No. _____

In the Supreme Court of the United States

JEROMY L. RAMM,
Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a statute which allows the admission of propensity evidence against a criminal defendant but does not provide the same defendant with an opportunity to present rebuttal or non-propensity evidence deprives a defendant of his fourteenth amendment right to due process of law.

PARTIES TO THE PROCEEDINGS

Petitioner, and defendant-appellant below is Jeromy L. Ramm.

Respondent, and plaintiff-appellee below is Illinois.

RELATED PROCEEDINGS

Circuit Court of Illinois (6th Jud. Cir.)

> *People* v. *Jeromy L. Ramm*, No. 15-CF-1371, (Sep. 14, 2016) (guilty verdict, sentenced to 20 years)
>
> *People* v. *Jeromy L. Ramm*, No. 15-CF-1371, (Nov. 15, 2023) (amended motion for new trial denied)

Appellate Court of Illinois (4th Dist.):

> *People* v. *Jeromy L. Ramm*, No. 4-17-0060, (Oct. 31, 2018) (reversed and remanded for Krankel hearing)

Appellate Court of Illinois (5th Dist.):

> *People* v. *Jeromy L. Ramm*, No. 5-23-1271, (Aug. 18, 2025) (affirmed)

Supreme Court of Illinois:

> *People* v. *Jeromy L. Ramm*, Supreme Court of Illinois, No. 132288, (Jan. 28, 2026) (leave to appeal denied)

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The order of the Appellate Court of Illinois, Fifth District is reproduced in the Appendix at App. 2–34. The order of the Supreme Court of Illinois is reproduced in the Appendix at App. 1.

JURISDICTION

The Appellate Court of Illinois, Fifth District, entered its order affirming the denial of the motion for new trial on August 18, 2025. The Supreme Court of Illinois denied the petition for leave to appeal on January 28, 2026. This court has jurisdiction under 28 U. S. C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const., Amdt. XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5/115-7.4. Evidence in domestic violence cases
725 ILCS 5/115-7.4

(a) In a criminal prosecution in which the defendant is accused of an offense of domestic violence * * *, evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances.

(c) In a criminal case in which the prosecution intends to offer evidence under this Section, it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.

(d) In a criminal case in which evidence is offered under this Section, proof may be made by specific instances of conduct, testimony as to reputation, or testimony in the form of an expert opinion,

except that the prosecution may offer reputation testimony only after the opposing party has offered that testimony.

STATEMENT OF THE CASE

Jeromy Ramm was charged with two counts of aggravated domestic battery on Candace Brown, the first count alleging that he intentionally strangled her, a household member, and the second count alleging that he caused her great bodily harm. (App. 3).

The Trial

Matthew McKinney, a city of Urbana police officer, testified. (R. 315). On September 22, 2015, at 4:00 a.m., he received a call of a domestic battery and was asked to respond to the Urbana Police Department. (R. 315-16).

At the department, McKinney met Candace Brown. Her eyes were swollen, his lip was bleeding, and there were scratches on her neck. (R. 316-17).

Without objection, McKinney testified that Candace Brown told him that she was at her boyfriend's house, that he had come in to the house in a "sort of rage," that he had battered her, choked her, and punched her multiple times. She said that she had lost consciousness, regained consciousness and then had snuck out of the house when her boyfriend fell asleep. (R. 318).

McKinney testified that Brown's injuries were consistent with her narrative. She had bloodshot eyes. (R. 318). Without objection, McKinney claimed: "I've seen people choked before and the consistency based on that was probably the worst I have ever seen." (R. 318-19).

Brown told McKinney that her boyfriend's residence was 1112 south Austin and that his name was Jeromy Ramm. (R. 319-21).

Candace Brown testified. (R. 328). In September of 2015 she was living at 1112 Austin Drive in Urbana with her boyfriend, Jeromy Ramm and her daughter, Rileigh. (R. 329-30). In 2005, she was convicted of possession of a controlled substance. (R. 330).

On September 21, 2015 at 4:00 p.m., Brown was home when Ramm came in. (R. 331). She described him as a "little agitated," and a "little snappy" in his conversation. (R. 332). He was making telephone calls, looking to get some Vicodin pills. (R. 332-33). Without objection, she testified that he did not have a prescription for Vicodin. (R. 333).

Brown left, taking her daughter to a friend's house. When she returned, Ramm had left to work the second shift. (R. 334). During the time Ramm was working, he was not responding to Brown's telephone calls, as he normally did. (R. 335-36).

When Ramm did get home at 11:30, Ramm and Brown "hung out" together. At one point, as Ramm and Brown were sitting on the couch, Ramm, "out of the blue," called Brown a "lying bitch." (R. 336-37).

Brown explained that Ramm's comment was based on a previous argument between Brown and Ramm about a message he had received from another girl and Ramm's explanation, which Brown did not believe, that Ramm was buying pills from the other girl's boyfriend. After the lying bitch comment, Ramm continued by telling Brown that she was causing him problems at work and she was too involved in his business. Ramm then became angry, walked around the table, and backhanded Brown in the face. (R. 338).

Brown testified that Ramm's back hand struck her on the lower chin. (R. 338). The next thing Brown knew, she was on the floor, and Ramm was choking her. (R. 338-40). According to Brown, Ramm choked her for 30 or 40 minutes, letting her go sometimes and choking her "probably" five times. (R. 339). Each time Ramm choked her, it materially obstructed her ability to breathe. Brown testified that during this period she may have lost consciousness. (R. 340).

Brown's mouth was bleeding. Ramm provided her with a washrag or a towel and told her to clean her face up. She did so. (R. 341).

At one point after Brown regained consciousness, Ramm stood in front of the door and told Brown to call the police. Brown told Ramm that she loved him and did not want to do that to him. Brown tried to calm Ramm down. (R. 341).

Brown and Ramm then began to talk. Then the two went to the bedroom. (R. 342). Brown and Ramm had sex, and Ramm fell asleep. (R. 344).

After Ramm fell asleep, Brown took the car keys, went outside, go in her car and drove to the Urbana police station. (R. 345). At that time her face was bruised and bloody. She was not able to see her neck. Her eyes were bruised and bloodshot red. (R. 346).

Brown spoke to an officer, got into an ambulance, and went to the Carle hospital emergency room for treatment. (R. 347). She was not given any medication, or any follow-up treatment. (R. 347-48).

On the same day, Brown met with a female officer at the Urbana police department who took photographs of her injuries. (R. 348). Brown identified a series of photographs of her injuries. (R. 349-60). On September 24, 2015, she returned to the Urbana

police station where more photographs were taken. (R. 360-61). She also identified these photographs as photographs of her injuries. (R. 360-66).

On cross-examination, Brown testified that she had told the police on multiple occasions that she did not want to pursue charges. (R. 367). They had told her that if she did not testify, her daughter Rileigh would be taken from her (R. 371-72) and that she would be arrested. (R. 372). She was also told that she could not change or correct her story. (R. 372-73).

Sarah Links, a City of Urbana patrol officer, testified. (R. 376-77). On September 22, 2015, she met Candace Brown and took photographs of her injuries. (R. 378-85). Links testified that she saw facial bruising, blood-colored whites in Brown's eyes, and injuries to her neck. (R. 379-80). Without objection, she testified that the injuries were more substantial than those she had observed in people who had been battered. (R. 380). The photographs she took were admitted and published to the jury. (R. 381-86).

David Smysor, a City of Urbana police officer, testified. (R. 391). On September 24, 2015, he took more pictures of Candace Brown. (R. 393-95). These photographs were also admitted into evidence. (R. 395-99).

Kacey Delaney testified. (R. 435). On September 22, 2015, she made plans to meet Jeromy Ramm, whom she had met on Facebook. (R. 436). She identified Jeromy Ramm in open court. (R. 436-37).

Ramm picked Delaney up at home and drove her to a bar in Champaign. (R. 437-38). On the drive to the bar, Ramm had Delaney's cellular phone. Delaney received a text message on her cellphone from Candace Brown asking why she was reaching out to Jeromy

Ramm. With Delaney's permission, Ramm answered the message. (R. 440).

When Delaney and Ramm arrived at the bar, they had drinks. Ramm tried to kiss Delaney but she refused his advances because he had a girlfriend. She asked Ramm to take her home, and Ramm drove her back to her house. (R. 440).

On the way home, Ramm seemed angry or perturbed. (R. 440). Either on the ride there or the ride home, Ramm said that "she" was "ruining this for us." (R. 440, 441-42). Ramm dropped Delaney off at home. (R. 442).

Defense counsel did not cross-examine Delaney. (R. 442).

Brian Mennega, a lieutenant with the Champaign County Sheriff's Office testified. (R. 443). Mennega testified that he participated in the arrest of Jeromy Ramm in the Candlewood subdivision of rural Mahomet. (R. 447-48). Mennega testified that he and other officers chased Ramm along a flight path which was eventually blocked by a second officer driving a marked squad car. (R. 449-50). Once his path was blocked, Ramm was taken into custody. (R. 450-51). After he was taken into custody, he complied with the officers. (R. 451-52).

Todd Gill, a correctional officer for Champaign County testified. (R. 460-61). On September 24, 2015, at 11:50 a.m. he was on duty at the satellite jail of the Champaign County Correctional Center. (R. 461-64).

Ramm was in a cell at the facility with his cellmate, Josh Edwards. (R. 464). Edwards waved his arms to get Gill's attention. (R. 464-65). Edwards said that Ramm was not doing well. (R. 465).

Together with nurses who had been called, Gill entered the cell. (R. 465-66). Ramm was slumped over, and appeared to have trouble breathing with drool coming out of his mouth. (R. 466). There was a five to six inch long welt on the side of his neck. (R. 466-67).

Ramm kept saying that he could not breathe. (R. 467). In response to questions from the nurses, Ramm said: "I fucking tried to kill myself." (R. 467-68). Under his shirt, Ramm had a paper bag which contained a rope like object made out of a torn-up sheet. (R. 468).

Anastasia Franzen testified. (R. 473). She was Jeromy Ramm's ex-wife, and was married to him between 2001 and 2007. (R. 474).

On July 6, 2002, Franzen was with Ramm in the village of Rantoul while he was drinking alcohol. (R. 475). As the two were driving away from the bar, they got into an argument. (R. 475-76). Ramm stopped the car, pulled into an alleyway and began hitting and choking her. (R. 476).

After a while, Ramm drove Franzen home. (R. 476-77). When they got home, Franzen ran to a neighbor's house where the police were called. had suffered bruises and abrasions to her neck and eyes. (R. 477).

At a later point, Franzen told an investigator in the Sheriff's Deputy Office that she had not been truthful when she reported that Ramm had abused her and that she had gotten into a fight with another woman. She said that she said this because Jeromy was threatening her and she needed to get the case dismissed. (R. 478).

Franzen testified to a second incident of domestic violence which took place on June 24, 2003. (R. 478-79). On that date, Franzen picked Ramm up at work. (R. 479). As they were driving home, the two began

arguing. Without objection, Franzen testified that they were arguing because Ramm "had been on a crack binge and was also cheating with numerous women." (R. 479-80).

After the two got home, the argument continued. At approximately 4 a.m., Ramm approached her and asked her if "it was over yet." (R. 480). Franzen brushed him off. (R. 480-81). At that point, Ramm "just lost it." He "exploded." He started hitting her and kicking her. He took a bat and started beating her with it. He also choked her. (R. 481).

Franzen suffered broken ribs and went to the hospital. (R. 481-82). She reported the attack to the Champaign County Sheriff's Office. Afterwards, she wrote a letter to Jeromy Ramm's public defender. (R. 481-82).

On October 19, 2004, Franzen and Ramm were drinking with friends. (R. 483). Ramm and his friends were drinking a lost of alcohol, half gallons. (R. 483-84). Franzen went with Ramm and his friends to a bar named Boomerang's. (R. 485).

When the party arrived at Boomerang's, Ramm decided that he wanted to go to another bar, the Malibu. Franzen told him that she did not want to go. (R. 485-86). The Malibu was also a strip club. (R. 486). Franzen went into the bar and locked herself into a stall, hoping that Ramm would leave. (R. 485).

Ramm came into the ladies' room, kicked the stall door open, grabbed Franzen by the hair, dragged her from the bar, threw her into the car and demanded that she take him and his friends to the Malibu. (R. 486).

Franzen drove the car, with Ramm seated next to her in the front passenger seat. One of Ramm's friends

was in the back seat. Ramm started "pummeling" her. Without objection, she testified that "blood was going everywhere," she was "screaming," and it was a "nightmare." Franzen "blowing" stop signs, but there were no police around. (R. 487).

Eventually, when Ramm and Franzen arrived at the Malibu, Franzen tried to run. (Ramm grabbed Franzen, threw her back into the car, and was hitting her and choking her. Franzen escaped, and ran "straight into the Malibu a bloody mess." Ramm left in Franzen's car. R. 487-88).

Franzen reported the incident to the Urbana police department. (R. 488). She received emergency medical treatment for injuries as a result of Ramm punching, dragging, and choking her. (R. 488-89). Franzen had black eyes, abrasions, scratches, and broken orbital bones. (R. 488).

Without objection, Franzen testified that as a result of these beatings she had to see a neurologist. She had neck surgery from the baseball beating, (R. 489-90).

Also without objection, Franzen testified that she never contacted the Urbana police to say that anything different had happened with respect to the Boomerang and Malibu beating. Defense counsel did not cross-examine Franzen. (R. 490).

Dr. James Park testified. (R. 492). On September 22, 2015, he treated Candace Brown for her injuries. (R. 502-03). She had "contusions of her face, particularly left mouth as well as some periorbital ecchymosis as well as some subconjunctival hemorrhage as well as bruising around the chin area as well as the neck." (R. 503). Park testified the redness in the conjunctiva, the whites of the eyes, would be caused by pressure applied to the neck. (R. 504).

Brown told Park that Ramm has physically attacked her, choked her, lifted her up, and struck her head against the wall multiple times. (R. 505-06). Park testified that Brown's injuries were consistent with the injuries Brown described. (R. 506). He also testified that the photographs of Brown's injuries were consistent with the injuries he saw. (R. 506-13).

Candace Brown testified for a second time as a witness for the defense. (R. 547). She testified that the effects of her injuries lasted between one and three weeks. (R. 547-49). She did not receive any follow-up treatments or medications for pain. (R. 549-50). She did not need any stitches, and did not suffer any broken bones, open wounds, fractures, or memory loss. (R. 550). On cross-examination, she again testified that when Ramm took her around the neck and applied pressure, it obstructed her ability to breathe, causing her to black out and fear for her life. (R. 551-52).

Jacob Ramm testified. He is Jeromy Ramm's son. (R. 553). At the time he testified, he was 14 years old. (R. 559).

On September 21, 2015 and September 22, 2015, Jacob Ramm arrived home from football practice at 7 p.m. Jeromy Ramm was home, but left at 7:30 p.m. to work the night shift. Jacob stayed home with his two year old sister, Rileigh. (R. 554-55).

Jacob went to bed at 10 p.m. He woke up around 1:08 a.m., when he heard the door chime and his father returned home. Jacob went out a few minutes later. His father was on the couch, with his work boots off and Candace Brown was at the door with Rileigh. (R. 556).

Jacob went into the kitchen and got something to drink. (R. 556). He did not see any broken dishes in

the kitchen, nor did he see silverware or pots strewn on the floor or overturned furniture. (R. 562). He heard the door close, and when he came out of the kitchen, his father was still on the couch, but Candace and Rileigh were no longer there. (R. 556).

Candace left the house driving a two door Mustang, which was equipped with Rileigh's car seat. (R. 560-61). Jacob did not see Candace and Rileigh get into the car, but he saw the lights of the Mustang as it pulled out of the driveway. The next day the Mustang was not in the driveway. (R. 575-76).

Jacob fell back asleep at around 1:40 or 1:50 a.m. (R. 556). He did not see Candace that night or the next day. (R. 562-63).

Throughout, Jacob did not hear any noise or commotion. When he saw Candace, there was no bruising on her face or blood on her face. (R. 557). When Rileigh left the house with Candace, neither was crying. Neither Candace or Jacob's father seemed to be angry or upset. (R. 558).

Jacob testified that he lived with his father and Candace Brown for two or three years. (R. 559). His father and Candace had "normal" arguments. If they argued, Candace would leave the house to stay with a friend. (R. 559-60). He never saw his father strike Candace or Candace strike his father. (R. 560).

On cross-examination, Jacob conceded that when he was interviewed by the Urbana police the next day, he told them that he did not see or hear anything. He told them he went to the kitchen, but he did not tell them that he went to get a glass of water or that he saw Rileigh in the house. (R. 574-75).

Jeromy Ramm testified. (R. 582). He swore he did not cause the injuries suffered by Candace Brown as depicted in the photographs. (R. 582, 583).

In September of 2015 Ramm was working at Carle Clinic as a laborer. On September 21, he finished working at 3:30 p.m. (R. 583-84). He arrived home from work at 4 p.m. Candace, Rileigh, and Jacob were all at home. . At 5:10 or 5:15, Jacob left for football practice. (R. 584). Ramm left home again at 7:30 p.m., ostensibly for a second shift of work. (R. 585).

Instead of going to work, Ramm went to Mahomet to meet Kacey Delaney. (R.586-87). He had contacted her on Facebook and was going to meet her in person for the first time. (R. 5870 After driving to Delaney's home and having a drink, Ramm took her to bar in Champaign called Goldy's. (R. 588).

While they were at the bar, Delany received a text message from Candace Brown. The text message asked Ramm whether he was done at the gym or not. (R. 590). Ramm replied to the message, pretending to be Delany and telling Brown that Ramm had a shoulder injury and that he was taking Vicodins for the injury. (R. 592).

Ramm and Delany remained at the bar, and Delany continued to text back and forth with Brown. (R. 592-93). Ramm became uncomfortable with the situation, so he left with Delaney and dropped her off Shein Mahomet between 11:30 and 12. Ramm and Delany did not "engage in anything romantic" that evening. (R. 594).

Ramm arrived back at his home between 12 and 12:30. Candace Brown was at home, sitting on a couch. Brown asked Ramm about work, When Ramm said that work was fine, Brown told him that she knew

that he was not at work and then said that she would "do him in" if she caught him cheating on her. (R. 595).

The argument continued. Brown told Ramm that if she caught him cheating on her, he was going to "pay for it." She was "highly upset," threatened to take Rileigh away, and began packing up. (R. 597). The argument never got "physical." (R. 597-98).

At around 1:00 a.m. Brown left the house, driving away in the Mustang with Rileigh. (R. 602-03). After Brown was gone, Ramm checked on Jacob and then went to sleep. He did not have sex with Brown that evening. (R. 604).

When Ramm was arrested, he had no marks, scratches or bruises on his hands, or any blood on his clothes. (R. 598). When Brown left she had not marks, scratches, or bruises. (R. 604).

Ramm testified that during the time he lived with Candace Brown he never hit her. (R. 600). Brown struck him on a few occasions, and in 2011 she was arrested for domestic battery but Ramm never pursued the charges. (R. 600-01). In that incident, Brown punched Ramm in the face. (R. 601-02).

Ramm conceded that he had become habituated to Vicodin which he began taking after shoulder surgery (R. 606), but denied that it caused him to become angry or altered his mood. (R. 607).

Ramm denied that everything that Anastasia Franzen had accused him of was true. (R. 613). In 2010, following his separation from her, he took a six month anger management course. (R. 614). He also had to undertake a parenting course, individual counseling with Jacob Ramm, along with substance abuse and drug testing. (R. 615). He had to take random drug

tests for two years. (R. 615-16). At the end of this period he received full custody of Jacob Ramm. (R. 616).

On cross-examination, the prosecutor referenced Ramm's statement that not everything that Anastasia Franzen had said was true, and elicited from him that he had pled guilty to the 2003 and 2004 incidents. (R. 618).

Ramm's post-trial motion was denied and he was sentenced to 20 years imprisonment.

The First Direct Appeal

On the first direct appeal, the defendant argued that (1) section 115-7.4, which authorizes the admission of evidence of other offenses of domestic violence of defendants accused of domestic violence, is unconstitutional; (2) the trial court erroneously allowed the State to introduce evidence of three prior domestic violence incidents; and (3) the trial court failed to conduct a meaningful inquiry into his claims of ineffective assistance of counsel and counsel should be appointed for a *Krankel* hearing. Because the appellate court agreed that the case should be remanded for a preliminary *Krankel* hearing, the court did not reach Jeromy Ramm's other claims. (App. 16).

Evidentiary Hearing on the Motion for New Trial After Remand

At the hearing on the motion for a new trial, John Charles Litchfield testified. He was employed installing swimming pools. (R. 920). He knew both Jeromy Ramm and Candace Brown. (R. 921-22).

On November 19, 2019 Litchfield executed an affidavit. (R. 922-23).

In September of 2015, Litchfield was with Jeromy Ramm when he was taken into custody on the case. At that time, Jeromy Ramm was working for Litchfied. (R. 923).

On December 26, 2015, the day after Christmas, Litchfield ran into Candance Brwon at the Circle K gas station at Philo Road in Urbana, Illinois. (R. 923). Litchfield had a conversation with Candace. (R. 923-24).

Candance was very "emotional." (R. 924). She told Litchfield that she had been loyal to Jeromy Ramm for years and that he had cheated on her. She said that she was going to "bury his ass in the penitentiary." (R. 924).

Candace Brown told Litchfield that she had paid "some black girl" 50 dollars to "whoop her ass." She said that the black girl "took it too far." Candace said that was going to "get Jeromy for this," and that it was "worth it to see him go to jail and rot." In a telephone call, Litchfield told Jeromy Ramm about his conversation with Candace. (R. 924, 925).

Litchfield also spoke with Candace and told her that what she had done was "wrong." She agreed, but said that she was "mad." She said: "People do things when they have a broken heart, John. And I can't change it now. He cheated on me. I never cheated on him. I never thought about cheating on him." (R. 924-25).

Both Jeromy Ramm and Jeromy Ramm's father, William Ramm, told Litchfield that Jeromy Ramm's attorney, Alfred Ivy, would be contacting him. Litchfield left Alfred Ivy four messages, but never heard back from him. (R. 926).

On cross-examination, Litchfield conceded that he had never contacted the police or that States Attorney about what Candace Brown had told him. (R. 927-28).

Jason Parrish testified. (R. 933-34). He testified that he met Jeromy Ramm on the day of the incident, about 9 or 9:30 p.m. Ramm appeared to be sober. (R. 936).

Parrish had heard things about Candace Brown, which were detailed in his affidavit. (R. 934-35). He was never contacted by attorney Alfred Ivy (R. 937). He never gave his information to the police or the States Attorney. (R. 938).

Alfred Ivy testified as a witness for the State. (R. 959). He was Jeromy Ramm's attorney for case 15-CF-1371. (R. 960).

Ivy testified that he was not aware of either John Litchfield or Jason Parrish. (R. 961-62). He claimed that Jeromy Ramm never told him about either of those witnesses. (R. 962). He also claimed that Jeromy Ramm was the only person who told him that Candace Brown was fabricating the allegation that Ramm had attacked her. (R. 962). Lastly, Ivy claimed that he spoke with Candace Brown multiple times and that he found her statements about the incident to be credible and consistent. (R. 963-64, 967-79). She never said that she made up the incident. (R. 964, 965). She never said that she had paid someone else to beat her up. (R. 967).

Ivy claimed that he met with William Ramm many times before Ramm's death, and that William Ramm never told him that Candace Brown was fabricating the incident. (R. 954-65).

Ivy claimed that he discussed the testimony of Anastasia Franzen with Jeromy Ramm and explained to

him that since he had pled guilty to the incident, it was not possible to attack her credibility. (R. 970). He would not have introduced any information about Jeromy Ramm's drug use, because he thought that information was better suited to a sentencing hearing than to a trial. (R. 972-73).

Attorney Ivy did not move for a change of venue because he was not aware of any pretrial publicity in the matter. (R. 974). He did not get the transcripts of the OP hearing because, based upon the OP itself, he did not believe that there would be significant variations between her testimony at the OP hearing and her testimony at trial. (R. 975-77).

On cross-examination, Ivy claimed that he did not have his trial file in the case because the file was destroyed by a flood in his basement. (R 982).

Jeromy Ramm testified. He viewed Candace Brown's testimony, and her testimony was not accurate in any respect. (R. 988).

Jeromy Ramm discussed the information about his counseling with his first attorney, Walter Ding. This information was relevant not only to his sentencing but also to the propensity motion. (R. 989). Attorney Ding did not in fact introduce that evidence. (R. 990).

Attorney Ivy visited Jeromy Ramm twice while Ramm was in jail, once before he was hired, and once after Jereomy Ramm was convicted. (R. 990-91). When Ivy visited Ramm after Ramm was convicted, Ramm noticed that Ivy had unopened letters from Ivy in his briefcase. (R. 991-92).

Ramm testified that both John Litchfield and Ramm's father, William Ramm, told him that Candace Brown was recanting her testimony. (R. 993-94).

The trial court denied the motion for new trial.

With respect to the argument that section 7.4 was unconstitutional because it did not provide defendant with the right to present non-propensity evidence, the trial court ruled that while the statute did not address rebuttal evidence it did not violate due process because "it not prevent the defense form engaging in a cross-examination, confronting the victim's bias, prejudice, or motive to testify falsely." (R. 1039). The court also noted that under *People v. Ward*, 2011 IL 108690, the defense would have the right to introduce evidence of an acquittal on 7.4 evidence. (R. 1039).

With respect to the admission of the 7.4 evidence, the trial court found that the danger of undue prejudice did not substantially outweigh the probative value of Anastasia Franzen's testimony. (R. 1046). The trial court also found that the 7.4 evidence was not presented in excessive detail. (R. 1048-49).

With respect to the claims of ineffective assistance of counsel, the court found that there was no credible evidence that attorney Ivy was aware of the evidence from William Ramm, John Litchfield., and Jason Parrish. (R. 1049-55). With respect to claims 6,7, 8. 9, 10, 11, and 12 in the amended motion for new trial, the trial court held that these claims were waived because they had not been supported by legal authority. (R. 1054-55).

The Decision on Appeal

On appeal, the appellate court rejected the constitutional challenge to section 115-7.4 on the ground that since Jeromy Ramm did not seek and was not denied a right to put on rebuttal to the State's propensity evidence he did not have standing to challenge the facial validity of section 115-7.4. (App. 21-23).

REASONS FOR GRANTING THE PETITION

I. This Court Should Grant the Petition to Determine Whether a State Statute Which Allows the Prosecution to Present Evidence of a Criminal Defendant's Criminal Propensity But Does Not Permit the Defendant to Present Evidence of Non-Propensity Violates Due Process

This Court should grant the petition to determine whether a state can admit evidence of a criminal defendant's general propensity to commit a crime without giving him the right to rebut that evidence with proof that he lacks that propensity. This question is of general importance, particularly because of the increasing popularity of statutes which allow the prosecution, contrary to the usual rules of evidence, to admit propensity evidence in particular kinds of cases, generally cases involve violence or sexual assault.

Illinois has enacted, two such statutes, section 115-7.4 of the Criminal Code (725 ILCS 5/115–7.4 (West 2014)) and section 115-7.3 of the Criminal Code (725 ILCS 5/115–7.4 (West 2014)).

Section 7.4 provides the following:

> (a) In a criminal prosecution in which the defendant is accused of an offense of domestic violence * * *, evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant.

> (b) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:
>
> (1) the proximity in time to the charged or predicate offense;
>
> (2) the degree of factual similarity to the charged or predicate offense; or
>
> (3) other relevant facts and circumstances.
>
> (c) In a criminal case in which the prosecution intends to offer evidence under this Section, it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.
>
> (d) In a criminal case in which evidence is offered under this Section, proof may be made by specific instances of conduct, testimony as to reputation, or testimony in the form of an expert opinion, except that the prosecution may offer reputation testimony only after the opposing party has offered that testimony.

Section 7.3, which applies to sex cases, is significantly different. Section 7.3 provides:

> (a) This Section applies to criminal cases in which:(1) the defendant is accused of predatory criminal sexual assault of a

child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, child pornography, aggravated child pornography, criminal transmission of HIV, or child abduction as defined in paragraph (10) of subsection (b) of Section 10-5 of the Criminal Code of 1961 or the Criminal Code of 2012;(2) the defendant is accused of battery, aggravated battery, first degree murder, or second degree murder when the commission of the offense involves sexual penetration or sexual conduct as defined in Section 11-0.1 of the Criminal Code of 2012;1 or(3) the defendant is tried or retried for any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child.

(b) If the defendant is accused of an offense set forth in paragraph (1) or (2) of subsection (a) or the defendant is tried or retried for any of the offenses set forth in paragraph (3) of subsection (a), evidence of the defendant's commission of another offense or offenses set forth in paragraph (1), (2), or (3) of subsection (a), *or evidence to rebut that proof or an inference from that proof, may be admissible* (if that evidence is otherwise admissible under the rules of evidence) and may be

> considered for its bearing on any matter to which it is relevant.
>
> ***
>
> d) In a criminal case in which the prosecution intends to offer evidence under this Section, it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.
>
> (e) In a criminal case in which evidence is offered under this Section, proof may be made by specific instances of conduct, testimony as to reputation, or testimony in the form of an expert opinion, except that the prosecution may offer reputation testimony only after the opposing party has offered that testimony.

(Emphasis supplied).

Because section 7.4, unlike section 7.3 on its face does not provide for a defense right of rebuttal, on its face, it violates the due process clause of the fourteenth amendment to the United States Constitution and implicates fundamental constitutional rights.

Applying the rational basis test, the Illinois courts have previously upheld section 7.4 against due process and equal protection challenges but has never, until this case, considered whether the absence of a right to rebuttal implicates fundamental

constitutional rights. See *People* v. *Dabbs*, 239 Ill. 2d 277, 293–94 (2010)(due process); *People* v. *Jenk*, 2016 IL App (1st) 143177, ¶ 33, *reh'g denied* (Sept. 20, 2016), *appeal denied*, 80 N.E.3d 4 (Ill. 2017).

Section 7.4 contains a fundamental flaw which was not raised or noted in either *Dabbs* or *Jenk*. In both those cases, the courts relied upon the assumption that section 7.4 need only be rationally related to a legitimate governmental purpose, because it did discriminate against a suspect class or implicate fundamental constitutional rights. *Dabbs*, 239 Ill. 2d at 292; *Jenk*, at ¶ 29. Both cases also relied upon the Illinois Supreme Court case of *People* v. *Donoho*, 204 Ill. 2d 159, 177 (2003), which held that the similar statute allowing for admission of prior sex crimes to prove propensity, 725 ILCS 5/115-7.3, did not implicate a fundamental right.

In fact, however, the wording of section 7.4 is significantly different from section 7.3 and the difference in the wording means that section 7.4, unlike section 7.3, does implicate fundamental constitutional rights.

The significant difference between section 7.3. and section 7.4 is that section 7.3 provides that once the prosecution introduces evidence of the defendant's propensity to commit a sexual crime, the defendant may "*evidence to rebut that proof or an inference from that proof*." Section 7.4, on the other hand, merely provides that the prosecution may introduce "evidence of the defendant's commission of another offense or offenses of domestic violence" with no provision for a right of rebuttal.

The omission of a defense right of rebuttal with counter evidence implicates the fundamental right of

all criminal defendants to due process and is therefore unconstitutional.

The general rule is that the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *Crane* v. *Kentucky,* 476 U.S. 683, 690 (1986). This right is abridged by evidence rules that "infring[e] upon a weighty interest of the accused" and are " 'arbitrary' or 'disproportionate to the purposes they are designed to serve.' " *United* v. *Scheffer*, 523 U.S. 303, 308 (1908).

Under this principle, this Court has held a wide variety of state restrictions upon defense evidence to be violative of due process. See *Holmes* v. *South Carolina*, 547 U.S. 319, 319–20 (2006)(exclusion of evidence of third party guilt where there was "strong evidence" of defendant's guilt); *Rock* v. *Arkansas*, 483 U.S. 44, 61 (1987)(exclusion of "hypnotically refreshed" testimony of defendant); *Crane* v. *Kentucky*, 476 U.S. 683, 691 (1986)(exclusion of evidence bearing upon the credibility of defendant's confession); *Chambers* v. *Mississippi,* 410 U.S. 284, 295 (1972) (preclusion of defense evidence under state hearsay rule); *Washington* v. *Texas*, 388 U.S. 14, 23 (1967)(exclusion of testimony of accomplice or co-defendant).

Because section 7.4 precludes a defense right of rebuttal to evidence of a propensity for domestic violence evidence, it is unconstitutional and must be struck down.

And although this is a facial challenge to section 7.4, it should be noted that Jeromy Ramm attempted, without success, to persuade his defense attorneys to introduce non-propensity evidence in the form of his counseling records.

The trial court rejected the challenge on the ground that the statute does not prevent a defendant from cross-examining 7.4 witnesses or, purportedly, introducing evidence of an acquittal. But neither of these rights can substitute for a right to present non-propensity evidence.

The appellate court made a different error. The appellate court concluded that Jeromy Ramm did not have standing because he had not sought to introduce non-propensity evidence, but the court failed to grasp that if the statute was facially unconstitutional, the propensity evidence was wrongfully admitted and the admission of that evidence provided Jeromy Ramm with standing to make the facial challenge.

Moreover, this court has held that it need not apply prudential standing limitations to review of a state statute. See *City of Chicago* v. *Morales*, 527 U. S. 41, 55 (1999).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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