No. 128366

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. FRANK ROLAND, Petitioner-Appellee.	))))))))))	On Appeal from the Appellate Court of Illinois, First District, No. 1-17-3013 There on Appeal from the Circuit Court of Cook County, Illinois, No. 02 CR 26630 The Honorable Maura Slattery Boyle, Judge Presiding.

REPLY BRIEF OF RESPONDENT-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2235
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellant People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
6/28/2023 10:07 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

Page(s)

ARGUMENT

Petitioner Failed to Make a Substantial Showing That Trial Counsel Provided Ineffective Assistance by Not Presenting Additional Evidence of Petitioner's Prior Suicide Attempts.

The People's opening brief demonstrated that the circuit court properly dismissed the postconviction petition because it failed to make a substantial showing that trial counsel provided ineffective assistance by not presenting additional evidence of petitioner's suicide attempt months before he shot at Officer Rewers and then again after his arrest.

Faced with a challenging case — petitioner was charged with attempted murder for shooting toward a police officer and would testify that he did shoot toward the officer — trial counsel argued that there was reasonable doubt that petitioner did so with the requisite intent to kill. Counsel elicited testimony via cross-examination of the People's witnesses suggesting that petitioner was not pointing the gun directly at the officer when he fired. Sup3R 338-45, 364-65, 404-09. Counsel also elicited from petitioner that he fired only because he was suicidal and hoped to provoke a fatal police response, not because he wanted to kill the officer, that he had "cut [his own] throat with a knife" before his arrest for this offense, and that he had tried to hang himself in jail a few days after his arrest. Sup3R 424-26. In finding petitioner guilty, the trial judge explained that petitioner's conduct that night, which amounted to doing everything he could to *avoid* being shot, could not be reconciled with his account.

Petitioner failed to make a substantial showing of deficient performance. His argument that trial counsel did not investigate his suicide attempts and related treatment is rebutted by the record, which demonstrates that counsel obtained relevant documents and litigated petitioner's mental health issues throughout the proceedings. Moreover, presenting additional evidence that petitioner was suicidal months before the offense and then again after his arrest would have provided little benefit to the defense — his suicide attempts were undisputed — but carried substantial risks.

Nor does petitioner make a substantial showing that he was prejudiced by trial counsel's decision not to present additional evidence of his suicide attempts. His assertion that such testimony would have been "useful" in weighing his credibility, Pet. Br. 38, is unavailing because there is no reasonable probability that corroboration of the uncontested fact of petitioner's suicide attempts would have led to a different outcome. Such evidence would not have addressed the fatal weakness in that defense: that petitioner's conduct on the day of the shooting was wholly inconsistent with a suicide attempt.

A. Petitioner Failed to Make a Substantial Showing of Deficient Performance.

Petitioner failed to make a substantial showing of deficient performance to overcome "the strong presumption that any challenged action or inaction may have been the product of sound trial strategy." *People v.*

Dupree, 2018 IL 122307, ¶ 44; *see also People v. Manning*, 241 Ill. 2d 319, 334 (2011) ("'Judicial scrutiny of counsel's performance must be highly deferential,' and 'a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'") (quoting *Strickland v. Washington*, 466 U.S. 668, 689 (1984)).

To begin, petitioner has no criticisms of counsel's affirmative actions at trial, acknowledging that he does not question "whether what counsel *did* was reasonable." Pet. Br. 33 (emphasis in original). This concession is notable because an "attorney's performance must be evaluated as a whole under *Strickland*." *In re Denzel W.*, 237 Ill. 2d 285, 299 (2010); *see also People v. Ganus*, 185 Ill. 2d 355, 365 (1998) (reviewing court must "[v]iew[] counsel's performance as a whole under the particular circumstances of this case"). In the difficult position of having to argue that when petitioner fired in the direction of Rewers, he did so without intent to kill, trial counsel aggressively cross-examined the prosecution's witnesses about the trajectory of the bullet. Counsel successfully elicited testimony that petitioner fired the gun while running, in the dark, and with his upper body half-turned and the gun under his left shoulder, Sup3R338, 341-45; that petitioner did not stop to fire his gun and the muzzle flash would have been visible even had he fired straight up into the air (and thus not actually at Rewers), Sup3R364-65; and that there was no evidence that a bullet had hit the buildings behind Rewers, suggesting that petitioner had fired over Rewers's head, Sup3R404, 408-09.

Counsel also elicited petitioner's testimony that he "turned and fired a shot in the air" while running, that his hand was not pointed at Rewers but "up at an angle," Sup3R421, 423, "that he was suicidal on the day of this incident and had attempted suicide both before and after this incident," *see* Pet. Br. 31, and that he shot at Rewers so the police would shoot and kill him, Sup3R420-22. This permitted counsel to argue that petitioner shot at Rewers in hopes of provoking a fatal response.

Counsel also provided the circuit court an additional, independent basis to acquit: that petitioner fired at the pursuing officers so he could escape and was not trying to kill Rewers. This was important because petitioner's conduct was inconsistent with attempting to commit suicide. He denied doing anything to initiate a police encounter, Sup3R421, and he conceded that after the officers told him to stop, he ran and continued to run even after Rewers shot and missed him, Sup3R421-22. He then hid inside a home until police arrived, at which point he came forward with his hands in the air. Sup3R371-75, 390-01.

Nonetheless, petitioner asserts that he made a substantial showing that trial's counsel's performance was deficient because he did not "use available evidence to corroborate [petitioner's] testimony that he was suicidal at that time." Pet. Br. 33. But petitioner cannot overcome the presumption that counsel investigated petitioner's history of suicide and made a strategic decision not to present additional evidence about his suicide attempts.

Evidence corroborating petitioner's uncontested testimony that he had attempted to kill himself two months before the offense and again after his arrest would not have strengthened, and could have undermined, his defense.

1. Petitioner has not shown that counsel failed to investigate his suicide attempts and therefore cannot overcome the presumption that counsel made a strategic decision not to present additional evidence of those attempts.

Petitioner fails to overcome the presumption that trial counsel's investigation was reasonable, *see People v. Cloutier*, 191 Ill. 2d 392, 403 (2000), as the record demonstrates that counsel was aware of and had documentation regarding petitioner's suicide attempts. As petitioner correctly sets forth, under *Strickland* trial counsel is obliged "to do 'some investigation' into 'readily available sources of evidence' to explore possible defense strategies." Pet. Br. 18 (quoting *Brown v. Sternes*, 304 F.3d 677, 691-92 (7th Cir. 2002)) (additional internal quotations and emphasis omitted). Petitioner offers no support for his contention that his counsel did not perform "some investigation" into his suicide attempts. And petitioner's argument that counsel must not have investigated the records of those attempts because "[n]othing in the record shows counsel had, or even was aware of, th[os]e records," Pet. Br. 36, turns *Strickland*'s presumption of competence on its head. A silent record concerning counsel's pre-trial investigation cannot overcome the "strong presumption" that counsel provided reasonable assistance. *See Burt v. Titlow*, 571 U.S. 12, 23 (2013) ("It

should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'") (quoting *Strickland*, 466 U.S. at 689); *see also Dunn v. Reeves*, 141 S. Ct. 2405, 2407 (2021) (same).

It is unclear whether petitioner abandons the centerpiece of the appellate court's reasoning — that is, that trial counsel should have obtained documents and conducted further investigation regarding petitioner's treatment at Tinley Park Mental Health Center. *See* A5. Although petitioner criticizes counsel for failing to present testimony from "Dr. Chun from Tinley Park," Pet. Br. 26, petitioner refers to the question of investigating Tinley Park records as "moot," Pet. Br. 36, and he does not dispute that Dr. Seltzberg testified at the fitness hearing that Tinley Park "said they had no record of [petitioner]," PI11, or that postconviction counsel confirmed with Madden Health Center, where Tinley Park's records were transferred, that no records existed indicating that petitioner was treated at Tinley Park, Sup2R12; Sup2C5.

To the extent petitioner agrees with the appellate court that trial counsel should have conducted further investigation into Tinley Park, counsel could have reasonably determined that would be fruitless. *See Harrington v. Richter*, 562 U.S. 86, 108 (2011) ("An attorney need not pursue an investigation that would be fruitless"); *People v. Pecoraro*, 175 Ill. 2d 294, 324 (1997) ("Where circumstances known to counsel at the time of his

investigation do not reveal a sound basis for further inquiry in a particular area, it is not ineffective for the attorney to forgo additional investigation."). Again, Dr. Seltzberg testified that Tinley Park responded to the release form provided by retained counsel that they had no records relating to petitioner. PI11. Thus, the record shows that counsel could have reasonably determined that there was no point in sending another request for the same nonexistent records.

Nor does the record support petitioner's assertion that trial counsel unreasonably failed to investigate the suicide attempts that were the subject of petitioner's treatment at Cermak and Ingalls. Retained counsel had petitioner evaluated for fitness and sanity based on his hospitalization "about a month" before the offense (that is, at Ingalls), PA4, and assisted Forensic Clinical Services (FCS) in obtaining petitioner's records from Cermak as well as "further records," PB3, PD3, PG3, PI13-17. Following the appointment of the public defender, petitioner's appointed counsel also had the Cermak records, as well as other medical records, PQ6, PT3, PU3, and informed the court that it was "seeking psychiatric interviews" of petitioner, PU3. And appointed counsel elicited testimony from petitioner at trial regarding his past suicide attempts — petitioner testified that before the offense he "cut [his] throat with a knife in several places" and, after being arrested, he "made a noose" with sheets and "other inmates came and discovered [him] unconscious," Sup3R424-26 — and argued petitioner's mental health issues

in mitigation at sentencing, including by presenting records documenting petitioner's post-shooting suicide attempt, PII9-10. Thus, petitioner failed to make the substantial showing that counsel did not perform a sufficient investigation into his suicide attempts.[1]

For that reason, petitioner's cited authority is inapposite, for those cases concern documented total failures to investigate. In *People v. Harris*, 206 Ill. 2d 293 (2002), cited Pet. Br. 18, 27, counsel conceded that he was "woefully unprepared for the capital sentencing hearing because he did not consider [the] defendant a serious candidate for the death penalty"; had "never investigated or contacted individuals" regarding the defendant's past depression, substance abuse, or "rough" childhood; and made "neither a strategic nor a tactical decision" not to investigate and present such evidence. *Id.* at 320, 322. Similarly, in *Brown*, cited Pet. Br. 18-19, counsel never obtained any of the petitioner's medical records or spoke to his "family about his past history" despite "a prolonged and documented history of severe

[1] While it is immaterial whether counsel had the precise records attached to the petition, the record suggests that counsel had the documents from Cermak and likely those from Ingalls as well. Retained counsel stated "[w]e have Cermak records." PN3; *see also* P03 (counsel stating that they had served a court order on FCS and counsel had reviewed returned records). Petitioner's appointed counsel also had the Cermak records, as well as other medical records. PQ6, PT3, PU3. There is no reason to believe that these Cermak records were different from those attached to his petition. As for the Ingalls records, retained counsel demonstrated his awareness of the Ingalls record when he informed the court that he "believe[d] the psych institute didn't have all the medical records specifically from a month before this incident," PL3, an apparent reference to petitioner's hospitalization at Ingalls, since that was around the time petitioner was hospitalized there.

mental illness." 304 F.3d at 694-95. And in *People v. Domagala*, 2013 IL 113688, cited Pet. Br. 17-18, 31, counsel admitted that he had not made a strategic decision not to "investigate, argue, or set forth" a defense to murder that a later expert opined would have been applicable. 2013 IL 113688, ¶¶ 26, 41. Petitioner's remaining case, *People v. Cleveland*, 2012 IL App (1st) 101631, cited Pet. Br. 31, does not involve a failure to investigate, but rather a failure to present a defense. 2012 IL App (1st) 101631, ¶ 60 (counsel "refus[ed] to call several witnesses who could have provided an alibi for the defendant").

Here, as explained, counsel was plainly aware of petitioner's prior suicide attempts. Counsel secured a fitness hearing, helped the experts to obtain the documents necessary to determining petitioner's fitness at the time of trial and sanity at the time of the offense, sought additional records, and presented petitioner's testimony about the suicide attempts at trial and additional evidence at sentencing. Petitioner thus has not made the substantial showing that counsel failed to investigate his suicide attempts necessary to overcome the presumption that counsel made a strategic decision not to present additional evidence of those attempts.

2. Petitioner's hindsight criticism does not overcome the presumption that counsel's strategic decision not to present additional evidence of petitioner's suicide attempts was reasonable.

Petitioner also failed to overcome the presumption that trial counsel's decision not to present additional evidence of his suicide attempts fell within

the wide range of reasonable assistance. *See Manning*, 241 Ill. 2d at 334; *Dupree*, 2018 IL 122307, ¶ 44 (noting "the strong presumption that any challenged action or inaction may have been the product of sound trial strategy"). Petitioner argues that because counsel presented his testimony about his suicide attempts, "no reasonable strategy could have included" not presenting additional evidence about those attempts. Pet. Br. 31-32. On the contrary, at least two reasons support counsel's decision not to present additional evidence of petitioner's suicide attempts: petitioner's testimony about those attempts was undisputed and the proposed additional evidence therefore was of limited value, and the proposed additional evidence about the suicide attempts would have been potentially harmful.

First, petitioner concedes that his testimony about his suicide attempts was undisputed — the prosecution did not cross-examine him about the suicide attempts — yet asserts that his "credibility as to whether he was actually suicidal on [the day of the shooting], was in dispute." Pet. Br. 32. But counsel could have reasonably concluded that additional evidence about the details of petitioner's suicide attempts before the offense and after his arrest would not have made his testimony about those attempts more credible because the prosecution did not challenge that testimony. Nor would additional evidence about the timing of petitioner's suicide attempts have benefited the defense. While petitioner criticizes counsel for failing "to ensure the judge knew when the pre-incident suicide attempt occurred," Pet.

Br. 24, it was sound strategy not to emphasize that it occurred months before — and therefore far removed from — the shooting. Thus, counsel's decision not to present additional evidence corroborating this undisputed point was well within the wide range of reasonable assistance.

Relatedly, counsel could have reasonably concluded that additional evidence about petitioner's suicide attempts would be of limited value because it would not establish that he was not pointing the gun at Rewers when he fired it. Contrary to petitioner's contention, *see* Pet. Br. 7 (citing Sup3R422-23) attempting "suicide by cop" is not incompatible with intending to kill a police officer. Shooting at an officer could draw return fire from the other officers at the scene. As a result, additional evidence about the suicide attempts would have provided little support for the defense, since shooting with an intent to kill Rewers was entirely consistent with petitioner's claimed suicide attempt.

Second, counsel's decision not to present further evidence about petitioner's suicide attempts was reasonable for the additional reason that presenting such evidence had strategic downsides. *See People v. Eddmonds*, 143 Ill. 2d 501, 532-33 (1991) (decision not to conduct further psychiatric examination of defendant was not deficient performance because results might have damaged his case). For example, it could have opened the door to questions about whether the suicide attempts were sincere. With respect to the pre-shooting attempt, during which petitioner cut his throat, hospital

records suggested that the injuries may not have reflected a serious attempt at suicide. While there were "lacerations noted to neck/throat area," they were "closed" with "[no] bleeding noted," Sup3C163, and apparently were not serious enough to be recorded in the emergency physician record, which instead reported lacerations to petitioner's right hand, Sup3C168; *see also* Sup3R425-26 (doctor's description of incident as "cry for help"). And regarding petitioner's post-shooting attempt to hang himself, Dr. Seltzberg testified at the fitness hearing that the records indicated that "there was no loss of consciousness," PI12, which would have discredited petitioner's testimony that he was found unconscious, Sup3R425, and called into question the seriousness of the attempt. Additional evidence about the post-arrest attempt also could have opened the door to testimony that the day after the attempt, petitioner announced that he was "going to start some shit" to avoid returning to a particular division of the jail. PII11; *see also* Sup3C102.

In addition, presenting additional evidence about the suicide attempts could have called attention to petitioner's aggressive, violent character. Records of the pre-shooting suicide attempt stated that although petitioner suffered from "[s]uicidal ideation," the "[c]hief complaint [was] Aggressive behavior" and noted petitioner's "[i]ncreased aggressiveness": he had "punched 'something'" and had to be maced and handcuffed by police after an "altercation" with his girlfriend, Sup3C168. Meanwhile, his post-shooting medical records discussed his "strong gang affiliation." Sup3C138; *see also*

Sup3C64 (petitioner's admission that he "held the rank of 'Chief Enforcer'" for Latin Kings). Aside from damaging petitioner's credibility, such evidence could have undermined his testimony that he purchased the gun only to commit suicide and was attempting to do so when he shot at Rewers.

Finally, presenting further evidence that petitioner had attempted suicide before and after the shooting risked eclipsing petitioner's secondary defense that he merely intended to fire a warning shot to slow his pursuers. Petitioner asserts that his counsel "never offered th[is] alternative theory," Pet. Br. 34, but this misstates the record. Although counsel did not argue this theory in closing (which he could not easily do, as it would have been incompatible with petitioner's testimony that he shot at police in a suicide attempt), counsel argued it in support of petitioner's motion for directed verdict and provided everything necessary for the circuit court to find reasonable doubt on this basis.

In particular, in his opening statement, counsel asserted that the evidence would show that petitioner, while "running away, turns and shoots" without "any sort of precision." Sup3R315-16. Then, in support of the motion for a directed verdict, counsel argued that petitioner fired when "most of his body is facing the other way," which was "more of a shot of get away from me or a warning shot." Sup3R416-17. And in closing argument, although counsel "adopted" petitioner's testimony insofar as he asked the circuit court to believe it, he left the door open for the court to acquit if it did not by

arguing that petitioner "wasn't thinking straight," was "looking in the direction that he is running," and "perhaps shot . . . without even looking up." Sup3R443, 450. Thus, counsel clearly offered an alternative basis to acquit that did not depend on the circuit court crediting petitioner's testimony — which was not supported by his actions — that he was attempting to commit "suicide by cop."

For all these reasons, counsel could have reasonably declined to present additional evidence of defendant's suicide attempts because such evidence offered little benefit but substantial risk. Petitioner thus failed to show that counsel's performance was outside the range of reasonable assistance.

B. Petitioner Failed to Make a Substantial Showing of Prejudice.

To demonstrate prejudice, petitioner was required to establish a reasonable probability of a different outcome. *Strickland*, 466 U.S. at 694. But petitioner failed to establish prejudice from trial counsel's decision not to present additional evidence of his suicide attempts because such evidence could not cure the fatal weakness in his defense: his conduct on the day of the shooting was wholly inconsistent with a suicide attempt. As the trial judge observed, petitioner's testimony did not "make any sense"; if he "wanted to commit suicide, he would not have fired the shot while running away, then duck[ed] behind an archway to hide." Sup3C245; *see also* Sup3R451 (similar). In other words, if petitioner had intended to commit

suicide, he would not have *prevented* the officers from shooting him. Sup3R335; Sup3R357; Sup3R421-22. Neither would petitioner have hidden in an apartment after briefly eluding police, nor, when the officers eventually found him, would he have come forward with his hands up. Sup3R371-75, 390-01. In fact, petitioner denied initiating the encounter with police in the first place. Sup3R421. In sum, nothing about petitioner's conduct during his encounter with police suggested a suicide attempt. Additional evidence of petitioner's suicide attempts would not have changed that. And it could have made it *less* likely that the trial judge would have credited petitioner's testimony. *See supra* pp. 11-13. Thus, there was no reasonable probability that the proposed evidence would have changed the outcome.

For his part, petitioner understates his burden of showing prejudice and overstates the likely impact of the proposed testimony. Petitioner asserts that he "satisfies [his] burden of pleading because [the evidence] would have corroborated his testimony that he was suicidal that day." Pet. Br. 37. And he argues that it "would have been useful to the trier of fact in weighing [his] credibility" to have medical experts testify about his suicide attempts. Pet. Br. 38. But to sustain his burden at the second stage of postconviction proceedings, petitioner was required to do more than merely allege that counsel could have presented arguably "useful" evidence that would have "corroborated" his uncontested testimony. Rather, petitioner was required to make a substantial showing of a reasonable probability that such

evidence would have led to a different outcome. *Dupree*, 2018 IL 122307, ¶¶29, 45.

Petitioner's other arguments are also misplaced. He repeatedly suggests that counsel declined to present evidence regarding his mental state "at that time" or "at that time of his life" (apparently meaning at the moment of the shooting), Pet. Br. 29, 33, 35, 38, but this ignores that the suicide attempts took place either months before or after his arrest for the offense. *See People v. Curry*, 225 Ill. App. 3d 450, 454 (2d Dist. 1992) (no prejudice from counsel's alleged failures because psychiatrist's opinion was limited to the defendant's mental state 17 days after the crimes); *People v. Dunigan*, 96 Ill. App. 3d 799, 820 (1st Dist. 1981) (collecting cases holding that examinations months before and after crimes were "not probative of [defendant's] mental condition at the time of offense"); *see also People v. Smith*, 2019 IL App (4th) 160641, ¶ 64 (inmate-request slips written by defendant were "indicative of his state of mind at that time, not reflective of his state of mind two months before"). At most, additional evidence that petitioner had tried to kill himself months before the shooting and days after would have corroborated his uncontested testimony that he was suicidal at those other times.

Nor, contrary to petitioner's argument, was his act of firing the gun "inexplicable." Pet. Br. 37. Petitioner's own testimony provided one explanation: He was attempting to draw fire from Rewers. And Rewers's

testimony provided a competing explanation: Petitioner was trying to kill him. The trial judge did not accept petitioner's explanation, crediting instead the explanation that fit his conduct.

Petitioner similarly misses the mark in arguing that evidence of his suicide attempts before and after the shooting would have resolved the trial judge's "doubts about whether [he] was 'sincere' in his claims of being suicidal." Pet. Br. 38. At sentencing, the judge stated that she did "not know how sincere [petitioner's] suicide attempt was at the Cook County Jail." PII20. But this was nearly four months after finding petitioner guilty, and the judge expressed no doubts about the "sincerity" of petitioner's suicide attempts when announcing her verdict. Indeed, the judge's skepticism at sentencing confirms the strategic downsides associated with presenting additional evidence of petitioner's suicide attempts. *See supra* pp. 11-13. It was only after viewing the evidence petitioner asserts counsel should have presented at trial that the trial judge questioned the sincerity of petitioner's post-shooting suicide attempt. *See* PII9-10 (stipulated records introduced regarding suicide attempt in jail after arrest).

Petitioner's cited cases are inapposite. In *People v. Moore*, 2020 IL 124538, cited at Pet. Br. 28, the defendant was charged with unlawful possession of a firearm by a felon, and defense counsel failed to stipulate to defendant's felon status, thereby guaranteeing that prejudicial evidence of a prior murder conviction would be presented to the jury. 2020 IL 124538,

¶¶ 36, 40, 46. This Court held that counsel was deficient for not offering the stipulation because the record "clearly show[ed]" that the decision "was not based on any legitimate trial strategy but, rather, on a misapprehension of the law," *id.* ¶ 41, and that the defendant was prejudiced because the evidence that he possessed the firearm was weak, *id.* ¶¶ 50-51. Here, unlike in *Moore*, counsel's decision not to present further evidence of petitioner's suicide attempts was not uniquely likely to affect the outcome. The People did not contest that petitioner had attempted suicide before and after the shooting. Nor did the proposed evidence shed any light on whether, when petitioner pulled the trigger, he was pointing the gun at Rewers and whether he intended to kill him. Meanwhile, petitioner's testimony that he was pointing the gun away from Rewers and with the intent to provoke fatal return fire was contradicted by his actions.

Similarly misplaced is petitioner's reliance on *People v. Sebby*, 2017 IL 119445, which addressed whether the evidence against the defendant was closely balanced under the first prong of the plain-error standard. Pet. Br. 28. There, both the defense and prosecution witnesses "presented plausible versions of events," *Sebby*, 2017 IL 119445, ¶ 60; thus, this Court held, the circuit court's failure to ensure during voir dire that the jurors understood and accepted the presumption of innocence and burden of proof constituted plain error, *id.* ¶ 67. Here, petitioner makes no plain error argument, and the trier of fact was not faced with two equally plausible versions of events.

Rather, as the trial judge explained, petitioner's version did not "make any sense." Sup3C245.

In sum, evidence corroborating petitioner's testimony that he tried to kill himself on two other occasions would have had no effect on the circuit court's resolution of the question whether he intended to kill Rewers when he shot at him. As the trial judge explained when delivering her verdict, what "tipped the scales" was not that she "discounted" that petitioner was suicidal on the day of the shooting but that his conduct was inconsistent with attempting to commit suicide. Only months later during sentencing, after the trial judge was presented with some of the evidence that petitioner now asserts would have helped his case, did she suggest that his testimony about one of his suicide attempts may not have been credible. Thus, petitioner failed to make a substantial showing that the trial judge would have believed his account had counsel presented additional evidence about his suicide attempts when she made clear that the key issue was that his account simply did not fit with his actions.

CONCLUSION

This Court should reverse the judgment of the appellate court.

June 28, 2023

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7973
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

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 containing 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, and the certificate of service, is 4609 words.

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General

PROOF OF FILING AND SERVICE

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 June 28, 2023, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system, which served a copy to the e-mail addresses of the persons named below:

Gilbert Lenz
Assistant Appellate Defender
Office of the State Appellate Defender
203 North LaSalle, 24th Floor
Chicago, Illinois 60611
1stdistrict.eserve@osad.state.il.us

Hon. Kimberly M. Foxx
State's Attorney
Cook County State's Attorney Office
69 West Washington Street
Chicago, Illinois 60602
eserve.criminalappeals@cookcountyil.gov

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General