

**NOTICE**

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2025 IL App (4th) 241024-U

NO. 4-24-1024

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 27, 2025

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Boone County
RICHARD P. ROWLAND,	)	No. 24CF80
Defendant-Appellee.	)	
	)	Honorable
	)	Ryan A. Swift,
	)	Judge Presiding.

---

JUSTICE GRISCHOW delivered the judgment of the court.

Justices Knecht and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed, holding the trial court’s ruling on defendant’s motion *in limine* was an abuse of discretion.

¶ 2 Defendant, Richard P. Rowland, filed a motion *in limine*, seeking to exclude certain statements he made during a police interrogation regarding allegations of the criminal sexual assault of a minor, specifically, seeking exclusion of statements he made admitting that he had masturbated in the bathroom in the home where the alleged assault took place. The trial court granted defendant’s motion, ruling any reference to “masturbation” was substantially more prejudicial than probative, pursuant to Illinois Rule of Evidence 403 (eff. Jan. 1, 2011). The State’s motion to reconsider that decision was denied in part, and this appeal followed. The State sought an interlocutory appeal pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Apr. 15, 2024) by filing a certificate of impairment, certifying the court’s ruling on defendant’s motion *in limine*

substantially impaired its case. We reverse.

¶ 3

## I. BACKGROUND

¶ 4

Defendant was charged by indictment with two counts of criminal sexual assault. 720 ILCS 5/11-1.20(a)(1), (a)(3) (West 2022). Count I alleged defendant committed the offense of criminal sexual assault when “defendant committed an act of sexual penetration with K.A.T., DOB: 01/20/09, in that by the use of force said defendant placed his penis in the vagina of K.A.T.” See *id.* § 11-1.20(a)(1). Count II alleged defendant committed criminal sexual assault when “defendant, a family member of K.A.T., DOB: 01/20/09, committed an act of sexual penetration with K.A.T., who was under 18 years of age when the act was committed, in that said defendant placed his penis in the vagina of K.A.T.” See *id.* § 11-1.20(a)(3).

¶ 5

On March 19, 2024, Detective Richard Zapf of the Belvidere Police Department was notified of a victim sensitive interview completed by Detective Ethan Berillo of the Crystal Lake Police Department. K.A.T. disclosed defendant, her step-grandfather, sexually assaulted her at a family pool party sometime between July 1, 2022, and September 20, 2023, when she was 13 or 14 years old. K.A.T. detailed the assault occurred when she went into the bathroom at her cousin’s house to change from her bathing suit into dry clothing. Defendant followed her into the bathroom, put his penis inside her, and threatened to kill K.A.T. if she told her parents. After the assault, defendant left the bathroom, while K.A.T. remained and cried. K.A.T. told police she was assaulted repeatedly by defendant. The assaults were more frequent before defendant’s family relocated from Boone County to McHenry County three years earlier. Defendant always threatened harm to K.A.T. if she disclosed the abuse. K.A.T. initially refrained from reporting the abuse due to feelings of fear and shame.

¶ 6

The case was set for trial on July 24, 2024. Prior to trial, both the State and

defendant filed numerous motions *in limine*. Defendant's first motion *in limine* is the only motion at issue on appeal.

¶ 7 A. The Trial Court's Ruling on Defendant's First Motion *in Limine*

¶ 8 Defendant's first motion *in limine* sought to bar evidence in police reports "wherein Defendant is described to have admitted that he masturbated in the home" where the alleged assault took place. Defense counsel argued, pursuant to Illinois Rule of Evidence 403 (eff. Jan. 1, 2011), defendant's confession he masturbated in the home was substantially more prejudicial than probative. Defense counsel argued the State had "no evidence to disprove the masturbation," yet intended "to claim it was a lie defendant concocted to potentially explain why his DNA might be present" in the bathroom where the events occurred. The defense asked the trial court to enter an order barring the State and witnesses from referring to details or information relating to this confessed conduct.

¶ 9 At the hearing on defendant's motion, defense counsel stated defendant was interviewed by the police and asked if there was any reason his semen might be present in the house where the alleged assault took place. Defendant admitted he had masturbated in a specific bathroom on the lower level in the house. Defense counsel argued the police questioning "was essentially a trap" and there was no evidence that the police "looked into the truth of it beyond that." The trial court inquired whether police questioning defendant in this way was an investigative technique. Defendant's counsel agreed it was but argued:

"There's no ability to refute [defendant's] claim that he masturbated in there, but I don't think his masturbation practices are particularly relevant or—it's certainly a lot more prejudicial than it is probative of anything if it was a response to a made-up question, and when he did respond, he put his DNA in an entirely distinct

bathroom from the one that they were thinking was in play.”

¶ 10 In response, the State argued defendant made an admission pursuant to investigative techniques, a common practice in these types of cases. The question posed, specifically, why defendant’s semen would be “located in the area where this event” occurred, was typical in this type of case. The State asserted, while defendant’s story about masturbating at his stepdaughter’s house during a children’s party could be prejudicial, it was not subject to exclusion unless the prejudice overcame the probative value. The State claimed the prejudice was minimal, as the statement was an admission by defendant that the jury should consider when assessing credibility. Notably, later in the interview, defendant tried to deny the admission. Defendant admitted his semen might be found at the house only after detectives told him the interview was recorded, including his earlier admission.

¶ 11 Defendant’s counsel replied there was no evidence compiled to suggest defendant did not honestly answer officers’ question about why his semen might be found in the house. Counsel argued allowing defendant’s admission to such acts without linking them to this case was substantially more prejudicial than probative.

¶ 12 The trial court granted defendant’s motion. Upon reviewing Rule 403, the court acknowledged the relevance of the statement. See *id.* The court concluded that the confession was not another bad act and held that its prejudicial impact outweighed any probative value. The State requested permission to revisit the issue after conducting additional research. The court agreed to hear anything it may not have already considered.

¶ 13 B. The Trial Court’s Ruling on the State’s Motion to Reconsider

¶ 14 Following the trial court’s ruling, the State filed “People’s Motion to Reconsider Defense First Motion *in Limine*.” The State argued defendant’s admission he masturbated in the

bathroom should be admissible in the State's case in chief as a partial admission, as well as a false exculpatory statement made to counter evidence defendant believed detectives had found. The State noted at the hearing on the motion the court watched the interrogation video and argued, "[T]here is a [*sic*] significant nuance and subtleties in the defendant's statements which should be considered" by the jury to determine defendant's credibility. Finally, the State argued the statement was not being offered to produce sympathy, hatred or contempt by the trier of fact, but was highly probative to show the defendant's consciousness of guilt, which directly impacted his credibility if not believed. There is no evidence that the police investigated the presence of semen in the bathroom. Instead, defendant presumed his semen could be present and admitted as much to the police.

¶ 15 Defense counsel argued the general rule about allowing a false exculpatory statement into evidence only applied when the statement was provably false. Moreover, there was no evidence defendant's admission was false, and it was unrelated to the facts of the case.

¶ 16 The trial court partially denied the State's motion to reconsider its ruling on defendant's first motion *in limine*. The court commented "I think the probative value is too thin to outweigh the possibility of substantial prejudice" to defendant. Therefore, the court ruled any evidence regarding defendant's admission to masturbating in the bathroom was barred. Everything else was "fair game." The court noted there were other ways to introduce the evidence, such as stating defendant admitted to being in the bathroom and using the bathroom. The State would be allowed to ask if defendant's DNA was in the bathroom and could highlight the inconsistencies in his statements to allow the jury to judge his credibility. The court also allowed the interrogation video to be played to the jury, but any portion pertaining to masturbation would have to be redacted. In explaining why it was barring the statements, the court explained, "I understand it's a

bodily function. My fear is if a bunch of strangers hear about how somebody went into a relative's house and masturbated in the bathroom, it would elicit somewhat of a visceral reaction that simply would not be fair in this case.”

¶ 17 The next day the State filed a notice of appeal, along with a certificate of impairment. In light of the State's appeal, on July 24, 2024, pursuant to Illinois Supreme Court Rule 604(a)(3) (eff. Apr. 15, 2024), defendant was released from custody pending the instant appeal.

## ¶ 18 II. ANALYSIS

### ¶ 19 A. Jurisdiction Under Rule 604(a)(1)

¶ 20 As an initial matter, we must address whether this court has jurisdiction to consider this interlocutory appeal. The State argues the trial court's partial grant of defendant's first motion *in limine* had the substantive effect of suppressing evidence, hence invoking this court's jurisdiction pursuant to Rule 604(a)(1) and article VI, section 6, of the Illinois Constitution. Ill. S. Ct. R. 604(a)(1) (eff. Apr. 15, 2024); Ill. Const. 1970, art. VI, § 6. Defendant did not address the matter of jurisdiction in his brief.

¶ 21 Rule 604(a)(1) provides, in pertinent part, “the State may appeal only from an order or judgment the substantive effect of which results in \*\*\* suppressing evidence.” Ill. S. Ct. R. 604(a)(1) (eff. Apr. 15, 2024). When appealing a pretrial suppression order, the State must certify to the trial court that the suppression substantially impairs the State's ability to prosecute the case. *People v. Young*, 82 Ill. 2d 234, 247 (1980). “In examining a certificate of substantial impairment, this court ‘rel[ies] solely upon the good-faith evaluation by the prosecutor of the impact of the [appealable] order on his case,’ and it is not the role of reviewing courts to second-guess that evaluation.” *People v. Sneed*, 2023 IL 127968, ¶ 38. This court's role is not to second guess the

prosecutor's good faith evaluation unless the trial court's order has the substantive effect of suppressing evidence. *Id.* In this case, the State evaluated the effect of the trial court's order and certified that the order substantially impaired its ability to prosecute the case. We accept that good-faith evaluation and conclude we have jurisdiction to consider the appeal.

¶ 22

#### B. Motion *in Limine*

¶ 23

Evidence is considered relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Ill. R. Evid. 401 (eff. Jan. 1, 2011). “A motion *in limine* is addressed to a court's inherent power to admit or exclude evidence.” *People v. Zimmerman*, 2018 IL App (4th) 170695, ¶ 134. These motions are designed, in advance of trial, to bring to the attention of the trial court evidence that is potentially irrelevant, inadmissible, or prejudicial and obtain a ruling from the court before trial. *Id.* Even though the title—motion *in limine*—suggests that such motions may be used only to seek to bar or limit evidence, such motions are used by the proponent of the evidence to obtain a pretrial ruling in appropriate circumstances, such as when the State wishes to present the trial court with other-crimes evidence the State will want to introduce at trial. See Michael H. Graham, Cleary & Graham's Handbook of Illinois Evidence § 103.9, at 27 (6th ed. 1994). As such, motions *in limine* are useful in saving time and judicial efficiency, as they resolve difficult evidentiary issues prior to trial, can encourage settlement or guilty pleas, and streamline preparations for trial. *People v. Owen*, 299 Ill. App. 3d 818, 822-23 (1998).

¶ 24

A trial court's ruling on a motion *in limine* regarding the introduction or exclusion of evidence will not be disturbed on appeal absent an abuse of discretion. *People v. Richter*, 2012 IL App (4th) 101025, ¶ 97. An abuse of discretion will be found when a decision is arbitrary,

fanciful, or unreasonable or when the decision is one with which no reasonable person would agree. *People v. Inman*, 2023 IL App (4th) 230864, ¶ 10.

¶ 25 In this case, the State argues the trial court abused its discretion in barring evidence that defendant admitted to an incident of masturbation as an explanation to police inquiry about whether his semen would be found in the home where the sexual assault allegedly occurred. The State contends defendant's statement constituted an admission and a false exculpatory statement and should have been allowed as part of its case in chief. We agree.

¶ 26 "An admission is a statement by an accused of fact or facts which, when taken in connection with proof of other facts, may lead to an inference of guilt, but from which guilt does not necessarily follow." *People v. Fulton*, 68 Ill. App. 3d 915, 926 (1979). It has been consistently held that a statement, even though exculpatory, "may lead to an inference of guilt and qualify as an admission." *People v. Houseton*, 141 Ill. App. 3d 987, 994 (1986). Furthermore, a false exculpatory statement has independent probative value as evidence of a defendant's guilt and is admissible. *People v. Marshall*, 2025 IL App (4th) 240368, ¶ 48. A false exculpatory statement is made to "attempt to evade criminal liability." *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 35. The definition of "exculpatory" is "'[c]learing or tending to clear from alleged fault or guilt; excusing.'" *People v. Conley*, 3 Ill. App. 3d 75, 79 (1971) (quoting Black's Law Dictionary 675 (4th rev. ed. 1968)). A lie does not constitute a false exculpatory statement if it is not directly related to the offense charged. See *People v. Wynder*, 2024 IL App (1st) 221875, ¶ 41; *Sanchez*, 2013 IL App (2d) 120445, ¶ 35.

¶ 27 In this case, defendant's statement admitting to masturbating in the bathroom where the alleged crime occurred undoubtably was an admission of fact which, when taken in connection with other facts, led to an inference of guilt. A review of the interrogation video showed defendant



tried to exculpate himself of the alleged criminal conduct by providing an explanation for why his semen would be found in the bathroom. Defendant provided a detailed account of having previously masturbated in the bathroom of the home where the alleged sexual assault took place. During the interrogation, the police directed defendant's attention to an incident involving K.A.T. in a specific bathroom during a pool party at her cousin's house. The police were testing defendant to observe his response to their questioning. The question posed to defendant, which the officers knew to be false, elicited a statement from defendant to explain why his semen would be found (because he assumed his semen was found there based on the question). After hearing defendant's reasoning, the police questioned him further, persisting they did not believe his explanation and suggesting defendant was merely offering excuses.

¶ 28 Whether defendant was truthful in his account of previously masturbating in the bathroom or whether he falsely stated it as an explanation for the presence of his semen in the bathroom, the result is the same—defendant admitted to conduct as a way to explain away a fact presented to him and evade criminal liability. The admission was based on a false premise (that his semen was found in the bathroom). Defendant's revelation, while not a confession, since it did not constitute direct acknowledgment of guilt of the specific crimes the police were investigating, was nonetheless an admission and could be used as such. During the interview, defendant was inconsistent with his story, suggesting it was a fictitious attempt to explain away the State's false premise (stating one incident of masturbation occurred during a party while the children were in the pool and then claiming it occurred while his wife and daughter went to the store with the children). Furthermore, a direct link to the alleged assault can be inferred since those statements were made in response to the police questing him regarding those assaults. This, along with our review of the interrogation video, supports the conclusion that defendant's admission was a false

exculpatory statement. As such, defendant's statement was relevant and clearly had probative value as evidence of consciousness of guilt. Again, a false exculpatory statement, which is, in itself, evidence of consciousness of guilt, may serve as circumstantial evidence to support a conviction. *Sanchez*, 2013 IL App (2d) 120445 ¶ 35.

¶ 29           However, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Ill. R. Evid. 403 (eff. Jan 1, 2011). In this case, we conclude the trial court abused its discretion in determining defendant's statements were more substantially prejudicial than probative.

¶ 30           Defendant's statements which, when taken in connection with proof of other facts, may establish an inference of guilt of the charges against him, making his statements highly probative, which the jury should be allowed to accept or reject. Defendant himself denied that his private act of masturbation was wrong. Instead, he offered it as an alternative explanation as to why his semen would be found in the bathroom. The jury is not obligated to believe exculpatory testimony by a defendant or his witnesses, but they should be afforded the opportunity to weigh the evidence and make that decision.

¶ 31           Further, we disagree with the trial court's conclusion that the State had other ways of presenting the excluded evidence to the jury. The court barred any reference to masturbating or the "consequences of masturbating," explaining, "I don't want to get into sperm, semen, ejaculating." Instead, the court indicated the State could present evidence that defendant "used the bathroom and simply couch it as just generic used the bathroom—I just don't want to get into what he actually did in the bathroom." The purpose of admitting the statements was to not only place him in the bathroom where the alleged offenses took place, but to reveal the falsity of his statements to explain away the possible presence of his semen in the bathroom, thereby revealing

his consciousness of guilt. Thus, defendant's statements were highly probative and not substantially outweighed by the recognized prejudice. The limitations placed on the evidence, including the necessity to significantly redact the police interrogation video, improperly prevented the State from prosecuting its case. Defendant's statements, when taken in connection with proof of other facts, may establish an inference of guilt of the charges herein, which the jury should be allowed to weigh. The jury is not obligated to believe defendant's exculpatory testimony but should have the opportunity to evaluate all the evidence. As such, the decision to grant defendant's motion *in limine* regarding this evidence was an abuse of discretion.

¶ 32

### III. CONCLUSION

¶ 33 Because the trial court erred in excluding defendant's statements, we reverse the court's ruling on the motion *in limine* and hold the statements should be admitted as false exculpatory statements.

¶ 34 Reversed.