No. 120011

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, Cross-Appellee -vs- WILLIS REESE Defendant-Appellee, Cross-Appellant	)	Appeal from the Appellate Court of Illinois, No. 1-12-0654. There on appeal from the Circuit Court of Cook County, Illinois, No. 07 CR 8683. Honorable Kenneth J. Wadas, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE CROSS-RELIEF REQUESTED

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ISSUE PRESENTED FOR REVIEW

I. Whether the appellate court correctly found that the State failed to prove Reese guilty of aggravated vehicular hijacking because he never dispossessed the driver of the bus, and therefore never completed a taking.

CROSS APPEAL ISSUES

II. Whether the State proved Reese guilty of vehicular invasion beyond a reasonable doubt where Reese entered through the open doors of a waiting bus, while the offense requires an entry by force.

III. Where the court gave no reasons for shackling Reese during jury selection and instead deferred to correctional officers, did the court deprive Reese of due process, as the appellate court found, and does this error require a new trial?

IV. Did the excessive information regarding Reese's prior conviction found in the certified copy of Reese's prior conviction and supplied by the prosecutor's improper questioning and arguments prejudice Reese and warrant a new trial?

V. Whether the trial court failed to comply with Supreme Court Rule 401(a) before permitting Reese to proceed *pro se* by not admonishing him that his sentence would be consecutive to a sentence he was already serving, requiring a new trial.

VI. Whether the court improperly imposed extended term sentences on various classifications of felony convictions.

VII. Whether vehicular invasion should be vacated because this conviction resulted from the same act as Reese's aggravated vehicular hijacking conviction.

STATUTES AND RULE INVOLVED

720 ILCS 5/12-11.1 (West 2007) Vehicular Invasion (now codified at 720 ILCS 5/18-5)

(a) A person commits vehicular invasion who knowingly, by force and without lawful justification, enters or reaches into the interior of a motor vehicle as defined in The Illinois Vehicle Code while such motor vehicle is occupied by another person or persons, with the intent to commit therein a theft or felony.

(b) Sentence. Vehicular invasion is a Class 1 felony.

720 ILCS 5/18-1 (West 2007) Robbery

(a) A person commits robbery when he or she takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force.

720 ILCS 5/18-2 (West 2007) Armed Robbery

(a) A person commits armed robbery when he or she violates Section 18-1; and

(1) he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm. . .

(b) Sentence.

Armed robbery in violation of subsection (a)(1) is a Class X felony.

720 ILCS 5/18-3 (West 2007) Vehicular Hijacking

(a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

720 ILCS 5/18-4 (West 2007) Aggravated Vehicular Hijacking

(a) A person commits aggravated vehicular hijacking when he or she violates Section 18-3; and

(1) the person from whose immediate presence the motor vehicle is taken is a physically handicapped person or a person 60 years of age or older; or

(2) a person under 16 years of age is a passenger in the motor vehicle

at the time of the offense; or

(3) He or she carries on or about his or her person, or is otherwise armed with a dangerous weapon, other than a firearm. . .

(b) Sentence. Aggravated vehicular hijacking in violation of subsections (a)(1) or (a)(2) is a Class X felony. A violation of subsection (a)(3) is a Class X felony for which a term of imprisonment of not less than 7 years shall be imposed. . .

730 ILCS 5/5-8-2 Extended Term

(a) A judge shall not sentence an offender to a term of imprisonment in excess of the maximum sentence authorized by Section 5-8-1 for the class of the most serious offense of which the offender was convicted unless . . .

Illinois Supreme Court Rule 401 Waiver of Counsel

(a) Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

STATEMENT OF FACTS

Willis Reese accepts the State's presentation of the facts in this case with the following correction and additions.

The State incorrectly writes that while testifying, Reese "admitted that, in the prior murder case, the jury had found that he had committed the murder by personally discharging a firearm that caused the victim's death." (State's Brief, at 13) Instead, the prosecutor asked,

> And not only did the jury find you guilty of first degree murder, they made an additional finding that when you committed that murder, that you did so by personally discharging a firearm that proximally [*sic*] caused your victim to die, right? (R. SSS150)

Reese responded by asking, "Oh, yeah. When they did that, when they did that?" (R. SSS150–51) The prosecutor again asked if that is what they found, and Reese replied, "Not that I know of . . . I thought it was something different than that." (R. SSS151).

The prosecutor next asked,

> Oh, well as a result of those findings, Mr. Reese, after being found guilty of first degree murder three days before your escape and with the additional finding that you shot your victim to death, you were looking at a potential sentence of 45 years to the rest of natural life in prison? (R. SSS151)

Reese did not answer, but instead objected, an objection the court overruled. He then agreed only that he was found guilty. (R. SSS151) The prosecutor again asked,

> Okay. You were found guilty of a crime of first degree murder and the jury found that you committed that murder by shooting and killing your victim? (R. SSS151–52)

Reese again said he was not sure about the rest, but he knows they found him guilty of murder and he faced a sentence of 45-years-to-life. (R. SSS152)

Also during Reese's testimony, the prosecutor asked if, on March 22, 2007, the date of the hospital incident, Reese was in jail after being "charged with a felony murder among other charges." (R. SSS156)

During closing argument, the prosecutor returned to the firearm verdict, stating,

> It's not a coincidence that the escape attempt of March 22nd, 2007 comes 3 days on the heels of the guilty verdicts on a charge of first degree murder. On the verdict, the additional verdict that the murder was committed by personally discharging a firearm that resulted in death of the victim. (R. TTT78)

Reese had also testified about the beating he suffered at the hands of correctional officers that was the basis of his necessity defense. He explained that he was attacked in his cell by a new guard in December of 2005. (R. SSS147) That guard called for assistance, and others came into the cell and beat him. (R. SSS126) He suffered a fracture in his eye, needed eight stitches on his chin, and had one eye swollen shut. (R. SSS127) Reese was hospitalized for three days as a result. (R. SSS127) The court admitted into evidence pictures of the injuries Reese suffered during this beating. (R. SSS147); (People's Exhibit 54). The officers responsible threatened to beat Reese again. (R. SSS126–27)

Reese did not try to escape immediately because he wanted to get out of jail by being acquitted in his murder case, but he was found guilty on March 19, 2007. (R. SSS149) He then tried to escape. (R. SSS149) Reese

wanted to avoid immediate danger, alert authorities, and bring justice to the plight of people in Cook County jail, many others of whom he had seen beaten. (R. SSS125, SSS149)

Two pre-trial issues are also relevant to this appeal. Prior to trial, Reese asked to dismiss his public defender and represent himself. (Supp. R. 4–5) The trial court admonished Reese about his right to appointed counsel and the various charges and sentences, including possible extended terms. (Supp. R. 7–11) The Court also informed Reese that some of his sentences in this case could be consecutive to each other, leading to a potential maximum term of 160 years. (Supp. R. 8–10) The Court did not tell Reese that any sentence in this case would be consecutive to his prior sentence in the murder case. (Supp. R. 7–14) After these admonishments, the court permitted counsel to withdraw and Reese to represent himself. (Supp. R. 15–18)

On the day of jury selection, Reese wore leg shackles and asked to have them removed before the jury entered. (R. PPP4–5) The court stated that Reese's hands would be free and there would be drapery around both the defense and prosecution tables, but both the court and Reese agreed that the jury could hear the shackles if he moved his legs. (R. PPP4–5) Reese noted that he had previously argued a motion without shackles and caused no problems. (R. PPP5) The court said that Reese was "preaching to the choir," but that the decision regarding shackles belonged to the correctional officers who had Reese in custody. (R. PPP5, PPP10) Specifically, the court stated, "I will leave it at their discretion." (R. PPP5) The court suggested that Reese

persuade the officers to remove the shackles, stating, "If you can convince those three men that you don't need leg shackles, you don't have to have them on." (R. PPP5) Reese told the court that the officers would only remove the shackles with a court order, and the court said it will consider his request for the following day. (R. PPP11)

During jury selection, Reese expressed concern that potential jurors seated to his side could see the shackles. (R. PPP55) The court questioned two potential jurors individually about whether they could see behind the curtains. One of these two, juror Quinn McSorley, said he could see the restraints behind the drapery. (R. PPP59) Juror McSorley was later seated on the jury and participated in reaching the verdicts. (C. 155–59; R. PPP66) No other jurors were questioned.

At the end of jury selection, the court asked a correctional officer about the shackles. The officer said that according to the Sheriff, they keep the shackles on unless the court orders them off. (R. PPP218) The following day, the court ordered that Reese be free from shackles during the remainder of trial. (R. QQQ3)

ARGUMENT

I. The State failed to prove Willis Reese guilty of aggravated vehicular hijacking because he never physically dispossessed James Rimmer of the shuttle bus, a statutory requirement as made clear by the evolution of the statutory language, legislative history, and case law.

Aggravated vehicular hijacking occurs only when a person "takes a motor vehicle from" another person. 720 ILCS 5/18-3(a)(West 2007); 720 ILCS 5/18-4(a) (West 2007). Before the legislature created the offense of vehicular hijacking, the robbery statute criminalized the taking of a car, which likewise required one to "take" property "from" another. 720 ILCS 5/18-1 (1992). In *People v. Strickland*, 154 Ill. 2d 489 (1992), this Court held that this taking requires one to physically dispossess another of a vehicle; forcing a person to drive a car from one location to another is insufficient. *Strickland*, 154 Ill. 2d at 525. One year after *Strickland*, the legislature then carved motor vehicles out of the robbery statute and created separate offenses of vehicular and aggravated vehicular hijacking in order to punish these takings more harshly, using the same language as the robbery statute requiring one to "take" a vehicle "from" another. Pub. Act 88-351, §5 (eff. Aug. 13, 1993).

This history shows that the offense of vehicular hijacking requires one to physically dispossess another of a car. In 2011, the Illinois Appellate Court reached this very conclusion in *People v. McCarter*, 2011 IL App 1st 092864, ¶¶ 75–79. The legislature has subsequently chosen not to respond with an amendment to bring the forced control of a vehicle within the scope of the

statute.

In light of this consistently developed law intersecting legislation and precedent, the appellate court below was correct to reaffirm *McCarter* and hold that Willis Reese did not commit aggravated vehicular hijacking where he commanded a bus driver to drive, but never dispossessed the driver of the bus. *People v. Reese*, 2015 IL App (1st) 120654, ¶¶ 55–67. The statutory text, various canons of statutory construction, and basic due process support this conclusion.

Whether Reese committed aggravated vehicular hijacking presents a question of statutory construction. The primary goal of statutory construction is to give effect to the legislature's intent. *People v. Hari*, 218 Ill. 2d 275, 292 (2006). The best evidence of legislative intent is the plain and ordinary meaning of the statutory language. *Id.* Courts view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. *People v. Gutman*, 2011 IL 110338, ¶ 12. The court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved. *Id.* Moreover, penal statutes must be "strictly construed in favor of the accused, and nothing should be taken by intendment or implication beyond the obvious or literal meaning of the statute." *People v. Laubscher*, 183 Ill. 2d 330, 337 (1998). Statutory construction is a question of law, reviewed *de novo*. *People v. Whitney*, 188 Ill. 2d 91, 98 (1999).

Because the plain language, legislative history, and judicial president all lead to the finding that vehicular hijacking requires physical

dispossession, the appellate court below correctly reversed Reese's conviction for the aggravated version of this offense. *Reese*, 2015 IL App (1st) 120654, ¶¶ 55–67

A. The plain language of the statute requires physical dispossession.

Where the legislature does not specifically define a term used, courts "assume that the legislature intended the word to have its ordinary and popularly understood meaning." *Whitney*, 188 Ill. 2d at 98. Because the commonly understood meaning of the term "takes from" involves physically removing an item, vehicular hijacking requires actual dispossession. Reese therefore did not commit the offense of aggravated vehicular hijacking.

"A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3 (West 2007). The use or possession of a weapon, or the status of the victim, can enhance this to an aggravated form. 720 ILCS 5/18-4 (West 2007).

The language at issue is the meaning of "takes . . . from" a person or presence of a person. This Court has found, and even the State in its appellate court brief has agreed, that the commonly understood meaning of taking an item from a person requires physical dispossession.

In *Strickland*, the defendant was convicted of robbery of a car by entering the car and directing the owner to drive him from a suburb to Chicago at gunpoint. Robbery occurs when one "takes property from the person or presence of another" by using or threatening force. Ill. Rev. Stat.

1985, ch. 38, par. 18-1(a), now codified at 720 ILCS 5/18-1(a) (exempting vehicles). This Court held that the defendant did not "take" the vehicle because, while the defendant denied the victim "a large measure of control over the vehicle," the defendant never removed the car from the victim's actual possession. *Strickland*, 154 Ill. 2d at 526. To "take" property, this Court held, required the victim to part with the possession. *Id.*, citing *People v. Smith* 78 Ill. 2d 298, 303 (1980).

The State's argument regarding the term "takes" is internally inconsistent. The State does not dispute that the term "take" in the robbery statute means to physically dispossess, and did not dispute this in the appellate court. In its brief the State then curiously agrees that "takes" has the same meaning in the robbery and vehicular hijacking statutes, writing, "Contrary to the majority's belief, the word 'takes' does not have to mean something different in the vehicular hijacking statutes." (State's Brief, at 29). The State conceded the same below: "To be clear, the People's argument is not that the word 'take' has a different meaning in the robbery and the vehicular hijacking statutes." (State's Brief, App. Ct. No. 1-12-0654, at 42)[1]

Contradicting itself, the State yet writes that the appellate court should not have "narrowly read the term 'takes' in the vehicular hijacking statutes as identical to its use in the armed robbery statute." (State's Brief, at

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[1]Defendant-Appellee Reese has filed a certified copy of this brief to this Court pursuant to Illinois Supreme Court Rule 318(c). *See People v. Hunt*, 234 Ill. 2d 49 (2009) (Supreme Court may take notice of the parties' briefs in the Appellate Court).

18) The State explains that while "takes" has the same meaning for both offenses, the nature of the property—a vehicle—leads to the conclusion that taking a motor vehicle has a different meaning than taking any other form of property. (State's Brief, at 29) Yet *Strickland* refutes this argument, holding that the taking of a motor vehicle requires dispossession. *Strickland*, 154 Ill. 2d at 526. If accepted at face value, the State's repeated concession that "takes" has the same meaning in the robbery and vehicular hijacking statutes amounts to a concession of the entire argument.

Indeed, cars are not unique. Imagine, for example, one who commands another by threat of force to use a bank card to obtain cash and hand the cash to the offender. No fair-minded observer would argue that the offender has "taken" the bank card; nor, it appears, would the State. The offender has not taken or robbed the victim of the card, but rather the cash, even though the card has been used at the offender's direction and for the offender's benefit. If, as the State agrees, "takes" carries the same meaning in the robbery and hijacking statute, then commanding the use of an object at the offender's direction, regardless of the nature of the object—be it a car, bank card, or other item—is neither robbery nor hijacking.

Instead of trying to redefine "takes," the State focuses its argument regarding the plain language of the statute on the title, "hijacking." (State's Brief at 17–19) "When the legislature enacts an official title or heading to accompany a statutory provision, that title or heading is considered only as a 'short-hand reference to the general subject matter involved' in that statutory

section, and 'cannot limit the plain meaning of the text.'" *Michigan Ave. Nat. Bank v. Cty. of Cook*, 191 Ill. 2d 493, 505–06 (2000), quoting *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528–29 (1947). "Official headings or titles 'are of use only when they shed light on some ambiguous word or phrase' within the text of the statute, and 'they cannot undo or limit that which the text makes plain.'" *Id.* Because the text here is plain, the title can neither limit nor expand the substance of the text.

Moreover, criminal offenses are defined by their elements, and it is the legislature's prerogative to define offenses by assigning elements in the manner it sees fit, regardless of the title. *People v. Lance*, 243 Ill. App. 3d 380, 385–86 (1st Dist. 1993) (legislature defined the offense titled "delivery" of narcotics to include possession with intent to deliver). For instance, the offense of "Manufacture or Delivery" of a controlled substance can be committed without any manufacture or delivery, or even an attempt to do so, but rather by possessing a controlled substance with intent to deliver. 720 ILCS 570/401 (West 2016). Similarly, a lay, common understanding of the term "assault" requires a physical attack, yet the legislature defined the offense titled Assault to criminalize merely placing another in the apprehension of receiving a physical insult or injury. 720 ILCS 5/12-1(a) (West 2016); *cf. People v. Graves*, 235 Ill. 2d 244, 251 (2009) (finding various monetary assessments fines even though their authorizing statute is titled "Additional fees to finance court system.").

The Illinois Pattern Jury Instructions further confirm that the

elements, not the title, comprise the definition of a crime. Jurors are instructed that, before finding a defendant guilty of vehicular hijacking, they must find that the defendant "took" a vehicle, not that the defendant "hijacked" one. Illinois Pattern Jury Instructions, Criminal, No. 14.22 (4th ed. 2000).

The plain and ordinary meaning of the phrase "takes from" a person, as seen in the dictionary, this Court's decisions, and as recognized by the State, unambiguously requires physical dispossession. There is no need to redefine this element according to the State's preferred understanding of the title; the legislature has clearly spoken.

If the plain and ordinary meaning is insufficiently clear, however, resort to common canons of statutory construction support the notion that vehicular hijacking requires physical dispossession.

B. Aware of *Strickland* and other judicial constructions of the term "takes from" requiring physical dispossession, the legislature used identical language in the vehicular hijacking statute.

"[T]he judicial construction of the statute becomes a part of the law, and the legislature is presumed to act with full knowledge of the prevailing case law and the judicial construction of the words in the prior enactment." *People v. Villa*, 2011 IL 110777, ¶ 36.

On August 13, 1993, Public Act 88-351 became law. This legislation carved the taking of cars out of the robbery statute and created the vehicular hijacking statute, punished vehicular hijacking more seriously than robbery, made offenses involving certain victims a higher class of felony than robbery

of those same victims, and imposed a slightly higher minimum term for aggravated vehicular hijacking as compared to armed robbery. 720 ILCS 5/18-1, 18-2, 18-3, 18-4 (West 2007); *See People v. Reese*, 2015 IL App (1st) 120654, ¶ 61. Previously, the taking of a car fell under the umbrella of the offense of robbery. *See People v. Strickland*, 154 Ill. 2d 489, 525 (1992). Aside from the type of property, though, the elements of the offenses remained nearly identical:

> A person commits robbery when he or she takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1 (West 2007).
>
> A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force. 725 ILCS 5/18-3 (West 2007).

When the legislature enacted this amendment to the Criminal Code, Illinois courts had already examined the phrase "takes property" and determined that it required physically removing the property from the victim. *People v. Smith*, 78 Ill. 2d 298, 303 (1980) (robbery "is complete when force or threat of force causes the victim to part with possession or custody of property against his will"); *Strickland*, 154 Ill. 2d at 526.

Indeed, *Strickland* examined the precise scenario of the robbery of a motor vehicle and concluded that the vehicle could not be considered taken from the victim until the defendant removed the vehicle from the victim's possession. *Strickland*, 154 Ill. 2d at 526. There, the defendant entered a car with the victim and his two young family members inside and ordered him at

gunpoint to drive to California. When the victim reached downtown Chicago, he saw a police car, stopped, and got out to alert the police. *Strickland*, 152 Ill. 2d at 499–500. This Court held that the defendant did not "take" the vehicle because, while the defendant denied the victim "a large measure of control over the vehicle," the defendant never removed the car from the victim's actual possession. *Id.* at 526.

Aware of judicial interpretations of the term "takes property from," including the specific interpretation of taking a car in *Strickland*, the legislature chose to retain this language without modification when it amended Chapter 18 of the Criminal Code, removing cars from the robbery statute and creating the hijacking statutes. The legislature therefore adopted this Court's interpretation in *Strickland* of what it means to take a car. "Where, as here, the statutory language has acquired a settled meaning through judicial construction and that language is retained in a subsequent amendment of the statute, such language is to be understood and interpreted in the same way unless a contrary legislative intent is clearly shown." *Villa*, 2011 IL 110777, at ¶ 36. *See also Dennis E. v. O'Malley*, 256 Ill. App. 3d 334, 344 (1st Dist. 1993) ("It is a cardinal rule of statutory construction that where the legislature re-enacts a statute which has been judicially construed, that body will be deemed to have tacitly approved of such construction if it uses virtually the same words as in the previous enactment"), citing *Harris Trust & Savings Bank v. Barrington Hills*, 133 Ill.2d 146, 139 (1989), and *Frank v. Salomon*, 376 Ill. 439 (1941).

Had the legislature intended a different meaning of "takes from" than reached in *Strickland*, it would have used different language in the hijacking statute, such as "takes control of" a car; it did not. Seen below, the legislature could have subsequently expressed an intent to define "takes from" in hijacking differently than in robbery, but again has not done so.

C. The legislature has not amended the hijacking statute to broaden its scope after *People v. McCarter*, which held that vehicular hijacking requires physical dispossession.

"A related principle of statutory construction is that '[w]here the legislature chooses *not* to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent.'" *In re Marriage of O'Neil*, 138 Ill. 2d 487, 496 (1990), quoting *Miller v. Lockett* 98 Ill. 2d 478, 483 (1984).

In 2011, the First District of the Appellate Court followed *Strickland* to reverse a conviction for vehicular hijacking based on similar facts as in *Strickland*: commanding a car owner at gunpoint to drive his vehicle to a location chosen by the defendant. *People v. McCarter*, 2011 IL App (1st) 092864, ¶¶ 71–79.

In the five years since this decision, the legislature has not altered the statute to include the compelled use of a motor vehicle. The legislature has therefore acquiesced in the *Strickland-McCarter* line of reasoning. *O'Neil*, 138 Ill. 2d at 496.

D. Legislative discussion reveals the intent to punish taking a car away from a person.

While the legislative intent is clear from the plain language and

historical sequence detailed above, the legislative commentary amply confirms this understanding. If the statutory language could be considered ambiguous, this Court "may consider other extrinsic aids for construction, including legislative history, to resolve the ambiguity and determine legislative intent." *People v. Whitney*, 188 Ill. 2d 91, 97–98 (1999).

Every comment in the legislative record explaining the mechanics of vehicular hijacking refers to the act of taking physical control of a car from a person.

Senator Hawkinson, the sponsor of Senate Bill 902 creating the hijacking offenses, explained that the legislation addressed the incidents in which an offender "snatches the driver out" of a car, or where a young child in the car is "taken for a ride after a mother or father is -- is yanked from the car." 88th IL Gen. Assem., Senate Proceedings, April 15, 1993, at 281 (statements of Senator Hawkinson). The Senator also mentioned an incident in which a person was caught by a seat belt and dragged—another incidence of the car being physically removed from the driver's possession and control. *Id.*

Senator Hawkinson repeated the term "yanked out" several times when describing the bill the following month. When generally describing the offense, the Senator again stated that it applies when "a man or woman is -- is yanked out of a car and the car taken." 88th IL Gen. Assem., Senate Proceedings, May 11, 1993, at 24 (statements of Senator Hawkinson). Responding to a question about the "person or immediate presence"

requirement, the Senator stated, "Theft of a motor vehicle would be a Class 3, I believe, currently, whereas this would be a Class 1, if the person was -- was yanked out of the car or was right at the car." 25. Describing the horror of the offense, he stated "how terrible an experience would be to have someone yank you out of a car." *Id.*, at 25–26.

Senator LaPaille also referred to the act of removing a car from a parent, stating the aim was to punish "the thugs and the criminals who carjack cars, take children away with them from their parents when they're in shopping centers." 88th IL Gen. Assem., Senate Proceedings, April 15, 1993, at 283 (statements of Senator LaPaille).

The same discussion occurred regarding the corresponding legislation in the House, House Bill 35. Representative Homer explained, "This is to address that situation that an assailant takes a car away from an individual." 88th IL Gen. Assem., House Proceedings, May 19, 1993, at 39 (statements of Representative Homer).

These legislative comments bolster the position found by the only judicial opinions to address this issue to date, *McCarter* and *Reese*, that vehicular hijacking requires a physical taking.

The State points to the legislative record as well. However, the State does not highlight any comments on the meaning of the statutory language. Rather, the State cites legislative debate indicating that this law is stronger than federal law: "it is also is [*sic*] stronger than the one that we have on the federal level because the federal carjacking Bill only applies if the defendant

was armed with a firearm." 88th IL Gen. Assem., House Proceedings, April 10, 1993, at 164 (statements of Representative Novak); (State's Brief, at 23). This legislative quote does nothing to establish that taking a vehicle means something different than taking any other property under the robbery statute. Rather, it simply shows that the offenses are different, where Illinois will punish the taking of a vehicle more harshly than other property even where the defendant is not armed, unlike federal law.

The legislative commentary therefore bolsters the conclusion signified by the plain and ordinary meaning of the statutory text and the historical legal context of the creation of this offense using language construed by *Strickland* and reaffirmed by *McCarter*: vehicular hijacking requires physical dispossession.

E. A harmonious reading of the robbery and vehicular hijacking statutes indicates that vehicular hijacking is the robbery of a car.

"Under the doctrine of *in pari materia*, two statutes dealing with the same subject will be considered with reference to one another to give them harmonious effect." *People v. McCarty*, 223 Ill. 2d 109, 133 (2006). Prior to 1993, the robbery statute criminalized the taking, by physical dispossession, of any property, including motor vehicles. Since 1993, robbery has excluded motor vehicles, and the taking of motor vehicles has been criminalized by the hijacking statute. Where there is no longer an offense of robbery of a car, a harmonious reading of these two offenses indicates that hijacking is simply robbery of a car, though with one caveat noted below that narrows, rather

than broadens, the scope of the offense.

The legislature separated motor vehicles from the offense of robbery not to broaden the scope of acts considered a taking, but rather to punish the taking of motor vehicles more harshly: robbery, generally, is a probationable Class 2 felony, while vehicular hijacking is a nonprobationable Class 1 felony. 720 ILCS 5/18-1(c), 18-3(b) (West 2007); 730 ILCS 5/5-5-3(c)(2)(K) (West 2007). Both offenses are enhanced to Class X felonies when committed while armed with a dangerous weapon, but this version of aggravated vehicular hijacking carries a minimum sentence of seven years, rather than six for armed robbery. 720 ILCS 5/18-2(b), 18-4(b) (West 2007). Further, additional factors can elevate vehicular hijacking, but not robbery, to a Class X felony: if the victim is 60 years or older or physically handicapped, or if a passenger is younger than 16 years of age. 720 ILCS 18-4(a)(1), (a)(2) (West 2007).

The State suggests that the legislature could simply have created a separate, enhanced punishment for robbery and armed robbery where the property taken was a vehicle. (State's Brief, at 26) Instead, the State submits, the legislature indicated a different meaning of the term "takes" by creating a new offense for taking a car. *Id.* This overlooks that the legislature added one word that narrowed the offense of taking a car, indicating that simply enhancing the punishment would not satisfy its aims. While robbery is a taking from the person or presence of another, hijacking is the taking of a car from the person or *immediate* presence of another. 720 ILCS 5/18-1, 18-3.

For robbery, "[t]he element of presence may be shown even though the property taken was not on the victim's person or within the victim's immediate control." *People v. Blake*, 144 Ill. 2d 314, 320 (1991). In contrast, "the language of the vehicular hijacking statute applicable in the present case, by its plain terms, requires more than the mere 'presence' required by the robbery statute." *People v. Cooksey*, 309 Ill. App. 3d 839, 848 (1st Dist. 1999); *accord People v. McGee*, 326 Ill. App. 3d 165, 171 (3d Dist. 2001).

By requiring that the car be taken from the "immediate" presence of the victim, the legislature narrowed the offense, indicating that while it wished to punish the forcible taking of a vehicle more harshly than the taking of other property, it did not want these new penalties to be triggered by as broad a range of scenarios that robbery of a car previously reached. This is indicated by the legislative statement quoted by the State, in which Senator Hawkinson explained that "immediate presence" meant that the victim did not need to be in the car, but could not be "in the store away from the car at the time." 88th IL Gen. Assem., Senate Proceedings, April 15, 1993, at 281 (statements of Senator Hawkinson); (State's Brief, at 30).

The State's interpretation is therefore doubly incorrect: not only did the legislature use the identical term "takes from" as in the robbery statute, indicating an intent to adopt the identical meaning, but when the legislature changed a word, it narrowed the scope of the offense rather than expanded it.

The committee comments to the Illinois Pattern Jury Instructions support the conclusion that hijacking was intended to mimic robbery. In a

note to the Pattern Instructions defining vehicular hijacking and listing the elements, the Committee suggested that prior robbery decisions help define this new offense:

> In *People v. Jones*, 149 Ill. 2d 288, 297, 595 N.E. 2d 1071, 1075, 172 Ill. Dec. 401, 405 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Because the offense of vehicular hijacking closely resembles robbery, the Committee believes the holding in Jones applies to vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

Illinois Pattern Jury Instructions, Criminal, Nos. 14.21–14.23, Committee Notes (4th ed. 2000).

Where the language of the robbery and vehicular hijacking statutes is nearly identical, and every published analysis of these statutes—the Committee Notes and the appellate court in this case and in *McCarter*—has found that the language used in both statutes must be given the same meaning, this Court should likewise construe "taking from" a person to have the same meaning in both statutes: physical dispossession.

F. There is no compelling reason to turn to out-of-state hijacking jurisprudence to interpret the distinct crime of vehicular hijacking in Illinois, especially where the crimes differ in statutory language.

The State urges this Court to rely on foreign jurisprudence expounding foreign statutes to guide its analysis of an Illinois offense. (St. Br. at 30–33) The State offers no compelling reason to do so and relies on some out-of-state cases that undermine its own position.

While Illinois courts are bound by federal decisions interpreting

federal statutes, they are not bound to the argued applicability of those cases to purely state law. *Sundance Homes, Inc. v. County of Dupage*, 195 Ill. 2d 257, 277 (2001). Where even federal cases interpreting Illinois statutes are not controlling, *Hanrahan v. Williams*, 174 Ill. 2d 268, 277 (1996), federal interpretation of *federal* statutes is even less relevant to the interpretation of a distinct Illinois law. *Sundance Homes, Inc.*, 195 Ill. 2d at 277–78.

There is little reason to look to federal cases interpreting the federal carjacking statute where the statutes are dissimilar. As discussed in Part D, *supra*, at the time Illinois adopted its own version, the federal offense required the offender to possess a firearm. 18 U.S.C.A. §2119 (1992). In 1994, the federal law was amended to remove the firearm requirement and instead require "intent to cause death or serious bodily harm," another element absent from the Illinois offense. 18 U.S.C.A. §2119 (1994), as amended by Pub.L. 103-322, § 60003(a)(14) (enacted Sept. 13, 1994). Further, the federal statute encompasses both when one takes a motor vehicle and when one "attempts to do so." 18 U.S.C. §2119 (2012).

In contrast, the Illinois offense excludes attempts, does not require the possession of a firearm, and does not require an intent to cause bodily harm. These differences led the appellate court to correctly conclude that the federal law is a poor model for interpreting Illinois's distinct carjacking statutes. *People v. Reese*, 2015 IL App (1st) 120654, ¶ 72. Because these statutes are so different, while the Illinois vehicular hijacking statutes and Illinois robbery statutes are nearly identical, it makes much more sense to rely on Illinois

robbery jurisprudence—as *McCarter* and *Reese* both did.

Likewise, a case from Georgia cited by the State also examined different statutory language. In *Bruce v. State*, 555 S.E. 2d 819 (Ga. Ct. App. 2001), the court examined the Georgia crime of "obtaining" a motor vehicle or, as in the federal offense, attempting or conspiring to do so. Ga. Code. Ann. § 16-5-44.1(b)(2000); (State's Brief, at 32)

The State cites *United States v. Figueroa-Cartagena*, 612 F.2d 69 (1st Cir. 2010), which involved actual dispossession, undermining the State's argument. (St. Br. at 31). In *Figueroa-Cartagena*, the assailants handcuffed the owner and placed him in the back seat of the car, thus taking the car from the victim's possession. *Figueroa-Cartagena*, 612 F.3d at 72.[2]

Another case cited by the State instead supports Reese. In *People v. Duran*, 88 Cal. App. 4th 1371 (4th Dist., 2001), the California Court of Appeals was called to interpret the term "felonious taking" in the state's carjacking statute. *Id.* at 1375–77. This identical term appears in California's robbery statute. *Id.* at 1377. The court noted that, as in Illinois, the taking of a car from a person was prohibited by the robbery statute prior to the creation of the offense of carjacking. *Id.* at 1376. The court found that the legislative history did not show an intent to treat the "taking" element differently or alter the definition of a "felonious taking." *Id.* at 1377 citing *People v. Alvarado*, 76 Cal. App. 4th 156, 160 (5th Dist. 1999). The court,

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[2] The companion case, *United States v. Castro-Davis*, 612 F.3d 53 (1st Circuit 2010), includes a more detailed recitation of the facts.

therefore, looked to its prior robbery cases for the definition of "felonious taking" and applied that settled definition to the identical term in the carjacking statute. *Id.* at 1377. Unlike Illinois, robbery in California includes exercising forced control over property. *Id. Duran* thus employs the same analysis conducted in *McCarter* and by the court below, and which Reese requests of this Court.

Additional out-of-state cases cited by the State show that hijacking in different jurisdictions can encompass the forced use of a vehicle. (State's Brief at 31–32), citing *United States v. Gurule*, 461 F. 3d 1238 (10th Cir. 2006), *United States v. DeLaCorte*, 113 F.3d 154, 156 (9th Cir. 1997), *Williams v. State*, 990 So. 2d 1122, 1123 (Fla. App. 2008), *People v. Green*, 580 N.W.2d 444, 450 (Mich. App. 1997), and *Winstead v. United States*, 809 A.2d 607, 609 (D.C. 2002). The appellate court ably distinguished these cases in its opinion below, explaining that the statutes at issue in those cases were "broad, dissimilar, and ultimately unhelpful to an analysis of our vehicular hijacking statute." *People v. Reese*, 2015 IL App (1st) 120654, ¶¶ 71–76.

Instead of turning to out-of-state courts interpreting out-of-state statutes, this Court should follow the sound progression of Illinois law—starting with *Strickland*, through the enactment of the vehicular hijacking offense, culminating in *McCarter* and *Reese*—establishing that vehicular hijacking requires physical dispossession.

G. The State misreads both *Strickland* and the appellate court decision below, leading to unfounded concerns.

The State incorrectly suggests that the appellate court below deviated

from *Strickland* to avoid a supposedly-acknowledged risk of absurd results. (State's Brief, at 34) The State's mistake stems from confusing taking an item from a person with taking a person from an item, rendering Part E of its brief irrelevant.

Strickland reversed a conviction for robbery of a vehicle because the car was never "taken from him." *People v. Strickland*, 154 Ill. 2d 489, 526 (1992). As this Court explained, the automobile "was never removed from [the victim's] actual possession." *Id.* From this, the State mistakenly suggests that the only way to take a vehicle from a person is to take the person from the vehicle. (State's Brief, at 35) From this faulty conclusion, the State paints *Strickland* as unworkable and suggests that the appellate court deviated from *Strickland* by acknowledging that vehicular hijacking may occur even if the victim remains in the car. (State's Brief, at 35–36)

The State overlooks scenarios in which physical control of a car is taken from the victim even while the victim remains in the car. This is evident in *Figueroa-Cartagena*, 612 F.2d 69, in which the victim was handcuffed and placed in the rear seat. In that case, the car was physically taken from the person even though the person was not physically taken from the car. The appellate court made this clear when it wrote, "we must clarify that we did not conclude in *McCarter*, nor do we conclude in this case, that our vehicular hijacking statute requires a defendant to *actually remove* the victim from his vehicle." *Reese*, 2015 IL App (1st) 120654, ¶ 69. Contrary to the State's interpretation, this is not a deviation from *Strickland* and does

not undermine the appellate court's sensible decision to apply *Strickland* to the vehicular hijacking statute.

H. Because the only courts to address this question have ruled against the State's interpretation, a contrary holding would show that the statute is ambiguous, requiring the reversal of Reese's hijacking conviction on grounds of due process and lenity.

The Due Process Clause of the Fourteenth Amendment and Article I, Section 2 of the Illinois Constitution provide that no state may deprive any person of liberty without due process of law. U.S. Const., amend. XIV; Ill. Const.1970, art. I, § 2. One fundamental element of due process is notice that particular conduct is unlawful. *See Bouie v. City of Columbia*, 378 U.S. 347, 351 (1964) (notice is "the first essential of due process of law"). "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994).

This principle of due process finds expression in the rule of lenity. The rule of lenity is "rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited." *Dunn v. United States*, 442 U.S. 100, 112 (1979). It "ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered." *United States v. Lanier*, 520 U.S. 259, 266 (1997).

The rule of lenity applies even where the conduct involved is clearly prohibited, but the classification and punishment for that conduct is

ambiguous. *See People v. Whitney*, 188 Ill. 2d 91, 98–99 (1999) (construing ambiguous language enhancing the classification and attendant punishment of an offense in the defendant's favor). As this Court has explained, "the rule of lenity is particularly applicable where the criminal statute operates as an enhancement provision." *People v. Davis*, 199 Ill. 2d 130, 140 (2002) (resolving ambiguity in the defendant's favor regarding the offense of armed violence, which enhances the severity of the felony and punishment for acts that were otherwise prohibited by other offenses.) *See also Johnson v. United States*, 135 S.Ct. 2551, 2555-60 (2015) (ambiguous clause enhancing current crime based on prior convictions for a "violent felony" violated due process because it did not provide clear and fair warning of the conduct that triggered the higher penalties).

In this case, while Reese's act of threatening a person with a weapon has long been prohibited, the aggravated vehicular hijacking statute makes it a Class X felony with severe possible punishments. It cannot be said that the only two appellate court decisions on this matter, *McCarter* and *Reese*, were not just wrong, but so wholly unsound as to be an irrational and unfair reading of the statute. *McCarter* and *Reese* relied on the plain language, legislative history, and jurisprudential context of the creation of this new offense, while the State resorts to misguided hypothetical scenarios and out-of-state cases. Where the State asks this Court to resort to foreign jurisprudence examining distinct foreign statutes to obtain its preferred construction of an Illinois law, while overruling the only appellate court

decisions to reach this issue, due process and the rule of lenity forbids such an expansion of a criminal statute to encompass Reese's acts. *See Davis*, 199 Ill. 2d at 140; *see also People v. Alcozer*, 241 Ill. 2d 248, 253 (2011) ("courts should avoid constitutional questions when a case may be decided on other grounds").

I. Every tool of statutory construction leads to the same conclusion: Willis Reese is not guilty of aggravated vehicular hijacking.

As demonstrated above, every method to determine legislative intent indicates that in Illinois, vehicular hijacking requires physical dispossession. The plain language of the term "takes from" requires a physical taking. The legislature used this term without amendment after it had been construed by *Strickland* to require the physical taking of a car, and has not amended it since *McCarter* applied this construction to the hijacking statutes. The legislative debates all refer to physically taking a car, while a harmonious reading of the hijacking and robbery statutes indicated that the "take from" element in each should be given the same meaning.

This Court should therefore hold that vehicular hijacking requires physical dispossession. In this case, the State did not prove that Reese physically dispossessed Rimmer of bus, and thus did not prove that Reese committed armed vehicular hijacking. This Court should affirm the appellate court's decision on this issue reversing Willis Reese's conviction for aggravated vehicular hijacking.

CROSS APPEAL

II. The State failed to prove Willis Reese guilty of vehicular invasion because there was no evidence that he entered the parked shuttle bus by force, an essential element of the offense. (Cross-Relief Requested)

Willis Reese was convicted of the vehicular invasion of a shuttle bus that was parked outside of Stroger Hospital. This offense requires entering a vehicle by force. 720 ILCS 5/12-11.1(a) (West 2007).[3] Reese, however, simply entered through the open doors of the parked bus. Because no force was used to effectuate this entry, the State failed to prove Reese guilty beyond a reasonable doubt of vehicular invasion.

Due process protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In Re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill.2d 250, 264 (2008); U.S. Const. amend. XIV; IL Const. Art. 1, §2. Ordinarily, the standard of review for a claim of insufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). However, the standard of review is *de novo* when assessing whether a statutory element was satisfied where, as here, the underlying facts of the case are undisputed. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004); *People v. Smith*, 191

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[3] Now codified at 720 ILCS 5/18-6, by Pub. Act 97-1108 (eff. Jan 1, 2013).

Ill. 2d 408 (2000).

"A person commits vehicular invasion who knowingly, *by force* and without lawful justification, enters or reaches into the interior of a motor vehicle ... while such motor vehicle is occupied by another person or persons, with the intent to commit therein a theft or felony." 720 ILCS 5/12-11.1(a) (West 2007) (emphasis added).

Reese did not enter the bus by force. Rather, he entered through the open bus door. James Rimmer, the bus driver, testified he was parked outside Stroger Hospital with the doors open when Reese entered. (R. QQQ121)

Courts in other contexts have found no forceful entry where people enter through an open door. In *People v. Bargo* 64 Ill. App. 3d 1011 (1st Dist. 1978), the appellate court held that officers did not enter by force where, through "sham and subterfuge," they made entry through an open door. *Bargo*, 64 Ill. App. 3d at 1012–13. Similarly in *People v. Currie*, 84 Ill. App. 3d 1056 (1st Dist. 1980), the court held that pushing open a house door and entering, after the homeowner opened the door a mere 10–12 inches, did not constitute an entry by force. *Currie*, 84 Ill. App. 3d at 1058, 1065. Here too, Reese did not force his way onto the bus. Rather, he entered through the open doors like any passenger.

Moreover, upon entering, Reese only *threatened* the use of force, rather than actually used force. Unlike numerous other statutes, the vehicular invasion statute requires the actual use of force rather than the use or threat of the use of force. *Compare* 720 ILCS 5/12-11.1(a) (vehicular invasion

requires entry "by force") *with, e.g.*, 720 ILCS 5/18-1(a) (West 2013) (robbery requires taking property "by the use of force or by threatening the imminent use of force"), 720 ILCS 5/18-3(a) (West 2013) (vehicular hijacking requires taking a vehicle "by the use of force or by threatening the imminent use of force"), 720 ILCS 5/12-15(a)(1) (a person commits criminal sexual abuse by committing sexual conduct "by the use of force or threat of force"). When a statute enumerates certain things, "there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words or limitation." *Burke v. Rothschild's Liquor Mart*, 148 Ill. 2d 429, 442 (1992).

Rimmer testified that after Reese entered, he displayed an object and said, "Drive. If you stop, I'm gonna stab you in the neck." (R. QQQ122) Bus passenger Sharon Jambrosek testified that Reese said "drive motherfucker, drive." (R. RRR22) Rimmer drove a short distance, then opened the doors to lock the breaks in an attempt to throw Reese off balance. (R. QQQ125) Rimmer then grabbed Reese and fought with him. (R. QQQ125–26) Jambrosek also testified that the bus stopped quickly, followed by a commotion. (R. RRR23) Thus, only after Reese completed his entry and the Rimmer drove the bus, slammed on the breaks, and attempted to detain Reese, did Reese use any force.

One case to address this issue appears to have rejected a similar argument, but its facts are readily distinguishable. In *People v. Isunza*, 396 Ill. App. 3d 127 (2d Dist. 2009), the defendant argued that he could not be guilty of vehicular invasion based solely on the act of punching a driver

through an open car window. *Isunza*, 396 Ill. App. 3d at 129–30. The Second District reasoned that because the entry was made by virtue of the force of punching the driver, the entry itself was forceful. *Id.* at 130. Here, in contrast, Reese's entry into the bus and subsequent acts inside were distinct physical acts. Because the acts of force and entry in *Isunza* were one and the same, whereas here Reese's entry was a physical act separate from any subsequent purported force inside the bus, *Isunza* is not persuasive.

The appellate court below held that Reese committed vehicular invasion because his use of force "was part of a series of closely connected events" and occurred "'before defendant's departure.'" *People v. Reese*, 2015 IL App (1st) 1120654, ¶ 90, quoting *People v. Brooks* 202 Ill. App. 3d 164, 170 (1990). The court relied on robbery cases, such as *Brooks*, which rest on the doctrine that theft may become robbery where the perpetrator uses force to escape with the property taken. *People v. Houston*, 151 Ill. App. 3d 718, 721 (5th Dist. 1986) ("the offense is robbery if the perpetrator's departure is accomplished by the use of force").

This comparison misses the mark. An escape effectuates a successful taking, so is seen as part of the taking. In contrast, vehicular invasion requires force to effectuate the entry. There is no similar escape or getaway needed to make good the entry; indeed, a getaway is the opposite of an entry. In addition, Reese's subsequent use of force here responded to an attempt to detain him within the bus rather than an attempt to thwart his entry.

In *Brooks*, the defendant lifted a wallet from the victim's purse without

force. When the victim became aware of this theft, she demanded her wallet back; the defendant pushed her and fled. *Brooks*, 202 Ill. App. 3d at 170, *abrogated on other grounds by People v. Williams*, 149 Ill. 2d 467 (1992). The appellate court found that this force was sufficiently tied to the taking to constitute robbery. *Id.*

In *Brooks*, then, the defendant used force as a means to escape with the victim's property. In other words, the force completed the taking. Here, again, the entry was already complete by the time Reese used any force.

A more sensible approach would be to compare vehicular invasion with an offense that likewise includes the element of an entry: burglary.

In *People v. Boose*, 139 Ill. App. 3d 471 (1st Dist. 1985), the defendant entered a department store during business hours, remained after the store closed, and was later found wearing and possessing stolen merchandise. *Boose*, 139 Ill. App. 3d at 471–72. The defendant was charged with burglary for entering the department store without authority and with intent to commit a theft. *Id.* at 472.[4] The appellate court explained that the intent to commit theft must be present at the time of entry. *Id.* at 473. The element "with intent to commit therein a felony or theft" modifies the element of "entry"; while a criminal intent formulated after a lawful entry may satisfy other crimes, it does not satisfy burglary by an improper entry. *Id.* at 474.

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[4] Burglary can also be committed by remaining in a building without authority and with intent to commit a felony or theft, but the State in *Boose* only charged burglary by an improper entry. *Boose*, 139 Ill. App. 3d at 473. There is no similar corollary in the vehicular invasion statute criminalizing remaining in a vehicle by force.

Because the evidence supported an inference that the defendant "formulated the intent to take the items some time after entering the store," it reversed his conviction. *Id.*, citing *People v. Weaver*, 41 Ill. 2d 424, 439 (1968) ("A criminal intent formulated after a lawful entry will not satisfy the statute"); *accord People v. Durham*, 252 Ill. App. 3d 88, 93 (3d Dist. 1993), *People v. O'Banion*, 253 Ill. App. 3d 427, 429 (3d Dist. 1993), *People v. Vallero*, 61 Ill. App. 3d 413, 415 (3d Dist. 1978).

Here, too, Reese made an entry without the statutory modifier: by force. Only subsequently did he employ force in response to Rimmer's attempt to detain him on the bus. Because the force occurred after the entry, he did not commit vehicular invasion.

The notion that force used after making an entry can retroactively criminalize the entry itself would lead to absurd results and therefore must be rejected. *People v. Smith*, 202 Ill. 2d 378, 385 (2002) ("In interpreting statutes, we must avoid constructions which would produce absurd results"). Any use of force inside a vehicle in connection with a theft or felony would complete a vehicular invasion, because the offender must have entered the vehicle at some point. A person could ride a bus for an hour before committing a theft by force, and would be guilty not only of the theft but of vehicular invasion as well. The only way to avoid this result would be for courts to set an arbitrary time limit after which the force is no longer connected to the entry. This Court should instead adopt a clear line between *Isunza* and the instant matter: where the entry itself is a forceful act,

vehicular invasion occurs; where the force used inside a vehicle is subsequent to and distinct from the physical entry, there has been no vehicular invasion.

Reese entered a parked bus through its opened doors without force as it awaited passengers. Once inside, he threatened the use of force, which is insufficient for vehicular invasion. After the driver conducted the bus around part of the driveway, the driver engaged Reese in a fight, which was the only time Reese used force inside the bus. Because Reese did not enter the bus by force, he did not commit vehicular hijacking. This Court should therefore reverse his conviction for this offense.

III. As the appellate court found, Willis Reese was deprived of due process where he was shackled during jury selection without the trial court articulating any reasons establishing a manifest need for restraints. This error was not harmless beyond a reasonable doubt. (Cross-Relief Requested)

Willis Reese was kept in ankle shackles during the entire day of jury selection. (R. PPP4–11) Although curtains were placed around the attorney tables in an attempt to hide the shackles, at least one juror saw them. (R. PPP59) The shackles inhibited Reese in the performance of his self-representation and prejudiced him in the eyes of the jury. Before allowing such a grave and prejudicial practice, the court exercised no discretion and gave no reason for allowing shackles. Instead, the court simply said it would let the Department of Corrections determine whether Reese should be shackled and would revisit the issue on the next day of trial. (R. PPP5, PPP10–11) Because the court stated no reasons for the record to justify shackling, much less any reasons establishing a manifest need for these restraints, the court violated Reese's right to due process. *People v. Boose*, 66 Ill. 2d 261 (1977).

The appellate court agreed, finding that "the trial court violated [Reese's] right to due process by failing to undertake a *Boose* analysis and state the reasons for shackling on the record before requiring him to remain shackled." *People v. Reese*, 2015 IL App (1st) 120654, ¶ 103. The court ultimately found the error harmless beyond a reasonable doubt regarding the counts of conviction other than aggravated vehicular hijacking. *Id.* at ¶ 107–09. However, the court did not explain how the evidence of vehicular

invasion was overwhelming. As discussed below, the State cannot show that this error was harmless beyond a reasonable doubt, and this Court should reverse and remand for a new trial.

A. The trial court erred by failing to exercise its discretion when ruling on Reese's objection to being shackled, instead deferring to correctional officers even when the court agreed that Reese did not need shackles.

In 1977, this Court unequivocally stated that a defendant may not be shackled during trial unless the court first determines that a manifest need for restraints exists. *Boose*, 66 Ill. 2d at 266-267; *In re Staley*, 67 Ill. 2d 33, 38 (1977). An accused has the right to stand trial "with the appearance, dignity, and self-respect of a free and innocent man." *Staley*, 67 Ill. 2d at 37. Shackling the accused should be avoided if possible because it prejudices the jury against a defendant, restricts the defendant's ability to assist counsel during trial, and offends the dignity of the judicial process. *Boose*, 66 Ill. 2d at 265.

The United States Supreme Court has likewise held that the visible shackling of a defendant during a phase of trial in front of a jury, without individualized consideration of the necessity for shackling, violates due process. *Deck v. Missouri*, 544 U.S. 622, 626, 633 (2005) (addressing the guilt and sentencing phases of a death penalty trial); U.S. Const., Amend. XIV, §1. As in *Boose*, *Deck* considered the harm shackles cause to the presumption of innocence, to the defendant's ability to assist with his defense, and to the dignity of the judicial process. *Deck*, 544 U.S. at 630–31.

Boose provided a list of factors a judge should consider in making a

"manifest need" determination. *Boose*, 66 Ill. 2d at 266–67. A trial judge must state for the record the reasons for allowing the defendant to remain shackled and must give the defense an opportunity to present reasons why the defendant should not be shackled. *Boose*, 66 Ill. 2d at 266. "Because shackling a defendant during trial is presumptively improper, the court may not do so unless it places its reasons on the record." *People v. Robinson*, 375 Ill. App. 3d 320, 330 (2d Dist. 2007); *accord People v. Allen*, 222 Ill. 2d 340, 348–49 (2006). The failure to follow the *Boose* procedures before permitting shackles violates due process. *Allen*, 222 Ill. 2d at 349; U.S. Const., Amend. XIV, §1; Ill. Const., Art. I, §2.

Normally, the determination of whether and how to restrain a defendant is left to the discretion of the trial court, and a reviewing court examines whether the trial court has abused that discretion. *Allen*, 222 Ill. 2d at 348. However, in this case, there can be no dispute that the trial judge failed to articulate the reasons for shackling Reese, as required by *People v. Boose*, 66 Ill.2d 261 (1977). Therefore, the only question for this Court is the legal significance of the trial judge's failure to comply with *Boose*. Where the facts are undisputed and only a legal question is presented, *de novo* review is appropriate. *See People v. Bellmyer*, 199 Ill. 2d 529, 537 (2002) (where an issue involves the application of the law to undisputed facts, the standard of review is *de novo*). Even if reviewed for an abuse of discretion, however, the failure of a trial court to conduct a *Boose* analysis—the failure to exercise any discretion—is necessarily an abuse of discretion. *E.g. Allen*, 222 Ill. 2d at

348–49.

Reese was shackled during jury selection but not during the remainder of trial. Jury selection is a critical stage of trial, *People v. Bean*, 137 Ill. 2d 65, 84 (1990), and a part of a trial's guilt phase. *See People v. Lovejoy*, 235 Ill. 2d 97, 151 (2009) (noting that a defendant wore an identification bracelet "during the *voir dire* portion of the guilt phase of trial"). *Boose* itself involved shackling only at a competency hearing conducted in front of a jury. *Boose*, 66 Ill. 2d at 264–65.

Here, the judge failed to follow the *Boose* procedures, considered none of the *Boose* factors, made no findings for the record, and did not articulate a manifest need to restrain Reese during jury selection. (R. PPP3–11) Instead, the court kept Reese in shackles despite agreeing that they were unnecessary.

Before the potential jurors entered the courtroom, Reese, acting *pro se*, said he was ready to have his shackles removed. (R. PPP3) The court discussed its jury selection routine, and then the following colloquy occurred.

> THE COURT: Later on you will be in your other clothes. You will have your hands free, and we'll have drapery around both tables so the jurors will not be able to see if you have leg shackles on.
>
> THE DEFENDANT: But won't they be able to hear?
>
> THE COURT: I guess if you move your legs around a lot.
>
> THE DEFENDANT: Yeah. And I am a human being so that's a big possibility that would happen. Also -- I mean the shackles why do they need to stay on at this particular portion of trial?

> THE COURT: *I will leave it at their discretion.* I am not going to order them to take --
>
> THE DEFENDANT: They take them off with other people. I've shown you approximately a year and a half ago that I can handle myself without being shackled when I argued the motion between Mr. Varga and Renee. I didn't have shackles then.
>
> THE COURT: *You are preaching to the choir. All you have to do is talk to the men in charge. If you can convince those three men that you don't need leg shackles, you don't have to have them on.* (R. PPP4–5) (emphasis added)

Following a recess for lunch, and again before jurors were brought in, Reese again asked to be free from shackles:

> THE DEFENDANT: Judge, one thing before we get started, and I don't mean to bring this back up and be difficult. But it's a very big problem. Will this be the case these shackles. When the jury come in here, when trial officially starts, will I still be confined to this?
>
> THE COURT: *That's up to the Illinois Department of Corrections.*
>
> THE DEFENDANT: Judge, the Illinois Department of Corrections is not on trial. You see what I am saying. They're not on trial. Their constitutional rights are not being violated. . . The only way they are going to come off is by court order. . . They need court orders for me to be in civilian clothes. That's how things work. And so to take these off, you're going to have to do an order for it. . . And I will give you my word if I so much as step in the wrong direction, I will willingly put these back on. But I am here to do a thorough job, and I can not work under these conditions.
>
> THE COURT: I will take it under consideration and make a decision tomorrow. (R. PPP10–11) (emphasis added)

At the end of jury selection, Reese again asked about the shackles and the court finally consulted with a correctional officer. The officer said he would remove the shackles only if the court ordered it, and the court said it

would sign an order the following day. (R. PPP217–28) The court did so, and Reese represented himself freely throughout the remaining four days of trial without incident. (R. QQQ3)

As shown in this transcription, the trial court completely deferred to correctional officers to determine whether Reese would be shackled during jury selection. The court stated that the decision was "up to the Department of Corrections" and that the court would "leave it to their discretion." When challenged, the court again stated that the decision is up to "the men in charge." The person in charge should have been the trial judge, not an officer. *People v. Johnson*, 356 Ill. App. 3d 208, 211 (3d Dist. 2005) ("it is clearly established that the trial judge, in his or her own sole discretion, must determine whether physical restraint of the defendant is necessary").

The court even said Reese was "preaching to the choir," but had to convince the correctional officers, not the court, indicating that the court thought the shackles should be removed. (R. PPP5) Reese expressed concern that the jury would hear the shackles, which the court agreed was possible if he moved his legs. (R. PPP4) Reese also stated the shackles would inhibit him from doing a thorough job of self-representation. (R. PPP11)

Moreover, shortly into jury selection, Reese believed potential jurors sitting in a certain location could see his shackles through an opening in the drapes around his table. (R. PPP55–56) The court individually questioned two potential jurors about this possibility, and one said he could indeed see Reese's shackles. (R. PPP59) This juror, Quinn McSorley, was seated on the

jury and participated in rendering the verdicts. (C. 155–59; R. PPP66)

Each of the three fears of *Boose* and *Deck* was met here: the shackling prejudiced Reese in the eyes of the jury, inhibited his ability to assist his defense—or in this case, represent himself—and, as always, offended the dignity of the judicial process. *Deck*, 544 U.S. at 630–31; *Boose*, 66 Ill.2d at 265. The court below caused this damage without conducting any *Boose* analysis, instead deferring completely to the correctional officers.

In *Allen*, this Court found a due process violation in a similar circumstance, writing: "the trial court never made a *Boose* analysis; it simply deferred to the judgment of the sheriff. . . [T]his abdication of the trial court's responsibility is not acceptable." *Allen*, 222 Ill. 2d at 348–49. As in *Allen*, the court below violated due process by failing to follow *Boose*. *Id.* at 349.

The trial court's error would have violated due process even if Juror McSorley did not see the shackles. This Court has held that *Boose* applies equally to visible and hidden restraints. In *Allen*, 222 Ill. 2d at 347, this Court found a due process violation by the use of a concealed stun-belt where the trial court failed to conduct a proper *Boose* analysis. In *In re Staley*, 67 Ill. 2d 33, 37–38 (1977), this Court likewise found a shackling error at a juvenile bench trial in the absence of a jury. In *People v. Bennet*, 281 Ill. App. 3d 814 (1st Dist. 1996), the appellate court reversed and remanded for a new trial due to shackles that the trial judge said were not visible to the jury, noting that the issue does not depend on the jury's awareness. *Bennet*, 281 Ill. App. 3d at 825–26. Additionally here, Reese and the trial judge agreed that the

jury could hear the shackles if he moved, a point Reese brought up again after trial. (R. PPP4–5, VVV10)

B. The State cannot show that this due process violation is harmless beyond a reasonable doubt.

Reese contemporaneously objected to the shackles and included this issue in his post-trial motion, preserving this issue for review. (C. 206; R. PPP3–11, VVV6–7, VVV10) Because this constitutional issue is preserved, Reese does not need to demonstrate actual prejudice; instead, the State bears the burden to prove beyond a reasonable doubt that the shackles were harmless. *Deck*, 544 U.S. at 634; *Chapman v. California*, 386 U.S. 18, 24 (1976). This it cannot do. Shackles are inherently prejudicial and cause negative effects that cannot be shown from a trial transcript. *Deck*, 544 U.S. at 634. Reese stated at the outset that the shackles would inhibit his ability to represent himself, arguing, "I cannot work under these conditions," and repeated this argument after trial. (R. PPP11, VVV11) Additionally, the evidence regarding aggravated vehicular hijacking and vehicular invasion was not overwhelming: the State did not prove Reese took the bus and did not prove he entered the bus by force. *See* Arguments I–II, *supra.*

Even if the States's interpretation of these two offenses prevails, the error is not harmless beyond a reasonable doubt. A constitutional error is harmless where, absent the error, "no fair-minded jury could reasonably have voted to acquit the defendant." *People v. Carlson*, 92 Ill. 2d 440, 449 (1982). Regarding vehicular hijacking, fair-minded justices of the appellate court have already found that Reese did not commit vehicular hijacking, and the

court's decision in *McCarter* reached the same conclusion regarding similar facts. Moreover, if one can "take" a vehicle by overcoming another's will and commanding that person to drive it, the jury would still need to weigh whether Rimmer ever relinquished control of the bus where he drove just a short distance before throwing Reese off balance and attempting to detain him. Regarding vehicular invasion, a conviction would hinge on whether the force used on the bus after Rimmer drove, stopped, and grabbed Reese was sufficiently tied to, or instead attenuated from, the entry. On both counts, reasonable minds could disagree.

The nature of the offense made shackling unusually prejudicial here. Where Reese was accused of escape, shackling him sent a clear signal to the jury not just that he was guilty, but that the judge thought he was a danger to those in the courtroom. In fact, the judge believed Reese did not need shackles at all: "you are preaching to the choir." (R. PPP5)

Additionally, the jury sent several notes, including asking for clarification on the definition of certain terms, whether the attempt robbery could be an attempt to take any property or had to be an attempt to obtain a specific item, and indicating a deadlock on one count. (C. 160–66; R. TTT114–32) The jury sent its first note at 2:15 p.m., and the court's response to the last note was sent at 7:12 p.m. (C. 160, 164) This length and difficulty reaching verdicts further indicates that the evidence was not overwhelming. *People v. Ehlert*, 274 Ill. App. 3d 1026, 1035 (1st Dist. 1995).

Lastly, Reese presented a legally viable necessity defense supported by

pictures of the injuries inflicted upon him by jail guards. (R. SSS126–27; People's Exhibit 54); *See People v. Unger*, 66 Ill. 2d 333, 340–41 (1977) (the necessity defense is available to inmates who escape to avoid harm in custody).

In its harmless error analysis, the appellate court mistakenly claimed that only one juror, juror McSorley, saw the shackles. *Reese*, 2015 IL App (1st) 120654, ¶ 107. This analysis is erroneous for three reasons. First, McSorley was the only one of merely two venire members whom the court individually questioned about shackles who said he could see them. This 50-percent rate does not mean no other juror saw them, but rather that it was possible for any venire member and eventual juror to see them. Second, the judge agreed that jurors would *hear* the shackles if Reese moved his legs. (R. PPP4–5) Third, even if undetectable, the concealment of shackles does not diminish the error. *Allen*, 222 Ill. 2d at 347; *In re Staley*, 67 Ill. 2d at 37–38; *Bennet*, 281 Ill. App. 3d at 814.

The appellate court also wrote that "the policy considerations underlying the *Boose* decision and its progeny do not apply with equal force here." *Reese*, 2015 IL App (1st) 120654, ¶ 107. The majority's opinion does not explain this comment, but the partial concurrence provides enlightenment. In language tracking the majority's unexplained line regarding policy, Justice Palmer wrote separately "to additionally point out that the policy considerations underlying the *Boose* decision and its progeny do not apply with equal force here." *Id.* at ¶136 (Palmer, J., concurring). Justice Palmer

explained:

> At the core of these cases is the recognition that unnecessary restraint runs afoul of the presumption of innocence and demeans both the defendant and the proceedings. The defendant here did not enjoy the presumption of innocence with regard to the charge of first degree murder. He had already been convicted of that charge and the jury in this case was so informed. It cannot be said therefore that the limited period of shackling he endured deprived him of a presumption of innocence, as he no longer enjoyed that presumption.

Id.

This is a shocking misunderstanding of the presumption of innocence. The presumption of innocence applied to all criminal charges; it is not a single-use ticket. A prior conviction does not strip a defendant of the presumption for any and all future charges. While a defendant's prior record is a factor for the trial judge to consider when conducting *Boose* analysis and determining whether error occurred, *Boose*, 66 Ill. 2d at 266, it is not relevant to the harm of that error once error has been found. Indeed, prior convictions would not be a factor within the *Boose* framework if *Boose* itself applied with diminished force to those with a past records. Reese was presumed innocent of the charges in this case, and a shackling error prejudiced him like any other defendant.

Shackling a defendant on the basis of a single *Boose* factor, without more, "has generally been held to be insufficient justification for restraint." *People v. Uridiales*, 225 Ill. 2d 354, 416 (2007). Here, the court offered no

factors supporting a manifest need for shackles, instead deferring completely to the correctional officers. The court therefore violated Reese's right to due process, requiring reversal and remand for a new trial on any counts that were proven beyond a reasonable doubt. *See Boose*, 66 Ill.2 d at 269; *Staley*, 67 Ill. 2d at 38; *Bennet*, 281 Ill. App. 3d at 826.

IV. The State introduced excessive and irrelevant details to the jury regarding Reese's prior conviction—including extra charges of which he was acquitted, that he had several fitness evaluations, and that he lost on appeal, among other prejudicial information—the documentation of which the court provided to the jury during deliberations, and argued additional irrelevant and damaging facts that were not proven during trial, requiring reversal and remand as plain error. (Cross-Relief Requested)

The court allowed the State to introduce Reese's prior murder conviction for two purposes: impeachment and motive. However, the State presented far too much detail regarding the prior conviction. The State introduced an unredacted certified copy of conviction that included wholly immaterial details, including facts that developed after the date of this offense, such as additional charges, fitness examinations, guilt on seven counts of murder (even though there was only one victim), his life sentence, and that he lost on appeal. (People's Ex. No. 52) When cross-examining Reese, the State elicited the fact that Reese previously faced charges in addition to murder even though he was acquitted of the only offense other than murder prior to the escape (an acquittal not reflected in the certified copy)[5]. (R. SSS148, SSS156) The State also questioned him about a jury finding that he personally discharged a firearm that caused death in the prior case, a finding he did not recall, and then argued that fact to the jury despite it not being in evidence. (R. SSS150–52, TTT178) The introduction of

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[5] The acquittal for aggravated kidnaping and the fact that there was only one murder victim are reflected in the unpublished order on direct appeal, *People v. Reese*, No. 1-07-1681, order at 2 (1st Dist. August 7, 2009) (unpublished Rule 23 order).

these details was improper because it was not relevant to either Reese's credibility or to motive. *People v. Grayer*, 106 Ill. App. 3d 324, 329 (1st Dist. 1982). It was also improper for the State to argue the firearm allegation that was not in evidence. *People v. Kliner*, 185 Ill. 2d 81, 151 (1998). Because this irrelevant surplusage prejudiced Reese, this Court should reverse and remand for a new trial.

A. Where the trial judge stated that the certified copy of conviction would be provided to the jury during its deliberations, it was the State's burden to impeach the record to show that it was not sent back.

The appellate court rejected this issue in large part because, it claimed, Reese did not establish that the certified copy of conviction was in fact provided to the jury. *People v. Reese*, 2015 IL App (1st) 120654, ¶ 116. At trial, when discussing which exhibits to send to the jury, the prosecutor stated, "I believe we were going to send back all our exhibits except for the Grand Jury transcript and the certified copy." The trial court responded, "Right. The Grand Jury transcript doesn't go back, everything else does." (R. TTT114)

The appellate court speculated that the prosecutor's tentative suggestion about what exhibits to send to the jury room are more trustworthy than the judge's order. However, it is within the trial court's discretion, not the prosecutor's, to determine what documentary evidence is provided during deliberations. *People v. Williams*, 97 Ill. 2d 252, 291 (1983). If the prosecutor believed that the certified copy should not and would not be sent back, the prosecutor could have responded to the judge; no correction was made. *See*

People v. Kliner, 185 Ill. 2d 81, 168 (1998) (party's failure to object in trial court may demonstrate accuracy of record). The record must be taken as true, "unless shown to be otherwise and corrected in a manner permitted by this rule." Ill. Sup. Ct. R. 329. The State took no steps to show otherwise.

The appellate court then held that, assuming the trial judge simply misspoke, it was the defendant's burden to prove the trial judge's order was carried out. *Reese*, 2015 IL App (1st) 120654, ¶ 116. However, the certified record must be accepted as accurate. If the State believes that the record does not accurately reflect that the certified copy was withheld from the jury in defiance of the judge's order, it could have proposed an amendment to the report of proceedings or filed its own report. *People v. Berg*, 183 Ill. App. 3d 431, 432 (3d Dist. 1989). The State could also have filed a motion to correct the record, pointing to some evidence establishing that the prosecutor and sheriff's deputy, without comment on the record, defied the judge's stated order. *See People v. Allen*, 109 Ill. 2d 177, 183 (State filed a motion to correct the record pursuant to Illinois Supreme Court Rule 329).

While the burden to file a complete record falls on the appellant, the State bears the burden to show that something transpired other than that recorded in the record. *People v. Majka*, 365 Ill. App. 3d 362, 369–70 (2d Dist. 2006), citing *People v. Smith*, 106 Ill. 2d 327, 335 (1985). In *Smith*, the defendant claimed he did not make a valid jury waiver, though a waiver was recorded in a docket entry. *Smith*, 106 Ill. 2d at 334–35. This Court noted that if the defendant wanted to show that no waiver was made in open court,

he need only supply a transcript of the proceeding corresponding to the docket entry. *Id.* at 335. If the State, then, believed that the waiver was made at some other time, the State has the burden to supplement the record with a new report. *Id.* As the appellate court summarized in *Majka*,

> despite the burden on the appellant to provide a record complete enough for review, the appellee cannot force the appellant to provide an exhaustive record by speculating that a partial record is misleading. The appellee has the burden of providing a record that shows that there is substance to its speculations.

Majka, 365 Ill. App. 3d at 370. Here, neither the State nor the appellate court provided any record showing substance to the speculation that officers of the court ignored the judge's command.

A properly functioning appellate system must rely on the accuracy of certified records, and must rely on the assumption that judge's orders are fulfilled unless and until something shows otherwise. Because the judge stated that the certified copy of conviction would be provided to the jury, reviewing courts must presume this occurred absent sufficient evidence to the contrary.

B. The certified copy of conviction contained irrelevant and prejudicial surplusage.

The introduction of evidence is reviewed for an abuse of discretion. *People v. Grayer*, 106 Ill. App. 3d 324, 329 (1st Dist. 1982). Under *People v. Montgomery*, 47 Ill.2d 510 (1971), a prior conviction may be admissible for impeachment purposes if it affects credibility and if the probative value outweighs the prejudicial effect. *Montgomery*, 47 Ill.2d at 515–517. However, even if the fact of a conviction is admissible under *Montgomery*, the details

surrounding the conviction are not.

Similarly, the details of a conviction introduced for a purpose other than impeachment are only admissible if relevant to the sanctioned purpose. *Grayer*, 106 Ill. App. 3d at 329. Here, the State sought to introduce the prior conviction to show a motive for Reese's escape, a specific purpose the court allowed. (R. SSS113–14). Reese was found guilty of murder three days before the incident at the hospital, but was not yet sentenced. (R. SSS150)

Here, the certified copy of conviction included far too many irrelevant details. The certified copy revealed:

- Reese was charged with 26 counts of first-degree murder, one count of Class 1 attempt aggravating kidnaping while armed,[6] and one count of Class 2 attempt aggravated kidnaping.
- Guilty verdicts on seven counts of murder.
- A sentence to life without parole on two counts.
- Four instances of "Behavior Clinic Exam Ordered," one specifically referring to his fitness, and one notation of a "psychiatric exam report filed." It only twice states he was found fit.
- That Reese's conviction was affirmed on appeal.
- That Reese filed a post-conviction petition, and that the court denied it.

The additional facts in the certified copy of conviction were not relevant to impeach his credibility or to establish a motive that rebutted his necessity defense. Details beyond the bare fact of a prior conviction for a particular crime are not relevant or admissible to impeach a witness. *People*

[6] This count reads: "(ATT) AGGRAVATED KIDNAPING/ARME"

v. DeHoyos, 64 Ill. 2d 128, 132 (1976). Specifically, the jury should not have learned of Reese's life sentence, since is it "obviously immaterial to the question of a defendant's credibility." *People v. Pruitt*, 165 Ill. App. 3d 947, 954 (1st Dist. 1988). The jury should not have learned that Reese faced 26 counts of murder and two counts of attempt aggravated kidnaping, especially where he was acquitted aggravated kidnaping and the certified report does not reflect this acquittal. *People v. Anderson*, 407 Ill. App. 3d 662, 671–72 (1st Dist. 2011). Even more prejudicial is the certified copy's notation that Reese was found guilty of seven counts of murder, though there was only one victim. *See People v. Reese*, No. 1-07-1681, order at 2 (1st Dist. August 7, 2009) (unpublished Rule 23 order). Similarly, Reese's four prior Behavioral Clinic Exams, a psychiatric report, and the fact that his conviction was affirmed on appeal likewise served no valid purpose.

While these cases discuss the introduction of immaterial details for impeachment, the reasoning applies to motive evidence as well. None of these facts bear on a motive to escape. Indeed, many of the improper details describe facts or events that occurred *after* the March 22, 2007, incident in the current matter, so could in no way relate to a motive. These include that he was sentenced to life without parole, that his conviction was affirmed on appeal, and that a post-conviction petition was denied. Because these facts were not relevant to either impeachment or motive, they should not have been introduced. *Grayer*, 106 Ill. App. 3d at 329.

C. The State improperly insinuated additional facts in the wording of its questions, some of which were inaccurate,

and inserted prejudicial facts not in evidence during closing argument.

The State presented the jury with additional inadmissible, inaccurate, and prejudicial details regarding Reese's murder conviction through both improper questioning and argument. First, the State elicited from Reese on cross-examination that, in the prosecutor's words, he was facing charges of first degree murder "among other things" at the time of the escape, and then the prosecutor phrased the question the same way a second time. (R. SSS148, SSS156) The only other charges Reese faced in his prior case were two counts of aggravated kidnaping. (People's Ex. No. 52) However, Reese had been found not guilty of aggravated kidnaping prior to the escape. *People v. Reese*, No. 1-07-1681, order at 2 (1st Dist. August 7, 2009) (unpublished Rule 23 order). In addition, the State's reference to plural "murder charges" suggested that he killed multiple people.

Next, when questioning Reese about the prior conviction, the State asked:

> And not only did the jury find you guilty of first degree murder, they made an additional finding that when you committed that murder, that you did so by personally discharging a firearm that proximally [*sic*] caused your victim to die, right? (R. SSS150)

Reese challenged this presumed fact, asking the prosecutor, "Oh, yeah. When they did that, when they did that?" (R. SSS150–51) When the prosecutor again asked if that is what they found, Reese said, "Not that I know of . . . I thought it was something different than that." (R. SSS151).

Despite Reese's inability to recall this finding, the prosecutor

continued,

> Oh, well as a result of those findings, Mr. Reese, after being found guilty of first degree murder three days before your escape *and with the additional finding that you shot your victim to death*, you were looking at a potential sentence of 45 years to the rest of natural life in prison? (R. SSS151) (emphasis added)

Reese did not answer, but instead objected, an objection the court overruled. He agreed only that he was found guilty, but then the prosecutor, undeterred, again asked,

> Okay. You were found guilty of a crime of first degree murder and the jury found that you committed that murder by shooting and killing your victim? (R. SSS151–52)

Reese again said he was not sure about the rest, but he knows they found him guilty of murder. (R. SSS152)

Despite failing to elicit the fact that the prior jury found that Reese personally killed someone with a firearm, the prosecutor reminded the jury of this finding during its rebuttal closing argument:

> It's not a coincidence that the escape attempt of March 22nd, 2007 comes 3 days on the heels of the guilty verdicts on a charge of first degree murder. On the verdict, the additional verdict that the murder was committed by personally discharging a firearm that resulted in death of the victim. (R. TTT78)

The prosecutor here persisted in making several errors. This information was irrelevant as impeachment or motive evidence. As stated above, only the bare fact of conviction is relevant for impeachment. *DeHoyos*, 64 Ill. 2d at 132. Further, while the sentence Reese faced is possibly relevant for a motive, the fact that he personally discharged a firearm that caused death is not probative at all. The jury did not need to know the specific basis

for the sentencing enhancement that made Reese eligible for a sentence of 45-years-to-life; it only needed to know that he was convicted of murder and faced such a punishment. The basis for this sentencing range is a purely prejudicial detail of the prior case that makes his motive no more probable. *People v. Villarreal*, 198 Ill. 2d 209, 232–33 (2001) (evidence is probative if it makes any fact of consequence more or less probable).

Moreover, the prosecutor supplied this impermissible information to the jury through misconduct. A prosecutor may not provide unproven information or insinuations through questioning. *People v. Davidson*, 235 Ill. App. 3d 605, 611 (1st Dist. 1992) (error to suggest through questioning that the defendant was high on narcotics at the time of the offense) (collecting cases). Below, frustrated with Reese's inability to recall the firearm finding, the prosecutor simply told the jury of this fact through his questions. This is especially forbidden where the information was not only unproven, but an inadmissible irrelevant detail of a prior conviction. *See id.* (unsubstantiated allegation is plain error where the prosecutor suggests prior crimes). Here, the prosecutor did even worse, suggesting "other charges" even though Reese had been acquitted of those prior to the escape. The prosecutor compounded this error by arguing the firearm finding in closing argument, even though it was never proven during trial. *See People v. Emerson*, 97 Ill. 2d 487, 497 (1983) (it is improper to comment on inadmissible facts); *People v. Rodriguez*, 134 Ill. App. 3d 582, 590–91 (1st Dist. 1985) (error to argue that a witness was under State protection, where no evidence was introduced on this

matter).

The appellate court found that the prosecutor was free to argue the firearm finding in closing because, while it was not elicited on cross-examination or proven up, "this factual assertion was correct." *Reese*, 2015 IL App (1st) 120654, ¶ 118. The court also suggested that the certified copy of conviction, which included all matters of his conviction, was admitted into evidence. *Id.* However, the certified copy does not refer in any way to a firearm finding, let alone a sentencing range of 45 years to life. A prosecutor is not free to argue whatever he or she pleases simply because it is true; argued facts must first be introduced into evidence. *People v. Whitlow*, 89 Ill. 2d 322, 341 (1983); *People v. Beier*, 29 Ill. 2d 511, 516–17 (1963).

D. The erroneous evidence and arguments regarding Reese's prior conviction constitute plain error.

Reese objected only to one of the instances detailed above, one of the times the State asked about the prior firearm finding, and he did not include these issues in his motion for a new trial. This Court should review for plain error.

The plain error doctrine allows for review of unpreserved issues affecting substantial rights where either (1) the evidence is closely balanced so that the error may have affected the outcome, or (2) regardless of the evidence, the error is so serious that it affects the right to a fair trial. *People v. Herron*, 215 Ill. 2d 167, 186–87 (2005); Ill. Sup. Ct. Rule 615(a). Here, both avenues of plain error apply.

The errors above are numerous. Through the certified copy of

conviction, the jury learned that Reese was charged with 28 counts in his prior case, including counts of which he was found not guilty; that he was found guilty of seven counts of murder, even though there was only one victim; that he was referred four times for Behavioral Clinic Examinations, that his fitness was questioned, and that a psychological report was filed; that he was sentenced to life in prison on two counts of murder, even though, again, there was only one victim; that he lost on appeal; that his post-conviction petition was denied. Through the State's questioning, the jury again learned that Reese was facing charges other than murder at the time of the escape, even though this was patently false: he was acquitted three days earlier. The State's questioning also informed the jury that Reese was found to have personally discharged a firearm that caused death, a fact not substantiated in evidence and yet repeated again during the prosecutor's rebuttal argument. These cumulative errors, all involving the misuse of Reese's prior conviction, require reversal as plain error. *Davidson*, 235 Ill. App. 3d at 613. *See People v. Dudley*, 217 Ill. App. 3d 230, 232–34 (5th Dist. 1991) (reversing due to extraneous detail in a certified copy of conviction alone, though the error was preserved there).

First, the evidence was closely balanced. As argued in more detail in Arguments I, and II, *supra*, the State failed to prove that Reese took the bus, an element of aggravated vehicular hijacking, and failed to prove he entered the bus by force, an element of vehicular invasion.

Even if the States's interpretation of these two offenses prevails, the

evidence was closely balanced such that the error may have tipped the scales against Reese. Regarding vehicular hijacking, if one can "take" a vehicle by overcoming another's will and commanding that person to drive it, the evidence was still close regarding whether Rimmer ever relinquished control of the bus where he drove just a short distance before throwing Reese of balance and attempting to detain him. Regarding vehicular invasion, a conviction would hinge on whether the force used on the bus after Rimmer drove, stopped, and grabbed Reese was sufficiently tied to, or instead attenuated from, the entry.

Reese also presented a viable necessity defense supported by pictures of the injuries inflicted upon him by jail guards. (R. SSS126–27; People's Exhibit 54); *See People v. Unger*, 66 Ill. 2d 333, 340–41 (1977) (the necessity defense is available to inmates who escape to avoid harm in custody). Additionally, the jury sent several notes, including asking for clarification on the definition of certain terms, whether the attempt robbery could be an attempt to take any property or had to be an attempt to obtain a specific item, and indicating a deadlock on one count. (C. 160–66; R. TTT114–32) The jury sent its first note at 2:15 p.m., and the court's response to the last note was sent at 7:12 p.m. (C. 160, 164) This length and difficulty reaching verdicts further indicates that the evidence was closely balanced. *People v. Ehlert*, 274 Ill. App. 3d 1026, 1035 (1st Dist. 1995).

This Court should also reverse under the substantial rights prong of plain error analysis. In *Davidson*, the appellate court reversed for plain error

based on a similar series of errors. The prosecutor there suggested unsubstantiated facts when questioning the defendant, misstated the evidence in closing argument by suggesting other facts not in evidence, and misstated the law. *Davidson*, 235 Ill. App. 3d at 610–13. *Davidson* held that while none of the errors would require a new trial on their own, the combined errors deprived the defendant of a fair trial, requiring reversal as plain error. *Id.* at 610, 613. The court did so without examining the strength of the evidence. *Id* at 613. Review and reversal under this second prong of plain error is also warranted because many of the errors below are attributed to the improper tactics of the prosecutor. *See People v. Johnson*, 208 Ill. 2d 53, 84–85 (2004) (reversing under the plain error doctrine due improper closing arguments without regard to the weight of the evidence).

The series of errors relating to Reese's prior conviction provided the jury with far too much irrelevant and prejudicial information and was achieved at least in part through prosecutorial overreach. The prejudice of the additional details of Reese's prior crime were compounded by the jury first meeting Reese in shackles. *See* Argument III, *supra.* This prejudicial excess deprived Reese of a fair trial. This Court should find plain error and reverse and remand for a new trial.

V. Willis Reese's pre-trial waiver of counsel was invalid because the trial court failed to comply with Supreme Court Rule 401(a) by not informing him that any sentence in this case would be consecutive to his sentence for a prior conviction. (Cross-Relief Requested)

During the pre-trial stage of proceedings, Willis Reese moved to discharge his appointed attorney and proceed *pro se*. Prior to accepting Reese's waiver of counsel, however, the trial court failed to admonish him that his sentence for the current offense would be imposed consecutive to his prior murder sentence, and thus failed to substantially comply with the requirements of Supreme Court Rule 401(a); (Supp. R. 5–18). Accordingly, Reese's waiver of counsel was invalid and this cause should be remanded for a new trial.

A trial court's compliance with the admonition requirements of Supreme Court Rule 401(a) is reviewed *de novo*. See *People v. Campbell*, 224 Ill. 2d 80, 84 (2006).

Although Reese did not object to the circuit court's violation of Rule 401(a), courts have consistently held that because the right to counsel is so fundamental, violations of Rule 401(a) will result in reversal as plain error under the substantial rights prong of analysis without any further showing of prejudice. *People v. Black*, 2011 IL App (5th) 080089, ¶24 (collecting cases); *see People v. Herron*, 215 Ill. 2d 167, 185–87 (2005).

The United States Constitution guarantees the right to counsel at every critical stage of a criminal proceeding. *People v. Baker*, 92 Ill. 2d 85, 90 (1982); *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). Conversely, a criminal

defendant has the right to self-representation, but such representation must be preceded by a knowing, voluntary, and intelligent waiver of counsel. *Baker*, 92 Ill. 2d at 90–91. In Illinois, compliance with Supreme Court Rule 401(a) ensures that any waiver of the right to counsel in a criminal proceeding is knowingly and intelligently made, and substantial compliance with the Rule is necessary before a counsel waiver will be deemed effective. *People v. Herring*, 327 Ill. App. 3d 259, 261 (4th Dist. 2002). "Without proper admonitions there can be no effective waiver of counsel." *Baker*, 94 Ill. 2d at 137; *accord Campbell*, 224 Ill. 2d at 84.

"[T]he language of Rule 401(a) could not be clearer." *Campbell*, 224 Ill. 2d at 84. The Rule provides,

> The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court. Ill. Sup. Ct. R. 401(a).

The charges in this case resulted from an incident after Reese was convicted of murder in a prior case, but before he was sentenced. For this reason, any potential sentence of imprisonment in this case had to be served consecutive to his murder sentence. 720 ILCS 5/5-8-4(i) (West 2007). When admonishing Reese prior to accepting his waiver of counsel, the trial court

failed to inform Reese of this requirement. (Supp. R. 7–12) This failure directly contravenes subsection (2) of Rule 401(a), which requires the court discuss "the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences." Ill. Sup. Ct. R. 401(a). The court therefore failed to substantially comply with Rule 401(a). *See People v. Langley*, 226 Ill. App. 3d 742, 750 (4th Dist. 1992) (failure to admonish of nature of charges and sentencing range at time of waiver was reversible plain error).

Where a trial court does not strictly comply with Rule 401, it may yet substantially comply if it can be shown that the defendant was otherwise aware of the full sentencing range. *People v. LeFlore*, 2013 IL App (2d) 100659 ¶ 52–59, 374, *aff'd in part, rev'd in part on other grounds*, 2015 IL 116799 (reversed on separate fourth amendment issue, after State conceded error on Rule 401(a) violation). Substantial compliance can be found "'either because [the defendant] was already aware of the information that was omitted or because his degree of legal sophistication made it evident that he was aware of the information that compliance with the rule would have conveyed.'" *LeFlore*, 2013 IL App (2d) 100659, ¶ 52, (quoting *People v. Gilkey*, 263 Ill. App. 3d 706, 711 (1994)). Here, nothing in the record indicates Reese was otherwise aware that he would be required to serve any sentence in this case consecutively to the sentence in his murder case. Therefore, the court did not substantially comply with Rule 401.

As detailed in Justice Ellis's dissent in *People v. Maxey*, 2016 IL App

(1st) 130698, this Court's decisions indicate that where a judge strictly complies with the rule, no error exists; where a judge fails to comply and the defendant is not otherwise aware of the sentencing range, reversible error lies; and where a judge fails to comply but the defendant is aware of the possible sentences, substantial compliance is found. Only then, if a trial judge substantially but not strictly complied, do reviewing courts examine whether the waiver was otherwise voluntary and whether the error was prejudicial. *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 151–58, 169–88 (Ellis, J, dissenting).

Justice Ellis examined this Court's decisions in *People v. Coleman*, 129 Ill. 2d 321 (1989), *People v. Kidd*, 178 Ill. 2d 92 (1997), *People v. Haynes*, 174 Ill. 2d 204 (1996), and *People v. Johnson*, 119 Ill. 2d 119 (1987), detailing how in each case, this Court first found a lack of strict compliance, then found substantial compliance, and then and only then examined the record to determine if the waiver was knowing and voluntary and whether the defendant suffered prejudice from the imperfect admonishments. *Maxey*, 2016 IL App (1st) 130698, ¶¶ 173–94 (Ellis, J, dissenting).

In this case, this last step is not necessary because there was no substantial compliance: the court did not inform Reese that his sentence in this case would be consecutive to his murder sentence, and the record does not show that Reese was otherwise aware of this sentencing aspect.

Failing to inform a defendant that any sentence must be consecutive to another prior term is similar to failing to correctly advise a defendant about

the maximum sentence: in either case, the court has not admonished the defendant about the upper boundary of sentencing possibilities. The appellate court has reversed for this single error. In *People v. Koch*, 232 Ill. App. 3d 923 (4th Dist. 1992), the trial court advised the defendant that the maximum term he faced was three years, when in fact the maximum penalty was an extended term of six years due to a prior conviction. The defendant waived his right to counsel and pleaded guilty, and the court sentenced him to five years in prison. The appellate court held that the failure to advise the defendant of the maximum extended term violated Rule 401(a) and vitiated his waiver of counsel, and reversed and remanded for new proceedings. *Koch*, 232 Ill. App. 3d at 926–28.

Similarly here, the trial court failed to advise Reese that he faced sentences that must be consecutive to his prior murder sentence, accepted his wavier of counsel, and then imposed sentences consecutive to his prior term. Here and in *Koch*, the failure related to sentencing requirements related to prior convictions, a specific facet of the rule. Here the failure also contravened the rule's command to discuss consecutive sentencing. This failure to comply 401(a) is as substantial in *Koch* and requires reversal and remand for a new trial.

VI. If this Court finds aggravated vehicular hijacking and vehicular invasion proven beyond a reasonable doubt, it should vacate the vehicular invasion count because the one-act, one-crime doctrine prohibits multiple convictions for the same act, as the State conceded below. (Cross-Relief Requested)

The trial court entered judgment and sentence against Reese for aggravated vehicular hijacking and vehicular invasion. Illinois prohibits multiple convictions for the same acts. *People v. King*, 66 Ill. 2d 551, 566 (1977). If both convictions survive Reese's challenges to the sufficiency of the evidence, this Court should then vacate the vehicular invasion conviction, it is premised on the same acts as aggravated vehicular hijacking.

In its appellate court brief, the State agreed with this contention. (State's Brief, App. Ct. No. 1-12-0654, at 42).[7] The appellate court did not reach this issue because it reversed Reese's conviction for aggravated vehicular hijacking. *People v. Reese*, 2015 IL App (1st) 120654, ¶ 91.

The application of the one-act, one-crime rule is a question of law reviewed *de novo*. *People v. Johnson*, 237 Ill. 2d 82, 97 (2010).

It is well settled and often repeated by the Supreme Court that one-act, one-crime violations qualify for review even if forfeited because such violations affect the integrity of the judicial process. *E.g. People v. Nunez*, 236 Ill. 2d 488, 493 (2010); *People v. Artis*, 232 Ill. 2d 156, 165 (2009); *People v. Harvey*, 211 Ill. 2d 368, 194 (2004); *People v. Carter*, 213 Ill. 2d 295, 299–300

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[7] Defendant-Appellee Reese has filed a certified copy of this brief to this Court pursuant to Illinois Supreme Court Rule 318(c). *See People v. Hunt*, 234 Ill. 2d 49 (2009) (Supreme Court may take notice of the parties' briefs in the Appellate Court).

(2004). The State acknowledged that plain error review is appropriate in *Carter v. Carter*, 213 Ill. 2d at 299. Thus, even though Reese failed to object to his conviction for vehicular hijacking, this Court should still review for plain error because the error is so serious that it affects the integrity of the judicial process. *See People v. Herron*, 215 Ill. 2d 167, 179 (2005); Ill. Sup. Ct. R. 615(a).

The Illinois Supreme Court has long held that multiple convictions are improper, under the "one-act, one-crime," doctrine. *Id.* at 566. There are two facets to one-act, one-crime, analysis:

> First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are improper. *People v. Miller*, 238 Ill. 2d 161, 165 (2010), citing *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996), and *King*, 66 Ill. 2d at 566.

Reese's conviction for vehicular hijacking is improper because it is premised on the same physical act as the greater offense of aggravated vehicular hijacking.

To determine whether an event constitutes one act or a mere series of closely related acts, courts will consider the presence of an intervening event, the interval of time between the defendant's actions, the identity of the victim, the location and similarity of the act, and the prosecutorial intent reflected in the charging instrument. *People v. Pearson*, 331 Ill. App. 3d 312, 321 (1st Dist. 2002) (citing *People v. Baity*, 125 Ill. App. 3d 50, 52–53 (1st

Dist. 1984)).

Reese's conviction for hijacking is based on taking a bus by force or threat of force while armed with a weapon. 720 ILCS 5/18-4(a)(3) (West 2007). Vehicular invasion is based on entering the bus by force with intent to commit escape therein. 720 ILCS 5/12-11.1(a) (West 2007). While the elements are different, the force is the same. If Reese used any force to make his entry, it was the same as he used to commandeer the bus: telling James Rimmer he would stab him with a shank if Rimmer did not drive. There was no time interval between these purported acts of force, the victim and location were the same, and the act was identical. *See Person*, 331 Ill. App. 3d at 321. As the State conceded in the appellate court, two convictions cannot be carved from this single act. If this Court rejects Reese's challenge to the sufficiency of the evidence of both aggravated vehicular hijacking and vehicular invasion, this Court should therefore vacate Reese's conviction for vehicular invasion, the less serious of the two.

VII. As the State and appellate court agreed below, the trial court erroneously imposed extended-term sentences on offenses that were not among the most serious class of felony, but any relief depends on this Court's ruling on Arguments I through V. (Cross-Relief Requested)

Despite finding that Reese's convictions all occurred during a single course of conduct, the trial court imposed extended terms on all four counts of conviction: one Class X felony, two Class 1s, and one Class 2. (Supp. C. 1; R. WWW56–57) A court can impose an extended-term sentence only for offenses within the class of the most serious offense of which the offender is convicted, among offenses committed during a single course of conduct. 730 ILCS 5/5-8-2(a) (West 2007) Therefore, three of Reese's extended terms should be reduced to comply with this statutory requirement.

Below, the State and appellate court agreed that Reese improperly received extended terms on offenses that were not of the most serious classification. *People v. Reese*, 2015 IL App (1st) 120654, ¶ 126–28. The issue of whether the trial court has imposed an unauthorized sentence is a question of law reviewed *de novo*. *People v. Champ*, 329 Ill. App. 3d 127, 129 (1st Dist. 2002).

Generally, a court may impose an extended-term sentence only on an offense within the most serious class. *People v. Jordan*, 103 Ill. 2d 192, 205–07 (1984); 730 ILCS 5/5-8-2(a). Reese was found guilty and sentenced to an extended term on aggravated vehicular hijacking, a Class X felony. (Supp. C. 1); 720 ILCS 5/14-4 (West 2007). His remaining counts of conviction were the Class 1 felonies vehicular invasion and attempted armed robbery without

a firearm, and the Class 2 felony escape. 720 ILCS 5/12-11.1 (vehicular invasion), 720 ILCS 5/8-4 (attempt), 720 ILCS 5/18-2(a)(1) (armed robbery), 720 ILCS 5/31-6 (escape) (West 2007). The court imposed extended terms on each offense. (Supp. C. 1; R. WWW56–57) As agreed by the State and Court below, no exception applies, and Reese therefore should only have an extended term on any offense within the most serious class of his counts of conviction. *People v. Reese*, 2015 IL App (1st) 120654, ¶ 126–28. *See People v. Bell*, 196 Ill. 2d 343, 355 (2001) (where robbery and battery occurred during the same course of conduct, extended term could only be imposed on the the most serious class of offense).

Because Reese received sentences beyond the maximum non-extended term for each offense, this Court can reduce those terms to the non-extended maximum, and leave his extended term for any sentence among the most serious classification of felony intact. *See People v. Peacock*, 359 Ill. App. 3d 326, 338 (4th Dist. 2005). The appropriate sentence reduction will depend on which of Reese's convictions, if any, withstand his challenges pursuant to Arguments I through V, *supra*.

CONCLUSION

For the foregoing reasons, Willis Reese, defendant-appellee, respectfully requests that this Court:

1) reverse his conviction for aggravated vehicular hijacking pursuant to Argument I; and

2) reverse his conviction for vehicular invasion pursuant to Argument II; and

3) reverse any counts of conviction proven beyond a reasonable doubt and remand for a new trial on those counts pursuant to Arguments III, IV, and V;

or, alternatively,

4) vacate his conviction for vehicular invasion as a one-act, one-crime violation pursuant to Argument VI, if this Court finds both counts proven beyond a reasonable doubt, and

5) reduce his sentences for any affirmed convictions, except for those among the most serious classification of his felony convictions, to the maximum non-extended terms pursuant to Argument VII.

Respectfully submitted,

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Assistant Appellate Defender

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COUNSEL FOR DEFENDANT-APPELLEE

CERTIFICATE OF COMPLIANCE

I, David T. Harris, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a) is 74 pages.

/s/David T. Harris
DAVID T. HARRIS
Assistant Appellate Defender

No. 120011

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, Cross-Appellee -vs- WILLIS REESE Defendant-Appellee Cross-Appellant	)	Appeal from the Appellate Court of Illinois, No. 1-12-0654. There on appeal from the Circuit Court of Cook County, Illinois, No. 07 CR 8683. Honorable Kenneth J. Wadas, Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602;

Mr. Willis Reese, Register No. R62423, Stateville Correctional Center, PO Box 112, Joliet, IL 60434

Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Brief and Argument in the above-entitled cause was submitted to the Clerk of the above Court for filing on December 2, 2016. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel and mailed one copy to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Brief and Argument will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Moses Kim
LEGAL SECRETARY
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COUNSEL FOR DEFENDANT-APPELLEE

APPENDIX TO THE BRIEF

People's Exhibit 52: Certified copy of conviction in No. 02 CR 20394 (01)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJURE
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJURE
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/INJURE
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/INJURE
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FELONY
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FELONY
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJURE
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJURE
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/INJURE
~~720-5/9-1(A)(2)~~	~~F~~	~~M~~	~~MURDER/STRONG PROB KILL/INJURE~~
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FELONY
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FELONY
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJURE
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJURE
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/INJURE
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/INJURE
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FELONY
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FELONY
720-5\8-4(10-2(A)5)	F	2	(ATT) ATTEMPT(AGGRAVATED KIDNAPING/
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJ
720-5/9-1(A)(1)	F	M	MURDER/INTENT TO KILL/INJ
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/I
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/I
720-5/9-1(A)(2)	F	M	MURDER/STRONG PROB KILL/I
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FEL
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FEL
720-5/9-1(A)(3)	F	M	MURDER/OTHER FORCIBLE FEL
720-5/10-2(A)(5)	F	1	(ATT) AGGRAVATED KIDNAPING/ARME

The following disposition(s) was/were rendered before the Honorable Judge(s):

08/12/02 IND/INFO-CLK OFFICE-PRES JUDGE 08/19/02 1701
02CR2039401 ID# CR100600720

PEOPLE V. WILLIS REESE
INDICTMENT NO. 07CR-8683
PEOPLE'S EXHIBIT NO. 52

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

08/19/02 CASE ASSIGNED BIEBEL, PAUL JR.	08/19/02 1708
08/19/02 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
08/19/02 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
08/19/02 PUBLIC DEFENDER APPOINTED CANNON, DIANE G.	00/00/00
08/19/02 DEFENDANT ARRAIGNED CANNON, DIANE G.	00/00/00
08/19/02 PLEA OF NOT GUILTY CANNON, DIANE G.	00/00/00
08/19/02 MOTION FOR DISCOVERY CANNON, DIANE G.	00/00/00 F 2
08/19/02 ADMONISH AS TO TRIAL IN ABSENT CANNON, DIANE G.	00/00/00
08/19/02 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	09/18/02
09/18/02 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
09/18/02 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
09/18/02 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	10/16/02
10/16/02 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
10/16/02 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	11/19/02
11/19/02 PRISONER DATA SHEET TO ISSUE BIEBEL, PAUL JR.	00/00/00
11/19/02 CONTINUANCE BY AGREEMENT BIEBEL, PAUL JR.	12/17/02
12/17/02 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
12/17/02 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	02/04/03
02/04/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

02/04/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/20/03		
03/20/03 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
03/20/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
03/20/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	04/30/03		
04/30/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
04/30/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	06/18/03		
06/18/03 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
06/18/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
06/18/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	07/21/03		
07/21/03 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
07/21/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
07/21/03 BLOOD TEST ORDERED CANNON, DIANE G.	00/00/00	S	1
07/21/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	09/16/03		
09/16/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
09/16/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	10/22/03		
10/22/03 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
10/22/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
10/22/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	11/19/03		
11/19/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

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WILLIS REESE

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

11/19/03 MOTION TO SUPPRESS CANNON, DIANE G.	00/00/00	F	2
11/19/03 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00		
11/19/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	12/17/03		
12/17/03 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
12/17/03 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00		
12/17/03 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	02/17/04		
02/17/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
02/17/04 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00		
02/17/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/24/04		
03/24/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
03/24/04 BEHAVIOR CLINIC EXAM ORDERED CANNON, DIANE G.	04/28/04		
03/24/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	04/28/04		
04/28/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
04/28/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
04/28/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	06/07/04		
06/07/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
06/07/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
06/07/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	07/08/04		
07/08/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

07/08/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
07/08/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	08/19/04
08/19/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
08/19/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
08/19/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	09/28/04
09/28/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
09/28/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
09/28/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	11/01/04
11/01/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
11/01/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
11/01/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	12/07/04
12/07/04 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
12/07/04 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
12/07/04 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	01/25/05
01/25/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
01/25/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
01/25/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	02/22/05
02/22/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
02/22/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

02/22/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/01/05
03/01/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
03/01/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
03/01/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/24/05
03/24/05 DEFENDANT IN CUSTODY CLAPS JOSEPH M	00/00/00
03/24/05 PRISONER DATA SHEET TO ISSUE CLAPS JOSEPH M	00/00/00
03/24/05 DISCOVERY ANSWER FILED CLAPS JOSEPH M	00/00/00 1
03/24/05 CONTINUANCE BY AGREEMENT CLAPS JOSEPH M	04/28/05
04/28/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
04/28/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
04/28/05 MOTION DEFT - CONTINUANCE - MD CANNON, DIANE G.	05/25/05
05/25/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
05/25/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
05/25/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	06/29/05
06/29/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
06/29/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
06/29/05 MOTION DEFT - CONTINUANCE - MD CANNON, DIANE G.	08/09/05
08/09/05 DEFENDANT IN CUSTODY CRANE, CLAYTON J.	00/00/00
08/09/05 PRISONER DATA SHEET TO ISSUE CRANE, CLAYTON J.	00/00/00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

08/09/05 CONTINUANCE BY AGREEMENT CRANE, CLAYTON J.	09/12/05
09/12/05 MOTION DEFT - CONTINUANCE - MD CANNON, DIANE G.	10/17/05
10/17/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
10/17/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
10/17/05 MOTION DEFT - CONTINUANCE - MD CANNON, DIANE G.	10/24/05
10/24/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
10/24/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
10/24/05 PSYCHIATRIC EXAM REPORT FILED CANNON, DIANE G.	00/00/00
10/24/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	11/03/05
11/03/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
11/03/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
11/03/05 BEHAVIOR CLINIC EXAM ORDERED FITNESS & UNDERSTAND MIRANDA CANNON, DIANE G.	12/06/05
11/03/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	12/06/05
12/06/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
12/06/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
12/06/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	12/20/05
12/20/05 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
12/20/05 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

12/20/05 DEFENDANT FOUND FIT CANNON, DIANE G.	00/00/00
12/20/05 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00
12/20/05 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	01/27/06
01/27/06 DEFENDANT IN CUSTODY CRANE, CLAYTON J.	00/00/00
01/27/06 PRISONER DATA SHEET TO ISSUE CRANE, CLAYTON J.	00/00/00
01/27/06 BEHAVIOR CLINIC EXAM ORDERED CRANE, CLAYTON J.	02/22/06
01/27/06 CONTINUANCE BY AGREEMENT CRANE, CLAYTON J.	02/22/06
02/22/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
02/22/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
02/22/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/09/06
03/09/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
03/09/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
03/09/06 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00
03/09/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/14/06
03/14/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00
03/14/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00
03/14/06 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00
03/14/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	03/22/06
03/22/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

03/22/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.			
03/22/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	04/17/06		
04/17/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
04/17/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
04/17/06 DEFENDANT FOUND FIT CANNON, DIANE G.	00/00/00		
04/17/06 MOTION TO SUPPRESS CANNON, DIANE G.	00/00/00	C	C
04/17/06 ENTERED AND CONTINUED CANNON, DIANE G.	00/00/00		
04/17/06 MOTION TO QUASH ARREST CANNON, DIANE G.	00/00/00	C	C
04/17/06 ENTERED AND CONTINUED CANNON, DIANE G.	00/00/00		
04/17/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	04/26/06		
04/26/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
04/26/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
04/26/06 MOTION TO SUPPRESS CANNON, DIANE G.	00/00/00	E	C
04/26/06 ENTERED AND CONTINUED CANNON, DIANE G.	00/00/00		
04/26/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	05/22/06		
05/22/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
05/22/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
05/22/06 MOTION TO SUPPRESS CANNON, DIANE G.	00/00/00	C	C
05/22/06 ENTERED AND CONTINUED CANNON, DIANE G.	00/00/00		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

05/22/06 CONTINUANCE BY ORDER OF COURT CANNON, DIANE G.	06/14/06		
06/05/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
06/05/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
06/05/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	06/08/06		
06/08/06 SPECIAL ORDER ON CALL IN ERROR CANNON, DIANE G.	00/00/00		
06/08/06 CONTINUANCE BY ORDER OF COURT CANNON, DIANE G.	06/14/06		
06/14/06 SPECIAL ORDER MOTION COMMENCED + CONTINUED CANNON, DIANE G.	00/00/00		
06/14/06 SPECIAL ORDER DET. BEST CANNON, DIANE G.	00/00/00		
06/14/06 SPECIAL ORDER DEFENDANT TESTIFIES CANNON, DIANE G.	00/00/00		
06/14/06 MOTION TO SUPPRESS DEFENDANT RESTS CANNON, DIANE G.	00/00/00	D	2
06/14/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	07/11/06		
07/11/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
07/11/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
07/11/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	08/28/06		
08/28/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
08/28/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS Page 011

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

08/28/06 DISCOVERY ANSWER FILED CANNON, DIANE G.	00/00/00	F	2
08/28/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	09/21/06		
09/21/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
09/21/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
09/21/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	10/24/06		
10/24/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
10/24/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
10/24/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	11/14/06		
11/14/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
11/14/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
11/14/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	12/05/06		
12/05/06 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		
12/05/06 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.	00/00/00		
12/05/06 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	01/04/07		
01/04/07 SPECIAL ORDER AMENDED ANSER TO DISC FILED CANNON, DIANE G.	00/00/00		
01/04/07 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.	00/00/00		
01/04/07 CONTINUANCE BY AGREEMENT CANNON, DIANE G.	01/29/07		
01/04/07 DEFENDANT IN CUSTODY CANNON, DIANE G.	00/00/00		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

01/04/07 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00
01/29/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
01/29/07 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00
01/29/07 CONTINUANCE BY AGREEMENT CANNON, DIANE G.		01/30/07
01/30/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
01/30/07 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00
01/30/07 WITNESSES ORDERED TO APPEAR CANNON, DIANE G.		00/00/00
01/30/07 DEF DEMAND FOR TRIAL CANNON, DIANE G.		00/00/00
01/30/07 MOTION STATE - CONTINUANCE -MS CANNON, DIANE G.		03/12/07
01/30/07 CHANGE PRIORITY STATUS CANNON, DIANE G.	R	00/00/00
03/12/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
03/12/07 MOTION STATE - CONTINUANCE -MS CANNON, DIANE G.		03/13/07
03/13/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
03/13/07 TRIAL COMENCED AND CONTINUED CANNON, DIANE G.		03/14/07
03/14/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
03/14/07 SPECIAL ORDER TWO ALTERNATES EXCUSED CANNON, DIANE G.		00/00/00
03/14/07 SPECIAL ORDER TWO ALTERNATES CHOSEN CANNON, DIANE G.		00/00/00
03/14/07 SPECIAL ORDER OPENING STATEMENTS HEARD CANNON, DIANE G.		00/00/00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS Page 013

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

03/14/07	TRIAL COMENCED AND CONTINUED CANNON, DIANE G.		03/15/07
03/15/07	DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
03/15/07	TRIAL COMENCED AND CONTINUED JURY TRIAL CANNON, DIANE G.		03/16/07
03/16/07	DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
03/16/07	MOTION DEFENDANT - NEW TRIAL CANNON, DIANE G.		00/00/00 D
03/16/07	TRIAL COMENCED AND CONTINUED JURY TRIAL CANNON, DIANE G.		03/19/07
03/19/07	DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00
03/19/07	PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C001	00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C002	00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C004	00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C005	00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C007	00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C022	00/00/00
03/19/07	VERDICT OF GUILTY CANNON, DIANE G.	C025	00/00/00
03/19/07	BAIL REVOKED CANNON, DIANE G.		00/00/00
03/19/07	PRE-SENT INVEST. ORD, CONTD TO CANNON, DIANE G.		04/18/07
03/19/07	CONTINUANCE BY AGREEMENT CANNON, DIANE G.		04/18/07

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

04/18/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00		
04/18/07 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00		
04/18/07 BEHAVIOR CLINIC EXAM ORDERED CANNON, DIANE G.		05/23/07		
04/18/07 MOTION DEFENDANT - NEW TRIAL CANNON, DIANE G.		00/00/00	F	2
04/18/07 ENTERED AND CONTINUED CANNON, DIANE G.		00/00/00		
04/18/07 CONTINUANCE BY AGREEMENT CANNON, DIANE G.		05/23/07		
05/23/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00		
05/23/07 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00		
05/23/07 MOTION DEFT - CONTINUANCE - MD CANNON, DIANE G.		06/06/07		
06/06/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00		
06/06/07 PRISONER DATA SHEET TO ISSUE CANNON, DIANE G.		00/00/00		
06/06/07 SPECIAL ORDER MITT TO REFLECT CERMAK HOSPITAL CANNON, DIANE G.		00/00/00		
06/06/07 MOTION DEFT - CONTINUANCE - MD CANNON, DIANE G.		06/11/07		
06/11/07 DEFENDANT IN CUSTODY CANNON, DIANE G.		00/00/00		
06/11/07 SPECIAL ORDER AGGRAVATION AND MITIGATION FOR SENTENCING. CANNON, DIANE G.		00/00/00		
06/11/07 MOTION DEFENDANT - NEW TRIAL CANNON, DIANE G.		00/00/00	D	2
06/11/07 DEF SENT TO LIFE IMPRISONMENT DEFENDANT SENTENCED TO NATURAL LIFE./ NO POTENTIAL FOR PAROLE. CANNON, DIANE G.	C002	00/00/00		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS Page 015

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

06/11/07 DEF SENT TO LIFE IMPRISONMENT DEFENDANT SENTECTED TO NATURAL LIFE./ NO POTENTIAL FOR PAROLE. CANNON, DIANE G.	C005	00/00/00		
06/11/07 SPECIAL ORDER EDXHIBITS 1,2, & 3 ADMITTED. CANNON, DIANE G.		00/00/00		
06/11/07 MOTION TO REDUCE SENTENCE CANNON, DIANE G.		00/00/00	D	2
06/11/07 NOTICE OF APPEAL FILED, TRNSFR CANNON, DIANE G.		00/00/00		2
06/11/07 DEF ADVISED OF RIGHT TO APPEAL CANNON, DIANE G.		00/00/00		
06/11/07 CHANGE PRIORITY STATUS CANNON, DIANE G.	M	00/00/00		
06/11/07 LET MITTIMUS ISSUE/MITT TO ISS CANNON, DIANE G.		00/00/00		
06/11/07 NOTICE OF APPEAL FILED, TRNSFR		03/19/07		
06/13/07 EVIDENCE ORDERED IMPOUNDED REC		00/00/00		
06/19/07 NOTICE OF NOTICE OF APP MAILED		00/00/00		
06/19/07 HEARING DATE ASSIGNED		06/22/07	1713	
06/22/07 ILL STATE APPELLATE DEF APPTD BIEBEL, PAUL JR.		00/00/00		
06/22/07 O/C FREE REPT OF PROCD ORD N/C BIEBEL, PAUL JR.		00/00/00		
06/25/07 COMMON LAW RECORD PREPARED ONE VOLUME CLR			07-1681	
06/27/07 APPELLATE COURT NUMBER ASGND		00/00/00	07-1681	
06/27/07 CLR RECD BY APP COUNSEL STATE APPELLATE DEFENDER - ONE VOLUME		00/00/00	07-1681	
07/26/07 SUPPLEMENTAL CLR PREPARED ONE VOLUME SUPPLEMENTAL RECORD OF CERTAIN DOCUMENTS		00/00/00	07-1681	
07/31/07 REPT OF PRCDS ORD FR CRT RPT		00/00/00		
07/31/07 SUPPL REC RECD BY APPL COUNSEL STATE APPELLATE DEFENDER - ONE VOLUME		00/00/00	07-1681	
08/24/07 SUPPLEMENTAL CLR PREPARED EXHIBITS - ONE VOLUME		00/00/00	07-1681	
08/24/07 SUPPL REC RECD BY APPL COUNSEL STATE APPELLATE DEFENDER - ONE VOLUME		00/00/00	07-1681	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS Page 016

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

11/15/07 SUPPL REC RECD BY APPL COUNSEL 00/00/00 07-1681
STATE APPELLATE DEFENDER - ONE VOLUME
04/08/08 TRANS PROC REC/FILED CLKS OFF 00/00/00
TEN VOLUMES
04/11/08 REPORT OF PROCEEDINGS PREPARED 00/00/00 07-1681
TEN VOLUMES
04/15/08 REPRT/PROCDS RECD BY APP ATTRY 00/00/00 07-1681
STATE APPELLATE DEFENDER - TEN VOLUMES
05/20/08 SUPP TRAN PRO REC/FILE CLK OFF 00/00/00
ONE VOLUME
05/21/08 SUPPL REPORT OF PRCD PREPARED 00/00/00 07-1681
ONE VOLUME
05/22/08 SUPPL REC RECD BY APPL COUNSEL 00/00/00 07-1681
STATE APPELLATE DEFENDER - ONE VOLUME
05/22/08 REPT OF PRCDS ORD FR CRT RPT 00/00/00
08/27/08 SUPP TRAN PRO REC/FILE CLK OFF 00/00/00
ONE VOLUME
09/05/08 SUPPL REPORT OF PRCD PREPARED 00/00/00 07-1681
ONE VOLUME
09/09/08 SUPPL REC RECD BY APPL COUNSEL 00/00/00 07-1681
STATE APPELLATE DEFENDER - ONE VOLUME
02/09/09 SUPPLEMENTAL CLR PREPARED 00/00/00 07-1681
CERTAIN DOCS - ONE VOLUME- FOR STATE S ATTORNEY OFFICE
02/11/09 SUPPL REC RECD BY APPL COUNSEL 00/00/00 07-1681
STATES ATTORNEY (JUAN SANCHEZ-MAILROOM) ONE VOLUME
05/15/09 SUPP TRAN PRO REC/FILE CLK OFF 00/00/00
ONE VOLUME
06/08/09 SUPPL REPORT OF PRCD PREPARED 00/00/00 07-1681
ONE VOLUME
06/09/09 SUPPL REC RECD BY APPL COUNSEL 00/00/00 07-1681
STATE APPELLATE DEFENDER - ONE VOLUME
09/30/09 MANDATE FILED 10/09/09 1776
07-1681
10/07/09 CLR RETURNED CLKS OFF/WAREHOUS 00/00/00
APLT# 07-1681; 1 VOL, 3 SUPP VOL AND 1 SUPP EXHIBT VOL
10/07/09 REPT OF PROCD RETD CLKS OFF/WH 00/00/00
APLT# 07-1681; 10 VOL, 3 SUPP VOL

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

10/09/09 REVIEW COURT AFFIRMANCE	00/00/00	
BIEBEL, PAUL JR.		
02/05/10 POST-CONVICTION FILED	00/00/00	
02/05/10 MOTION APPT ATTY - FILED	00/00/00	
02/05/10 HEARING DATE ASSIGNED	02/16/10	1708
02/16/10 CONTINUANCE BY ORDER OF COURT	03/24/10	
CANNON, DIANE G.		
03/24/10 CONTINUANCE BY ORDER OF COURT	03/26/10	
CANNON, DIANE G.		
03/26/10 CONTINUANCE BY ORDER OF COURT	04/15/10	
CANNON, DIANE G.		
04/15/10 CONTINUANCE BY ORDER OF COURT	04/29/10	
CANNON, DIANE G.		
04/26/10 DEFENDANT IN CUSTODY	00/00/00	
IDOC		
CANNON, DIANE G.		
04/26/10 CASE ADVANCED	04/29/10	
CANNON, DIANE G.		
04/26/10 POST-CONV PETITION DENIED	00/00/00	
DEFENDANT SERVED IN OPEN COURT W/WRITTEN ORDER-DENIED		
CANNON, DIANE G.		
05/14/10 NOTICE OF APPEAL FILED, TRNSFR	04/26/10	
05/17/10 NOTICE OF NOTICE OF APP MAILED	00/00/00	
05/17/10 HEARING DATE ASSIGNED	05/21/10	1713
05/21/10 ILL STATE APPELLATE DEF APPTD	00/00/00	
BIEBEL, PAUL JR.		
05/21/10 O/C FREE REPT OF PROCD ORD N/C	00/00/00	
BIEBEL, PAUL JR.		
05/21/10 MEMO OF ORDS & NOA PICKED-UP	00/00/00	
BIEBEL, PAUL JR.		
06/08/10 APPELLATE COURT NUMBER ASGND	00/00/00	10-1547
06/08/10 SPECIAL ORDER	00/00/00	07-1681
SAD RECD 1 VOL CLR, 3 VOL SUPP CLR, 10 VOL ROP, 3 VOL SUPP ROP		
06/08/10 SPECIAL ORDER	00/00/00	07-1681
SAD RECD 1 VOL SUPP EXHIBITS		
06/11/10 REPT OF PRCDS ORD FR CRT RPT	00/00/00	
06/18/10 COMMON LAW RECORD PREPARED	00/00/00	10-1547
ONE VOLUME		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS Page 018

PEOPLE OF THE STATE OF ILLINOIS

VS NUMBER 02CR2039401

WILLIS REESE

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

06/22/10 CLR RECD BY APP COUNSEL	00/00/00	10-1547
STATE APPELLATE DEFENDER - ONE VOLUME		
09/03/10 TRANS PROC REC/FILED CLKS OFF	00/00/00	
ONE VOLUME		
09/07/10 REPORT OF PROCEEDINGS PREPARED	00/00/00	10-1547
ONE VOLUME		
09/08/10 REPRT/PROCDS RECD BY APP ATTRY	00/00/00	10-1547
STATE APPELLATE DEFENDER - ONE VOLUME		
04/26/11 MOTION FOR CORRECTED MITTIMUS	00/00/00	
04/26/11 HEARING DATE ASSIGNED	05/02/11	1700
05/10/11 SUPPLEMENTAL CLR PREPARED	00/00/00	10-1547
ONE VOLUME		
05/13/11 CASE ASSIGNED	05/18/11	1708
BIEBEL, PAUL JR.		
05/10/11 SUPPL REC RECD BY APPL COUNSEL	00/00/00	10-1547
STATE APPELLATE DEFENDER - ONE VOLUME		
05/18/11 DEFENDANT NOT IN COURT	00/00/00	
CANNON, DIANE G.		
05/18/11 PRISONER DATA SHEET TO ISSUE	00/00/00	
CANNON, DIANE G.		
05/18/11 CONTINUANCE BY ORDER OF COURT	06/02/11	
CANNON, DIANE G.		
06/02/11 PRISONER DATA SHEET TO ISSUE	00/00/00	
CANNON, DIANE G.		
06/02/11 CORRECTED MITTIMUS TO ISSUE		
CORRECTED MITT TO ISSUE 6/11/07 NATURAL LIFE ON CT5 NO POSSIBILTY OF PARO		
CANNON, DIANE G.		
06/06/11 SPECIAL ORDER	00/00/00	
COPY OF CORRECTED MITTIMUS FORWARDED TO MENARD CORRECTIONAL CENTER		

I hereby certify that the foregoing has been entered of record on the above captioned case.
Date 08/09/11

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT OF COOK COUNTY