defendant's residence. Three individuals who lived near the scene testified they heard a gunshot that morning. One of these individuals stated he was looking at his phone when he heard the gunshot, and he observed it was 1:26 a.m. Data retrieved from Bell's cell phone indicated that the last activity on the phone was at 1:24 a.m. Alisha Johnson, defendant's wife, called 911 at approximately 2 a.m. and reported that Bell had been shot. A recording of the call was admitted into evidence. In the recording, Alisha indicated defendant had just found Bell in defendant's vehicle with a gunshot wound. She stated she was not present during the shooting. She stated that she and defendant left to go to the store, and, when they returned home, they found Bell had been shot.

¶ 6 Police officers responded to the scene shortly after Alisha called 911. Emergency personnel took Bell to the hospital. An emergency room physician who treated Bell that morning testified that Bell sustained a gunshot wound to the right side of his head, which caused bone

fractures and injury to the brain tissue and adjacent structures. Bell's mother testified that Bell was not doing well since the shooting. She stated Bell had only one eye, could not hear, was paralyzed on the left side, had memory loss, and was currently residing in a "caring environment by medical staff."

¶ 7 Sergeant Kris Kuhlman testified that he arrived at the scene at approximately 2 a.m. on the morning of the incident. He observed Bell sitting in the front passenger seat of a vehicle with a gunshot wound to the right side of his head. Bell was moaning and moving but could not speak. The front passenger door to the vehicle was open and defendant was standing next to Bell and tending to him. Defendant was distraught and emotional. Kuhlman observed what appeared to be a "gunshot hole" in the front passenger window of the vehicle.

¶ 8 Officer Ibrahim Ramirez testified he also responded to the scene, where he spoke to both defendant and Alisha. Ramirez indicated defendant seemed nervous and was quick to say he was not in the area when the shooting occurred. A recording of Ramirez's body camera footage was admitted into evidence. In the recording, defendant stated Bell was sitting in defendant's car calling people to try to get a ride. Defendant and Alisha left to buy cigarettes, and, when they returned, Bell had been shot. Defendant stated Bell had been drinking that night, and he smoked crack. Defendant was crying at times during the conversation.

¶ 9 Officer Andrew Lawler testified he also responded to the scene. Lawler located a shell casing on the road approximately three feet in front of the vehicle where Bell had been shot and a "bullet" on the ground just outside the passenger side door. Lawler stated that by "bullet," he meant a "complete round of ammunition that was unfired."

¶ 10 Garrett Alderson, a criminalist who worked for the Rock Island Police Department, testified that he was familiar with the general functioning of handguns. He stated a

semiautomatic handgun has a frame, grip, trigger, and slide. It typically has a magazine that is fed into the bottom of the grip. Alderson stated that a person operating a semiautomatic handgun must "charge" or "rack" the slide to load a cartridge after the magazine has been inserted. Once the slide is racked, the cartridge is chambered. Alderson indicated that if one were to rack the slide when a cartridge was already in the chamber, "that cartridge that's loaded will then kick out and then a new cartridge in the magazine will then feed and then take that previous cartridge's place."

¶ 11 Detective Sean Roman testified he was assigned to investigate Bell's shooting. After officers responded to the scene, defendant and Alisha were brought to the police station to be interviewed. They were considered cooperating witnesses at that point. Roman and Detective Phil Anderson interviewed Alisha first. During the interview, Alisha indicated defendant came home at approximately 1:30 a.m., and they left the residence to purchase cigarettes at the 7-Eleven. Bell was sitting in defendant's white Cadillac in front of the residence when they left. She stated that they returned home approximately 10 minutes later, and defendant observed that Bell had been shot. Roman testified he believed Alisha lied during this interview because officers had obtained surveillance video footage from a camera near the 7-Eleven, which showed a vehicle the detectives believed belonged to Alisha drive past the 7-Eleven at 1:41 a.m. The vehicle reappeared and pulled into the 7-Eleven parking lot approximately eight minutes later. Roman indicated he believed defendant and Alisha had gone somewhere else that she had not disclosed.

¶ 12 Roman stated he interviewed defendant after his initial interview with Alisha, and he then interviewed Alisha a second time. At that point, Alisha was a suspect for obstructing justice and was not free to leave. The detectives then interviewed defendant a second time. At

that point, they were planning to arrest Alisha for obstruction of justice. Alisha agreed to speak to them a third time, and she provided them with a video recording from a camera in her bedroom showing defendant entering the bedroom on the morning of the incident. The detectives ultimately released Alisha without charging her. They then interviewed defendant a third time.

¶ 13 Video and audio recordings of defendant's three interviews were admitted into evidence and played in court. During the first interview, defendant indicated that, on the night before the incident, he and Bell went out and had a few drinks. Defendant dropped Bell off at the end of the night. Bell then called defendant and told him that some individuals who had previously "jumped" him were in Bell's parking lot. Defendant picked up Bell and drove home. Defendant indicated that he was "done" at that point and did not want to drive Bell anywhere else. Bell started calling people to try to get a ride. Defendant and Alisha then went to 7-Eleven to buy cigarettes. When they left, Bell was sitting in defendant's vehicle, looking at his phone. When defendant and Alisha returned home, defendant went to his vehicle to make sure the doors were locked. He saw Bell had been shot and told Alisha to call 911. Defendant initially denied that he and Alisha went anywhere other than 7-Eleven. However, the detectives told defendant they had him on camera driving past the 7-Eleven. Defendant then stated he and Alisha initially drove past the 7-Eleven to go to a different store, but it was closed, so they drove back to the 7-Eleven.

¶ 14 During the second interview, defendant indicated he was actually present in the car when Bell was shot. Defendant saw the shooter run down an alley but he "couldn't get a look at him." After the shooting, defendant and Alisha drove around and discussed how to "keep [defendant] out of the situation" because he was in the car during the shooting. A detective asked defendant if this was more important to him than getting help for Bell, and defendant said he

thought Bell was dead at that time. Defendant acknowledged that Bell was moving later when the officers arrived, but he stated Bell was not moving at all right after the shooting.

¶ 15 During the third interview, defendant gave the detectives yet another version of events, stating he had tried to drop Bell off that morning, but Bell would not get out of the car. Defendant indicated he had been awake for two days, wanted to go to sleep, and did not want to leave Bell in his car. Defendant pointed a gun at Bell to scare him. A detective asked defendant if he then pulled the trigger or "racked" the slide. Defendant stated: "I don't know because—if I pulled it, I thought it was on safety." Defendant stated he was "not in [his] right mind" and it was like he was watching it "outside [his] body." Defendant began to cry and stated he did not think the gun was really going to go off. Defendant stated he would never purposefully have done that to Bell. One of the detectives indicated he believed defendant. Defendant stated he panicked after he shot Bell, and he threw the gun into a river when he was driving around with Alisha after the shooting. During the interview, Roman stated that defendant had "owned up" to his mistakes. During his trial testimony, however, Roman stated he could not recall if he actually believed defendant at that time.

¶ 16 Alisha testified that she was interviewed by the police after the incident, and she eventually showed the officers a video recording from a camera in her bedroom. The recording was admitted into evidence. It showed defendant running into a bedroom where Alisha was sleeping and dropping an object on the floor, which Alisha carried out of the room a few minutes later. Alisha testified this object was a gun. In the video, defendant appeared to be very upset. He repeatedly fell to ground and appeared to be sobbing at times. He changed his clothing, and Alisha left the room carrying the clothes he had been wearing. After about 10 minutes, defendant and Alisha both left the room.

¶ 17 A recording of a phone conversation between defendant and an unidentified woman on January 25, 2021, was admitted into evidence and played in court. In the recording, defendant indicated that Bell would not get out of his car on the night of the incident. Defendant stated he "upped" the gun just to scare Bell. Defendant believed the gun was on safety, but it went off. Defendant stated the shooting was an accident. Defendant sounded as though he was crying at times during the phone call.

¶ 18 The State rested, and defense counsel moved for a directed verdict. The trial court indicated it was taking the motion under advisement. The court then asked if the defense would be presenting any evidence. Defendant was admonished concerning his right to testify, and defendant indicated he would not be testifying. Defendant presented no evidence.

¶ 19 The jury found defendant guilty of attempted first degree murder and aggravated battery with a firearm. The jury also found the State had proven defendant personally discharged a firearm that proximately caused great bodily harm to another person. After the jury returned its verdict, defense counsel noted he had previously moved for a directed verdict. The trial court stated it was taking the matter under advisement and would issue a written decision shortly thereafter. The court subsequently denied defendant's motion for a directed verdict.

¶ 20 Defendant filed a posttrial motion arguing, *inter alia*, the trial court erred by reserving its ruling on his motion for a directed verdict because it gave him a false impression of the State's evidence during the trial and affected his decision as to whether to testify. Defendant asserted that this uncertainty substantially prejudiced him. The court denied the motion. The court indicated it believed it was a matter of trial strategy for defense counsel not to request a ruling on its motion for a directed verdict and allow the matter to remain under advisement. The

court noted defense counsel could have requested that it rule on the motion if it was crucial to defendant's position as to whether to testify.

¶ 21 The matter proceeded to sentencing. A presentence investigation report (PSI) prepared in advance of the sentencing hearing showed defendant was 40 years old. The PSI indicated defendant had prior felony convictions in Illinois for aggravated unlawful use of weapons and aggravated discharge of a firearm for which he had been sentenced to probation. The PSI indicated defendant also had two federal convictions for unlawful possession of a firearm, and he had received prison sentences for each conviction. Defendant reported he had been diagnosed with schizophrenia and bipolar disorder in 2004. Defendant reported that he had been drinking alcohol since he was 12 years old, and he had been drinking heavily at the time of the offense. He indicated he started using cocaine when he was 20 years old, used it every few days at the time of the offense, and had last used it on the day of the offense. He also indicated he had used ecstasy and cannabis in the past. Defendant indicated he believed he had problems with drugs and alcohol and needed treatment. The PSI reflected that, at the time of the incident, defendant had been employed for approximately 14 months. During that time, defendant held positions as a forklift operator, a picker, and an employee at a car detailing business.

¶ 22 Several of Bell's family members read victim impact statements. The defense submitted three letters of support from defendant's family members. Defendant made a statement in allocution, stating that he was "sorry from the bottom of [his] heart" and that shooting Bell was a "careless mistake."

¶ 23 The trial court sentenced defendant to 50 years' imprisonment for attempted first degree murder. The court did not impose a sentence for aggravated battery with a firearm, as the parties and the court had previously agreed that it merged with the conviction for attempted first

degree murder. The court stated it had considered the factors in aggravation and mitigation, observed the witnesses during the trial, and considered the evidence produced by the State. The court stated: "I don't know how this happened, but I know you pulled a trigger resulting in that horrific damage to your friend." The court noted defendant had four prior gun convictions and found this indicated defendant was a danger to the public such that a 50-year sentence was warranted to protect the public. The court also stated the sentence was to "deter others from playing with guns."

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant argues (1) the trial evidence was insufficient to prove him guilty of either attempted first degree murder or aggravated battery with a firearm, (2) he was denied a fair trial when the trial court failed to rule on his motion for a directed verdict at the close of the State's evidence, and (3) his 50-year sentence was excessive.

¶ 27 A. Sufficiency of the Evidence

¶ 28 Defendant argues the trial evidence was insufficient to prove him guilty beyond a reasonable doubt of either attempted first degree murder or aggravated battery with a firearm.

¶ 29 1. *Attempted First Degree Murder*

¶ 30 Defendant contends the trial evidence was insufficient to prove him guilty of attempted first degree murder because it did not establish that he had the specific intent to kill Bell. Defendant argues the only direct evidence of his mental state was his statement to detectives and a recording of a phone call indicating the shooting was an accident and that he only intended to scare Bell. Defendant further asserts that the circumstantial evidence the State

argued demonstrated a specific intent to kill was "equally consistent" with his theory that he fired the gun accidentally.

¶ 31 When considering a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "This means the reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). "[W]e will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 32 "To secure a conviction for attempted first degree murder, the State must prove that the defendant performed an act that constituted a substantial step toward the commission of first degree murder and that the defendant did so with the specific intent to kill the victim." *People v. Reynolds*, 2021 IL App (1st) 181227, ¶ 34; see also 720 ILCS 5/8-4(a), 9-1(a) (West 2020); *People v. Lopez*, 166 Ill. 2d 441, 445-46 (1995) ("[T]he crime of attempted first degree murder requires *** the specific intent to kill ***.").

¶ 33 "[B]ecause intent to kill is a state of mind, it is usually difficult to establish by direct evidence and is typically inferred from the surrounding circumstances." *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 82. Such circumstances include "the character of the attack, the use of a deadly weapon, and the nature and extent of the injuries inflicted." *Reynolds*, 2021 IL App (1st) 181227, ¶ 34; see also *People v. Ephraim*, 323 Ill. App. 3d 1097, 1110 (2001) ("The specific intent to kill may be inferred so long as the surrounding circumstances show that

the defendant intended the wilfully committed act, the direct and natural tendency of which is to destroy another's life." (Internal quotation marks omitted.)). "The very fact of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill." *People v. Mitchell*, 209 Ill. App. 3d 562, 569 (1991).

¶ 34 In the instant case, the trial evidence, when viewed in the light most favorable to the State, was sufficient to prove beyond a reasonable doubt that defendant possessed the intent to kill when he shot Bell. The circumstances surrounding the shooting—including defendant's use of a firearm, the nature and location of Bell's injuries, and defendant's actions after the offense—could reasonably support the conclusion that defendant acted with the specific intent to kill. Specifically, the evidence showed defendant shot Bell in the head at close range. There was an unfired cartridge on the ground outside the car. Based on Alderman's testimony, the jury could have inferred that defendant "racked" the gun to ensure there was a round in the chamber before pulling the trigger, which would be consistent with an intentional firing of the gun. Also, the evidence showed defendant did not call 911 immediately after the shooting. Instead, he went inside his home, changed his clothes, and drove to a location with Alisha to dispose of the gun. Only after they returned from disposing of the gun, approximately 30 minutes after the shooting, did Alisha call 911.

¶ 35 While defendant stated during his interview with the detectives and in a recorded phone call that the shooting was accidental and that he believed the gun was on "safety," the jury was not required to believe defendant's statements. Defendant had previously lied several times during his police interviews concerning his involvement in the shooting, and the jury could have reasonably concluded defendant was lying about the shooting being an accident in an attempt to minimize his culpability. Also, the jury could have found the evidence that defendant racked the

gun and pulled the trigger was inconsistent with his claim that he only intended to scare Bell, as this could have been accomplished by merely pointing the gun at Bell. Additionally, the jury could have reasonably found defendant's decision to attempt to cover up his involvement immediately after the shooting rather than seeking medical attention for Bell was more consistent with the shooting being intentional than accidental.

¶ 36 In his brief, defendant notes that one of the detectives indicated during the third interview that he believed defendant's statement that he did not intend to shoot Bell and that Roman told defendant he had "owned up" to his mistakes. Defendant then cites *People v. Theis*, 2011 IL App (2d) 091080, ¶ 36, for the proposition that the trier of fact may consider statements made by a detective to a defendant during a recorded interview that he believed the defendant. To the extent defendant is arguing that the detectives' comments indicating they believed defendant should have been considered by the jury as evidence that defendant's statement was credible, we reject his argument.

¶ 37 The *Theis* court actually held that an officer may testify concerning statements he made to a defendant during an interview regarding whether the officer believed the defendant only for the limited purpose of "explain[ing] the logic of the interview." *Id.* ¶¶ 36-37; see also *People v. Munoz*, 398 Ill. App. 3d 455, 488 (2010). An officer may not testify as to whether he or she believed a defendant's prior statement when the testimony would serve "no other purpose but to impermissibly comment on the ultimate issue of the defendant's credibility." *Munoz*, 398 Ill. App. 3d at 488 (2010). This is because "[q]uestions of credibility are to be resolved by the trier of fact." *People v. Kokoraleis*, 132 Ill. 2d 235, 264 (1989); see also *People v. Davila*, 2022 IL App (1st) 190882, ¶ 52 ("[A] witness is not permitted to comment on the veracity of another

witness's credibility."). Thus, we reject defendant's argument that the detectives' statements during the interview should be considered as evidence that he was credible.

¶ 38 2. *Aggravated Battery With a Firearm*

¶ 39 Defendant also argues the evidence was insufficient to prove him guilty of aggravated battery with a firearm because the evidence did not establish that he knowingly fired the gun. However, no sentence was entered on this count, as the trial court found it merged with defendant's conviction for attempted first degree murder. Accordingly, no final judgment of conviction was entered for the charge of aggravated battery with a firearm, and we may not address this issue on appeal. See *People v. Caballero*, 102 Ill. 2d 23, 51 (1984) ("The final judgment in a criminal case is the sentence, and, in the absence of the imposition of a sentence, an appeal cannot be entertained.").

¶ 40 B. Motion for a Directed Verdict

¶ 41 Defendant argues the trial court denied him a fair trial by failing to rule on his motion for a directed verdict at the close of the State's evidence in violation of section 115-4(k) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-4(k) (West 2022)). Defendant contends this error prejudicially interfered with his right to testify. Specifically, defendant argues that, by reserving its ruling, the court "left [defendant] playing a 'guessing game' as to the sufficiency of the State's evidence and the cost-benefit analysis of taking the stand."

¶ 42 The State argues defendant has forfeited this issue by failing to object to the trial court's decision to reserve its ruling on the motion for a directed verdict. Defendant contends his failure to object did not result in a forfeiture of the issue because his only burden was to move

for a directed verdict. Defendant asserts he was not required to also "plead" to the court that his decision as to whether to testify hinged upon the court's ruling.

¶ 43 We find defendant forfeited this issue by failing to object when the trial court indicated it would reserve its ruling. "[F]or a criminal defendant to preserve an issue for review on appeal, the defendant must object at trial and raise the issue in a written posttrial motion." *People v. Jackson*, 2022 IL 127256, ¶ 15. This is because a defendant's "failure to raise the issue at trial deprives the circuit court of an opportunity to correct the error, thereby wasting time and judicial resources." *Id.* "This forfeiture rule also prevents criminal defendants from sitting idly by and knowingly allowing an irregular proceeding to go forward only to seek reversal due to the error when the outcome of the proceeding is not favorable." *Id.* Accordingly, defendant was required to object to the court's decision to reserve its ruling on the motion in order to preserve his challenge to the timing of the ruling for appeal.

¶ 44 Defendant argues that, in the event we find the issue forfeited, we should review it under the first prong of the plain error doctrine.

> "The plain error rule allows reviewing courts discretion to review forfeited errors under two alternative prongs: (1) when a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) when a clear or obvious error occurred and 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." *People v. Moon*, 2022 IL 125959, ¶ 20.

¶ 45 The first analytical step under either prong of the plain error doctrine is determining whether a clear or obvious error occurred. *Id.* ¶ 22. "An alleged error is not clear or obvious if it concerns 'merely arguable issues.' " *In re M.P.*, 2020 IL App (4th) 190814, ¶ 45 (quoting *People v. Hammons*, 2018 IL App (4th) 160385, ¶ 17). Rather, "the error must 'be manifest or patent.' " *Id.* (quoting *Hammons*, 2018 IL App (4th) 160385, ¶ 17). "Plain-error review is reserved for errors that are clear or obvious based on law that 'is well settled at the time of trial ***.' " *People v. Williams*, 2015 IL App (2d) 130585, ¶ 11 (quoting *People v. Downs*, 2014 IL App (2d) 121156, ¶ 20).

¶ 46 We find that, at the time the trial court took the motion under advisement, the law was not sufficiently settled on the issue of whether it was error for a trial court to reserve its ruling on a motion for a directed verdict made at the close of the State's evidence. Defendant contends that reserving a ruling on a motion for a directed verdict at the close of the State's evidence is prohibited by the plain language of section 115-4(k) of the Code, which provides:

> "When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant." 725 ILCS 5/115-4(k) (West 2022).

We find the above statutory language does not clearly indicate whether a trial court must immediately rule on a motion for a directed verdict. While the statute indicates the court "shall make a finding or direct the jury to return a verdict of not guilty" (*id.*) when the defendant moves for a directed verdict and the evidence is insufficient, it does not expressly indicate whether the court's ruling on the motion must be immediate or whether it may reserve its ruling.

¶ 47 Courts have taken several different approaches to the issue of whether a trial court may reserve its ruling on a motion for a directed verdict at the close of the State's evidence. In *People v. Faulkner*, 64 Ill. App. 3d. 453, 457 (1978), the defendant moved for a directed verdict at the close of the State's evidence on the basis that the State failed to prove an essential element of the offense. The trial court reserved its ruling on the motion and allowed the State to reopen its case to present additional evidence. *Id.* The defendant argued this was improper, and this court held the trial court's ruling was not an abuse of discretion. *Id.* The *Faulkner* court found there was no "[*per se*] rule prohibiting a court from reserving ruling or permitting the State to reopen its case once the defendant has moved for a directed verdict." *Id.*

¶ 48 In *People v. Rascher*, 223 Ill. App. 3d 847 (1992), this court again considered, in *dicta*, the issue of whether it is error for a trial court to reserve ruling on a motion for a directed verdict made at the close of the State's evidence. In *Rascher*, defense counsel moved for a directed verdict at the close of the State's evidence. *Id.* at 849. The trial court reserved its ruling on the motion, reasoning " '[t]here are a lot of things we don't know *** based on this evidence.' " *Id.* The defendant presented no evidence or testimony. *Id.* The trial court ultimately denied the motion after the jury returned a guilty verdict. *Id.* at 849-50. On appeal, the *Rascher* court reversed, holding that the trial evidence was insufficient to prove the defendant guilty of the offense beyond a reasonable doubt. *Id.* at 853.

¶ 49 The court then considered the defendant's argument that the trial court erred by reserving its ruling on his motion for a directed verdict at the close of the State's evidence. *Id.* The *Rascher* court noted the State had argued the defendant was required to show how the trial court's reservation of its ruling prejudiced him in order to establish error. *Id.* at 853-54. The

court then stated: "Here we have concluded the evidence was not sufficient to support the jury's verdict, and the trial court's comments suggest it too found the evidence lacking." *Id.* at 854.

¶ 50 The *Rascher* court found that "[a] trial court should not reserve ruling on a motion for directed verdict at the close of the State's evidence" and that such a practice "could be reversible error in some cases." *Id.* at 855. The court stated that a directed verdict at the close of the State's evidence would have been justified in that case. *Id.* at 854. The *Rascher* court also found the defendant was entitled to a ruling on her motion rather than having to guess as to whether the State had proven its case. *Id.* The court reasoned:

> "A trial judge should not be allowed to circumvent rules of law by postponing a decision on a proper motion [citation]. Under section 115-4(k) of the Code ***, the trial court is obligated to rule on the defendant's motion for a directed verdict. Here, the trial judge did not rule on the motion at the close of the State's evidence or at the close of all the evidence, but instead waited until after the jury verdict to deny the motion. To postpone the ruling makes the trial a guessing game for the defendant. The defendant should not have to guess as to whether the State's evidence was sufficient nor as to whether the trial court expects the defendant to testify." *Id.* at 854-55.

¶ 51 The Third District took a similar approach to *Rascher* in *People v. Trump*, 62 Ill. App. 3d 747, 748 (1978). The *Trump* court held that the trial court did not err by reserving its ruling on the defendant's motion for a directed verdict, which was made at the close of all the evidence. *Id.* The court distinguished that circumstance from cases where defendants move for directed verdicts at the close of the State's evidence. *Id.* The *Trump* court stated a trial court should not be permitted to reserve ruling in such cases because "the defendant ought not to be

forced to decide whether to produce evidence in his defense without knowing that the prosecution's evidence was sufficient." *Id.*

¶ 52 The First District has taken a different approach than the *Rascher* and *Trump* courts in its decisions in *People v. Watkins*, 206 Ill. App. 3d 228 (1990), and *People v. Ramirez*, 244 Ill. App. 3d 136 (1993). In both cases, the courts held that section 115-4(k) of the Code does not require the trial court to rule on a motion for a directed verdict made at the close of the State's evidence immediately, but rather permits the court to rule at the close of all the evidence. *Watkins*, 206 Ill. App. 3d at 243; *Ramirez*, 244 Ill. App. 3d at 150.

¶ 53 After considering the foregoing authority, we conclude the law at the time of trial was not clearly settled as to whether a trial court could properly reserve its ruling on a defendant's motion for a directed verdict made at the close of the State's evidence. While our prior decision in *Rascher* found that a trial court should not reserve ruling on a motion for a directed verdict made at the close of the State's evidence and that such a practice "could be reversible error in some cases" (*Rascher*, 223 Ill. App. 3d at 855), the *Rascher* court did not identify the circumstances it thought *would* constitute reversible error, nor did it indicate whether a showing of prejudice was necessary. As noted, prior to *Rascher*, this court held in *Faulkner* that there is no *per se* rule prohibiting a court from reserving ruling on a directed verdict at the close of the State's evidence. *Faulkner*, 64 Ill. App. 3d. at 457. The *Faulkner* court further held that it was within the court's discretion to not only reserve its ruling on a motion for a directed verdict but to permit the State to reopen its case in the meantime to present additional evidence. *Id.* The First District has held that a trial court may reserve its ruling until the close of all the evidence. See *Watkins*, 206 Ill. App. 3d at 243; *Ramirez*, 244 Ill. App. 3d at 150.

¶ 54 Because the law on the subject was not well-settled at the time of trial, we cannot say the trial court's decision to reserve its ruling on defendant's motion for a directed verdict at the close of the State's evidence constituted a "clear or obvious error." See *M.P.*, 2020 IL App (4th) 190814, ¶ 45; *Williams*, 2015 IL App (2d) 130585, ¶ 11. Accordingly, this issue is not reviewable under the plain error doctrine.

¶ 55 C. Sentencing

¶ 56 Defendant argues the 50-year prison sentence imposed by the trial court was excessive because he had no history of harming others, he was unlikely to survive the sentence, and the evidence at sentencing did not indicate he was without rehabilitative potential.

¶ 57 "The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because the trial court has the opportunity to observe the defendant and the proceedings and, accordingly, has a better opportunity than the reviewing court to assess relevant sentencing factors, like the defendant's credibility, demeanor, character, mentality, social habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The reviewing court may not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 58 The trial court is required to consider the statutory factors in aggravation and mitigation when imposing the sentence. 730 ILCS 5/5-5-3.1(a), 5-5-3.2(a) (West 2022). Also, pursuant to the Illinois Constitution, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. However, while a sentencing court is required to consider a defendant's rehabilitative potential, it is not required to give greater weight to rehabilitative

potential than to the seriousness of the offense or other aggravating factors. *People v. Tye*, 323 Ill. App. 3d 872, 890 (2001). Moreover, "the court need not recite and assign a value to each factor it has considered." *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 38.

¶ 59 "A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court." *Alexander*, 239 Ill. 2d at 212. "[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 60 Here, the trial court did not abuse its discretion by sentencing defendant to 50 years' imprisonment. The court's sentence was well within the statutory range of 30 years to life imprisonment. See 720 ILCS 5/8-4(c)(1)(D), 9-1(a)(2) (West 2020); 730 ILCS 5/5-4.5-25(a) (West 2022). The court indicated it had considered the statutory factors in aggravation and mitigation. The court properly found defendant's criminal history, which included four prior gun-related offenses, to be an aggravating factor (see 730 ILCS 5/5-5-3.2(a)(3) (West 2022)). The court indicated this prior record showed defendant was dangerous and the public needed to be protected from him. The court also stated the sentence was necessary to "deter others from playing with guns." Given defendant's criminal history and the need for deterrence, we find the 50-year sentence of imprisonment was not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210.

¶ 61 In reaching our holding, we reject defendant's argument that the trial court should have considered his intoxication at the time of the offense, his history of substance abuse, and his history of mental illness to be mitigating factors. While the court did not expressly indicate that it found these things to be mitigating, nothing in the court's comments during sentencing indicated

it did not. Accordingly, to the extent these matters were proper mitigating evidence, we presume the court considered them. *People v. White*, 237 Ill. App. 3d 967, 970 (1992) ("Absent any indication in the record to the contrary, it is presumed that the trial court considered evidence presented in mitigation."). We also note that the court was not required to find defendant's history of substance abuse or mental illness to be mitigating, and it would have been within its discretion in finding they were not. See *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 105 ("[A] history of substance abuse is a 'double-edged sword' that the trial court may view as a mitigating or aggravating factor.); see also *People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 44 ("[A] defendant's mental or psychological impairments are not inherently mitigating.").

¶ 62 We reject defendant's argument that the trial court abused its discretion by sentencing him to a term of imprisonment that he was unlikely to survive because there was no evidence he was irredeemable or without rehabilitative potential. Defendant cites no authority indicating there must be a showing that an adult defendant is devoid of rehabilitative potential before the court may properly impose such a sentence. Also, while the sentencing evidence may not have shown defendant was completely without rehabilitative potential, the court could have reasonably concluded from the evidence that defendant's rehabilitative potential was negligible. Defendant had previously been convicted of four gun-related offenses and, as a result of these convictions, had served two terms of probation and two terms of imprisonment. He was apparently not deterred or rehabilitated by his prior sentences, however, as he possessed and discharged a firearm in the instant case, causing extensive injuries to Bell. We conclude the trial court did not err in imposing the 50-year sentence given the sentencing range and aggravating factors it found were present.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's judgment.

¶ 65 Affirmed.

No. 130447

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>-vs-<br><br>DEVIN JACOB JOHNSON,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Appellate Court of Illinois, No. 4-22-1021.<br><br>There on appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 21-CF-48.<br><br>Honorable Frank R. Fuhr, Judge Presiding. |

**NOTICE AND PROOF OF SERVICE**

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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 October 10, 2024, the Brief and Argument 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-appellant 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 Brief and Argument to the Clerk of the above Court.

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