No. 130585

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 5-22-0492.
Plaintiff-Appellant,	)	There on appeal from the Circuit Court of the Twenty-Fourth Judicial Circuit, Perry County, Illinois, No. 21-CF-87.
-vs-	)	
ANZANO P. CHAMBLISS,	)	Honorable Jeffrey K. Watson, Judge Presiding.
Defendant-Appellee.	)	

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Whether the trial court's failure to provide Anzano Chambliss with a constitutionally required probable cause hearing either by an indictment or preliminary hearing prior to trial was structural error?

STATUTES AND RULES INVOLVED

CONSTITUTIONAL PROVISIONS, RULES AND STATUTES INVOLVED

Ill. Const. 1970, Art. VI, § 7.
Relevant Section:

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

Ill. S. Ct. Rule 615(a), The Cause on Appeal.

Insubstantial and Substantial Errors on Appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.

725 ILCS 5/111-2, Commencement of prosecutions.
Relevant Section:

(a) All prosecutions of felonies shall be by information or by indictment. No prosecution may be pursued by information unless a preliminary hearing has been held or waived in accordance with Section 109-3 and at that hearing probable cause to believe the defendant committed an offense was found, and the provisions of Section 109-3.1 of this Code have been complied with.

725 ILCS 5/109-3, Preliminary Examination.
Relevant Sections:

(a) The judge shall hold the defendant to answer to the court having jurisdiction of the offense if from the evidence it appears there is probable cause to believe an offense has been committed by the defendant, as provided in Section 109-3.1 of this Code, if the offense is a felony.

(b) If the defendant waives preliminary examination the judge shall hold him to answer and may, or on the demand of the prosecuting attorney shall, cause the witnesses for the State to be examined. After hearing the testimony if it appears that there is not probable cause to believe the defendant guilty of any offense the judge shall discharge him.

...

(e) During preliminary hearing or examination the defendant may move for an order of suppression of evidence pursuant to Section 114-11 or 114-12 of this Act or for other reasons, and may move for dismissal of the charge pursuant to Section 114-1 of this Act or for other reasons.

725 ILCS 5/109-3.1. Persons Charged with Felonies.
Relevant Sections:

(a) In any case involving a person charged with a felony in this State, alleged to have been committed on or after January 1, 1984, the provisions of this Section shall apply.

(b) Every person in custody in this State for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand Jury as provided in Section 111-2, within 30 days from the date he or she was taken into custody. Every person on bail or recognizance for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand Jury as provided in Section 111-2, within 60 days from the date he or she was arrested.
The provisions of this paragraph shall not apply in the following situations:
...
(3) when a competency examination is ordered by the court;
...
(c) Delay occasioned by the defendant shall temporarily suspend, for the time of the delay, the period within which the preliminary examination must be held. On the day of expiration of the delay the period in question shall continue at the point at which it was suspended.

725 ILCS § 5/114-1. Motion to dismiss charge.
Relevant Sections:

(a) Upon the written motion of the defendant made prior to trial before or after a plea has been entered the court may dismiss the indictment, information or complaint upon any of the following grounds:
...
(11) The requirements of Section 109-3.1 have not been complied with.

(b) The court shall require any motion to dismiss to be filed within a reasonable time after the defendant has been arraigned. Any motion not filed within such time or an extension thereof shall not be considered by the court and the grounds therefor, except as to subsections (a)(6) and (a)(8) of this Section, are waived.
...
(e) Dismissal of the charge upon the grounds set forth in subsections (a)(4) through (a)(11) of this Section shall not prevent the return of a new indictment or the filing of a new charge, and upon such dismissal the court may order that the defendant be held in custody or, if the defendant had been previously released on pretrial release, that the pretrial release be continued for a specified time pending the return of a new indictment or the filing of a new charge.

STATEMENT OF FACTS

Pretrial

Anzano Chambliss was arrested without a warrant after police were called to the scene of a fight near a funeral home in DuQuoin. (R.224-25,227) Mr. Chambliss was taken into custody and charged by information with three counts of aggravated battery for allegedly causing great bodily harm to Emily Barnes and for striking both Emily Barnes and Carolyn Spell on a public way. (C.14-15)

When he was arrested, Mr. Chambliss had a misdemeanor case pending in the same county with appointed counsel. (R.3) Misdemeanor counsel appeared by phone, and the court appointed him in this felony. (R.3-4) Neither the State nor Mr. Chambliss participated in the phone call with counsel and the court. (R.3)

During the call, the court confirmed with counsel that a fitness evaluation had been ordered in the pending misdemeanor, and counsel requested a fitness evaluation order in this case as well. (R.3) Counsel told the court that Mr. Chambliss' current behavior is similar to the times when fitness questions were raised in the past. (R.4) Counsel also advised the trial court that the State was in agreement with the entry of a fitness order. (R.6) The court separately raised the issue of fitness, saying that the jail advised that Mr. Chambliss could not appear in court in person or on Zoom, but did not elaborate. (R.4) The court entered an order for a fitness evaluation by Dr. Peterson. (C.16)

The court noted that raising the issue of fitness would delay the preliminary hearing. (R.4) Counsel responded that he and the State agreed that the fitness

evaluation order would necessarily cause the delay of a preliminary hearing. (R.5-6)

Mr. Chambliss personally appeared at the next court hearing, which began with an arraignment. (R.9) Counsel waived formal reading of the charges and the court entered a plea of not guilty. (R.10)

The court then advised counsel that it received information from Dr. Peterson that Mr. Chambliss had refused to participate in the ordered fitness evaluation. (R.9) The court also received letters from Mr. Chambliss that raised the issue of fitness in the court's mind. (C.17,18,27,28,31,32,33,45,R.10,12) The court told Mr. Chambliss that another fitness evaluation order was being entered, and Mr. Chambliss told the court that he did not want to speak to Dr. Peterson. (R.12-13) The court told counsel the case would be set over for a preliminary and a fitness hearing when Mr. Chambliss interrupted with additional refusals to talk to Dr. Peterson. (R.12-13) Mr. Chambliss was removed from the courtroom for being disruptive. (R.13) The court advised counsel to contact Dr. Peterson about making another attempt to evaluate Mr. Chambliss. (R.13-14)

The court entered a written order for a fitness evaluation by Dr. Peterson and set the case for fitness and preliminary hearing. (C.30) When the court called the case for a fitness hearing, counsel advised that Mr. Chambliss had again refused to meet with Dr. Peterson. (R.17) Counsel also advised that Mr. Chambliss wanted counsel to withdraw from the case because he did not request counsel. (R.18) The court declined to hear any issues regarding counsel until after the issue of fitness was resolved. (R.18-19) The court asked counsel to continue encouraging Mr. Chambliss to meet with Dr. Peterson. (R.19-20)

The court told the parties that the judicial assignment was changing and set a pretrial hearing on the fitness issue before the newly assigned judge. (C.46,R.19-20) The court did not set a preliminary hearing, nor was it discussed. (C.46)

At the next court hearing, counsel advised the new judge that Mr. Chambliss continued to refuse to participate in a fitness evaluation with Dr. Peterson. (R.26-27) The court reviewed the fitness statute with Mr. Chambliss and assured him that anything he said during the evaluation could not be used against him in the criminal case. (R.29-30) The court appointed Dr. Cuneo to conduct a fitness evaluation of Mr. Chambliss, and said the next court date would be within 45 days of the court's receipt of the fitness report as required by statute. (C.48,R.31-33) Mr. Chambliss continued to insist he would not speak to the doctor. (R.32)

Counsel raised the question of speedy trial and mentioned that the preliminary hearing had been delayed due to the unresolved fitness issue. (R.33) The court responded that speedy trial was tolled while awaiting fitness results. The court made no mention of a preliminary hearing. (R.34)

Counsel filed a motion for leave to withdraw, alleging that he and Mr. Chambliss had a fundamental disagreement about how to proceed in the case, and Mr. Chambliss wanted to proceed *pro se.* (C.66-69)

Dr. Cuneo filed a report concluding Mr. Chambliss was fit to stand trial. (R.37-39, EI22-26) Dr. Cuneo's report opined that Mr. Chambliss suffers from schizophrenia with alcohol and cannabis use disorders as a result of self-medicating to deal with paranoia, delusions, and agitation. (EI24-25) Mr. Chambliss is clearly

mentally ill and argumentative. (EI25) However, Dr. Cuneo found Mr. Chambliss fit to stand trial because he understood the nature of the proceedings against him and was able to assist in his own defense. (EI25) The court reviewed the report, heard the stipulations of counsel and Mr. Chambliss to Dr. Cuneo's conclusions, and agreed Mr. Chambliss was fit to stand trial. (R.37-39)

The court immediately took up counsel's motion to withdraw. (R.39) Mr. Chambliss agreed with the motion, and asked to appear *pro se*. (R.39-40) The court advised Mr. Chambliss pursuant to Rule 401, granted his request to proceed *pro se*, and excused counsel from the case. (C.66-69,R.40-44)

Mr. Chambliss told the court that he had never been arraigned and bond was never set. (R.44) The court responded that it was not clear from the record that Mr. Chambliss was arraigned.[1] (R.45) The court advised Mr. Chambliss of the charges against him and the possible penalties, and set Mr. Chambliss' bond again. (R.4547)

Mr. Chambliss then asked, "Jury trial next month, right?" (R.48) The court answered that the next step was a pretrial date. (R.48) The court explained that everything had been on hold due to the issue of fitness being raised by the court, and Mr. Chambliss responded that he should never have been found unfit according to the court's doctor. (R.48) The court told Mr. Chambliss to stop interrupting, and when Mr. Chambliss commented that the court was ignoring him, the court had Mr. Chambliss removed. (R.49) Before being removed, Mr. Chambliss heard

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[1]Bond was set at $75,000 on October 7, 2021. (C.30) Mr. Chambliss was present for an arraignment on October 28, 2021. (R.9)

the court clerk say that pretrials were in May, and Mr. Chambliss said he was ready for trial in May. (R.49) The court responded: "We are going to give you one," before Mr. Chambliss was removed. (R.49)

The court and the State agreed to set a pretrial date and jury date in May. (R.49-50) The court concluded by saying that: "[W]e have everything covered. He was arraigned. There is a stipulation as to fitness. Mr. Foster has been allowed to withdraw. We have set the pretrial date and the jury trial date. For the record, the Court had Mr. Chambliss removed because he was being disruptive to the proceedings." (C.91,R.50) No mention of a preliminary hearing was made.

At the next pretrial hearing, the State dismissed count 1, which alleged great bodily harm. The State filed amended counts 2 and 3, expanding the location of the offense to include a "public place of accommodation." (C.121, R.56) The court also provided Mr. Chambliss with subpoena forms to obtain witnesses for the trial. (R.60,68) No mention of a preliminary hearing was made.

The court subsequently held an unscheduled pretrial hearing and quashed eleven of Mr. Chambliss' subpoenas because they sought irrelevant information and witnesses. (C.145,R.73-74,87-88,90,95-96,97-99) The court prohibited Mr. Chambliss from issuing additional subpoenas without leave of court. (C.145) Mr. Chambliss became upset with the court's decisions and left the courtroom before the hearing concluded. (R.92-93) No mention of a preliminary hearing was made.

Trial

The evidence at trial was that Emily Barnes and Carolyn Spell were talking

outside of the Shell convenience store near the funeral home when Mr. Chambliss approached them and began making inappropriate and offensive comments. (R.224-25,235-36,329) Barnes testified that when she asked Mr. Chambliss to leave them alone because he was angry and smelled of liquor, Mr. Chambliss spat on Barnes and struck her, knocking her to the ground. (R.238-39,247,299)

Spell saw Mr. Chambliss hit Barnes, and when Spell tried to pull Mr. Chambliss off of Barnes, he hit Spell and knocked her down too. (R.239,254-55,263,266,268,328-229) Spell's knee was scraped and her toe was bent backwards. Two correctional officers were driving by and saw Mr. Chambliss striking the two women. (R.227-28,287-90,292,294,296) They stopped to assist the women and stayed until the police came. (R.239,255,266,290-91,296) Mr. Chambliss broke Barnes' glasses when he knocked them off her face, and she was taken to the emergency room by ambulance for treatment of her injuries. (R.239-40,256,299, 305-06,311-12) Mr. Chambliss was taken into custody (R.224-25,300-01) and described as "highly intoxicated and agitated" by the arresting officer. (R.299,300-01)

Mr. Chambliss testified that Barnes accused him of homosexual acts and having AIDS. He explained that Barnes struck him first when Mr. Chambliss cussed back at her. (R.334) Mr. Chambliss argued that it was not logical that he would attack two women on the street for no reason. (R.342)

The jury found Mr. Chambliss guilty of two counts of aggravated battery on a public way. (C.180-81,R.356-57) Mr. Chambliss continued *pro se* at his sentencing hearing. (R.375-76) After hearing evidence and arguments, the court sentenced Mr. Chambliss to four years in the Illinois Department of Corrections

with credit for time served. (C.234,237,R.425)

Mr. Chambliss appealed. (C.241-42,247)

Appellate Court Decision

The appellate court held, as a matter of first impression in Illinois, that the trial court's failure to provide Mr. Chambliss with a preliminary hearing prior to trial was structural error and reversed his conviction. *People v. Chambliss*, 2024 IL App (5th) 220492, ¶¶ 10, 25, 29. Because Mr. Chambliss did not raise the lack of a preliminary hearing until direct appeal, the appellate court considered the issue under the plain error rule. *Id*. at ¶ 11. The court found error occurred when the trial court failed to either indict Mr. Chambliss or conduct a preliminary hearing prior to trial. *Id*. at ¶¶ 18, 22. The appellate court then held the error was second-prong structural error because proceeding to trial without providing Mr. Chambliss with the required preliminary hearing deprived Mr. Chambliss of basic constitutional protections and resulted in an unfair or unreliable process for determining his guilt or innocence. *Id*. at ¶¶ 12, 25.

The State now appeals.

ARGUMENT

The trial court's failure to provide Anzano Chambliss with a constitutionally required probable cause hearing either by an indictment or preliminary hearing prior to trial was structural error.

In a case of first impression, the appellate court held that the trial court's failure to provide Mr. Chambliss with a constitutionally required probable cause hearing prior to trial was structural error and reversed his conviction for aggravated battery. *People v. Chambliss*, 2024 IL App (5th) 220492, ¶¶ 25, 29. The State concedes clear and obvious error because Mr. Chambliss did not receive a constitutionally required finding of probable cause, but argues that there is no remedy for Mr. Chambliss and that his conviction should be reinstated. (St.Br.Dir.App.18,St.Br.11) The State claims that Mr. Chambliss waived his right to a preliminary hearing or invited and acquiesced in the trial court's error. (St.Br.12-15,15-18) However, the State cites no cases to support its position that a right to a probable cause finding can be waived by mere acquiescence or invitation rather than through a knowing and voluntary affirmative act, which the State concedes did not occur here. (St.Br.12-18)

While the State argues that the error was not structural, it cites no case where a defendant was entirely deprived of his constitutionally required probable cause hearing or where that violation was cured because of a subsequent trial. The purpose of a constitutional right to a probable cause finding is to prevent an individual from being unduly detained by the government (*People v. Howell*,

60 Ill. 2d 117, 122 (1975)), and to ignore this requirement damages the integrity of the judicial process in immeasurable ways.

The appellate court should be affirmed.

Standard of Review

Whether a forfeited claim based on the denial of a constitutional right is reviewable as plain error is a question of law that is reviewed *de novo*. *People v. Schoonover*, 2021 IL 124832, ¶ 26, reh'g denied (Jan. 24, 2022), cert. denied sub nom. *Schoonover v. Illinois*, 142 S. Ct. 2665 (2022)(citing *People v. Johnson*, 238 Ill. 2d 478, 485 (2010)). The construction of a statute is a question of law, and is also reviewed *de novo*. *People v. Jones*, 223 Ill. 2d 569, 580-81 (2006)(citing *In re Estate of Dierkes*, 191 Ill. 2d 326, 330 (2000)). The standard of review when the question involves only the application of the law to the undisputed facts is *de novo*. *People v. Dorsey*, 2023 IL App (1st) 200304, ¶ 94 (citing *People v. Rockey*, 322 Ill. App. 3d 832, 836 (2001); *People v. Sims*, 192 Ill. 2d 592, 615 (2000)).

A. The trial court's failure to make a probable cause determination is clear and obvious error and reviewable under the Plain Error doctrine.

The utter failure to make a probable cause determination amounts to clear and obvious error, which the State readily conceded in the appellate court and does not deny here. (St.Br.Dir.App.18,St.Br.11-24) While the error was forfeited below, forfeiture is only a limit on the parties, not this Court, and Mr. Chambliss is requesting this error be reviewed under the second prong of plain error. Ill. S.Ct. Rule 615(a); *People v. Ratliff*, 2024 IL 129356, ¶ 26.

Mr. Chambliss did not get a late probable cause hearing - he got none at

all. To the extent that the State minimizes the importance of this error throughout its brief, it does so only by relying on cases where defendants received a delayed probable cause hearing, not an entirely absent one. (St.Br.14,15,20-21,23) That is because an error so egregious as entirely failing to make a constitutionally required probable cause finding simply has not happened before.

To that point, to the extent that the State insinuates that Mr. Chambliss and the appellate court ignored binding precedent by this Court in reaching its decision, the State is wrong. (St.Br.20-21) No such case law exists. Rather, the State relies on *Howell*, where the delay between arrest and indictment was 65 days. See *Howell*, 60 Ill. 2d at 118. But again, *Howell* received a probable cause hearing, and this Court was reviewing a relatively short delay, not a total absence. So not only is *Howell* inapplicable, but the State's argument that *Howell* is binding precedent should be ignored. *Howell* supports the importance of a probable cause hearing, and this Court's reasoning suggests that failing to have one at all is rather unthinkable. "We consider the delays in giving an accused a prompt preliminary hearing to be a serious deprivation of his constitutional rights..." *Id.* at 122.

The State's brief argues that the failure to provide Mr. Chambliss with the constitutionally required probable cause finding prior to trial should be treated the same as a statutorily delayed probable cause finding, but there is a significant difference between justice delayed and justice denied. See *Howell*, 60 Ill.2d at 121. The State cites two additional cases, *Hendrix* and *Holman*, to claim that reversal of a conviction is not an appropriate remedy for a violation of a defendant's right to a probable cause hearing. (St.Br.20-21) However, neither of those cases

have facts making them applicable to Mr. Chambliss because both Holman and Hendrix actually received an indictment at some point during their detention. *People v. Hendrix*, 54 Ill. 2d 165, 169 (1973); *People v. Holman*, 103 Ill. 2d 133, 154-155 (1984). Mr. Chambliss was arrested and detained until he was tried, without ever having a probable cause finding. Thus, there can be no doubt that Mr. Chambliss suffered a clear and obvious error.

Mr. Chambliss proceeds under second-prong plain error because the denial of his constitutional right to a probable cause hearing prior to trial is structural error. See Ill. Sp.Ct. Rule 615(a) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.").

B. The failure to provide a probable cause hearing is second-prong plain error.

The second step of second-prong plain error review is to determine whether the error is so serious that it affected the fairness of 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; Ill. S. Ct. Rule 615(a). This "second prong" - the "substantial rights prong" - of plain error equates to "structural errors," which affect the framework within which the trial proceeds, rather than being mere errors in the trial process itself. *Moon*, 2022 IL 125959 at ¶¶ 24-25; 28-29 (citing *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). Second prong plain errors are "presumptively prejudicial errors—errors that may not have affected the outcome, but must still be remedied" because the error deprives the defendant of substantial

rights and a fair trial. *People v. Herron*, 215 Ill. 2d 167, 185 (2005).

Federal courts have found structural error when a defendant suffers a complete denial of counsel, is denied self-representation at trial, is tried before a biased judge, is denied a public trial, when racial discrimination occurs in the selection of a grand jury, and when the trial court gives a defective reasonable doubt instruction. *Moon*, 2022 IL 125959 at ¶ 29 (citing *Washington v. Recuenco*, 548 U.S. 212, 218 n.2 (2006)).

This Court is not limited to only those issues identified by the Supreme Court as structural error, but may determine that an error is structural as a matter of state law regardless of whether it is deemed structural under federal law. *Id.* at ¶ 30 (citing *People v. Averett*, 237 Ill. 2d 1, 13 (2010)). A recent example of this Court's expansion of structural error beyond federal law occurred in *Moon*, which held the trial court's failure to administer a trial oath to the jury prior to the verdict was structural error because the error affected the framework within which the trial proceeded, rather than being merely an error in the trial process itself. *Id.* at ¶ 62.

History supports probable cause findings as structural error

The State cites *Moon* to argue that the trial court's failure to conduct a preliminary hearing is not structural error because it did not render the trial fundamentally unfair or an unreliable means of determining guilt or innocence. (St.Br.19) But this Court in *Moon* counseled that when determining whether an error was structural, history matters. In detailing why the failure to give a jury oath was a structural error, this Court first turned to the importance of the oath

itself throughout the common law. *Moon*, 2022 IL 125959 at ¶ 32. In noting that "A criminal defendant's right to an impartial jury is firmly rooted in American Jurisprudence," this Court looked to centuries old cases and the formation of the right to a fair trial as ensconced in both the federal and Illinois constitutions. *Id.* at ¶¶ 33-34.

Just as history and the common law supported the failure to give a jury oath as structural, so too does the history of the probable cause hearing. The State agrees the constitutional probable cause requirement protects the individual's right not to be unduly detained by the government. *Howell*, 60 Ill. 2d at 122 (1975); *Kosyla*, 129 Ill. App. 3d at 694-95; (St.Br.15). However, the State does not acknowledge the significance of the history of the constitutional probable cause requirement in our criminal justice system or its modern application.

While the right to a preliminary hearing first appeared in the Illinois Constitution in 1970, the right to a finding of probable cause prior to trial was memorialized in the State's first Constitution of Illinois in 1818, which required a grand jury indictment for criminal prosecution. See, Ill. Const. 1818, art. VIII, § 10. The timing is similar to that found persuasive in *Moon*, which determined that This Court has recognized the right to an impartial jury since the State's first constitution was adopted in 1818. *Id.* at ¶ 34. The requirement of a grand jury indictment continued through the Illinois Constitution of 1848 and the Illinois Constitution of 1870. See, Ill. Const. 1848, art. XIII, § 10; Ill. Const. 1870, art. II, § 8.

This Court also found it persuasive in *Moon* that the jury oath dated back

to the English common law. *Moon*, 2022 IL 125959 at ¶ 45. This Court noted that common law jury trials included jury oaths dating back to Blackstone's Commentaries in 1769, and that scholars of the common law have concluded that a jury oath was a consistent part of the common law jury trial. *Id*. at ¶ 47. Similarly the use of grand jury indictments for criminal prosecutions dates back to English common law, possibly to the reign of King Henry II. *Id*. at 251-52 (citing *United States v. Calandra*, 414 U.S. 338, 343 (1974)). At common law, the function of the grand jury was to investigate crimes and protect citizens from unsubstantiated accusations by the government or the personal disdain of the prosecutor. *Benitez,* 169 Ill. 2d at 251-252. The English grand jury served for centuries both as a body of accusers sworn to discover and present for trial persons suspected of criminal wrongdoing, and as a protector of citizens against arbitrary and oppressive governmental action. *Calandra*, 414 U.S. at 342-43.

This Court also found it critical that the Supreme Court presumed in 1827, just "eight years after Illinois was admitted to the Union," that juries were sworn prior to rendering a verdict. *Moon*, 2022 IL 125959 at ¶ 46. The need for a probable cause determination, however, is even more enshrined in our country's history than the jury oath. The necessity of protecting the citizen from abuses by the government by requiring a finding of probable cause to detain him before trial was adopted in our federal constitution, which provides that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..." U.S. Const. amend. V. Additionally, federal law contains a statutory requirement for preliminary hearings in certain circumstances,

which serve the same purpose as preliminary hearings in Illinois, "to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it." 18 U.S.C. § 3060(a)(2018).

Just as this Court was "confident that the practice of swearing jurors with a trial oath was well established in common law long before the ratification of Illinois's first constitution in 1818," this Court should be equally persuaded that the right to a probable cause determination existed long before Illinois became a state or adopted a constitution. *Moon*, 2022 IL 125959 at ¶ 48. This Court reasoned in *Moon* that "swearing the jurors with a trial oath directly impacts the state of mind of the selected jurors." *Id.* at ¶ 52. But so too does the probable cause hearing. It is specifically designed to protect an individual from being unduly detained, ensuring his constitutional right to liberty. *People v. Redmond*, 67 Ill. 2d 242, 246-48 (1977); *Howell*, 60 Ill. 2d at 122; *People v. Kosyla*, 129 Ill. App. 3d 685, 694-695 (2d Dist. 1984). To forego it altogether calls into question our judicial system in the minds of citizens much in the same way that a jury oath affirmatively reminds jurors of their duty to be fair and impartial.

The trial court's failure to provide a probable cause hearing to Mr. Chambliss damages the integrity of the judicial process because it leads to the increasing public perception that criminal justice is not fairly and equally applied. Currently, only thirty-five percent of Americans express confidence in their country's judicial system.[2] Confidence in the rule of law is foundational to a free society, and research

[2] https://www.chicagolawbulletin.com/elements/pages/print?printpath=/Articles/2024/12/17/Americans-trust-in-nation%E2%80%99s-court-system-hits-rec& classname=tera.gn3article.

shows that a court's procedural fairness in a case, rather than the actual outcome, has a greater impact on how people view the legal system.[3]The public is more likely to obey the law and accept the decisions of the court when the process is perceived as fair.[4] Much like the jury oath in *Moon*, the probable cause hearing has an essential purpose in the American criminal jurisprudence and a storied history. It is more than a mere formality, and to simply forego it altogether amounts to structural error.

Three Categories of Structural Error

Aside from the essentialness of the probable cause determination in this State's history, the Supreme Court has also defined structural errors in three ways. An error is structural when "the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest," such as the defendant's constitutional right to conduct his own defense. *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017). An error is also structural if "the effects of the error are simply too hard to measure," such as when a defendant is denied the right to select his own counsel and the precise effect of the constitutional violation cannot be ascertained. *Id*. at 295-296. Finally, an error is structural "if

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[3]https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx; Tracey L. Meares, Tom R. Tyler, Justice Sotomayor and the Jurisprudence of Procedural Justice, 123 Yale L.J. Forum 525, 526-27 (2014); *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 33 (Hyman, J., specially concurring).

[4]*Id*. (citing Tom R. Tyler & Justin Sevier, How Do the Courts Create Popular Legitimacy?: The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures, 77 Alb. L.Rev. 1095, 1102 (2014)).

the error always results in fundamental unfairness," such as when an indigent defendant is denied an attorney or the trial court fails to give a reasonable doubt instruction, making the resulting trial fundamentally unfair. *Id.* at 296.

This Court relied on all three categories of structural error in finding the trial court's failure to swear the jury constituted structural error. *Moon*, 2022 IL 125959 at ¶¶ 29, 64, 65, 70. In *Moon*, for example, this Court found that the failure to swear the jury caused fundamental unfairness because it deprived the defendant of his constitutional right to protection from double jeopardy. *Id.* at ¶ 70. This Court also found that it was impossible to measure the effects of failure to swear a jury (*id.* at ¶ 65) and that the error affected the integrity of the judicial process (*id.* at ¶ 64) - implicating an interest other than an erroneous conviction.

In its brief, the State wants to ignore these categories and instead focus on the fact that Mr. Chambliss was guilty. But so what? The defendant in *Moon* was also found guilty, but that did not stop the error from being structural. *Id.* at ¶ 90. To be clear, some constitutional errors can be harmless. *Id.* at ¶ 28. As this Court explained, "the Supreme Court has applied harmless-error analysis to a wide array of constitutional errors [citation omitted] and has recognized an error as structural, and subject to automatic reversal, only in a limited class of cases." *Id.* (internal quotes removed).

To put another way, harmless error and structural error are two sides to the same coin. A structural error can never be harmless, and a harmless error can never be structural. But despite the State's argument that whether this error comes down to how guilty Mr. Chambliss was or how good the State's evidence,

this cannot be the test. Rather, the test always has to be focused on the importance of the error and whether the error goes to the very framework of the court proceeding.

Consider that in *Moon*, this Court never discussed the weight of the evidence against Moon. In fact, the question was never whether the State had overwhelming evidence to prove Moon guilty but whether the process itself failed. So here, the question is whether the error implicates the framework of the court proceedings, not whether Mr. Chambliss was eventually found guilty. To be sure, the State is not just arguing that this is about the weight of the evidence. Rather the State's argument is more nuanced than that. The State proposes that if the complaint was that Mr. Chambliss was held without probable cause, meaning perhaps he should have been released, then perhaps the error is harmless because he was eventually found guilty, meaning that he wasn't held by the government inappropriately. However, the resounding answer to this proposal has to be a resounding rejection.

Even if the weight of the evidence against Mr. Chambliss might implicate structural error in a different way than in *Moon*, which involved the jurors themselves, that still does not obviate the other concerns raised here. The integrity of the judicial process does not disappear merely because the State feels it can more than meet its burden at trial or that the evidence showed guilt. The appellate court found structural error here because proceeding with the prosecution without providing the protection guaranteed by the Illinois Constitution "resulted in an unfair or unreliable process for the determination of the defendant's guilt or

innocence." *Chambliss*, 2024 IL App (5th) 220492 at ¶ 25. The State limits its argument to the claim that because the denial of a preliminary hearing did not affect the outcome of the trial it is not structural error, but the State does not speak to all of the other reasons for findings of structural error, such as the damage to the integrity of the judicial process, or the unfairness inherent in denying a constitutional right to a defendant, or the inability to measure the damage caused by the court's failure to provide Mr. Chambliss with his constitutionally required preliminary hearing.

The State's claim that the court's failure to conduct a preliminary hearing is not structural error because it did not render the trial an unreliable means of determining guilt or innocence is refuted by *Moon. Id.;* (St.Br.19) Guilt or innocence is not the test for structural error. Rather, the determination should rest on whether: "the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest"; "the effects of the error are simply too hard to measure"; "if the error always results in fundamental unfairness." *Weaver*, 582 U.S. at 295-96. Further, the State argues that the appellate court erred by finding that the complete denial of a probable cause hearing was structural, arguing that the appellate court's view "would turn every error that implicates a defendant's constitutional right into second-prong error." (St. Br. at 22) But this is not correct. Like this Court did in *Moon* and like Mr. Chambliss urges here, the history and importance of the violation determine whether a constitutional violation is harmless or structural.

Turning to the three categories defining structural error for the Supreme

Court, a constitutional error only becomes structural when one or more categories are impacted. Mr. Chambliss' case fits within all three categories of structural error. Like in *Moon*, where the impact of a failure to give an oath could not be measured, the effects of the trial court's error in failing to provide Mr. Chambliss with a preliminary hearing are "simply too hard to measure," because the precise effect of the constitutional violation cannot be ascertained. As in *Moon,* where the process was fundamentally unfair, so too is Mr. Chambliss', where his government detained him and deprived him of liberty without ever first showing that he more likely than not committed the offense. Finally, aside from an erroneous conviction, the failure to hold a probable cause hearing speaks to the very integrity of the judicial process.

The State's view on those errors that are second-prong structural error is significantly more narrow than that of this Court. The Supreme Court currently recognizes six types of structural error. Those cases include "a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction." *Neder v. United States*, 527 U.S. 1, 8 (1999); *People v. Thompson*, 238 Ill. 2d 598, 608-09 (2010). However, this Court has explicitly held that plain error in Illinois is not limited to only the types of structural error that have been recognized by the Supreme Court. *People v. Clark*, 2016 IL 118845, ¶ 46.

This Court recognizes structural error in many situations beyond those recognized by the Supreme Court. For example, this Court has held that one-act,

one-crime violations are structural error. See *People v. Coats*, 2018 IL 121926, ¶ 10 (citing *People v. Nunez*, 236 Ill. 2d 488, 493 (2010); *People v. Artis*, 232 Ill. 2d 156, 168 (2009); *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009). Similarly, convicting a defendant of an uncharged, but not lesser-included offense, is structural error. *Clark*, 2016 IL 118845 at ¶ 47. The failure to have a defendant's physically present during a guilty plea is structural error unless the defendant consents to a closed-circuit television plea. *People v. Stroud*, 208 Ill. 2d 398, 406-07 (2004). Similarly, the trial court's brief absence from the courtroom during a felony jury trial is structural error. *People v. Vargas*, 174 Ill. 2d 355, 366 (1996). The trial court's reflexive and arbitrary denial of defense counsel's request for a continuance is structural error. *People v. Walker*, 232 Ill. 2d 113, 131 (2009). The admission of a witness' polygraph exam is structural error. *People v. Gard*, 158 Ill. 2d 191, 205 (1994). Cumulative errors can also become structural errors. *People v. Blue*, 189 Ill. 2d 99, 138-39 (2000). The trial court's entry of a street value fine without holding a proper evidentiary hearing is structural error. *People v. Lewis*, 234 Ill. 2d 32, 48 (2009). Finally, a pattern of intentional prosecutorial misconduct is structural error. *People v. Johnson*, 208 Ill. 2d at 84-85. The one common factor in this list of trial errors is that this Court found in each of these examples that the error was structural because it violated or undermined the integrity of the judicial process. Here, the failure to hold a probable cause hearing and continue to hold Mr. Chambliss in the custody of the government undermines the faith in the justice system and represents structural error.

The Importance of a Probable Cause Hearing

Finally, the State argues that because the limited purpose of a preliminary hearing is only to address the defendant's right not to be unduly detained without a finding of probable cause, the most important protection for Mr. Chambliss is a "fair trial." (St.Br.15) The State cites *J.H.* to support its perspective on the significance of preliminary hearings to criminal defendants. See *People v. J.H.*, 136 Ill. 2d 1, 11-12 (1990). *J.H.* did not involve a preliminary hearing. It involved an indictment dismissed by the trial court for prosecutorial misconduct for the use of illegally obtained evidence during the grand jury presentation. *Id.* at 4-5. This Court held that a grand jury indictment based in part on illegally obtained evidence would not be dismissed because the defendant's rights are protected by filing a suppression motion prior to trial. *Id.* at 11-12. In the discussion of the suppression hearing, this Court commented that the most important protection for an accused in our system is a fair trial. *Id.* at 12.

The State diminishes the importance of a probable cause hearing to minimize the trial court's failure to protect Mr. Chambliss' constitutional right to a probable cause finding in an effort to make the error appear less egregious than it truly is. A preliminary hearing prevents a defendant from being held in custody or on bail without a prompt determination of probable cause, protecting his constitutional right not to be unduly detained. See *People v. Moore*, 28 Ill. App. 3d 1085, 1089 (5th Dist. 1975); *Howell*, 60 Ill. 2d at 122; *Kosyla*, 129 Ill. App. 3d at 694-95. In *Howell,* this Court found the defendant's constitutional right to a prompt probable cause hearing was violated when he was held in custody for 65 days before he was indicted because the defendant was unduly detained. *Howell*, 60 Ill. 2d at

122.

More importantly, this Court has already said that probable cause hearings are critical: "We consider the delays in giving an accused a prompt preliminary hearing to be a serious deprivation of his constitutional rights..." *Howell*, 60 Ill. 2d at 122. Mr. Chambliss was unduly detained in violation of his constitutional right to a probable cause finding, just like the defendant in *Howell*. The length of the detention does not lessen the severity of the constitutional violation to Mr. Chambliss.

C. Mr. Chambliss did not invite or acquiesce to the trial court's error in failing to provide a preliminary hearing prior to trial

The State next argues that Mr. Chambliss is estopped from arguing that the trial court erred in not conducting a preliminary probable cause hearing because Mr. Chambliss invited or acquiesced to the trial court's error. (St.Br.15) The State argues that Mr. Chambliss, through counsel, agreed to the delay of any preliminary hearing until the question of his fitness had been resolved, and once it was resolved, Mr. Chambliss sought immediate trial "rather than seeking or agreeing to a preliminary hearing." (St.Br.16) The State claims that since Mr. Chambliss agreed that "any preliminary hearing should be indefinitely postponed," he cannot now complain about the postponement to which he agreed. (St.Br.16) The State's argument relies on a flawed reading of both the facts and the applicable law. Rather than Mr. Chambliss, it was the State and the trial court who erred in not providing Mr. Chambliss with the constitutionally required probable cause hearing.

During the court's first phone call with counsel, the court asked if counsel

agreed to the postponement of the preliminary hearing and noted that raising fitness at this time would "push off any need for a prelim." (R.4) Counsel agreed that the immediate need for a fitness evaluation would cause a delay in setting the preliminary hearing. (R.4-5) Counsel did not agree the preliminary hearing should be indefinitely postponed, but instead, he only agreed to delay until the issue of fitness was resolved. (R.5) Regardless of whether counsel agreed to the postponement of the preliminary hearing, the law required postponement until the court determined that Mr. Chambliss was fit to stand trial. See 725 ILCS 5/109-3.1(b)(3)(The requirement of a prompt preliminary hearing does not apply "when a competency examination is ordered by the court.")

The State then claims that the court did not revisit the issue of a preliminary hearing between October 2021 and April 2022. (St.Br.17) This is not factually accurate, because in early October 2021, the court scheduled a preliminary hearing along with another fitness hearing for the end of October 2021. (R.13) The delay in a preliminary hearing was also raised by counsel at the first scheduled hearing before the newly assigned trial judge in January 2022. (R.33) The record shows the trial court was aware that a preliminary hearing had not been held before the April 2022 hearing when Mr. Chambliss asked for a trial.

The State argues that as soon as Mr. Chambliss was found fit, he sought an immediate trial instead of "seeking or agreeing to a preliminary hearing." (St.Br.16) Mr. Chambliss twice asked for a trial next month, and then told the trial court "I am ready for trial in May" at the hearing on April 14 when he was found fit to stand trial. (R.47, 49) This request for a trial by Mr. Chambliss is

interpreted by the State as either an agreement that he would completely forgo a preliminary hearing, or an inducement of the trial court to commit error by failing to schedule a preliminary hearing. (St.Br.17) Neither of these positions is accurate. Mr. Chambliss' desire for a trial does not mean that Mr. Chambliss did not want a preliminary hearing, as the two are not mutually exclusive. The record shows that counsel agreed to delay the preliminary hearing until Mr. Chambliss was found fit, and as soon as Mr. Chambliss was found fit, the court set a jury trial without first setting a preliminary hearing, despite believing that Mr. Chambliss had not been arraigned or had bond set.

The State faults Mr. Chambliss for not "seeking or agreeing to a preliminary hearing." (St.Br.16) However, the State cites no law to support its argument that Mr. Chambliss bears the burden of requesting or agreeing to a preliminary hearing, as none exists. A preliminary hearing or indictment is provided, as a matter of constitutional and statutory law, to every person charged with a felony in Illinois. Ill. Const. 1970, art. I, § 7; 725 ILCS 5/109-3; 725 ILCS 5/109-3.1. The law additionally prohibits any prosecution from proceeding without either an indictment or a preliminary hearing. 725 ILCS 5/111-2(a). The State chose not to indict Mr. Chambliss. Therefore, it had to provide him with a preliminary hearing. Mr. Chambliss was not obligated to "seek" a preliminary hearing in order to have one. Nor was Mr. Chambliss ever asked to "agree" to a preliminary hearing. There is no precedent requiring a defendant to assert his right to a probable cause finding before one is held.

The record here shows that at the fitness hearing, after Mr. Chambliss was

found fit and allowed to represent himself, there was a discussion between the court and Mr. Chambliss which ended when the court had Mr. Chambliss removed from the courtroom. (R.49) It was during his removal from court that Mr. Chambliss said he was ready for trial in May. (R.49) The State faults Mr. Chambliss for not "seeking or agreeing" to a preliminary hearing when the fault for this error actually lies with both the State and the trial court.

The State's argument assigning the fault for the lack of a preliminary hearing solely to Mr. Chambliss fails. Both the State and the court had an obligation to provide Mr. Chambliss with a preliminary hearing and failed to do so.

The State represents "all the people, including the defendant in a criminal action, and is bound to safeguard the constitutional rights of the defendant as well as those of any other citizen." *People v. Afandi*, 2024 IL App (1st) 221282, ¶ 35 (citing *People v. Jackson*, 2021 IL 124818, ¶ 52 (Neville, J., specially concurring); *People v. Cochran*, 313 Ill. 508, 526 (1924). The State's duty "is to seek justice, not merely to convict." Ill. Sp. Ct. Rule 3.8. The State had an affirmative duty to remind the court that Mr. Chambliss had not received a preliminary hearing when the court found Mr. Chambliss fit to stand trial. *Afandi*, 2024 IL App (1st) 221282, ¶ 35. The State did not do so and, instead, agreed to set the case for jury trial without first holding a preliminary hearing. (R.50) The State violated its duty and did not seek justice for Mr. Chambliss when it failed to ask the court to set the case for a preliminary hearing.

The court also has an obligation to protect Mr. Chambliss' constitutional rights. A judge shall comply with the law and shall uphold and apply the law.

Ill. Sp. Ct. Rules 2.1, 2.2. Providing a preliminary hearing is one of the trial court's many pretrial duties intended to protect the rights of criminal defendants. The defendant need not seek or agree to the trial court's performance of its pretrial duties, nor must he seek or agree to a preliminary hearing.

The State's argument to support its claims that Mr. Chambliss acquiesced or invited the trial court's error relies on cases wherein the defendants were represented by counsel and actively participated in decisions that they later regretted. For example, in *Swope*, defense counsel sought and received the court's consent to depose certain DHS treatment providers, and Mr. Swope later argued on appeal that the court's deposition process was error. *People v. Swope*, 213 Ill. 2d 210, 214-215 (2004). This Court held that even the grudging acceptance of a procedure prohibits a subsequent attack on that procedure. *Id.* at 217. In *Sevogiano*, defense counsel strongly objected to the State's motion for a mistrial when it was discovered that the State's witness committed perjury. *People v. Segoviano*, 189 Ill. 2d 228, 241-242 (2000). This Court held that an accused may not complain in a court of review that an order was in error when he asked for that order. *Id.* at 242. See also *People v. Villarreal*, 198 Ill. 2d 209, 226-228 (2001)(defendant cannot complain on appeal about the verdict forms defense counsel tendered); *People v. Patrick*, 233 Ill. 2d 62, 76-77 (2009)(defendant cannot complain that the instruction he tendered was erroneous). In *Harvey*, two of the three co-defendants who either requested or agreed to mere-fact impeachment were prohibited from raising on appeal the error they invited in the trial court. *People v. Harvey*, 211 Ill. 2d 368, 386 (2004). In *James*, the appellate court held the defendant could

be represented by counsel or could represent himself, but hybrid representation was not allowed. *People v. James*, 362 Ill. App. 3d 1202, 1205-06 (4th Dist. 2006). In each of these cases, the defendants were represented by counsel, who makes all strategic decisions for the defense, and none of these cases involved a preliminary hearing or indictment. *Id*. at 1206. Mr. Chambliss was represented by counsel until he was found fit, at which time counsel withdrew and Mr. Chambliss proceeded *pro se.* (R.36-43) At no time after counsel withdrew was a preliminary hearing mentioned to Mr. Chambliss by the court or the State. (R.43-427)

Mr. Chambliss is not at fault for not "seeking or agreeing" to a preliminary hearing, as the law requires that a probable cause determination be provided for him. See Ill. Const. 1970, art. VI, § 7. Nor is Mr. Chambliss estopped from raising the lack of a preliminary hearing as plain error on appeal, as he did not invite or acquiesce to the trial court's failure to hold the required preliminary hearing.

D. Similarly, Mr. Chambliss did not waive his right to a preliminary hearing.

The State argues that Mr. Chambliss waived his right to a preliminary hearing when he failed to file a motion to dismiss the charge against him prior to his trial. (St.Br.12-13) The State then claims that Mr. Chambliss' failure to file a motion to dismiss was a waiver of his constitutional right to a probable cause hearing, because the constitutional right is only enforceable through the statute. (St.Br.14) The State's argument must fail for two reasons.

First, the State agrees that the constitutional right is separate from the statutory right. (St. Br. 13) In arriving at this conclusion, the cites to *People v.*

Marcum, 2024 IL 128687, ¶ 25, which acknowledges that "the statutory speedy trial right is neither equivalent to, nor coextensive with, constitutional speedy trial right."(St. Br. 13). In other words, because the two are different, then violations of or compliance with the statutory or constitutional right might look different. Given that Mr. Chambliss has focused exclusively on his constitutional right, to the extent that he waived the statutory right (but see *Infra* arguing he did not), the statutory waiver is not "equivalent to, nor coextensive with" the question of whether he waived his constitutional right to a probable cause determination.

In any event, he didn't waive the statutory right either. The State's argument fails because the time enforcement statutes are intended to solve only the problem of delayed probable cause hearings, not the failure to provide a probable cause hearing. The State's application of the waiver and dismissal statute to Mr. Chambliss must be rejected because it creates a conflict of laws regarding the waiver of preliminary hearings.

As previously discussed, the requirement for an indictment or preliminary hearing first appeared in the Illinois Constitution of 1970 and provided only for a "prompt" preliminary hearing or indictment. Ill. Const. 1970, art. I, § 7. In 1984, the legislature acted to impose the time requirement for the indictment or preliminary hearing, and provided the remedy of a motion to dismiss for a violation of that time requirement. See *People v. Bartee*, 177 Ill. App. 3d 937, 940 (2d Dist. 1988); 725 ILCS 5/109-3.1; 725 ILCS 5/114-1 (a)(11). The constitutional provision and the two statutes provide enforcement of the "prompt" preliminary hearing requirement.

However, there are additional laws regarding preliminary hearings and their waiver that contradict the automatic waiver imposed by Section 114-1(a)(11) for failure to file a motion to dismiss within a reasonable time after arraignment for violation of a prompt hearing. This Court held the right to a preliminary hearing can only be waived by the affirmative act of the accused. *People v. Williams*, 36 Ill. 2d 194, 201-02 (1966). A defendant's failure to demand a preliminary hearing does not constitute a waiver of the right to a preliminary hearing because a valid waiver of a preliminary hearing must be understandingly made. *People v. Houston*, 174 Ill. App. 3d 584, 587-588 (4th Dist. 1988)(waiver of preliminary hearing was understandingly made when defendant signed a waiver form and it was apparent from his statements to the court that defendant appreciated the purpose and procedure of the preliminary hearing).

Mr. Chambliss did not waive his right to a preliminary hearing under *Williams*, as the record shows no affirmative action by Mr. Chambliss that could be construed as a waiver. *Williams*, 36 Ill. 2d at 201-02. Nor did Mr. Chambliss waive his right to a preliminary hearing under *Houston*, as there is no evidence in the record that Mr. Chambliss appreciated the purpose and procedure of a preliminary hearing. *Houston*, 174 Ill. App. 3d at 587-88.

Instead, the record shows that a preliminary hearing was mentioned only three times, and Mr. Chambliss was not present during one of those times. The court and counsel spoke on the phone at the beginning of the case and agreed the preliminary hearing could only occur after the question of Mr. Chambliss' fitness was resolved. (R.4-5) Two weeks later, the court personally encouraged

Mr. Chambliss to cooperate with the fitness evaluation and then set the matter over for a "prelim" and a fitness hearing. (R.13) The final time was when counsel told the newly assigned judge that the preliminary hearing had not yet been held because of the unresolved fitness issue. (R.33)

Waiver means the voluntary relinquishment of a known right. *People v. Blair,* 215 Ill. 2d 427, fn. 2 (2005); accord, *United States v. Olano*, 507 U.S. 725, 733 (1993). A waiver of a preliminary hearing will be upheld where it is understandingly made. *Houston*, 174 Ill. App. 3d at 587(citing *People v. Puleo*, 96 Ill. App. 3d 457, 465 (1st Dist. 1981)). In *Blankly*, the trial court admonished the defendant as to the rights he was relinquishing by waiving his preliminary hearing and admonished the defendant as to the possible penalties he could receive if convicted on both counts. *People v. Blankley*, 319 Ill. App. 3d 996, 999 (5th Dist. 2001). The defendant acknowledged that he understood his rights and the possible penalties and that he wanted to waive his preliminary hearing. *Id*. The defendant also acknowledged that he previously discussed the waiver of his preliminary hearing with counsel. *Id*. The court determined the defendant understandingly waived his right to a preliminary hearing. *Id*. at 1005. Mr. Chambliss was never advised that he had the right to a preliminary hearing, so he did not understandingly waive the right. See *Blair*, 215 Ill. 2d at 427 fn. 2 (citing *Hill v. Cowan*, 202 Ill. 2d 151, 158 (2002)). The State's brief fails to address the need for an affirmative act by Mr. Chambliss to understandingly waive his right to a preliminary hearing.

Finally, the law states that "[n]o prosecution may be pursued by information unless a preliminary hearing has been held or waived in accordance with Section

109-3 and at that hearing probable cause to believe the defendant committed an offense was found, and the provisions of Section 109-3.1 of this Code have been complied with." 725 ILCS 5/111-2 (a). Mr. Chambliss did not receive a probable cause hearing and the time provisions of Sections 109-3.1 were not complied with, yet his prosecution was pursued.

There appears to be a conflict between the automatic waiver of a preliminary hearing provision in the motion to dismiss statute and the statute prohibiting prosecution without a preliminary hearing and the case law requiring a waiver to be a voluntary relinquishment of a known right. See 725 ILCS 5/114-1 (a)(11), (b); 725 ILCS 5/111-2 (a); *Blair*, 215 Ill. 2d at 427 fn. 2. However, the conflict is alleviated by considering the plain language of each provision, which limits its application to the denial of a prompt probable cause finding, rather than to the denial of any probable cause finding.

The primary rule of statutory interpretation, to which all other rules are subordinate, is that a court should ascertain and give effect to the intent of the legislature. *Henrich v. Libertyville High Sch.*, 186 Ill. 2d 381, 387 (1998), as modified on denial of reh'g (June 1, 1999). The best evidence of legislative intent is the plain language of the statute itself. *In re Tiney-Bey*, 302 Ill. App. 3d 396, 400 (4th Dist. 1999)(citing *In re A.P.*, 179 Ill. 2d 184, 195 (1997)). Statutes relating to the same subject are "intended to be consistent and harmonious." *People v. Molina*, 2022 IL App (4th) 220152, ¶ 31, aff'd, 2024 IL 129237, ¶ 31 (citing *In re Craig H.*, 2022 IL 126256, ¶ 26). Thus, even when statutes are in apparent conflict, they must be construed in harmony with one another insofar as it is reasonably possible

to do so. *Tiney-Bey*, 302 Ill. App. 3d at 400 (citing *People v. Maya*, 105 Ill. 2d 281, 287 (1985)).

Under the plain language of the dismiss or waive statute, the failure to seek dismissal of the charges when the court fails to comply with Section 109-3.1 results in a waiver of the right to complain about the delay or to seek a remedy for the delay. 725 ILCS 5/114-1 (a)(11). Section 109-3.1 requires that an indictment or a preliminary hearing be held within 30 days from the date of custody. 725 ILCS 5/109-3.2 (b). The dismiss or waive statute clearly applies only to the delay of an indictment or preliminary hearing, not the complete failure to provide a preliminary hearing as occurred here. Limiting the dismissal statute's application to situations involving delays of preliminary hearings prevents a conflict with Section 5/111-2(a)(No prosecution may be pursued by information unless a preliminary hearing has been held or waived in accordance with Section 109-3 and at that hearing probable cause to believe the defendant committed an offense was found, and the provisions of Section 109-3.1 of this Code have been complied with), and with Section 109-3.1(b) (Every person in custody in this State for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand Jury as provided in Section 111-2, within 30 days from the date he or she was taken into custody).

Courts should also keep in mind the subject a statute addresses and the legislature's apparent objective in enacting it. *People v. Jones*, 223 Ill. 2d 569, 580-81 (2006)(citing *People v. Davis*, 199 Ill. 2d 130, 135 (2002)). The legislature enacted the dismissal statute as a remedy for the violation of the time requirements

for preliminary hearings in Section 109-3.1, likely in response to this Court's request due to unreasonable delays of preliminary hearings in violation of a recently enacted constitutional right to a "prompt" preliminary hearing. Ill. Const. 1970, art. I, § 7; *Bartee*, 177 Ill. App. 3d at 940; *Howell*, 60 Ill. 2d at 122-23 ("We consider the delays in giving an accused a prompt preliminary hearing to be a serious deprivation of his constitutional rights and we are deeply concerned about the number of cases in which an accused has not had a prompt probable-cause determination. We consider this a subject for appropriate legislative action and we strongly urge the General Assembly to consider the prompt implementation of this constitutional provision.") The chief justice of this Court included this subject in the annual report recommendations to the General Assembly. *Id*. The reason for the dismissal statute was to remedy the repeated and significant delays in providing "prompt" preliminary hearings. *People v. Donoho*, 204 Ill. 2d 159, 171-72 (2003); Ill. Const. 1970, art. I, § 7. To read it as prohibiting relief when no probable cause hearing occurred, as the State argues, causes conflicts between the preliminary hearing statutes.

The proper interpretation of a statute must consider the results and consequences from construing it one way or the other. *Mulligan v. Joliet Reg'l Port Dist*., 123 Ill. 2d 303, 312-13 (1988) (citing *Carrigan v. Illinois Liquor Control Comm'n*, 19 Ill. 2d 230, 233 (1960)). Statutes must be construed so as to avoid absurd results. *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561, ¶ 27 (citing *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27. If the proffered reading of a statute leads to absurd results, or to results that the legislature could not have intended, then the reading leading to such absurdity should be rejected by

the courts. *Dawkins*, 2022 IL 127561 at ¶ 27 (citing *Evans*, 2021 IL 125513 at ¶ 27). The statute here was written to remedy the lack of a prompt probable cause finding, as this Court requested in *Howell*, not the lack of any probable cause finding, which, until now, had never occurred or needed a remedy. *Howell*, 60 Ill. 2d at 122.

The State's argument that Mr. Chambliss waived his preliminary hearing under the automatic waiver provision in the dismissal statute is an absurd result that should not be accepted by this Court. Under the State's interpretation of the law, a defendant who receives a preliminary hearing or indictment, but receives it late (not within the time provisions of Section 109-3.1) has a dismissal remedy available to him. However, Mr. Chambliss, who received no preliminary hearing and no indictment, is determined to have waived his right and has no remedy for the denial of his probable cause hearing. There is nothing to support an argument that the legislature ever considered application of the dismissal statute to the situation in this case where a defendant simply did not receive or waive a probable cause hearing before trial. The plain language of the dismissal statute is that it applies to delayed probable cause hearings, not to denied probable cause hearings.

The State argues that the only method for enforcement of the constitutional right to a prompt preliminary hearing is through the time requirement statute because a plain error remedy is not available. (St.Br.13,15) 725 ILCS 5/109-3.1. The State relies on *Marcum*, a speedy trial case, for support. (St.Br.13) *People v. Marcum*, 2024 IL 128687, ¶ 41. In *Marcum*, this Court held that a violation of the speedy trial time requirement statute alone does not constitute plain error.

Id. This is the same argument the State has made regarding the time requirement statutes for a preliminary hearing, and Mr. Chambliss makes the same response. In a case where speedy trial time requirements were violated, the defendant received a trial, he just did not receive a speedy trial in accordance with the statute. Mr. Chambliss is not complaining that he did not receive a timely or "prompt" probable cause hearing in accordance with the statues, he is complaining the he did not receive any probable cause hearing in accordance with the constitution.

CONCLUSION

For the foregoing reasons, Anzano Chambliss, defendant-appellee, respectfully requests that this Court affirm the decision of the lower court.

Respectfully submitted,

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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 40 pages.

/s/Julie A. Thompson
JULIE A. THOMPSON
Assistant Appellate Defender

No. 130585

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 5-22-0492.
Plaintiff-Appellant,	)	There on appeal from the Circuit Court of the Twenty-Fourth Judicial Circuit, Perry County, Illinois, No. 21-CF-87.
-vs-	)	
ANZANO P. CHAMBLISS,	)	Honorable Jeffrey K. Watson, Judge Presiding.
Defendant-Appellee.	)	

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, Attorney General's Office, 115 S. LaSalle Street, Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Mr. David H. Searby, Jr., Perry County State's Attorney, One Public Square, P.O. Box 438, Pinckneyville, IL 62274, dsearby@perrycountyil.gov;

Mr. Anzano Chambliss, Perry County Jail, 12 E. Water Street, Pinckneyville, IL 62274

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 28, 2025, 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-appellee in an envelope deposited in a U.S. mail box in Mt. Vernon, 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.

/s/Katherine Byerley
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