No. 129208

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- CORTEZ TURNER, Petitioner-Appellant.	))))))))))))))	Appeal from the Appellate Court of Illinois, No. 5-19-0329 & 5-19-0330 (consolidated). There on appeal from the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, No. 16-CF-466 & 17-CF-104. Honorable Ralph R. Bloodworth, III, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Cortez Turner was convicted of first-degree murder, aggravated discharge of a firearm, and conspiracy to commit aggravated discharge of a firearm after a bench trial and was sentenced to 30 years in the Department of Corrections and three years mandatory supervised release, concurrent with Jackson County case 17-CF-104.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether police were required to obtain a warrant prior to entering Mr. Turner's private trauma room in the hospital, where he had a reasonable expectation of privacy.

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STATEMENT OF FACTS

Hospital Room Encounter

In October 2016, petitioner-appellant Cortez Turner went to St. Joseph Hospital for treatment for a gunshot wound to his left thigh. (R.65-66,396-97; E.5)[1] Nurse Janet Womick placed Mr. Turner in a trauma room and began his triage at 1:44 a.m. (R.77,66-67,71-72) Mr. Turner told Womick he had been on the phone trying to get a ride, heard shots, dropped to the ground, and realized he had been shot in the leg. (R.80) There were three or four separate patient rooms in the emergency department, and Mr. Turner's room was one "very small room[,]" about 8-foot by 10-foot. (R.107,72) Mr. Turner's individual room had a door, walls, one bed, medical equipment, a counter against the wall, and a sink. (R.107-08) To access his room, one had to enter a set of doors, turn right into the emergency department, and go past a main desk. (R.127) Mr. Turner's mother, Patrice Turner, was prohibited from accessing his room by hospital staff and had to remain in a waiting room for about an hour until she was taken back to see him. (R.119-20)

Womick cut and removed Mr. Turner's clothing and visually assessed his injuries. (R.70,81) She bagged his pants and underpants in a clear bag and placed the bag on the counter inside the room because those items had blood on them. (R.71-72) She placed his shirt on the counter and his shoes at the foot of his bed. (R.71-73) Police came to the hospital in response to another gunshot victim, Detrick Rogers, who arrived via ambulance shortly after Mr. Turner. (R.78-80,104)

[1] This case consists of two consolidated causes of action. The majority of citations refer to the record in 16-CF-466. Any citations to the record in 17-CF-104, in which the two perjury charges were filed, will begin with (P.).

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Detectives Chris Liggett and Corey Etherton entered Mr. Turner's room, spoke with him about his injuries, and seized his clothing as evidence. (R.96-97,86)

Charges

In March 2017, Mr. Turner was charged with two counts of perjury in Jackson County Case 2017-CF-104, with both counts alleging he made false statements during his grand jury testimony regarding Detrick Rogers' death. (PC.28) In April 2017, Mr. Turner, along with co-defendant Juwan Jackson, was charged with first-degree murder for Detrick's[2] death, aggravated discharge of a firearm, and conspiracy to commit aggravated discharge of a firearm, in 2016-CF-466. (C.32)

Suppression Hearing

Prior to trial, Mr. Turner's counsel filed a motion to suppress the clothing seized from the hospital, arguing police violated Mr. Turner's state and federal constitutional rights to be free from unreasonable searches and seizures when they seized his clothing without consent, without a warrant, and without meeting the plain view doctrine. (C.218); See Appendix A-36.

At the suppression hearing, Womick explained that Mr. Turner told her he had been shot while outside using the phone to get a ride. (R.79-80) Hospital staff are required to notify police when they receive a gunshot victim, but they did not call police after Mr. Turner's arrival because police were already on the way for another gunshot victim. (R.80-81) Two officers "came in and told [Mr. Turner] that they were going to need his stuff," and Womick claimed Mr. Turner "was

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[2] Detrick Rogers and Terry Rogers are each referred to by their given names to avoid any confusion that would arise from using their shared surname.

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very cooperative with the police." (R.73) However, she could not remember what police said to Mr. Turner about his clothing. (R.74) Her notes stated, in part, that police "tell patient taking clothing patient shakes head in agreement." (R.85; E.5) When asked whether she remembered police asking if they could take his clothing out of the hospital, Womick said, "At that point it was an investigation, so they were collecting evidence." (R.94) She explained, "I don't think they have to ask." (R.94)

Detectives Liggett and Etherton also testified at the suppression hearing. (R.95,123) Neither indicated they asked Mr. Turner for permission to enter his room. The hospital had three or four separate patient rooms within the emergency room department. (R.107-08) "Small would be a nice way" to describe Mr. Turner's room because it was "tiny" and "half the size of a jail cell***." (R.107-08) Mr. Turner was in bed and in pain when officers arrived. (R.128,134-35) He did not have clothing on and was covered with a blanket. (R.129) People's Exhibit 1, a photo of Mr. Turner in the hospital bed with wires connected to his chest, stomach, and side, and an IV in his arm, fairly depicted how he appeared when police arrived. (R.128-29; E.57) Doctors and nurses came in, and Etherton and Liggett tried to stay out of their way so Mr. Turner could be treated. (R.136) Hospital staff became angry if the officers got in their way. (R.136)

Upon entering the room, the officers saw Mr. Turner's clothing in the clear bag and on the countertop, and the bagged pants appeared to have blood on them. (R.108-09,98,127,131) Mr. Turner told police he did not know who shot him. (R.107) He was outside the house of his friend, Jacie Marble, in the Shoemaker Drive

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area, using a phone to get a ride, heard some shots, and realized he was shot. (R.105-07,126) He went to Marble's home for help and got a ride to the hospital. (R.105,107,126) Liggett and Etherton considered clothing to be a potential source of evidence when dealing with a gunshot victim. (R.112,140) Neither could remember who asked for permission to look at and take Mr .Turner's clothing, but both claimed one of the two asked and that Mr. Turner agreed. (R.99,137-38,143) Only Etherton wrote a report regarding the interaction, but it failed to indicate whether police had requested consent to view or take Mr. Turner's clothing. (R.100-02,116) The clothing was collected at a later time by another officer. (R.86)

Patrice Turner, Mr. Turner's mother, testified that she had to remain in the waiting room for about an hour before she was taken back to see Mr. Turner. (R.118-120) The trial court denied the motion to suppress, finding the clothes were in plain view, that Mr. Turner consented to police taking his clothing, and that his consent was knowing and voluntary. (C.233-35); See Appendix A-39.

Bench Trial

Mr. Turner's case was severed from Jackson's, and evidence presented at his bench trial showed the following. (C.75; R.20) Around 1:30 am on October 24, 2016, Jacie Marble's car, a white Kia Optima, was used to commit a drive-by shooting that began in front of 1936 Shoemaker Drive and continued as the car turned right onto 20th Street. (R.762,351,353,427-28,495-96) The shooting resulted in Detrick's death. (R.340,812-13)

Earlier in the night, prior to the shooting, several people attended a gathering at Marble's home where drugs and alcohol were consumed. (R.443-44) While many

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attended, among Marble's guests were Mr. Turner, Juwan Jackson, Jaylon Moore, Orlando Garrett, Brianna Phipps, and Quan Scruggs. (R.443-46,819) Jackson had multiple guns at Marble's home, a ".357, either two baby 9s or .22s[,] and a large assault rifle." (R.447,450) Moore had a gun as well, "either a compact 9 or a compact 22." (R.450) Mr. Turner was not seen with any weapons. (R.447,460,849)

Cleophas Gaines, Detrick's brother, was the only eyewitness to the shooting who testified. (R.410) Gaines, a felon with pending charges, "vaguely" remembered the night Detrick was shot. (R.417,408) When asked whether Gaines recalled that time frame of his life, he responded, "Somewhat, yes." (R.408) On the night Detrick was killed, Gaines was under the influence of promethazine with codeine, known as "lean," as well as cocaine. (R.408-09) Earlier that night, on the way to a tavern, Gaines and Detrick were stopped by Jackson in the Valley Ridge area, the area of houses around Shomaker, Apple Lane, 19th Street, and 20th Street. (R.411-12) Jackson was alone and approached them with a gun in each hand, saying, "You bitch ass n*gger, you bitch ass n*gger[.]" (R.413) Gaines and Detrick fled to the home of Lakesha Ross. (R.415-16)

Ross testified that she was at 1849 Alexander Street and invited the two men inside. (R.874-77) At some point, Ross looked out the window and saw Mr. Turner outside by himself walking on the sidewalk, which was common for Mr. Turner. (R.879-880,883) Gaines and Detrick left Ross' home about 30 minutes later, and Ross heard gunshots about 10 minutes after their departure. (R.881-82)

Gaines and Detrick left Ross' home with their brother, Terry Little, and

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went to 1906 Shomaker, the house at the corner of Shomaker and 20th Street. (R.419,484) When Marble's car came down the street, Detrick and Gaines were standing outside, and Gaines was "[p]ulling up another cup of promethazine" and "cutting up some lines" of cocaine. (R.421-23) Jackson pointed two guns out the window of the vehicle and said, "That's what you motherfuckers is on." (R.421)

Orlando Garrett, Marble's boyfriend, drove the car down Shomaker and turned right on South 20th Street while Jackson sat in the front passenger seat and shot at Detrick and Gaines. (R.421,424-28) Gaines claimed that after he heard Jackson say, "That's what you motherfuckers is on[,]" Gaines got down inside the car Little had driven earlier. (R.425-26) However, Gaines also claimed he kept watching Marble's car and that he saw Jackson shooting at him and Detrick. (R.426-27) Gaines later insisted, "At the time of the shooting, I was on the floorboard." (R.438) Gaines claimed neither he nor Detrick had a gun. (R.427)

The gunfire began on Shomaker and continued as the car drove on South 20th Street. (R.427-28) Gaines admitted it "was kind of hard to see at that point in time," but he claimed he recognized Mr. Turner in the passenger side of the backseat of Marble's car. (R.429) Gaines admitted he had previously told the prosecutor he did not see Mr. Turner in the car. (R.430) Gaines claimed he had lied because he did not want police involved. (R.430) Gaines thought Moore might have also been in the vehicle, but he was uncertain. (R.431) Gaines said he did not see his other brother, Terry Rogers, at the time of the shooting and did not see Terry with a gun. (R.422,435) However, after the shooting stopped, Gaines saw Terry in the yard with Detrick. (R.433)

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When asked whether cocaine and "lean" affected Gaines that night, he said he had "been doing it for ten years and [had] no effects." (R.432-33) He also claimed he had only been using cocaine for a year. (R.436) Gaines did not recall telling police he was "so messed up on drugs" that he "would not be able to tell who was present[.]" (R.434) When asked whether the drugs might have affected his memory, Gaines said, "Well, cocaine is an upper and promethazine-codeine is a downer, but, at that point in time, I was like Superman, X-ray vision." (R.436) Gaines clarified he was not claiming he was "able to see through things[.]" (R.437) The "upper" made him feel like he could "run through anything, you can see through anything***." (R.437)

Police responded to the shooting at around 1:30 am and found Detrick on the ground with a bullet wound to the head. (R.338, 340-41) He was still breathing and was taken from the scene via ambulance. (R.345-46) Deputy Michael Marks, who lived at 809 South 20th Street, heard the multiple gunshots, and at least one round came through his wall. (R.353-55; E.103-07) Although Gaines indicated he and Detrick were outside and that Terry Rogers was not present before the shooting, Marks testified that he had seen three black males standing at the corner of Shomaker and 20th Street just four minutes before the shooting. (R.422,433,435,352-53)

Brianna Phipps was in Marble's home when the shooting occurred, and after hearing the gunshots, she went into Marble's bedroom, where she saw Garrett climb in through the window. (R.453-54) Phipps heard someone "banging on the side door[,]" and when Marble opened it, Mr. Turner came inside. (R.455) According

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to Marble, Mr. Turner was limping and had been shot. (R.825) Garrett told Marble to take Mr. Turner to the hospital. (R.822-23) Marble, Mr. Turner, and Quan Scruggs left the house in Marble's car, with Scruggs in the front passenger seat and Mr. Turner in the rear passenger seat. (R.826-27,818; Vol. 2, E.28) Mr. Turner was in a lot of pain in the backseat. (R.858)

Scruggs threw something out of the window as Marble drove, and she assumed it was a gun because Scruggs pulled the item from his pants, though Marble did not actually see the item. (R.828-29) Marble dropped Scruggs off on the way to the hospital, and when Scruggs got out, "it was talked about that the shell casings needed to get out" of her vehicle. (R.829-30) Marble admitted Mr. Turner never told her to clean the shells out of her car. (R.830,855) After taking Mr. Turner to the hospital, Marble cleaned her car, disposing of 10 to 15 shell casings, and she cleaned blood out of the backseat. (R.831-34) No one told her to clean up the blood, but she did so because she was scared. (R.836) Marble pled guilty to obstructing justice for destroying evidence. (R.836-37)

According to Officer Michael Laughland, People's Exhibit 1, footage of the shooting from a nearby home, showed a vehicle backing out and into traffic from the 1800 block of Shomaker Drive at 1:26 a.m. and driving directly in front of 1936 Shomaker. (R.466-67,487,494-95) Gunshots could be heard as the car traveled in front of 1936 Shomaker and onto South 20th Street, and Laughland opined that someone in the yard at 1936 Shomaker fired a gun, though he could not tell who fired first. (R.495-96,51)

Evidence from several witnesses showed that, shortly after the shooting,

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Jackson ran to his girlfriend's home on South 20th Street, and his girlfriend, Patyce Houston, was heard telling Jackson to "leave it, leave it. Hide the gun." (R.563) Jackson was frantic and had Houston drive him to his studio, having her pulling over at least once when a police car was behind them. (R.668-76) Police went to Houston's home and found a black, loaded Smith & Wesson M&P .223 caliber rifle in a brush pile in her backyard. (R.544-45,627-635,638; Vol.2, E.66-76) Forensic evidence as well as statements Terry Rogers made to his cousin immediately after the incident suggested Terry Rogers was likely shooting from the yard at 1936 Shomaker. (R.733-748,757-58,690-92,708-12,937-38,940-42,526-29,1054)

Police canvassed the area in front of 1936 Shomaker and onto South 20th Street and recovered discharged cartridge casings of multiple calibers as well as a baseball cap; police also recorded damage caused by bullets to multiple types of property in the area. (R.681-700; Vol. 1, E.62-67,708,730-31,733-48,757-58, 715)

Officers searched Marble's home on October 25 and found bullets of multiple calibers that corresponded to the bullets found in front of Shomaker and on South 20th Street. (R.580-94,598-99,600-03; Vol. 2, E.51-60) Police processed Marble's car and found multiple discharged casings. (R.762,767-75) There was staining on the rear seat cover on both the driver and passenger sides as well as corresponding stains on the foam underneath the cover. (R.762,765-66,778-79) There was also a defect on the rear driver side seat with staining around that defect as well as a corresponding defect in the rocker panel area on the back passenger side of Marble's vehicle. (R.765-66) While the rear seat cover tested

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positive for the presence of blood, DNA testing was inconclusive. (R.899-901)

An investigator believed a bullet was fired from above the rear seat and caused the defect, with the bullet lodging in the bottom rocker panel of the vehicle. (R.776-78) The rocker panel was removed, and police found a copper jacket from a projectile as well as a small metal fragment. (R.782-85; Vol. 2, E.45-49) The fired bullet jacket recovered from that pillar was .38 caliber, which was not the type of bullet that killed Detrick. (R.985-86,328,332,989) The bullet that killed Detrick, a .22 caliber, was damaged and could not be matched to any firearm. (R.991)

A forensic scientist, Angela Horn, examined Mr. Turner's camouflage pants taken from the hospital. (R.993) Horn observed a gray haze and metallic flakes near one of the defects. (R.999-1000) For various reasons, Horn opined the damage to the pants was caused by a contact or near-contact gunshot within a three-inch range. (R.1001 -08) According to Mary Wong, Mr. Turner's long-sleeve black shirt taken from the hospital was either in the vicinity of a discharged firearm or came into contact with primer gunshot residue, which could have been transferred from a car seat where a gun had just been fired minutes beforehand. (R.1038-42)

Nurse Womick testified consistently with her suppression hearing testimony. (R.395-402) When asked if Womick recalled police telling Mr. Turner "they were there to take his clothing[,]" Womick said Mr. Turner "didn't verbalize but he shook his head that he agreed." (R.402) Meanwhile, Detective Etherton testified as follows:

> THE STATE: And did you ask Mr. Turner if you could take those [clothing items]?
>
> ETHERTON: Oh, we told him we were going to, yes. It's part of the

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investigation.

THE STATE: Did he acquiesce in that?

ETHERTON: Say that again, sir.

STATE: Did he agree with that?

ETHERTON: Yeah. He said, the only concern he had at the time, I recall, he was concerned about getting the shirt back. (R.575-76)

Mr. Turner told Etherton he had been near the Elk's Lodge, in the Shomaker Drive area, outside and using the phone when he heard shots and realized he had been shot in the leg. (R.578) He then went to Marble's house, and she drove him to the hospital. (R.579) Mr. Turner told Etherton that two vehicles had driven around the block before the shooting, but he could not identify them. (R.578-79)

Marble claimed that, days after the shooting, she heard Mr. Turner say "[t]hat he had the gun on his lap and Quan was shooting and bumped into him, and he shot himself in the leg." (R.842-43) Cara Howerton also claimed she heard him say "someone bumped into him in the back seat" and that he "shot himself." (R.867-68) However, both women admitted they had been smoking marijuana the day Mr. Turner allegedly made this statement, and both admitted they had given inconsistent statements to police. (R.842-47,869-71)

The court found Mr. Turner guilty of murder, aggravated discharge of a firearm, and conspiracy to commit aggravated discharge of a firearm in 16-CF-466 and guilty of both perjury charges in 17-CF-104. (R.1070-93,1093-94)

Post-Trial & Sentencing

In his post-trial motion, Mr. Turner argued, *inter alia*, that the trial court erred in denying the motion to suppress his clothing. (PC.354) The motion asserted

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he had a reasonable expectation of privacy in his room, that police failed to obtain consent to enter the room, and that neither exigent circumstances nor other exceptions to the search warrant requirement applied. (PC.355-59) Following a hearing, the court denied the motion. (R.1156-67) Mr. Turner was ultimately sentenced to a total of 30 years in DOC. (PC.478; R.1234-36; C.701)

Appellate Court Proceedings

On appeal, Mr. Turner argued he had a reasonable expectation of privacy in his hospital room and that police violated his constitutional right to be free from unreasonable searches by seizing his clothing without a warrant. *People v. Turner*, 2022 IL App (5th) 190329, ¶ 31. He asked the appellate court to vacate his conviction for conspiracy to commit aggravated discharge because he could not be convicted of the inchoate offense as well as the principal offense of aggravated discharge of a firearm. *Id.*, ¶ 73. He also argued for vacatur of one perjury conviction, because both were based on the same issue and point of inquiry. *Id.*, ¶ 76. The appellate court vacated the conviction for conspiracy and one perjury conviction. *Id.*, ¶¶ 74, 81-84.

The court found the argument that Mr. Turner had a reasonable expectation of privacy in his trauma room was not preserved and that it was raised for the first time in the post-trial motion. *Id.*, ¶ 38. However, the court addressed the merits of the argument because the State had failed to raise a forfeiture argument during post-trial proceedings and on appeal and because the trial court had the opportunity to fully consider the argument during post-trial proceedings. *Id.*, ¶¶ 38-39. The appellate court found Mr. Turner did "not dispute the trial court's

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determination that, once in the trauma room, [he] provided police voluntary consent to seize his clothing and the bloody clothing was in plain view." *Id.*, ¶ 37. Contrary to that finding, the opening and reply briefs asserted that Mr. Turner did not consent to the taking of his clothing, but rather merely acquiesced to the police's show of authority. See Appendix A-49, A-103; (Op. Br. 38-39; Rep. Br. 11-13)

The court recognized Mr. Turner's case was similar to *People v. Pearson*, 2021 IL App (2d) 190833. *Turner*, 2023 IL App (5th) 190329, ¶ 48. The court noted it would consider the totality of the circumstances as well as the six factors provided by this Court in *People v. Pitman*, 211 Ill. 2d 502 (2004). *Turner*, 2023 IL App (5th) 190329, ¶ 42 (citing *People v. Johnson*, 114 Ill. 2d 170, 191-92 (1986)). The court found Mr. Turner did not have a reasonable expectation of privacy in his private trauma room. *Turner*, 2023 IL App (5th) 190329, ¶¶ 57, 71. The court found only one of the *Pitman* factors weighed in his favor – that he was legitimately present in the room. *Id.*, ¶ 57. The court found he had no ownership or possessory interest in the area, the first and third factors. *Id.* As for Mr. Turner's prior use of the room, the fourth factor, the court found this did not weigh in his favor because he was only in the room for about 15 minutes before officers arrived and there was no evidence of other prior use. *Id.*

With respect to the fifth factor, the ability to control others' access to the area, the court found the hospital could exercise control but Mr. Turner could not. *Id.*, ¶ 58. As for the sixth factor, Mr. Turner's subjective expectation of privacy, the court found there was no indication Mr. Turner wanted the trauma room door closed or that he requested to not have visitors. *Id.*, ¶ 59. The court found he

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voluntarily spoke to police and did not take "any steps to proclaim his privacy beyond his presence in the trauma room." *Id.*, ¶ 59. The court found this Court's decision in *Pitman* did not support the contention that "a person need only to act as a typical occupant of a space to establish a subjective expectation of privacy in that space." *Id.*, ¶ 62. The court "read *Pitman* to hold that a person need not take affirmative steps to establish his or her subjective expectation of privacy when such person has a possessory interest in and the ability to exclude others from an area ***." *Id.*

The appellate court found the presence of four walls and a door did not bear significant weight in its analysis. *Id.*, ¶ 64. The court also found a trauma room was a temporary placement where patients were provided initial medical care until a more permanent place became available and that Mr. Turner was not seeking refuge in the trauma room for an extended period. *Id.*, ¶ 66-67.

Petition for Rehearing

Mr. Turner filed a petition for rehearing, arguing the court misconstrued the law and misapplied the *Pitman* factors when determining whether he had a reasonable expectation of privacy in his trauma room. His petition also argued the appellate court's decision was irreconcilable with the Second District Appellate Court's Decision in *Pearson*. The appellate court denied the petition for rehearing on November 21, 2022. This Court granted leave to appeal on May 24, 2023.

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ARGUMENT

This Court should hold that Mr. Turner had a reasonable expectation of privacy in his hospital trauma room, and police violated his right to be free from unreasonable searches when they entered that room and seized his clothing without a warrant.

People seeking medical treatment from a hospital are "especially vulnerable: ill or in pain, unclothed or garbed only in a flimsy gown, and often lacking their usual capacity to resist intrusion." *People v. Pearson*, 2021 IL App (2d) 190833, ¶ 30. This vulnerability bolsters a finding of a reasonable expectation of privacy in a hospital trauma room because "under these circumstances[,] society recognizes as reasonable the right of hospital patients to maintain the little privacy that remains to them." *Id.* This Court should find Mr. Turner had a reasonable expectation of privacy in his hospital trauma room within the emergency department, a room that was not open to the general public, had four walls and a door, and contained one patient.

Such a bright-line rule would aid police by providing clear-cut guidance on when a warrant or permission to enter is required. This rule would protect vulnerable and medically fragile patients seeking treatment. The rule would also assist hospital staff who may operate under the impression that police can access all areas of the hospital and seize patient property, even if this results in police obstructing the hospital's ability to treat patients. Accordingly, Mr. Turner respectfully requests that this Court reverse the appellate court's decision and

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remand for a new trial with Mr. Turner's clothing and the evidence obtained from it suppressed.

Standard of review

A trial court's ruling on a motion to suppress evidence presents a mixed question of law and fact. *People v. Thomas*, 198 Ill. 2d 103, 108 (2001). A court's factual findings and witness credibility determinations are reviewed for clear error and will be reversed if they are against the manifest weight of the evidence. *People v. Gherna*, 203 Ill. 2d 165, 175 (2003). However, a reviewing court "remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted." *Id.*, 175-76. The ultimate question of whether suppression of the evidence is required is reviewed *de novo. Id.*, 175.

Analysis

The question before this Court is whether a person has a reasonable expectation of privacy in an enclosed hospital trauma room. Mr. Turner asks this Court to find that he did have such a right and was constitutionally protected from the search and seizure that occurred in this case. This Court should find that when a defendant is in a hospital room with four walls and a door, a patient has a reasonable expectation of privacy, and thus, police are required to either obtain consent to enter or a warrant.

Both the United States and Illinois Constitutions protect citizens against unreasonable searches and seizures. U.S. Const. amends. IV, XIV; Ill. Const. of 1970, art. I, § 6. The Fourth Amendment protects a person where he has a reasonable

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expectation of privacy in the place to be searched. *Minnesota v. Carter*, 525 U.S. 83, 88-89 (1998); *People v. Pitman*, 211 Ill. 2d 502, 514 (2004). "[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). This Court has interpreted the search and seizure provision in the Illinois Constitution in a manner that is consistent with Fourth Amendment jurisprudence from the United States Supreme Court. *Pitman*, 211 Ill. 2d at 513.

"The question whether a defendant has a reasonable expectation of privacy in the area searched or the items seized must be resolved in view of the totality of the circumstances of the particular case." *People v. Johnson*, 114 Ill. 2d 170, 192 (1986). In determining whether a person has a reasonable expectation of privacy, this Court has explained that courts should consider: "(1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched; (3) whether defendant has a possessory interest in the area or property seized; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the defendant himself had a subjective expectation of privacy in the property." *Pitman*, 211 Ill. 2d at 520-521.

Pitman Factors One and Three

This Court should find the majority of the *Pitman* factors weigh in favor of finding Mr. Turner had a reasonable expectation of privacy in his hospital trauma room, which was a private room with four walls and a door. The first three factors

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should not be in dispute. Mr. Turner concedes the first and third *Pitman* factors do not weigh in his favor, because he did not have ownership or a possessory interest in the hospital room. *See Pitman*, 211 Ill. 2d at 520. However, this Court should find the remaining factors weigh in favor of finding an expectation of privacy.

Second Factor: Legitimately Present

The second *Pitman* factor is whether Mr. Turner was legitimately present in the trauma room. *See id.* Mr. Turner came to the hospital and was in the trauma room for treatment for a gunshot wound to his leg, and thus, he was legitimately present in the area searched. (R.396-97) The appellate court agreed on this point, though it found this was the only factor weighing in Mr. Turner's favor. *People v. Turner*, 2022 IL App (5th) 190329, ¶ 57.

Fourth Factor: Prior Use of the Area Searched or Property Seized

This Court should find the fourth factor, the prior use of the area searched or property seized, weighs in favor of finding a reasonable expectation of privacy here. *See Pitman*, 211 Ill. 2d at 520. The courts' current method for applying this factor amounts to counting the number of minutes a patient was in his room before police arrival and leads to inconsistent and absurd results.

When evaluating this factor, Mr. Turner urges this Court to consider the unique nature in which a trauma room is generally used—that is, to treat patients who have suffered illness or injury and may be medically fragile. "[T]he nature of the premises where the search occurred may affect the extent to which it is protected by the fourth amendment." *Pearson*, 2021 IL App (2d) 190833, ¶ 25; *see also Oliver v. United States*, 466 U.S. 170, 178 (1984) (The use of a location

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and "our societal understanding that certain areas deserve the most scrupulous protection from government invasion" are important Fourth Amendment considerations.).

Such a rule would create clarity and consistency by instructing police and hospital staff as to whether a warrant or consent to enter was required. With the current jurisprudence from the appellate court, a difference of minutes or hours could dictate whether one possesses an expectation of privacy and is entitled to the constitutional protection of the Fourth Amendment. This simply does not make sense and is impossible to apply for all of the parties responsible for making decisions in the moment. Police may not know how long a patient was in a room before the officers' arrival and thus would not know whether he needs a warrant or consent. It also follows that police may not know how long is long enough; it makes no sense for police to decide to forego a warrant or consent at 31 minutes, but suddenly feel compelled to obtain one at 30 minutes. Additionally, officers with a busier night who took longer to arrive at the hospital might find themselves at a suppression hearing months later, learning they should have obtained a warrant; an officer who was able to arrive promptly would not be subject to such constraints.

Likewise, hospital staff also may not readily know this information or may estimate it wrong given the priority of other matters in the emergency room. Imagine a nurse being asked to calculate minutes when a trauma is coming into the emergency room, and it is easy to see that accuracy may not be a priority. Further, whether someone needs a warrant or consent surely cannot be decided based on an accurate or inaccurate counting of minutes. This is absurd.

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As *Pearson* recognized, "any assessment of expectations of privacy in a hospital must take into account the highly personal nature of the usual activity conducted there – medical treatment – as well as the fact that persons in a hospital may be especially vulnerable: ill or in pain, unclothed or garbed only in a flimsy gown, and often lacking their usual capacity to resist intrusion." *Pearson*, 2021 IL App (2d) 190833, ¶ 30. "[U]nder these circumstances[,] society recognizes as reasonable the right of hospital patients to maintain the little privacy that remains to them." *Id.*

Finding that a patient in an individual trauma room has a reasonable expectation of privacy is akin to how this Court views hotel occupants or overnight guests. Hotel guests are entitled to constitutional protection against unreasonable searches and seizures. *Stoner v. California*, 376 U.S. 483, 490 (1964); *People v. Lindsey*, 2020 IL 124289, ¶ 38. Similarly, the U.S. Supreme Court has recognized that one's "status as an overnight guest" in another's residence "is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990).

When considering the prior use factor, this Court should find that patients in hospital rooms with four walls and a door are to be afforded the same expectation of privacy as overnight guests or hotel room occupants, with that expectation of privacy attaching as soon as the patient is placed in his individual room. This bright-line rule is practical and would protect vulnerable patients who are less able to resist intrusion and would instruct police and hospital staff as to whether a warrant or consent was required for police entry.

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Under the current state of the law, when considering prior use, every appellate court has focused on the amount of time the patient was in the room, even when that information was not obvious from the record. The Second and Third District Appellate courts focused on the duration a patient spent in his hospital room. *Pearson* found there was not a clear-cut application of this factor since the record did not show exactly how long Pearson had been in his trauma room before police entered. *Pearson*, 2021 IL App (2d) 190833, ¶ 36. However, Pearson was in the trauma room "at least long enough for hospital personnel to have removed his clothing and to have begun treating his wounds." *Id.* In *Gill*, it was also unclear how long the defendant was in the room, "with possibilities ranging from 8 hours to 15 minutes." *People v. Gill*, 2018 IL App (3d) 150594, ¶ 85.

The Fifth District seemed to consider the duration Mr. Turner was in the room and possibly whether he had used the trauma room before, although the latter is unclear. The appellate court simply noted that Mr. Turner "was in the room about 15 minutes before officers arrived, and there was no evidence that [he] had prior use of the trauma room (fourth factor)." *Turner*, 2022 IL App (5th) 190329, ¶ 57. No further analysis was provided.

This Court should consider clarifying the analysis of the "prior use" factor to include the manner in which these hospital rooms are generally used, affording the patients in these rooms the same privacy as an overnight guest or hotel occupant. Prior use must be about the accepted expectation of privacy society generally has in a specific place, such as a hotel or in a bedroom where he is an overnight guest, not in the minutes spent in these locations. Hospital rooms, rooms where individuals

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are at the most vulnerable, must be a location where the prior use of the room by society at large would dictate a reasonable expectation of privacy, regardless of the minutes spent inside the private room with four walls and a door.

In addition to providing clear guidance to hospital staff and police, this would also provide greater efficiency and effectiveness of treatment without unplanned police presence. As one detective explained in this case, the officers angered hospital staff by getting in their way as the hospital attempted to provide Mr. Turner care for his gunshot wound. (R.136) Even if this Court only considers Mr. Turner's own prior use of the room as a trauma patient, this Court should find this factor weighs in favor of finding he had a reasonable expectation of privacy in that room.

Here, Mr. Turner was in the hospital trauma room as a patient with a gunshot wound to the leg. (R.80) While, according to Nurse Womick, officers arrived within minutes of Mr. Turner, Mr. Turner had been present in the room long enough to be undressed, placed in the bed, and to receive triage. (R.80-81,70-72) Detective Etherton explained that People's Exhibit 1 was a photo of Mr. Turner's appearance upon the officers' arrival to his room. (R.128-29; Vol. 1, E.57) People's Exhibit 1 shows Mr. Turner reclined in a hospital bed with wires attached to his chest and abdomen, and his eyes appear to be closed and his mouth agape. (Vol. 1, E.57) Thus, Mr. Turner was in the room long enough to be admitted as a patient and to begin receiving treatment. Accordingly, this Court should find this weighs in favor of finding he had a reasonable expectation of privacy.

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Fifth Factor: The Ability to Control or Exclude Others

From the Use of the Property

Contrary to the Fifth District's findings, the Fourth Amendment considers a person's right to *exclude* others from accessing areas in which he has an expectation of privacy; this constitutional protection is not about an individual's right to *include*. This Court should find Mr. Turner had some ability to control his individual trauma room and to exclude others from the room, weighing in favor of an expectation of privacy. *See Pitman*, 211 Ill. 2d at 520-521. While police may enter public areas of a business like a private citizen, areas that are not open to the public are shielded from police entry. *Maryland v. Macon*, 472 U.S. 463, 470 (1985).

The appellate court's conclusion in this case seems to conflate the idea of *inclusion* with the *right of exclusion*, and the appellate court overlooked Mr. Turner's *right to exclude*. The appellate court also did not consider that the hospital could not have forced Mr. Turner to entertain visitors he did not want. It is well known that a hospital patient may deny visitors entry into his hospital room; thus, he has a measure of control over his room. Even hospital staff seem to recognize a patient's ability to deny or, at least, delay entry, as it is commonplace for hospital staff to knock on a closed patient room door before entering, allowing the patient time to ready himself for visitors.

Here, the appellate court, in a conclusory fashion, found there was no evidence Mr. Turner could exclude others from his room. *Turner*, 2022 IL App (5th) 190329, ¶ 58. The appellate court found Mr. Turner's mother's inability to visit him reflected

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the hospital's control over the area as opposed to Mr. Turner's, and the court noted that while Mr. Turner might be able to *invite* guests to the room, the hospital would have "controlling authority" on whether they were allowed in. *Id.*

Gill and *Pearson* took a more reasoned approach when considering this factor. In *Gill*, the court noted that the defendant "likely maintained some ability to exclude others from the room." *Gill*, 2018 IL App (3d) 150594, ¶ 85. The court explained that while Gill might not have had "any ability to restrict access to the seventh floor, generally he likely enjoyed *some* rights regarding visitation in his private hospital room." *Id.*, ¶ 93 (emphasis in original). It was significant that "while doctors and nurses may come and go from his room to provide care, his room was *not open to the public in general*." *Id.* (emphasis added).

Gill's approach with respect to a patient's right to exclude is consistent with a hotel occupant's right to exclude. As early as 1964, in *Stoner v. California*, the United States Supreme Court stressed that "the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority.' " *Stoner*, 376 U.S. at 488. In *Stoner*, the court explained that neither a night clerk of the hotel nor the hotel proprietor could consent to a search of an occupant's room. *Id.* at 489. The court explained that while a hotel occupant renting a room "undoubtedly gives 'implied or express permission' to 'such persons as maids, janitors or repairmen' to enter his room 'in the performance of their duties[,]' " he has not consented to police entry. *Id.*; *see also People v. Eichelberger*, 91 Ill. 2d 359, 364-65 (1982) (where this Court recognized a hotel occupant retains a reasonable expectation of privacy

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in his hotel room).

Similarly, when considering whether an overnight guest had control of the home where he was staying, the U.S. Supreme Court has explained, "That the guest has a host who has ultimate control of the house is not inconsistent with the guest having a legitimate expectation of privacy." *Olson*, 495 U.S. at 99. "The houseguest is there with the permission of his host, who is willing to share his house and his privacy with his guest." *Id.* The supreme court further noted that "when the host is away or asleep, the guest will have a measure of control over the premises." *Id.*

Pearson recognized that a "hospital typically contains both public areas, such as hallways and waiting rooms, and private areas such as patients' rooms." *Pearson*, 2021 IL App (2d) 190833, ¶ 29. "Just as with commercial premises, the limits placed on public access to particular areas in a hospital likewise may restrict the authority of police to enter freely." *Id.* (citing *See v. City of Seattle*, 387 U.S. 541, 545 (1967)). *Pearson* found that one does not turn his hospital "room into a public thoroughfare" by simply checking into a hospital and that just because a "hospital patient has implicitly consented to the intrusion of medical personnel into a private treatment room does not mean that he or she has waived the right to deny others, such as the police, entry[.]" *Pearson*, 2021 IL App (2d) 190833, ¶ 29 (quoting *People v. Brown*, 88 Cal. App. 3d 283, 151 Cal. Rptr. 749, 754 (Ct. App. 1979)).

The *Olson* court, in addressing an overnight guest's privacy, explained, "The host may admit or exclude from the house as he prefers, but it is unlikely

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that he will admit someone who wants to see or meet with the guest over the objection of the guest." *Olson*, 495 U.S. at 99. "The point is that hosts will more likely than not respect the privacy interests of their guests, who are entitled to a legitimate expectation of privacy despite the fact that they have no legal interest in the premises and do not have the legal authority to determine who may or may not enter the household." *Id.*

This Court should find *Pearson*'s application of the right to exclude is well-reasoned and consistent with Fourth Amendment jurisprudence. Additionally, this Court should find Mr. Turner had the right to exclude others from his individual trauma room. Mr. Turner was not on a gurney separated from other hospital patients by a sheer curtain; he was unclothed, in a hospital bed, in an individual trauma room within the emergency department, and his room had four walls and a door. (R.129,107-08) As *Gill* noted, a door "alone implie[s] a certain layer of privacy," *Gill*, 2018 IL App (3d) 150594, ¶ 94.

The presence of four walls and a door, as opposed to an emergency room curtain, suggests Mr. Turner could prevent visual and physical entry. Additionally, Mr. Turner's room was not accessible by the general public because visitors had to pass a main desk, which evidently was sufficient to stop Mr. Turner's own mother from entering his room. (R.119-20) Of course, as recognized by *Pearson*, *Stoner*, and *Olson*, Mr. Turner had the right to exclude his mother or others entry to his room. *See Brown*, 88 Cal. App. 3d at 291, 151 Cal. Rptr. at 754(recognizing that a hospital patient can prohibit entry to his room by visitors, including police).

Comparable to the overnight guest's control, which is shared with the host,

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Mr. Turner may not have had a right to exclude hospital staff. Hotels can require one to open up for maintenance or cleaning. A host in a home a could do the same. That Mr. Turner had to let hospital staff enter his room is the same. He surely had the ability to exclude anyone else from his individual hospital room, including the general public and the government. Of course, this right of exclusion cannot be exercised when police and hospital staff both assume police may intrude without a warrant and without consent into a hospital patient's individual room while that patient is receiving medical care.

Illinois courts have explicitly recognized a hospital patient's room is *not* open to the general public, albeit in the context of a civil invasion of privacy context. In *Green v. Chicago Tribune Co.*, the plaintiff alleged that *Chicago Tribune* staff had committed an invasion of privacy, infliction of emotional distress, and battery, when staffers photographed her son as he was undergoing emergency treatment for a bullet wound and photographed him again when his body was moved to a private room to await the coroner. *Green v. Chicago Tribune Co.*, 286 Ill. App. 3d 1, 3 (1st Dist. 1996). The *Tribune* staff also listened as Green made statements to her deceased son, and the *Tribune* published the statements and a photograph from the incident. *Id.*, 3-4. On appeal from the trial court's order granting the *Tribune's* motion to dismiss Green's complaint, the appellate court addressed whether the *Tribune* invaded her privacy when staffers entered her son's room, photographed him, eavesdropped on her statements to him, and published those statements and photographs. *Id.*, 4. Relevant here, the court, looking to Black's Law Dictionary, found the son's hospital room was *not a public place. Id.*, 5-6.

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This Court should find Mr. Turner had the right to exclude entry into his individual room consistent with the rights of hotel occupants and overnight guests. This makes sense considering the nature of what occurs in a trauma room- medical treatment of vulnerable persons who may be ill, in pain, or unclothed. *See Pearson*, 2021 IL App (2d) 190833, ¶ 30. Here, Mr. Turner was unclothed, in pain, and seeking treatment for a gunshot wound when police entered his individual room to question him and take his property, occasionally angering hospital staff by hindering their ability to provide medical care. See (R.136) (where Detective Liggett explained hospital staff became slightly angry if the officers got in their way while they treated Mr. Turner).

As the *Pearson* court aptly noted, society recognizes a hospital patient's right to maintain the little privacy that remains to him. *Id.* Thus, finding Mr. Turner had a right to exclude entry to visitors, *in addition to the hospital's own ability to exclude visitors*, is based in Illinois law. This finding is also grounded in common experience and in societal expectations–protecting vulnerable people who are seeking medical attention from unwanted intrusions from the public. Accordingly, this Court should find this factor weighed in favor of finding that Mr. Turner had a reasonable expectation of privacy in his individual trauma room with four walls and a door.

Sixth Factor: A Subjective Expectation of Privacy

The sixth *Pitman* factor is whether the defendant had a subjective expectation of privacy. *Pitman*, 211 Ill. 2d at 521. "Persons reasonably expect increased privacy during hospitalization***." *Ohio v. Funk*, 896 N.E. 2d 203, 207 (Ohio Ct. App.

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4th Dist. 2008) In *Gill*, the court considered the codification of doctor-patient privilege and the passage of the Health Insurance Portability and Accountability Act (HIPAA) when finding that "the concepts of privacy and confidentiality are tantamount concerns in a hospital***." *Gill*, 2018 IL App (3d) 150594, ¶ 94. The court found it significant that Gill was in his own personal room, with four walls and a door, as opposed to an ER with an open floor plan with nothing more than curtains separating the beds. *Id.*, ¶¶ 92-93. While his room was open to hospital staff, it was not open to the general public, and Gill acted in a manner typical of an occupant of the space. *Id.*, ¶¶ 93-94. The court found this evidenced Gill's subjective expectation of privacy in his room. *Id.*, ¶ 94.

In *Pearson*, the State conceded the defendant had a subjective expectation of privacy in his trauma room. *Pearson*, 2021 IL App (2d) 190833, ¶ 37. As for whether it was a *reasonable* expectation, the court explained that "[t]he concern for patients' personal bodily privacy and vulnerability gave rise to the laws protecting the privacy and confidentiality of medical treatment highlighted in *Gill*." *Id.*, ¶ 38. With respect to the State's argument that Pearson's room was in the emergency department, the court noted that it was not in an open emergency room and "was in a separate enclosed trauma room with four walls and a door." *Id.*, ¶ 39. The court found that, under such circumstances, Pearson had a reasonable expectation of privacy. *Id.*

Here, the appellate court found there was no subjective expectation of privacy because there was "no indication that defendant wanted the trauma room door closed or that defendant requested to have no visitors." *Turner*, 2022 IL App (5th)

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190329, ¶ 59. The court noted that Mr. Turner voluntarily spoke with the officers that entered his room and that the "record does not reveal [he] took any steps to proclaim his privacy beyond his presence in the trauma room." *Id.*

The appellate court's decision directly contradicts this Court's precedent. This Court made clear that a "defendant need *not* have taken affirmative steps to proclaim his expectation of privacy." *Pitman*, 211 Ill. 2d at 522 (emphasis added). In fact, a "defendant simply must outwardly behave as a typical occupant of the space in which the defendant claims an interest, avoiding anything that might publicly undermine his or her expectation of privacy." *Id.* Here, Mr. Turner occupied the trauma room as a patient receiving treatment for his gunshot wound, a typical occupant in a hospital trauma room. (R.65-67) There is nothing in the record to suggest that he took any action that would undermine his expectation of privacy. Even assuming Mr. Turner's door was open, this is no different than a hotel occupant leaving his hotel door open as he unloads his things into his room. The hotel occupant surely does not lose his privacy expectations in such a scenario. It is the existence of the door and the four walls that imply a layer of privacy. Accordingly, this Court should find this factor weighs in favor of finding a subjective expectation of privacy.

This Court should find Mr. Turner had a reasonable expectation of privacy in his individual trauma room that had four walls and a door and was not open to the general public. *Pearson*'s analysis appropriately considered the *Pitman* factors and Fourth Amendment protections and recognized that society has a heightened expectation of privacy in a hospital setting. As this Court resolves the split in authority created by the Second and Fifth District Appellate Court

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decisions, Mr. Turner urges this Court to find that the Second District's decision in *Pearson* is thorough and well-reasoned when contrasted with the more conclusory opinion from the Fifth District's decision in this case.

No Exceptions to Warrant Requirement

Finally, no exceptions to the warrant requirement apply to the facts of this case. The record shows police did not obtain Mr. Turner's consent to enter the trauma room, with Nurse Womick testifying at the suppression hearing that "police came in and told him that they were going to need his stuff***." (R.73) Any argument that Mr. Turner consented to the taking of his clothing is irrelevant because police were required to obtain consent to enter Mr. Turner's room or a warrant, as discussed above. *See People v. Martin*, 382 Ill. 192, 197 (1942) (A search which is unlawful in the beginning may not be justified by what is found.). Additionally, while the officers claimed prior to trial that one of the two had requested Mr. Turner's consent to seize his clothing, neither officer could recall which had asked and the only written account did not reflect that the officers *had* asked. (R.98-102,138) Detective Etherton's trial testimony established that police did *not* request the clothing, and instead, officers *told* Mr. Turner they were taking his clothing as part of their investigation. (R.575-76) This Court may consider evidence adduced at trial as well as the suppression hearing when reviewing the trial court's ruling. *Gill*, 2018 IL App (3d) 150594, ¶ 76; *People v. Brooks*, 187 Ill. 2d 91, 127-28 (1999).

At most, Mr. Turner merely acquiesced when police unlawfully entered his room and told him they would be taking his clothing, and mere acquiescence to a show of police authority does not establish consent. *See Bumper v. North*

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Carolina, 391 U.S. 543, 548-59 (1968); *People v. Anthony*, 198 Ill. 2d 194, 201 (2001). Again, this acquiescence does not remedy the police's failure to obtain consent to enter the room or their failure to secure a warrant. Accordingly, this Court should find that no exceptions to the warrant requirement apply.

This Error Was Preserved and Was Not Harmless

Next, this Court should find the suppression error here was preserved and that the State has the burden to prove the error was harmless beyond a reasonable doubt. *See People v. Wright*, 2012 IL App (1st) 073106, ¶ 128 (Where an error is preserved, the State bears the burden of showing the error was harmless beyond a reasonable doubt.). At the pre-trial suppression hearing, the State argued Mr. Turner did not have a reasonable expectation of privacy in his trauma room. (R.151) Mr. Turner's post-trial motion asserted that he was entitled to a new trial because he had a reasonable expectation of privacy in his trauma room and the clothing seized from his room should have been suppressed. (PC.354) Thus, the trial court had the opportunity to fully consider the merits of Mr. Turner's argument as well as the opportunity to correct this error, as recognized by the appellate court. *Turner*, 2022 IL App (5th) 190329, ¶¶ 38-39. Accordingly, this Court should find the error preserved.

Even if this error were not preserved, the Illinois Supreme Court has long held that "constitutional issues that were properly raised at trial and may be raised later in a postconviction petition" are one of the types of claims that "are not subject to forfeiture for failing to file a posttrial motion[.]" *People v. Cregan*, 2014 IL 113600, ¶ 16 (citing *People v. Enoch*, 122 Ill. 2d 176, 190 (1988)). This exception was created

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in the interest of judicial economy. *Cregan*, 2014 IL 113600, ¶ 18. This way, issues that the trial court had a chance to correct can be addressed now, rather than waiting years and requiring the defendant to raise the issue in a separate post-conviction petition. *Id.*

While the argument that Mr. Turner had a reasonable expectation of privacy in the trauma room was asserted in the post-trial motion, it was not asserted in the pre-trial motion or during trial. (PC.354) Even so, the State argued during pre-trial proceedings that Mr. Turner lacked a reasonable expectation of privacy in his room. (R.151) The constitutional exception and the interests of judicial economy apply in this case because the trial court was able to fully consider the merits of Mr. Turner's argument during the post-trial proceedings, and Mr. Turner could raise this constitutional issue in a post-conviction proceeding.

Finally, this Court should review the error here for harmless error because during both post-trial proceedings and on appeal, the State failed to assert Mr. Turner had forfeited this argument. *See People v. Nelson*, 2013 IL App (1st) 102619, ¶ 78 (Where the State forfeits a forfeiture argument, the issue is reviewed for harmless error.) (Gordon, J., concurring). Here, the appellate court recognized the State had forfeited any forfeiture argument, and the court reviewed the merits of Mr. Turner's suppression argument. *Turner*, 2022 IL App (5th) 190329, ¶ 38.

"Before it can be said that a Federal constitutional error can be harmless, a reviewing court must be able to declare beyond a reasonable doubt that the error did not contribute to the finding of guilty." *People v. Smith*, 38 Ill. 2d 13, 15 (1967) (citing *Chapman v. California*, 386 U.S. 18 (1967)). The State bears the burden

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of proving harmlessness beyond a reasonable doubt. *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). This Court has recognized three different approaches for evaluating whether a constitutional error is harmless beyond a reasonable doubt: "(1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determining whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id.* (citation omitted). The State cannot sustain its burden under any of those approaches.

In this case, the error undeniably contributed to Mr. Turner's conviction. The State used Mr. Turner's pants to present testimony from Horn that the gunshot was a contact or near contact gunshot that entered the front of his pant leg and exited the back of the pant leg about seven inches lower. (R.993-1008) The State then used the evidence from the pants to argue Mr. Turner was in the backseat of the car during the drive-by shooting and shot himself in the thigh, with the bullet lodging into Marble's car. (R.320,1080-81,1089-92) Therefore, this error was not harmless under the first approach.

Next, there was not overwhelming evidence of Mr. Turner's guilt in this case. There was strong evidence that Juwan Jackson and Terry Rogers both participated in the shooting and then fled the area and discarded their guns and clothing. (R.421-27,563,529,1054-55,937-38,940-42) There was also evidence suggesting Quan Scruggs participated in the shooting, potentially discarded a gun, and instructed Marble to clean out her car after it was used for the shooting.

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(R.828-30) However, the evidence against Mr. Turner was slim.

To review, Cleophas Gaines was the only eyewitness to the shooting that testified. Gaines admitted to being under the influence of promethazine with codeine as well as cocaine. (R.408-09) Though Gaines was under the impression that his substance abuse made him feel "like Superman" with "X-ray vision" and felt like he could "see through anything[,]" (R.436), Gaines was inconsistent, unreliable, and lacking credibility. First, Gaines was not credible with respect to his claim that he did not see Terry Rogers present in the yard at 1906 Shomaker, where the evidence strongly suggested Terry shot at Marble's car and then fled the area before police arrived.

Next, Gaines said he saw Jackson aiming two guns out of the car window. (R.421,425) Gaines claimed it was "hard to see" but that he kept watching the vehicle after Jackson started shooting, and he claimed he saw Mr. Turner in the backside passenger seat. (R.428-29,431) This was directly contradicted by Gaines' own claims that, after hearing Jackson say, "That's what you motherfuckers is on," he got "down in the car" and that, "[a]t the time of the shooting," he was "on the floorboard[.]" (R.425-26,438) Additionally, Gaines told the prosecution "from the very start" that he did *not* see Mr. Turner in Marble's vehicle during the drive-by shooting. (R.430)

Further problems exist where Gaines claimed he saw Mr. Turner in the backseat on the passenger side, but the State argued Mr. Turner shot himself in the backseat on the driver's side of the car. (R.429,431,1080) Gaines thought Jaylon Moore might have been in the vehicle, though he was not sure. (R.431)

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According to Gaines, Garrett was driving, Jackson was in the front passenger seat shooting, and Moore might have been in the backseat. Of course, Marble testified that Quan Scruggs appeared to discard a gun while she took Mr. Turner to the hospital. (R.828-29) Thus, it is entirely possible Scruggs and Moore were the backseat passengers.

Mr. Turner told Nurse Womick and police that he was outside on the phone in the Shomaker Drive area trying to get a ride when he was shot. (R.400-01,578) He also said he went to Marble's home for help, and she took him to the hospital. (R.579) This claim is supported by Ross' testimony. Ross' home,1849 Alexander, was about two blocks away from Marble's home at 1936 Shomaker. (R.499-500) When Ross looked out her window, she saw Mr. Turner outside by himself walking on the sidewalk, which was not uncommon for Mr. Turner. (R.879-83) According to Ross, the shooting occurred about 40 minutes later. (R.881-82) Thus, the evidence supports Mr. Turner's claim he was outside in the Shomaker Drive area when shot.

Ballistics evidence supports his claim as well. Investigator Glover testified that the bullets fired from South 20th Street could have continued on down Shomaker Street until they struck something. (R.792-93) Investigator Sutton said the bullets could have traveled more than 300 yards from South 20th Street and down Shomaker. (R.726-27) Sutton explained that a .223 rifle round or a .357 SIG would travel even farther, with the .223 round potentially going miles. (R.725-26) Thus, if Mr. Turner was outside walking near Marble's home, he could have been shot by the bullets that were fired from the white car while it was on South

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20th Street and shooting toward 1906 Shomaker. It makes sense that Mr. Turner sought help from Marble or those in her home immediately after the shooting since he was nearby. Thus, the other evidence was not overwhelming.

Finally, the improper evidence was not merely cumulative and did not duplicate other evidence. No other evidence was admitted to show that Mr. Turner suffered a close contact gunshot wound. The only evidence that potentially placed Mr. Turner inside Marble's vehicle were the statements from Marble and Howerton, who both claimed they heard Mr. Turner say he shot himself in the leg. (R.842-43, 867-68) However, both women admitted that they had smoked marijuana on the day they allegedly heard this statement, and both admitted they had given inconsistent statements to police. (R.845-47,869-71)

Mr. Turner consistently told hospital staff and police that he was outside on the phone and trying to get a ride when shot. Mr. Turner never made any incriminating statements to police, and no evidence was presented showing that his fingerprints or DNA were present on any guns or shell casings. No one, not even Gaines, claimed to see Mr. Turner with a weapon on the night of the shooting. The improperly admitted evidence that was obtained from the illegal search was not harmless beyond a reasonable doubt.

Summary

People seeking medical treatment at a hospital are especially vulnerable, in pain, suffering illness, and even life-threatening injuries. Patients like Mr. Turner, Pearson, and Gill, are often stripped of their clothing and placed in flimsy gowns so that their unclothed, sick, or injured bodies may be examined by doctors and

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their personal and private health conditions discussed. Under these circumstances, people have an increased expectation of privacy, and because the concepts of privacy and confidentiality are tantamount concerns in a hospital, this expectation of privacy is one that society can accept as reasonable. By finding that Mr. Turner had a reasonable expectation of privacy in his individual trauma room with four walls and a door, this Court can create a bright-line rule that instructs police and hospital staff as to when a warrant or consent to enter is required. Such a rule would provide clarity and consistency for police and would avoid absurd results. This rule would also allow hospital staff to treat patients without being hindered by the government's intrusion into an individual's room, and significantly, this rule would protect patients' privacy and vulnerability.

Mr. Turner respectfully requests that this Court find he had a reasonable expectation of privacy in his individual trauma room with four walls and a door. He further asks this Court to find the officers' entry into his room violated both his state and federal constitutional rights to be free from unreasonable searches. Because the State cannot prove that the constitutional error was harmless beyond a reasonable doubt, this Court must reverse the appellate court's decision and remand for a new trial with Mr. Turner's clothing and the evidence obtained from it suppressed.

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CONCLUSION

For the foregoing reasons, Cortez Turner, petitioner-appellant, respectfully requests that this Court reverse the appellate court's ruling and reverse his convictions and remand for a new trial in both 16-CF-466 and 17-CF-104.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 40 pages.

/s/Jennifer M. Lassy
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*All of the exhibits contained within the perjury record, 17-CF-104, are contained within the murder record, 16-CF-466. In the interest of brevity, only the exhibits within the murder record have been provided.

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**NO. 2016-CF-466**
	)	
CORTEZ L. TURNER,	)	
	)	
Defendant.	)	

FILED 24
2017 NOV 15 AM 10: 32
CIRCUIT CLERK
JACKSON COUNTY, IL

MOTION TO SUPPRESS EVIDENCE ILLEGALLY OBTAINED

Now comes the Defendant, Cortez L. Turner, by and through his attorneys of Lawler Brown Law Firm, and pursuant to 725 ILCS 5/114-12, moves to suppress clothing unlawfully obtained. In support thereof, the Defendant states as follows:

1. On October 24, 2016, the Defendant was admitted to St. Joseph's Hospital in Murphysboro, Illinois, for treatment as a victim of a gunshot wound.

2. On that same date, clothing worn by the Defendant was taken by members of the Murphysboro Police Department and/or Jackson County Sheriffs Department while the defendant was at the hospital.

3. That at that time, the Defendant was not under investigation and was not being detained, but was a victim to a crime and was receiving treatment.

4. That there were no exigent circumstances which permitted the Police to seize the Defendant's clothing without first securing a warrant

5. The plain view exception to the warrant requirement does not apply because the clothing was not in plain view and the officers requested the clothing from the attending nurse.

6. The seizure of the Defendant's clothing was not incident to his arrest.

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7. Said officers did not have a warrant, no consent was given, and the clothing was not in plain view.

8. That pursuant to U.S. Const. Am. IV, and Ill. Const. Art. 1 § 6, all persons have the right to be free of unreasonable searches and seizures.

9. The clothing was taken in violation of United States and Illinois Constitutions.

10. It is believed that the clothing will be used against the Defendant.

WHEREFORE, the Defendant prays that this Honorable cCourt enter an order finding the clothing was siezed in violation of the U.S. and Illinois Constitutions, suppress the clothing seized, bar the use of said clothing by the People, and for such other relief as is just and proper.

Respectfully Submitted,

By: David W. Lawler

LAWLER BROWN LAW FIRM
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon attorney of record by enclosing the same in an envelope addressed to such attorney at his business address as disclosed by the pleadings of record herein with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mail box in Marion, Illinois, on the 13th day of November, 2017.

Casey Bloodworth
Jackson County Assistant State's Attorney
1001 Walnut Street
Murphysboro, IL 62966

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY

PEOPLE OF THE STATE OF ILLINOIS,)
)
vs.) Case No: 16-CF-466 & 17-CF-104
)
CORTEZ TURNER,)
)
Defendant.)

FILED
JAN 26 2018
JACKSON COUNTY CIRCUIT CLERK
FIRST JUDICIAL CIRCUIT OF ILLINOIS

ORDER

This case came for hearing before this Court on the Defendant's Motion to suppress evidence illegally obtained. Present for the hearing were the Defendant, Cortez Turner, and his counsel Nick Brown. Assistant States' Attorney Casey Bloodworth was also present on behalf of the People of the State of Illinois. All announced ready to proceed. The Rule on witnesses was invoked and all who would testify other than the Defendant were excluded from the courtroom. During the hearing the following witnesses were called, examined and cross-examined until released:

1. Janet Womick;
2. Detective Chris Ligget;
3. Patrice Turner;
4. Detective Cory Etherton.

Essentially, the Defendant's Motion seeks to suppress the use of his clothing at the trial of this matter which he asserts was unlawfully obtained. According to the Motion, Defendant, Cortez Turner, was being treated as a patient at a local hospital for a gunshot wound when his

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clothing items were taken by law-enforcement personnel. The Defendant asserts that the law enforcement personnel did not have a warrant to take his clothing, nor were there any exigent circumstances which permitted the law-enforcement personnel to seize the clothing without warrant. The Defendant further asserts in his Motion that the clothing items were not in plain view, the seizure of the clothing items was not incident to his arrest and finally the items were not taken with his consent. Based upon the same the Defendant seeks to suppress the clothing items seized and bar their use by the people in the trial of this case.

The Court after having considered the facts, circumstances and evidence disagrees and finds that the Defendant's Motion should be and is hereby respectfully **DENIED.** Here the evidence establish at the hearing confirmed that the Defendant, Cortez Turner, was receiving medical treatment for a gunshot wound at a local hospital. Mr. Turner was in a small treating room. The gunshot wound was to his upper leg or thigh area. Law enforcement personnel were called to investigate the incident pursuant to policy upon a patient with a gunshot wound presenting to the hospital.

Mr. Turner's clothing items were removed by treating personnel and placed in clear plastic hospital bags. They were then set on a counter near Mr. Turner located inside the treating room. His shoes were not bagged but placed close by. All of Mr. Turner's clothing items were in plain view when law enforcement personnel entered the room. The officers could view the clothing items upon entry into the room.

The testimony further established that the Defendant, Cortez Turner, was experiencing some pain when law enforcement personnel entered the room however he was compliant and cooperative. He was asked by law-enforcement personnel whether the clothing items could be

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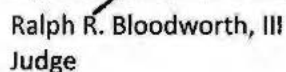
taken and he consented. He did not appear to be confused or hesitant when this permission was sought and consent given. It was noted that he was concerned about receiving his shoes back as they were apparently recently given to him. Hospital treaters did prescribe and administer pain medication to Mr. Turner while he was being treated. However, the testimony established that at the time law-enforcement personnel entered the room and Mr. Turner gave consent he did not appear to be under the influence to an extent where his consent was not voluntarily, understandingly and knowingly given.

Accordingly, based upon the testimony, evidence, facts and circumstances of the situation, this Court hereby respectfully **FINDS AND ORDERS** that the Defendant's Motion to quash and suppress should be and is hereby respectfully **DENIED.**

IT IS HEREBY SO ORDERED.

ENTERED THIS 26th DAY OF January, 2018.



Ralph R. Bloodworth, III
Judge

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2019 JAN 18 AH 10: 19
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JACKSON COUNTY

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff)
)
v.) Case No. 2016-CF-466
) 2017-CF-104
CORTEZ TURNER)
Defendant.)

MOTION FOR NEW TRIAL

NOW COMES the Defendant, Cortez Turner, by and through his attorneys of Lawler Brown Law Firm, and for his Motion for a New Trial pursuant to 725 ILCS 5/116-1 states as follows:

FACTS

1. The Court found Defendant guilty of the offenses of first degree murder, aggravated discharge of a firearm, conspiracy to commit aggravated discharge of a firearm, and perjury on December 21, 2018 following a bench trial.

2. Thirty days have not elapsed since the date of filing this Motion and the date Defendant was found guilty of said offenses.

3. Defendant seeks a new trial on the grounds that the Court erred in denying his Motion to Suppress Evidence Illegally Obtained filed on November 15, 2017 and, as a result, admitted evidence at trial of Defendant's clothing which should have been excluded based on a violation of Defendant's Fourth Amendment right against unreasonable searches and seizures.

4. Law enforcement personnel conducted a warrantless search of Defendant's hospital room at Saint Joseph Memorial Hospital and, as a result thereof, seized as evidence therefrom certain clothing and other personal items belonging to Defendant.

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5. Law enforcement personnel did not obtain consent from Defendant to enter and search his hospital room, nor did exigent circumstances or other applicable exceptions to the search warrant requirement exist to justify such entry and search.

6. Law enforcement personnel testified that, *after* entering Defendant's room, they observed clothing and other personal items in their plain-view on a countertop.

7. Law enforcement personnel testified that, *after* entering Defendant's room, they determined the clothing and other items belonged to Defendant.

8. Law enforcement personnel testified that, *after* entering Defendant's room, they obtained Defendant's consent to search and seize his clothing and other items.

ARGUMENT

9. Defendant's clothing and other items seized by law enforcement personnel from Defendant's hospital room should have been excluded from evidence at trial because it was obtained through an unlawful search of Defendant's hospital room.

Defendant Had a Reasonable Expectation of Privacy in the Hospital Room

10. A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. *People* v. *Gill,* 2018 IL App (3d) 150594¶71, 103 N.E.3d 459, 475.

11. "[T]he concepts of privacy and confidentiality are tantamount concerns in a hospital ... indicating that society would recognize that expectation of privacy as reasonable." *Id.* at 94. ¶

12. The State relied on *People v. Hillsman,* 362 Ill. App. 3d 623, 839 N.E.2d 1116 (4th Dist. 2005) to support the proposition that Defendant did not have a reasonable expectation of privacy in his hospital emergency room.

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13. *Hillsman* however "did not further delve into the nature of [the] defendant's specific settings." *Gill*, 150594, 92¶ 103 N.E.3d 459, 479.

14. *Hillsman* therefore does "not stand for the broad principle that all persons in an ER will not have a reasonable expectation of privacy." *Id.* at 96.¶

15. The question of whether a defendant has a reasonable expectation of privacy depends on the totality of the circumstances, which will vary from person to person and case to case. *Id.*

16. There are six factors to consider in determining whether a person has a reasonable expectation of privacy: (1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched; (3) whether defendant has a possessory interest in the area or property seized; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the defendant himself had a subjective expectation of privacy in the property. *Id.* at 84.¶

17. Considering those factors, the totality of the circumstances show that Defendant, similar to the defendant in *Gill*, had a reasonable expectation of privacy in his hospital room for the following reasons:

a) Defendant was in the room legitimately, as a patient;

b) Defendant stayed in the room for an extended period of time;

c) The room had a door that closed and four solid walls, which alone implied a certain layer of privacy;

d) The room was a personal single occupancy room and was occupied by Defendant alone with just a single bed;

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e) Defendant maintained at least some authority to exclude others from visiting the room, and at all times acted in a manner typical of an occupant of that space, thus demonstrating a subjective expectation of privacy; and

f) The room was not open to the public in general.

18. Law enforcement personnel's warrantless entry and search of Defendant's hospital room therefore was an infringement on Defendant's reasonable expectation of privacy in his hospital room.

The State Failed to Establish an Exception to the Search Warrant Requirement Applied to Justify the Warrantless Search of Defendant's Hospital Room

19. Because Defendant had a reasonable expectation of privacy in his hospital room, the Fourth Amendment barred governmental intrusions without a warrant, such as the one undertaken by law enforcement personnel, unless an applicable exception to the search warrant requirement existed. *Id.* at 9¶.

20. The State has the burden of proving that an exception to the search warrant requirement applies. *Id.*

21. The State failed to establish that an exception to the search warrant requirement applied to justify the warrantless search of Defendant's hospital room for the following reasons:

a) Defendant did not consent to the search of his hospital room;

b) Law enforcement personnel had no concern that Defendant would destroy any evidence;

c) Defendant's clothing was not immediately discardable or destroyable;

d) Defendant was unaware that he was being investigated until sometime after law enforcement personnel spoke to him and searched and seized his clothing; and

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e) Multiple law enforcement personnel were at the hospital, so it would not have unduly burdened the investigation had they believed it necessary to remain at the hospital while another or others obtained the warrant.

22. Law enforcement personnel's failure to obtain a search warrant therefore infringed on Defendant's reasonable expectation of privacy in his hospital room in violation of the Fourth Amendment to the United States Constitution.

23. Evidence of Defendant's clothing therefore should have been excluded at trial because it was obtained by law enforcement personnel through an unlawful search of Defendant's hospital room.

The Plain-View Exception to the Search Warrant Requirement Did Not Apply to the Search and Seizure of Defendant's Clothing from the Hospital Room

24. Law enforcement personnel must view the evidence from a place where the officer has a legal justification for being for the plain-view exception to the search warrant requirement to apply. *Id.* at 8¶.

25. The plain-view exception does not apply to this case because law enforcement personnel did not view Defendant's clothing until *after* entering Defendant's hospital room, a place where they had no legal justification for being, as previously discussed.

26. The plain-view exception to the search warrant requirement therefore did not apply to render law enforcement personnel's search and seizure of Defendant's clothing from his hospital room lawful.

27. For the same reason, any alleged consent given by Defendant to law enforcement personnel to search his clothing and other items was invalid.

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WHEREFORE, the Defendant, Cortez Turner, respectfully requests that this Court set aside the findings of guilty and grant Defendant a new trial, and for such other relief as the Court deems just and appropriate.

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon attorney of record by enclosing the same in an envelope addressed to such attorney at his business address as disclosed by the pleadings of record herein with postage hilly prepaid, and by depositing said envelope in a U.S. Post Office mail box in Marion, Illinois, on the /¥ day of January 2019.

Casey Bloodworth
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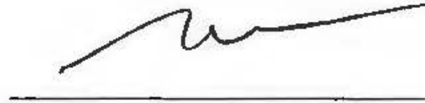

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APPELLATE COURT 5TH DISTRICT

No. 5-19-0329 & 5-19-0330 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court) of the First Judicial Circuit,) Jackson County, Illinois
Plaintiff-Appellee,	)) 16-CF-466 & 17-CF-104
-vs-	)
CORTEZ TURNER,	)) Honorable) Ralph R. Bloodworth, III,
Defendant-Appellant.	) Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

Cortez Turner was convicted of first degree murder, aggravated discharge of a firearm, conspiracy to commit aggravated discharge of a firearm, and two counts of perjury after a bench trial in 16-CF-466 and 17-CF-104, respectively. Mr. Turner was sentenced to a total of 30 years, to be followed by three years of mandatory supervised release.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

I. Whether Mr. Turner had a reasonable expectation of privacy in his hospital room, and whether police violated his right to be free from unreasonable searches by seizing his clothing without a warrant.

II. Whether Mr. Turner's conviction for conspiracy to commit aggravated discharge of a firearm must be vacated because he was also convicted of the principal offense.

III. Whether one of Mr. Turner's perjury convictions must be vacated where the two convictions are based on the same issue or point of inquiry.

JURISDICTION

Mr. Turner appeals from a final judgment of conviction in a criminal case. His motion to reconsider the sentence was denied, in part, on August 1, 2019.

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(PC.478; C.701; R. 1235-36)[1] Notice of appeal was timely filed on August 1, 2019. (C.723,735) Jurisdiction therefore lies in this Court pursuant to Article VI, Section 6, of the Illinois Constitution, and Supreme Court Rules 603 and 606.

[1] This case consists of two consolidated causes of action; citations are as follows:

R:	Report of Proceedings 16-CF-466
C:	Common Law Record 16-CF-466
SC:	Secured Common Law Record 16-CF-466
Vol. 1, E:	Volume 1 Exhibits 16-CF-466
Vol. 2, E:	Volume 2 Exhibits 16-CF-466
PR:	Report of Proceedings 17-CF-104
PC:	Common Law Record 17-CF-104

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STATEMENT OF FACTS

In March 2017, Cortez Turner was charged with two counts of perjury in Jackson County Case 2017-CF-104, with both counts alleging that Mr. Turner made false statements during his grand jury testimony regarding Detrick Rogers' death. (PC.28) In April 2017, Mr. Turner, along with co-defendantJuwan Jackson, was charged with first-degree murder for Detrick Rogers' death, aggravated discharge of a firearm, and conspiracy to commit aggravated discharge of a firearm. (C.32) Mr. Turner's case was severed from co-defendant Jackson, and the court granted the State's motion to join Mr. Turner's charges in 2017-CF-104 and 2016-CF-466 for trial. (C.75; R.20; C.96,137,215,231)

On November 15,2017, trial counsel filed a motion to suppress Mr. Turner's clothes that were seized from the hospital, arguing that the clothing was taken without a warrant and in violation of Mr. Turner's state and federal rights to be free from unreasonable searches and seizures. (C.218) The motion argued that Mr. Turner was a victim seeking treatment, that there were no exigent circumstances permitting police to seize the clothing without a warrant, that the clothing was not in plain view, that officers requested the clothing from the attending nurse, the seizure was not incident to arrest, and the officers did not have consent or a warrant. (C.217-19) Following the January 5, 2018, suppression hearing, the trial court entered an order denying the motion to suppress. (C.233, 234) The court found Mr. Turner's clothes were in plain view, that he consented to the taking of the clothes, and that his consent was knowing and voluntary. (C.234-35)

Mr. Turner's two cases proceeded to a bench trial on December 18, 2018.

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(C.353; R. 193-95,301) During its opening statement, the State claimed the evidence would show that on October 24, 2016, around 1:30 am, Detrick Rogers was killed in a driveby shooting when he was shot in the forehead with a .223 rifle. (R.318-19) The State argued that Juwan Jackson, Orlando Garrett, Quandre Scruggs, and Mr. Turner left Jacie Marble's home at 1906 Shomaker in Marble's car and drove to 1936 Shomaker before firing at Rogers. (R.319) The State told the court that Juwan Jackson was armed with a .223 rifle, and that the others possessed a .357 handgun and a .380 handgun. (R.319)

The State claimed the men began shooting on Shomaker and continued shooting as their vehicle turned the corner onto 20th Street. (R. 319) Deputy Michael Marks' residence and a vehicle was struck in the gunfire. (R.319-320) The State informed the court that it believed Juwan Jackson was in the front seat "relentlessly firing towards Detrick Rogers and Cleophas Gaines and possibly Terry Rogers [,]" and the State claimed that Mr. Turner was in the back seat behind the driver, Orlando Garrett. (R.320) The State argued the evidence would show Mr. Turner shot himself in the left thigh, with the bullet lodging into the B pillar of Marble's car. (R.320-21) The State argued that Mr. Turner was guilty for Detrick Rogers' death via accountability. (R.321-22)

Defense counsel informed the court that witnesses had given many different statements, with some giving "upward to six statements." (R.322) Some witnesses gave statements while in jail and while "begging for probation" in exchange for their testimony. (R.322) Counsel argued the State's witnesses were not credible and had criminal convictions as well as histories of drug abuse and drug addiction.

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(R.322-23) Some witnesses gave prior statements where they said "they didn't see anything" and "did not see Cortez Turner do anything." (R.323) Counsel explained that Mr. Turner had only given one statement. (R.323) Mr. Turner had been walking on Shomaker Drive after visiting friends and family at Jacie Marble's home in the Valley Ridge area and was using his phone trying to get a ride. (R.323) As he was walking toward the corner, two vehicles passed by Mr. Turner, gunshots erupted, and rounds were fired west to east and in Mr. Turner's direction. (R.323-24)

Counsel explained that the vehicles between where the gunshots were coming from and where Mr. Turner was standing had bullet holes in them and that Detrick Rogers and his family were shooting as well. (R.324) Counsel explained Mr. Turner was walking on Shomaker Street and was shot during the shoot-out and that he never agreed with Jackson or anyone to go to the corner of Shomaker and 20th to shoot or kill anyone. (R.324)

State's Evidence

Lakesha Ross testified that she was at 1849 Alexander Street and invited Detrick Rogers in when she saw him walking. (R.874-76) Detrick was with his brother, who Ross knew by the nickname "LandShark." (R.877) According to Ross, Detrick had a "plain" or "blank" look on his face and did not say anything. (R.876-79) Ross looked out the window and saw Mr. Turner outside by himself walking on the sidewalk on the other side of the street. (R.879-880,883) It was not uncommon for Mr. Turner to walk on the sidewalk in that area. (R.883) Detrick and the person with him left about 30 minutes later when they were picked up by someone, and Ross heard gunshots about 10 minutes later. (R.881-82)

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Cleophas Gaines testified that he was present when his brother, Detrick Rogers, was shot and killed, but when asked if he recalled that time frame of his life, he said, "Vaguely, a little bit [,]" and "[s]omewhat, yes." (R.408,410) Gaines admitted that he was under the influence of cocaine as well as promethazine with codeine, also known as "lean," on October 24, 2016. (R.408-09) Gaines claimed the promethazine with codeine was prescribed to him and that he did not abuse it. (R.409) Gaines testified that Valley Ridge is a group of houses around 20th Street, Shomaker Drive, Apple Lane, and 19th Street. (R.411) On October 23, Gaines and Detrick Rogers were in Valley Ridge and began heading to Gene's Tavern when Juwan Jackson approached and held the two at gunpoint. (R.410-12) Jackson was by himself, had a gun in each hand, and was "cussing" and saying, "You bitch ass n**** r[.]"(R. 412-13) Gaines claimed Jackson had Glock"45s, Smith & Wesson maybe." (R.413-14) Jackson pointed his guns at the two men, and Gaines urinated on himself. (R.414)

The confrontation ended after five or six minutes when Kesha opened the door at 1849 Alexander Street, and Gaines and Detrick Rogers went inside. (R.415-16,874-76) When asked whether Gaines saw someone other than Jackson outside the house, Gaines said he "thought [he] saw a shadow or something***." (R.416) Gaines, a convicted felon, did not call police and did not want police involved. (R.416-17) When someone tried to call police, Gaines broke his phone. (R.417-18) Gaines and Detrick Rogers remained in Kesha's house for about 45 minutes until they left in the car with their brother, Terry Little, and went to Brittany Deransberg's house at 1936 Shomaker Drive at the corner of Shomaker Drive and 20th Street.

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(R.419, 556-58) Gaines claimed that Terry Little left after about 20 to 30 minutes, and Gaines and Detrick Rogers remained at the house. (R.421)

Gaines was "[p]ulling up another cup of promethazine" and "cutting up some lines" of cocaine on a CD case when a white car moved slowly down the street. (R.421-23) The car belonged to Orlando Garret's girlfriend, Jacie, who lived on Shomaker about five houses away. (R.423-24) Garret was driving, and Juwan Jackson, who was in the front seat, pointed two guns out of the car window and said, "That's what you motherfuckers is on." (R.421,425) After hearing Jackson, Gaines said he "[g]ot down in the car" that belonged to "Terry Little's baby mom." (R.426) However, Gaines then claimed that he kept watching the white car. (R.426) On cross-examination, Gaines claimed, "At the time of the shooting, I was on the floorboard." (R.438) Gaines said Detrick Rogers was outside near the rear of the car when there was a "lot of gunfire." (R.426-27) Gaines claimed he saw Jackson shooting at him and Detrick Rogers, and he claimed that he did not have a gun and that neither he nor Detrick shot at the white car. (R.427,435)

Gaines claimed Mr. Turner was in the back seat on the passenger side of the vehicle, and he said, "It was kind of hard to see at that point in time, but I recognized Cortez." (R.431,429) Gaines admitted he had told the prosecutor "from the very start that [he] didn't see Cortez." (R.430) However, he claimed he lied because he "didn't want the police involved." (R.430-31) Gaines said Jayion Moore might have also been in the vehicle, but he was uncertain. (R.431)

Gaines claimed the shots began near the stop sign on Shomaker and continued as the car turned right and went up 20th Street. (R.427-28) Gaines said that the

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white car stopped in front of Deputy Marks' home and that the gunshots continued. (R.431-32) Gaines said the car "[m]ade a right into Valley Ridge and stopped again." (R.432) Gaines gave Detrick Rogers CPR, and deputies approached, but Gaines did not recall anyone else running up. (R.432) Gaines claimed he had been doing cocaine and promethazine with codeine, also known as "lean," for 10 years and had "no effects" from it. (R.432-33) However, Gaines later claimed he had only used cocaine for "[m]aybe a year." (R.436) When asked whether his drug use would have affected his memory, Gaines testified, "Well, cocaine is an upper and promethazine-codeine is a downer, but, at that point in time, I was like Superman, X-ray vision." (R.436) Gaines explained that he meant that "when you do an upper, it make you feel like, you know, run through anything, you can see through anything or just gives you that filling, up filling [sfc]." (R.437) Gaines did not recall telling police that he was "so messed up on drugs" that he would be unable to tell who was present. (R.434)

Gaines said that he had another brother named Terry Rogers, but he claimed that he did not see Terry Rogers there at the time that the white car drove down Shomaker Drive. (R.422) Gaines remembered seeing Terry Rogers with Detrick after the shooting, but he did not know if Terry Rogers stayed because Gaines was detained in a police car. (R.433) Gaines claimed he never saw Terry Rogers with a gun, and Gaines claimed that neither he nor Detrick Rogers fired a shot toward the white vehicle. (R.435) An autopsy on Detrick Rogers revealed that his death was a homicide, and his cause of death was a gunshot wound to the head. (R.803-04,812-13)

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Patyce Houston testified that she lived at 620 South 20th Street on October 24. (R.664-65) Houston claimed she woke up when she heard shooting, and someone walked by her window. (R.665-66) Jnwan Jackson, the father of Houston's child, then knocked on Houston's door. (R.667-68) Jackson seemed frantic and had Houston drive him to his studio. (R.668-676) At one point, Jackson had Houston pull over at a gas station when a police car was behind her. (R.674-75)

Jeanmė Mowry testified that she lived at 618 Sonth 20th Street and heard a single shot gunshot followed by 10 more on October 24. (R.561) When looking out her window and at Patyce Houston and Juwan Jackson s house, Mowry saw a black four door car fly into the driveway and saw Houston exit the car. (R.562-63,565) Mowry saw Juwan Jackson "running up the hill from Valley Ridge" and heard Houston yell, "Just leave it, leave it. Hide the gun." (R.563)

Deputy Michael Marks was off duty on October 24 at around 1:30 am and was inside his home at 809 South 20th Street, about 30 yards from Shomaker Drive. (R.350-51) Marks took his dog outside and "saw three black males standing at the corner of Shomaker and 20th***." (R.352) Marks was not wearing his contacts and could not see the men clearly. (R.352) He heard "a little talking" but did not see anything unusual and went back inside his home. (R.352-53) About four minutes later, Marks heard more than 20 gunshots that sounded like they were coming from outside of his window. (R.353) A bullet came through Marks' wall, and he used his radio to call the sheriff s office. (R.354) People's Group Exhibit 14, pictures of Marks' home, was admitted. (R.355-56; Vol. 1, E.103-107)

After the gunfire ceased, Marks exited his home, crossed 20th Street, and

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went towards Shomaker Drive where he heard yelling. (R.362) Marks saw Cleophas Gaines and Holden Haney standing near the west side of one of the housing units, with an AR-15 in front of the two, and he saw Detrick Rogers on the ground with a head wound. (R.362-64) Marks kept the two men at gunpoint until other officers arrived. (R.363-64) Officers searched Marks' residence but did not recover a projectile. (R.365) Marks assumed the bullet must have come from the Shomaker side of the roadway traveling east to west toward his home. (R.366)

Holden Haney testified that he lived at 721 South 20th Street, about 150 to 200 feet away from Shomaker Drive. (R. 370-71) After hearing about 20 shots, Haney exited his home with his Core brand AR-15 and went south toward the corner of 20th and Shomaker in the direction of a woman yelling for help, but he never fired his gun that night. (R.373-74,380-81) Haney thought he saw two people running away, but because it had been so long before trial, he was unsure. (R.374) If he did see anyone running as he came down 20th Street, they would have been running east toward COPE school, but he was uncertain. (R.380) Haney saw a woman named Brittany and saw a male on the ground. (R.374) Haney dropped his AR-15, the gun in People's Exhibit 12B, and tried to help the man. (R.375; Vol. 1, E.91)

Simon Blackfell lived at 619 South 20th Street, about three blocks from Shomaker Drive. (R.383) About 10 or 15 minutes after hearing multiple gunshots, Blackfell saw the light turn off in the backyard at the house directly across the street from him. (R.385-86; Vol. 2, E.66) When the light turned back on, Blackfell saw a person he described as "[m]edium build, medium height, dark clothes, dark

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skin." (R.386-87) The person seemed to move in and out of the bushes, and Blackfell believed the person was trying not to be seen. (R.388) Blackfell observed the individual for two or three minutes and called police. (R.388) A female came out of the house and got into a car, and Blackfell heard a second door close before the car drove away. (R.388-89) Blackfell did not see the person that got into the car with the female. (R.390)

Marvin Locke testified that he lived on Shomaker Drive at the time of the shooting, and he thought his address might have been 1914 Shomaker Drive. (R.514) After hearing several gunshots, Locke looked outside and heard voices saying to call police and an ambulance. (R. 516) A couple minutes later, Locke saw a white vehicle drive off of 20th Street and stop about three houses down from his home. (R.517) Locke recognized the white car as belonging to the girl that lived there. (R.518) After about five minutes, Locke saw the car leave and go east on Shomaker toward COPE school, but he could not see its occupants. (R.519-520)

Devanna Priget testified that she lived at 712 South 19th Street at the time of the shooting. (R.525) Priget heard gunshots around 1:30 and saw her cousin, Terry Rogers, running to her house. (R.526) Rogers said his brother had been shot, saying, "Let me in. They shot Demp." (R.526,528) Rogers asked for a ride, but Priget did not give him one. (R.526) Rogers left and went to Roy House's residence at 1849 Alexander Street. (R.527) According to Priget, Rogers did not have a firearm but did have blood on his clothes. (R.529) Priget denied telling police that Rogers said he could not go back to the house because he had gunshot residue on his hands. (R.529-530) Priget claimed Rogers did not have a towel with him when Priget

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saw him, and she claimed she did not remember telling police that he did. (R.530-31)

Corey Henry testified that he lived at 1849 Alexander Street at the time ofthe shooting but that the home belonged to Roy House. (R.533) After the gunshots on October 24, Terry Rogers, who Henry knew as T.A., came to 1849 Alexander Street. (R.534-35) Henry initially claimed that Rogers did not go into any rooms where Henry was not, but then he said he was not with Rogers the entire time Rogers was in his home. (R.538) Henry claimed he did not see Rogers change clothes and did not help him dispose of clothes or a gun. (R.535-540) Henry said that the black jacket found on his washer and dryer and the grey shoes found in his trash were not his and that he did not know where they came from. (R.535-540)

Nurse Janet Womick testified that she was working as an R.N. at St. Joseph's Hospital on October 24, 2016. (R.395) Hospital staff were waiting for a shooting victim to arrive via ambulance when Mr. Turner walked in with a gunshot wound. (R. 396-97) Mr. Turner told Womick that he was outside on the phone on Facebook trying to get a ride and was shot in the crossfire of a shooting. (R.400-01) Mr. Turner's pants were placed in a clear plastic bag because they had blood on them, and the rest of his clothing was placed on a counter. (R.399-400) Womick described the hospital room as "maybe 10 foot by 12 foot" and "very small." (R.400) The State questioned Womick regarding the taking of Mr. Turner's clothing as follows:

> STATE: During your observations of those interactions, do you recall the police telling Mr. Turner they were there to take his clothing?
>
> WOMICK: Yes.
>
> STATE: Do you recall his response?

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> WOMICK: He didn't verbalize but he shook his head that he agreed. (R.402)

Womick explained that there were two detectives in the room and that they did not take his clothing at that time but took it later. (R.402)

Detective Cory Etherton testified that he went to St. Joseph's Memorial Hospital in October to speak with Mr. Turner. (R.570-71) Mr. Turner's clothes, including his camouflage pants, were on a nearby countertop in the room with Mr. Turner. (R. 573-75) Etherton then gave the following testimony:

> STATE: And did you ask Mr. Turner if you could take those?
>
> ETHERTON: Oh, we told him we were going to, yes. It's part of the investigation.
>
> STATE: Did he acquiesce in that?
>
> ETHERTON: Say that again, sir.
>
> STATE: Did he agree with that?
>
> ETHERTON: Yeah. He said, the only concern he had at the time, I recall, he was concerned about getting the shirt back. It was something to do with his grandmother. His grandmother had given it to him or something along those lines. (R.575-76)

At the hospital, Mr. Turner told Etherton that he had been near the Elk's Lodge in the Shomaker Drive area walking around and using a phone to get on Facebook. (R.578) Mr. Turner heard shots and "felt something leaking out of his leg" and realized he had been shot. (R.578) He told Etherton he had seen two vehicles driving around the block or in the area but could not identify them and did not know who shot him. (R.578-79) Mr. Turner told Etherton he went to Jacie Marble's house at 1906 Shomaker Drive and close to the Elk's Lodge, and she took him to the hospital. (R.579)

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Brianna Henley Phipps, Jacie Marble's sister, testified that she was at Marble's house on October 23. (R.442-43) Phipps was drinking shots and beer, smoking marijuana, and snorting cocaine. (R.459,443-44) While Phipps was under the influence of those substances, she said she was not staggering or unable to see. (R.444-45) Phipps recalled Mr. Turner, Jacie Marble, Juwan Jackson, Jayion Moore, and Quan being present. (R.445-46) Other people were coming and going, and there were "a lot of people in and out." (R.446) Jackson, also known as "City," had guns, including a ".357, either two baby 9s or .22s and a large assault rifle." (R.447) Jackson let Phipps hold his .357 when she asked. (R.447-48) Jackson also had a "large assault rifle" that was "[ejither gray or dark green with a scope on it [,] " and Phipps believed it was an AR but was not sure. (R.449) Phipps saw Jayion Moore with "either a compact 9 or a compact 22 [,]" which Phipps referred to as 'a baby' since it was a smaller gun. (R.450) Phipps saw Jackson talking and appear agitated, but she did not pay attention to that conversation. (R.451) Phipps never saw Mr. Turner with any guns that day, and had never seen Mr. Turner with any weapons. (R.460)

Phipps said that, at some point, Mr. Turner, Jay Ion Moore, Juwan Jackson, and Quan left, but she did not know if Mr. Turner left with them. (R.452,460-61) Phipps, Garret, and Marble remained in the home. (R.452) Garret, who is also known as "Ed," and Marble went to sleep in Marble's bedroom. (R.452) Phipps slept on the couch. (R.453) Phipps woke up when she heard gunshots. (R.453) Phipps went into her sister's room and saw Orlando Garret coming through the window. (R.454) Someone banged on the side door, and either Jayion or Quan

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was there with Mr. Turner. (R.455) Mr. Turner was "hobbling around" and was injured. (R.455-56) Garret told Marble to take Mr. Turner to the hospital, and Marble took him in her white four door sedan. (R.456) Phipps claimed that either Jayion Moore or Quan left with Marble and Mr. Turner, but Phipps was not sure which person left with Marble and Turner. (R.457)

Jacie Marble testified that she lived at 1906 Shomaker on October 24 and owned a 2008 Kia Optima. (R.818) On October 23, Juwan Jackson, Cortez Turner, Orlando Garret, Quan Scruggs, Brianna Henley, Cara Howerton, and other people, were at Marble's home. (R.819-820) Marble had been smoking marijuana that evening and had taken a Xanax. (R.821-22) Marble went to bed and did not wake up to the gunshots but was woken up by her boyfriend, Orlando Garrett, and was told to take Mr. Turner to the hospital. (R.822-23) Mr. Turner was limping and had been shot. (R.825) Marble, Mr. Turner, and Quan Scruggs left the house in Marble's car, with Quan Scruggs sitting in the front passenger seat and Mr. Turner in the rear passenger seat. (R.826-27)

Scruggs threw something out of the window as Marble drove, and she assumed it was a gun because Scruggs pulled the item from his pants, though Marble did not actually see the item. (R.828-29) Marble dropped Scruggs off near a trailer court before taking Mr. Turner to the hospital. (R.829-830) Marble claimed that when she stopped to let Scruggs out, she was "[n]ot necessarily told, but it was talked about that the shell casings needed to get out" of her vehicle. (R.830) Marble claimed the conversation was between the three, but she admitted Mr. Turner never told her to clean the shells out of her car. (R.830, 855) She explained that

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Mr. Turner was in a lot of pain in the backseat. (R.858) After taking Mr. Turner to the hospital, Marble cleaned her car, disposing of 10 to 15 shell casings, and she cleaned the blood out of the backseat. (R.831-34) No one told her to clean up the blood, but she did so because she was scared. (R.836) Marble admitted she pled guilty to obstructing justice for destroying evidence. (R.836-37)

Marble claimed that, on the Tuesday after the shooting, she heard Mr. Turner say "[t]hat he had the gun on his lap and Quan was shooting and bumped into him, and he shot himself in the leg." (R.842-43) Marble admitted that she had smoked "a few blunts" on the day when she heard Mr. Turner make that statement, but she claimed this did not affect her memory. (R.845) On cross-examination, Marble said she did not see Mr. Turner leave with a group of people on October 24 and believed that he was still in her home when she went to bed. (R. 849) Marble never saw Mr. Turner with a gun on the night of the shooting and never heard him plan a shooting. (R.849-850) Marbled admitted to giving a "number of different statements" about the case to police, and she admitted that she told police that Mr. Turner had been shot while walking around Shomaker Drive and had also told police that she "didn't know anything about any of this[.]" (R.846-47) However, she claimed she was testifying truthfully at trial. (R.850-52)

Cara Howerton testified that several people came to her home on October 25, including Mr. Turner, and she claimed that she heard him say that "someone bumped into him in the back seat" and that he "shot himself." (R.867-68) Howerton admitted she had probably smoked marijuana on October 25 and that she habitually smokes once or twice per day. (R.869) Howerton claimed the drug usage did not

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impact her memory, and she admitted to giving different statements to police over the course of the case. (R.870-71)

Officer Steven Zang testified that he was dispatched to the intersection of Shomaker Drive and South 20th Street for shots fired around 1:30 a.m. on October 24. (R.338) Zang found Detrick Rogers lying on the ground just north of a parking space with what appeared to be a bullet wound to the top of his head. (R.340-41; Vol. 1, E.61) Near the area, Zang observed an "AR-15 type rifle laying on the ground with the magazine removed[,]" but he did not collect that weapon. (R.346) Rogers was still breathing, Zang rendered aid, and Rogers was taken from the scene via ambulance. (R.345-46)

Officer Michael Laughland testified that 1936 Shomaker is on the corner of Shomaker Drive and 20th Street. (R.483,484) Using People's Exhibit 6A, Laughland explained that 20th Street was the street in the middle of the photo running north and south, Commercial Drive was the street on the left-hand side, and Shomaker Drive was on the right side of the photo. (R.487; Vol. 1, E.56) People's Exhibit 1, surveillance footage of the shooting, was recorded from a home on Commercial Street about four houses to the left of South 20th Street and Shomaker Drive. (R.466-67) The surveillance camera faced toward 20th Street and saved footage in files of 15-minute increments. (R.469-479) Laughland testified that he had viewed People's Exhibit 1 several times and that the shooting occurred around 1:26 a.m. (R.491-92) 1936 Shomaker Drive was visible in the video, and vehicles can be seen traveling on 20th Street. (R.493) Commercial Street was the Street on the bottom left of the video. (R.493-94)

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According to Laughland, the illumination at 1:26:27 off to the side of 1936 Shomaker Drive was a vehicle backing out and into traffic from the 1800 block of Shomaker Drive. (R.494) The vehicle appeared to drive directly in front of 1936 Shomaker. (R.494-95) Shomaker Drive is in the distance on the right side of the screen, but the view of Shomaker Drive is obstructed due to the angle of the camera, a light fixture, an awning support, and a spiderweb near the camera. See (People's Ex. 1) The first gunshot could be heard around 1:26:48 a.m. (R.495) A flash of light was visible in the yard area of 1936 Shomaker, and Laughland believed this to be the muzzle flash from a firearm. (People's Ex. 1; R.495-96) Laughland believed someone in the yard at 1936 Shomaker fired at least one shot based on that muzzle flash, but he could not tell who fired shots first. (R.510) Laughland testified that the vehicle then drove north on 20th Street. (R.496) The video shows a light colored vehicle turn off of Shomaker Drive and onto South 20th Street at approximately 1:26:55 a.m., and multiple gunshots can be heard as the car travels along 20th Street, before pausing briefly and then disappearing from view at 01:27:07 a.m. (People's Ex. 1) According to Laughland, the vehicle then appeared to make a right-hand turn onto Apple Lane, travel to 18th Street, and then south on 18th Street before disappearing behind houses. (R.496-97) However, the vehicle went outside of the surveillance camera's view, and Laughland admitted that could have been a different vehicle. (R.511) Laughland testified that 1906 Shomaker is six to eight houses east of 1936 Shomaker. (R.499)

Police went to Patyce Houston's home at 620 South 20th Street in response to Blackfell's report of a suspicious male behind the home. (R.385-86, 541-43; Vol.2,

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E.66) Police found a black, loaded Smith & Wesson M&P .223 caliber rifle in a brush pile in the backyard. (R.544-45, 627-635, 638; Vol.2, E.66-76) Ablack2008 Lincoln MKZ was parked in the backyard, and police found the keys to that vehicle inside Houston's home within a black jacket found on the dining table. (R.643-45; Vol. 2, E.78,75) Houston said the car in her backyard belonged to Juwan Jackson. (R.671) Inside the Lincoln, police found an empty gun case and ID cards belonging to Jackson. (R.657-661) Nothing in the vehicle was related to Mr. Turner. (R.662)

Police searched the home at 1849 Alexander, which belonged to someone with the last name House and was about two blocks away from 1936 Shomaker. (R.499-500) There, police collected a pair of gray Nike tennis shoes from a trash can and a black coat from atop the washer and dryer in the laundry room. (R.502-03; PC.344; Vol.2, E.65,64)

A search of Marble's home at 1906 Shomaker on October 25 resulted in officers recovering two live Winchester .357 SIG bullets from the couch, three live .357 SIG bullets and one 9mm bullet from a closet, a live 9mm round from the top of the fridge, a live 9mm round from behind the fridge, and one .223 rifle cartridge from the trash can. (R.580-594,598-99,600-03; Vol. 2, E.51-60)

Investigator Ray Sutton collected one discharged Winchester .357 SIG cartridge case and two discharged Winchester. 380 cartridge cases from Shomaker Drive, and he found one discharged Western Cartridge Company .223 rifle round at the intersection of Shomaker and South 20th Street. (R.698) On South 20th Street, he found one black baseball cap and seven discharged Winchester .380 cartridge cases and five Western Cartridge Company .223 rifle discharged cartridge

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cases. (R.698-700) People 's Group Exhibits 7 and 8, photos of Shomaker Drive and South 20th Street, depicted the discharged cartridge cases and one baseball cap in the roadway. (R.681-86; Vol. 1, E.62-67) In addition to the 12 discharged cartridge cases from the roadways, Sutton also found four discharged cartridge cases in the yard at 1936 Shomaker. (R.690-692)

People's Group Exhibit 12 were pictures of the 1936 Shomaker residence and yard. (R.703; Vol. 1, E.90-102) There were two vehicles parked at 1936 Shomaker, a Chrysler 300 in the driveway and a Pontiac G6 in the grass. (R.708, 730-31) Sutton found what appeared to be blood on the grass near the rear driver's side of the Pontiac G6, and Sutton recovered four discharged .40 caliber Federal brand discharged cartridge cases nearby. (R.708-712; Vol. 1, E. 93-94,97-102) The exterior wall of the 1936 Shomaker house, which faced South 20th Street, had what appeared to be a bullet defect. (R. 715; Vol. 1, E.95-96) The bullet causing that defect would have been fired from the west and heading east, and the projectiles fired from South 20th Street during the shootout could have traveled more than 300 yards east to west and could have also disintegrated upon striking a hard surface and could change direction. (R.726-27) Sutton explained that a .223 rifle round or a .357 SIG round would travel much farther than 300 yards, and that at the proper angle, a .223 round could go miles. (R.725-26) A .380 round would not go as far as a .223 but would "travel considerable distance***." (R.726)

Investigator Daniel Glover processed the Pontiac G6 and Chrysler 300 at 1936 Shomaker. (R.730-31) Police did not recover any evidence from the Chrysler 300. (R.731) The Pontiac G6, which was parked in the grass and closer to South

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20th Street had what appeared to be impacts from bullets as depicted in People 's Group Exhibit 15, with some of those bullets coming from the west and south and some coming from the north and west of the Pontiac G6. (R. 733-747; Vol. 2, E.4-26) However, Glover believed that at least one of the bullets that shot the G6 must have been fired from someone standing near that car. (R.748; Vol. 2, E.16) Glover collected what appeared to be blood on the driver's side and bottom piece of molding on the driver's seat of the Pontiac G6. (R.757-58; Vol. 2, E.26)

Glover later processed a white 2008 Kia Optima owned by Jacie Marble. (R.762; Vol. 2, E.27-28) Glover found staining on both of the rear seats, and a defect on the rear passenger seat with a corresponding defect in the rocker panel area on the back passenger side of the Optima. (R.765-66 Vol. 2, E.30-32) After removing the rear seat cover and exposing the foam of the rear seat, Glover noticed staining on the center of the passenger side rear seat and the driver side rear seat as well as staining around the defect in the seat. (R.778-79; Vol. 2, E.43) There was also a corresponding stain on the underneath side of the seat cover. (R.779; Vol. 2, E.44) Glover found a diaper in the map pocket on the back of the driver's seat, and inside the diaper were three discharged rifle cartridge cases. (R.767-771; Vol. 2, E.33-37) Glover found a discharged .357 casing above the rear seats between the seats and the window. (R.772-75; Vol. 2, E.38-39) Using trajectory rods, Glover believed that a bullet caused the two defects in the rear passenger seat on the driver's side of the Optima, and he believed that the projectile lodged in the bottom rocker panel of the vehicle. (R.776-77; Vol. 2, E.40-43) Glover believed the projectile was fired from above the seat and down toward the rocker panel. (R.777-78)

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Glover removed the plastic molding and ultimately found a copper jacket from a projectile as well as a small metal fragment. (R.782-85; Vol. 2, E. 45-49) Glover felt confident that the holes in the rear passenger seat were caused by a projectile, but he was not certain of this. (R.788) Glover could not identify the caliber of the projectile found in the rocker panel. (R.788) Defendant's Exhibit 1 showed the Pontiac G6 as it was parked at 1936 Shomaker Drive and showed Shomaker Drive in front of the residence. (R.790-91; Vol. 1, E.4) Glover said that the discharged cartridge casings on South 20th Street possibly caused the damage to the Pontiac G6, and he agreed that projectiles fired from South 20th Street could have continued on down Shomaker Street until they struck something. (R.792-93)

While forensic biologist Keia Tate testified that the rear seat cover tested positive for the presence of blood, DNA analyst Jay Winters testified that the DNA testing of the rear seat was inconclusive. (R.899-901) Winters also conducted DNA testing on the black jacket from Patyce Houston's home, the baseball cap from South 20th Street, and the rifle from the brush pile, and the results were inconclusive. (R.928-36) However, the black jacket found on the washer at 1849 Alexander had blood and DNA matching Terry Rogers, and the substance appearing to be blood on the driver's side of the Pontiac G6 parked at 1936 Shomaker also matched Terry Rogers' DNA. (R.937-38,940-42)

Forensic scientist Angela Horn testified that the four Federal brand .40 caliber Smith & Wesson casings found in the yard at 1936 Shomaker near the Pontiac G6 were all fired from the same firearm. (R.964-65) As for the fired bullet

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fragment recovered from the Pontiac G6, Horn said it was "a .40/10 mm caliber bullet" and could have been fired from one of the .40 caliber casings from the Shomaker yard. (R.752-55,984-85) The six .223 caliber discharged cartridge cases from South 20th Street and Shomaker and the three .223 fired cartridge cases from Marble's car were fired from the same firearm. (R.966,971-73) Testing revealed that all nine of those .223 casings were fired from the rifle recovered from the brush pile behind Patyce Houston's home. (R.976-981) The nine .380 caliber discharged casings from Shomaker and South 20th Street were all fired from one firearm. (R.971) Finally, Horn also concluded that the .357 SIG cartridge case on Shomaker Drive was fired from the same firearm as the .357 SIG casing recovered from behind Marble's backseat. (R.973-75)

As for the fired bullet jacket recovered from the B pillar in Marble's car, Horn concluded it was a .38 caliber fired bullet jacket, and Horn explained that .38 caliber "includes revolver cartridges, such as .38 Special, .357, and semi-auto cartridges, such as .380 auto, 9mm Luger, and .357 SIG, for instance." (R.985-86) The projectile from Detrick Rogers' skull was "a .22 caliber fired bullet that was consistent, due to the size and the shape of it, that it was consistent with a 55, 5.56mm or .223 rifle bullet." (R.328,332,989) However, because the projectile was damaged, Horn was unable to determine whether it was fired from the firearm found in the brush pile. (R.991) The projectile recovered from Detrick Rogers' autopsy, the projectile from the Pontiac G6, and the projectile from Marble's car came from three separate firearms. (R.992)

Horn examined People's Exhibit 37, Mr. Turner's camouflage pants taken

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from the hospital, and Horn was asked to "determine a possible muzzle to garment distance from a defect in the pants." (R.993) Horn also found a larger amount of blood and a smaller "L shape defect" on the back of the pants. (R.996) Horn explained that the pants were 98% cotton and that cotton tends to tear and shred. (R.997-98) Horn explained that the pants were dark colored and had blood on the front and back of the pants. (R.996) Dark colored fabric and blood could have

a "masking effect, because blood could cover up or coat gunpowder particles. (R.996-97) Horn did not chemically process the pants, but she observed a gray haze and metallic flakes near one of the defects. (R.999-1000) Horn explained that when

a bullet goes through something in a close contact situation, you re going to see

a halo around the hole but then also a smoke pattern vapors lead, that leaves

its deposits around the entire hole itself also. "(R. 1000) Because of the tearing and fabric damage and the gray haze aronnd the defect, Horn believed that the damage to the pants was caused by a contact or near contact gunshot. (R. 1001 -03,1007-08) Contact or near contact shots are typically within the "two to three inch range." (R. 1004-05)

Horn testified that the defect in the front of the pants was about 7 3/4 inches down from the top of the pants, and the defect on the back of the pants was about 14 7/8 inches down from the waistband. (R. 1002-03) Horn noted that the pants had an "L shape defect in the front of the pants" and "blood around the front below the crotch area and below [that] defect." (R.996) Horn confirmed that this would have been from a gunshot that was "from an upward, from the front upward downward ***angle[.]" (R. 1003-04)

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Forensic scientist Mary Wong examined Detrick Rogers' sweatshirt, the black jacket found on the washing machine at 1849 Alexander Street, the jacket found on Patyce Houston's dining table, and Mr. Turner's long-sleeve black shirt from the hospital, and Wong concluded that all of those items were either in the vicinity of a discharged firearm or came into contact with primer gunshot residue. (R. 1029-1038) Wong admitted that the residue on Mr. Turner's shirt could have been transferred from a car seat where a gun had just been fired minutes beforehand. (R.1042) Following Wong's testimony, the State rested, and the court denied trial counsel's request for a directed verdict. (R. 1049,1050-51)

The sole defense witness, Officer Laughland, testified that Devanna Priget told police on October 26 that she heard gunshots and heard someone from the area of the shooting say, "Get down, Dem, and don't shoot me[.]" (R.1053) Priget told police she saw Terry Rogers dabbing his head and hands with a towel after the shooting and that Terry Rogers said, "I can't go over there. I got gunpowder on my hands[.]" (R. 1054) Priget also told police that Rogers went to 1849 Alexander Street after leaving her home. (R. 1054) During the search of that residence, police recovered a black plastic bag of .22 caliber ammunition, a towel with a bloodlike substance in the dumpster, and a pair of shoes in the dumpster. (R.1055 ; Vol. 1, E.48-55) However, Laughland believed the ammunition at the Alexander Street home was not used in the shooting. (R.1059) Following Laughland's testimony, the defense rested. (R.1062)

The State moved to dismiss the murder charge in Count Three and proceeded on the remaining counts. (R. 1070) The court found Mr. Turner guilty of first degree

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murder, aggravated discharge of a firearm, and conspiracy to commit aggravated discharge of a firearm in case 16-CF-466. (R. 1070-1093,1093-94) The court found him guilty of both perjury charges in case 17-CF-104. (R.1094)

In his post-trial motion, counsel argued that the trial court erred in denying the motion to suppress Mr. Turner's clothing. (PC.354) The motion asserted that police violated Mr. Turner's Fourth Amendment right against unreasonable searches and seizures when they conducted a warrantless search of his hospital room and seized his clothing. (PC.354) The motion argued that Mr. Turner had a reasonable expectation of privacy in his hospital room, that exceptions to the warrant requirement did not apply, that police failed to obtain his consent to enter the room, that there were no exigent circumstances, and police obtained his clothing after entering that room. However, the trial court denied the motion. (R. 1156-57)

At the May 16,2019, sentencing hearing, Mr. Turner was initially sentenced in 16-CF-466 to 29 years for the first degree murder in Count One, eight years for the aggravated discharge of a firearm in Count Four, and six years for the conspiracy charge in Count Five. (R.1212-13; C.612) In 17-CF-104, the court sentenced Mr. Turner to three years on each perjury count. (R. 1213; PC.390) The court ordered that the aggravated discharge sentence must be served consecutively to the murder sentence in 16-CF-466. (R.1213; C.613) The sentences for conspiracy and perjury would all be served concurrently with the other sentences. (R. 1213-14; C.613, PC.391) The court granted Mr. Turner's motion to reconsider the sentence, in part, and the first degree murder sentence was reduced to 25 years and the aggravated discharge of a firearm sentence was reduced to five years, but the

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other sentences remained unchanged. (PC.478; R.1234-36; C.701) This appeal followed.

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ARGUMENTS

I. Mr. Turner had a reasonable expectation of privacy in his hospital room, and police violated his right to be free from unreasonable searches when they seized his clothing without a warrant. Therefore, the trial court erred in denying the motion to suppress and in denying the motion for a new trial.

Mr. Turner had a reasonable expectation of privacy in his single-bed individual hospital room, and because of this, police were required to get a warrant before entering that room. Detectives Liggett and Etherton violated Mr. Turner's state and federal constitutional rights to be free from an unreasonable search when they entered his hospital room and seized his clothing. In light of this, the trial court erred when it denied the motion to suppress and the motion for a new trial. Accordingly, Mr. Turner respectfully requests that this Court reverse his convictions in both 16-CF-466 and 17-CF-104, reverse the trial court's order denying
Mr. Turner's motion for a new trial, and remand for a new trial, with Mr. Turner's clothing excluded from evidence.

Standard of Review

A trial court's ruling on a motion for a new trial is reviewed for an abuse of discretion. *People v. Arze,* 2016 IL App (1st) 131959, T| 86. On review, a ruling on a motion to suppress evidence presents a mixed question of law and fact. *People v. Thomas,* 198111.2d 103,108(2001). Atrial court's factual findings and witness credibility determinations are reviewed for clear error and will be reversed if they

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are against the manifest weight of the evidence. *People v. Gherna,* 203 Ill. 2d 165, 175 (2003). However, a reviewing court "remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted." *Id.* at 175-76. The ultimate question of whether suppression of the evidence was required is reviewed *de novo. Id.* at 175.

Analysis

Both the United States and Illinois Constitutions protect citizens against unreasonable searches and seizures. U.S. Const, amends. IV, XIV; Ill. Const, of 1970, art. I, § 6. The Fourth Amendment protects a person where he has a reasonable expectation of privacy in the place to be searched. *Minnesota v. Carter,* 525 U.S. 83,88-89 (1998); *People v. Pitman,* 211 Ill. 2d 502,514 (2004)."[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se*unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katzv. United States,* 389 U.S. 347, 357 (1967). The Illinois Supreme Court has "interpreted the search and seizure provision found in section 6 in a manner that is consistent with the fourth amendment jurisprudence of the United States Supreme Court." *Pitman,* 211 Ill. 2d at 513.

The Fourth Amendment protects people, not places, and in order to claim the protection of the Fourth Amendment, a defendant must establish that he personally has a reasonable expectation of privacy in the place searched. *Id.* at 514. A defendant has a reasonable expectation of privacy in his single occupancy

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hospital room. *People v. Gill,* 2018 IL App (3d) 150594, ¶¶ 85-94. *People v. Gill* is directly on point with Mr. Turner's case and demonstrates that his clothing seized from the hospital was taken in violation of his constitutional right to be free from unreasonable searches.

In *Gill,* the defendant was charged with aggravated arson and residential arson for knowingly damaging a house while someone was inside. *Id.,*¶3. Gill moved to suppress his clothing taken from the hospital, arguing that the seizure did not meet any exceptions to the warrant requirement. *Id.,*¶4. At the suppression hearing, Officer Catton testified he was informed of a house fire and told that Gill was a suspect and had been taken to the hospital. *Id.,* T| 5. Catton, accompanied by arson investigators, went to the hospital to speak with Gill. *Id.,* If 6. There, Catton and the others met with Jeffrey Lickiss, the nurse attending to Gill. *Id.,* v.

Lickiss informed Catton that Gill smelled of gasoline upon intake, and Lickiss took the men to a common area on the seventh floor of the hospital. *Id.* Catton initially said Lickiss[4] 'retrieved the clothing from 'behind the counter on that floor [,]' " but Catton also testified that Lickiss "got the clothing that was behind the counter of [defendant]." *Id.* Lickiss retrieved Gill's clothing at the investigators' request. *Id.,* If 8. Gill's clothing was placed on the floor, and an investigator's canine performed a free air sniff on the clothing and alerted, and the clothing was taken into custody. *Id.* After the free air sniff, Catton and an investigator went to speak with Gill. *Id.,* ¶9. Catton said that Gill's room was "right where we were standing" and that the door was open. AZ Catton could see Gill through the open door, and

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he described the room as a "single occupancy" and agreed when counsel referred to the room as a "private room." *Id.*

Nurse Lickiss testified that he first saw Gill lying on a bed in a private room when other hospital staff needed assistance removing Gill's clothing and establishing IVs. *Id.*, 1) 10. Lickiss noted the odor of gasoline and assisted in removing Gill's clothing, and Lickiss temporarily placed Gill's clothes on the floor in the corner of the room. *Id.* Lickiss was told that police wanted to speak with him, and he went to the nurse's station and told an officer about the gasoline smell. *Id.*, K 11. Lickiss testified, "He wanted the clothing, so we went back into the room and bagged up the clothing." *Id.* Lickiss claimed that the clothing was taken from the room, placed in bags, and then taken to the nursing station. *Id.* Lickiss claimed he did this to get the clothes out of the room and into a "centralized secure area." *Id.* Lickiss said that he then gave the clothing from the nurse's station to the police officer. *Id.* Lickiss did not ask Gill for his consent to take the clothing. *Id.*

Lickiss testified that all of the events occurred on the first floor of the hospital, in the emergency room. *Id.*, 112. However, he also said "that he hadbeen involved in two recent cases involving the securing of clothing, one of which occurred in the ER, and one of which occurred on the seventh floor." *Id.* Lickiss remembered that the incident on the seventh floor involved an arson investigator, whereas the ER incident did not involve clothing being laid out on the floor. *Id.*

Arson investigator Arndt testified that he went to the hospital with Catton and others, and upon arriving at the hospital, "went to "a nurse's station next to a room.' " *Id.*,¶ 13. Arndt described it as "just a hospital room" and not the

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emergency room. *Id.* Arndt saw Gill lying on a bed, alone in the room. *Id.*, 14. ¶ Arndt recalled someone requesting Gill's clothing, and the clothing was brought to the nurses' station in a plastic bag. *Id.* Arndt could smell gasoline on the clothing when it was first removed from the bag. *Id.* Arndt's canine alerted after performing a free air sniff on the clothing, and Arndt took the clothing from the hospital. *Id.* The trial court denied Gill's motion to suppress, finding no distinction between an emergency room and a nurse's station, and the court noted that its decision "might even be the same even if it was in the defendant's hospital room, but we're not dealing with that situation today." *Id.*, 15. ¶

At Gill's jury trial, Nurse Lickiss testified that after undressing Gill, he placed the clothing in the corner of the room. *Id.*¶ 43. When Lickiss returned that afternoon for his next shift, Gill was in an intensive care unit. *Id.*, H 44. Lickiss testified that he met with two officers in the emergency room, and the officers told him that they had a dog and wanted to do a "contraband search of Gill's clothing. *Id.* Lickiss took the officers to the seventh floor and told them that he had previously observed an odor of gasoline. *Id.* The officers had "some reservation about going in and getting the clothing," so Lickiss agreed to remove Gill's clothing from the room and did so. *Id.* Lickiss confirmed he went into Gill's room and took the clothing because police asked him to do so. Zd¶ 45. Lickiss said the clothing was in the ICU unit, to the immediate left and up against the glass door. *Id.* When asked about the inconsistency in his testimony from the suppression hearing, Lickiss said that he had misspoke at the earlier hearing and that Gill's clothing was not behind the nurse's station. *Id.* Investigator Arndt testified that his canine

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alerted to Gill's clothing at the hospital, and two witnesses testified they could smell gasoline on Gill's clothing at the hospital. *Id.*,¶47. A forensic scientist testified that Gill's clothing tested positive for gasoline. *Id.*, T| 48. The jury found Gill guilty of aggravated arson. *Id.*, 54.¶

On appeal, Gill argued the trial court erred in failing to suppress as evidence his clothing, that he had a reasonable expectation of privacy in the hospital room, and that the seizure violated the Fourth Amendment. *la.*, ¶56, 69. The appellate court agreed. *Ia.*, fl 85-94. Because Lickiss, at trial, disavowed his pre-trial claim that he had taken Gill's clothing from the nurse's station and testified at trial that he had taken Gill's clothing from his hospital room, the appellate court conducted its analysis assuming the latter was true. *Id.*, fl 73-78. The appellate court found that Lickiss was an agent of the government for fourth amendment purposes because he retrieved Gill's clothing at the request of investigators. *Id.*, fl 80-81.

In analyzing whether Gill had a reasonable expectation of privacy in his hospital room, the court considered six factors: "(1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched;
(3) whether defendant has a possessory interest in the area or property seized;
(4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the defendant himself had a subj ective expectation of privacy in the property." *Id.*, T) 84 (quoting *Pitman*, 211 Ill. 2d at 520-21). The court found that the "factors cut in both directions on their face." *Gill*, 2018 IL App (3d) 150594, Tf 85.

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The court distinguished Gill š case from *People v. Torreswh&ce* Torres was in the ER and not in a position to permit or deny access to anyone and where police observed a plastic bag of a leafy substance protruding from Torres' jeans when the officer arrived at the ER. *Id.*, TH 86-89 (citing *People v. Torres,* 144 Ill. App. 3d 187 (1986)). The *Gill* court also found that *People v. Hillsman* was distinct since Hillsman was in the ER after having been shot, his clothing was under his hospital gurney, and police were lawfully in the ER when they saw that clothing. *Id.*, II 90 (citing *People v. Hillsman,* 362 Ill. App. 3d 623 (2005)).

The Gẅ/court noted that Gill was in a single-occupancy hospital room with a single bed on the seventh floor. *Gill,* 2018 IL App (3d) 150594, II 93. The court noted that Gill 's room "had a door that closed and, presumably, four solid walls." *Id.*, T| 93. The court found that the door "alone implied a certain layer of privacy." *Id.*, ¶94. While Gill stayed there between four and 11 hours, the court found that the ICU was likely suitable for patients requiring longer stays, and the court found that Gill "likely enjoyed *some* rights regarding visitation in his private hospital room" and thus had "at least some authority to exclude others from this room[.]" *Id.*, TIT) 93, 94. The court explained, "That is, while doctors and nurses may come and go from his room to provide care, his room was not open to the public in general." *Id.*, H 93.

The court also found that Gill "acted in a manner typical of an occupant of that space, thus demonstrating a subjective expectation of privacy." *Id.*,¶ 94. The court ultimately held that Gill had a reasonable expectation of privacy in his hospital room. *Id.* Because Gill had a reasonable expectation of privacy, officers

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were required to get a warrant in order to enter the hospital room and seize Gill's clothing. *Id.*, ¶8. Because the State had failed to prove that an exception to the warrant requirement applied, the *Gill* court held that the search violated Gill's fourth amendment rights. *Id.*, TH 98-106. The court reversed the circuit court's denial of the motion to suppress, vacated Gill's conviction, and remanded the case for a new trial. *Id.*, TH 107-08.

At the January 5, 2018, suppression hearing in this case, the State acknowledged that no warrant was issued. (R. 148) The State cited 20ILCS 2630/3.2 to argue that the hospital staff were required to contact police in response to Mr. Turner's gunshot wound. (R. 147,149-151) The State relied on *People v. Hillsman,* 362 Ill. App. 3d 623 (4th Dist. 2005), to argue that Mr. Turner did not have an expectation of privacy in his hospital room and that police thus had lawful access to him and lawful access to observe his clothing in plain view. (R.147, 149-155) As for the clothes being in plain view, the State argued that Mr. Turner had presented himself as the victim of a gunshot, and the State explained that the pants and the blood on them were evidence of a crime. (R. 148-155) Finally, the State argued that Mr. Turner had consented to officers looking at and taking his clothing, and the State argued his consent was knowing and voluntary. (R.148, 153-155)

Gillis directly on point with Mr. Turner's case. At the suppression hearing, Detective Liggett testified that Mr. Turner was in a bed in "one of the ER patient rooms[,]" and Liggett described it as a "relatively small room." (R.97,98) When the State asked Liggett to describe the "emergency department, the rooms, the

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individual rooms," Liggett explained:

> Small would be a nice way of putting it, especially this room. This was—they've got three or four separate patient rooms there within the emergency room department, and this is one of the ones—just seems tiny. Seems like half the size of a jail cell to me. (R. 107-08)

Liggett explained that there was "one bed" in the room and "one patient" as well as some medical equipment and a what looked like a "kitchen counter with a small sink in it" next to the door. (R.108)

Janet Womick testified that Mr. Turner came into the emergency department with a gunshot wound. (R.65-70) Mr. Turner's clothing was removed, and he was placed in a gown. (R.70) Then, Mr. Turner was placed in a hospital room that Womick described as a "very small room" that was "maybe 8-foot by 10-foot[,]" and his clothing and the clear bag containing his pants were placed on the counter. (R.72) Thus, like *Gill,* Mr. Turner's room was a small, single-bed hospital room with four walls and a door.

Following the suppression hearing testimony given by Womick, Patrice Turner, and Liggett, the State called as its sole witness Detective Corey Etherton. (R.123) Etherton said that Mr. Turner was in a "treatment room at St. Joseph's Emergency Department," and he described it as a "small room" that was the second or third treatment room past the past the emergency main desk. (R. 126-27) Etherton explained that People's Exhibit 4 was a photo that showed the door and the countertop in the room. (R. 132-33; Vol. 1, E.60) Etherton confirmed that police took Mr. Turner's clothing from the room and that his clothing included, among other items, his camouflage pants as well as his black long-sleeved shirt. (R.139)

Just as in *Gill,* four of the six factors weigh in favor of finding that Mr. Turner

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had a reasonable expectation of privacy in his hospital room. The 67/7court found

a significant distinction between a defendant in the ER with open floor plans, with nothing more than curtains separating beds and Gill s room occupied by him alone, with just a single bed." *Gill,* 2018 IL App (3d) 150594, ¶¶ 92-93. The court explained that a door "alone implied a certain layer of privacy." *Id.,* | 94. Here, Mr. Turner was in a single occupancy room with four walls and a door, just like Gill. The wooden door to Mr. Turner s room appears to be closed m People 's Exhibit 4. (Vol. 1, E.60) The *Gill* court noted that while doctors or nurses could come to Gill's room, it was not open to the public, which weighed in favor of an expectation of privacy. *Gill,* 2018 IL App (3d) 150594¶, 93. Patrice Turner testified that when she came to the hospital, she had to wait in a waiting room for about an hour before she was allowed to see Mr. Turner. (R. 119-120) Etherton testified that after entering the emergency room, one had to pass the main desk before arriving to the treatment rooms where Mr. Turner was located. (R. 126-27) This testimony from Patrice Turner and Etherton establishes that Mr. Turner's room was not open to the general public, and again, weighs in favor of an expectation of privacy.

Just like Gill, Mr. Turner was legitimately present in the hospital room and acted in a manner typical of an occupant of that space, which demonstrates a subjective expectation of privacy. See *Gill,* 2018 IL App (3d) 150594¶,94. Like Gill, Mr. Turner did not have an ownership or possessory interest in the treatment room, but the remaining four factors all weighed in favor of finding that Mr. Turner had a reasonable expectation of privacy in his hospital room. *See id.,* 195. Because

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Mr. Turner had a reasonable expectation of privacy in his hospital room, the F ourth Amendment barred governmental intrusions without a warrant. *See id.*, IT 98.

Finally, no exceptions to the warrant requirement applied in Mr. Turner 's case. The record demonstrates police did not obtain Mr. Turner 's consent to enter the room because Womick testified at the suppression hearing that "the police came in and told him that they were going to need his stuff, and he was very cooperative with the police." (R.73) Additionally, there were no exigent circumstances such as a risk that the evidence would be destroyed. See *Gill,* 2018 IL App (3d) 150594, ¶ 102. Mr. Turner had a gunshot wound to the leg and was medicated with morphine while lying in his hospital bed. (R.83, 92-93) People's Exhibit 1 depicts Mr. Turner lying in his hospital bed, and he looks as though he is unconscious with his mouth agape and his eyes either unopened or barely opened. See (Vol. 1, E.57) No reasonable officer would have thought Mr. Turner was in a position to get up and destroy his clothing, and thus officers could have secured a warrant but failed to do so.

To the extent that the State argued that Mr. Turner consented to the seizure of his clothes, Detective Etherton's trial testimony demonstrates that police "told" Mr. Turner that they were going to take his clothing as part of their investigation and that Mr. Turner merely acquiesced. See (R.575-76) Mere acquiescence to a show of police authority is insufficient to establish consent. *Bumper v. North Carolina,* 391 U.S. 543, 548-49 (1968); *People v. Anthony,* 198 Ill. 2d 194, 201 (2001). Furthermore, the alleged consent occurred a/Jterthe officers' unlawful entry into Mr. Turner's hospital room, a location officers could not lawfully access without

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a warrant or without Mr. Turner's consent to enter, both of which officers failed to obtain. Because the officers could not legally access Mr. Turner's hospital room without a warrant, the plain view exception also does not save the illegal search that occurred here. For the plain view exception to apply, officers must first have lawful access to the place from which they viewed the evidence. *See Gill,* 2018 IL App (3d) 150594, ¶ 88.

Mr. Turner had a reasonable expectation of privacy in his hospital room, and thus, officers required a warrant to enter that room and seize his clothing.
Because no exceptions to the warrant requirement apply in this case, Mr. Turner's state and federal constitutional rights to be free from unreasonable searches were violated. Therefore, Mr. Turner's clothes should have been excluded from evidence. The trial court erred in denying the motion to suppress and in denying the motion for a new trial. Accordingly, Mr. Turner respectfully requests that this Court reverse Mr. Turner's convictions and reverse the court's order denying the motion for a new trial and remand this cause for a new trial, with Mr. Turner's clothes excluded from evidence.

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II. Mr. Turner's conviction and sentence for conspiracy to commit aggravated discharge of a firearm must be vacated because he was also convicted of the principal offense.

Mr. Turner was convicted and sentenced for both conspiracy to commit aggravated discharge of a firearm as well as the principal offense. (PC.390) Illinois law bars convictions for both the principal and the inchoate offenses. 720 ILCS 5/8-5. Accordingly, Mr. Turner respectfully requests that this Court vacate his conspiracy conviction.

Standard of Review

Whether multiple convictions may stand is a question of law subject to *de* zzoro review. *People v. Boyd,* 307 Ill. App. 3d 991, 998 (3d Dist. 1999). Questions of statutory interpretation are also reviewed *de novo. People v. Giraud,* 2012 IL 113116, U 6.

Analysis

Illinois law provides that "[n]o person shall be convicted of both the inchoate and the principal offense." 720 ILCS 5/8-5. Mr. Turner was convicted and sentenced for aggravated discharge of a firearm as well as conspiracy to commit aggravated discharge ofafirearm. (R.1O93-94;C.7O1) Conspiracy is an inchoate offense. *People v. Rashid,* 82 Ill. App. 3d 941, 948 (1st Dist. 1980); *People v. Gomez,* 286 Ill. App. 3d 232,235 (3d Dist. 1997). "[A] judgment of conviction and sentence maybe entered on either the inchoate 6>rthe principal offense, but not both." *Gomez,* 286 Ill. App. 3d at 235 (emphasis in original). "Where a defendant has been convicted of both the principal and inchoate offenses, the proper procedure is to vacate the conviction

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and sentences with respect to the inchoate offenses." *People v. Johnson,* 250 Ill. App. 3d 887, 905 (4th Dist. 1993) (citations omitted).

In this case, the trial court convicted Mr. Turner of both the inchoate offense of conspiracy to commit aggravated discharge of a firearm as well as the principal offense of aggravated discharge of a firearm; Mr. Turner received separate sentences for both convictions. (R. 1093-94; C.701) The trial court's entry of convictions and sentences for both the inchoate and the principal offense was improper under 720 ILCS 5/8-5.; *Gomez,* 286 Ill. App. 3d at 235.

Although Mr. Turner did not raise this issue in the trial court, this Court has previously held that multiple convictions in violation of 720 ILCS 5/8-5 is plain error. *See People v. Haycraft,* 349 Ill. App. 3d 416, 429-430 (5th Dist. 2004) (reversing conspiracy conviction where defendant was also convicted of principal offense); see also *People v. Castaneda,* 299 Ill. App. 3d 779, 781 (4th Dist 1998) (court found convictions for conspiracy and the principal offense was plain error and vacated conspiracy convictions); *People v. Sonntag,* 238 Ill. App. 3d 854, 857 (2d Dist. 1992) (same).

Accordingly, Mr. Turner requests that this Court vacate his conviction and sentence for conspiracy to commit aggravated discharge of a firearm.

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III. Where Mr. Turner's two perjury convictions are based on the same issue or point of inquiry, only one perjury conviction may stand.

Mr. Turner was charged with two counts of perjury in 17-CF-104. (PC. 28) Both charges alleged that Mr. Turner had lied during the grand jury proceedings with respect to how he was shot on October 24, 2016. (PC.28-29) Because both perjury charges dealt with the same issue or point of inquiry, only one of those perjury convictions can stand. See *People v. Guppy,* 30 Ill. App. 3d 489, 492-96 (3d Dist. 1975).

Standard of Review

Whether multiple convictions may stand is a question of law subject to *de novo* review. *People v. Boyd,* 307 Ill. App. 3d 991, 998 (3d Dist. 1999).

Analysis

Both perjury charges in this case were grounded in the same material issue or point in question-how Mr. Turner was shot on October 24,2016. See (PC.28-29) *People v. Guppy* established that multiple convictions for perjury cannot stand where the false testimony is based on the same fact or point in question. *Guppy,* 30 Ill. App. 3d at 492-96. In *People v. Guppy,* the defendant was convicted of 13 counts of perjury following a bench trial. *Id.* at 489. All of the perjury charges arose from false testimony that Guppy had given during grand jury proceedings regarding an armed robbery allegedly committed by Guppy's husband. *Id.* at 489-490.

On appeal, Guppy argued she had committed only one offense of perjury and that 12 of the convictions should be reversed. *Id.* at 489-490. The reviewing court found that it was "required to analyze the perjury statute to determine whether

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the offense of perjury is defined as a single act or whether it encompasses a series of acts constituting one course of conduct." *Id.* at 492. "A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes a false statement, material to the issue or point in questions, knowing the statement is false." 720 ILCS 5/32-2(a). The GTz/^ycourt analyzed the perjury statute, and the court noted that no cases had "decided whether this provision permits multiple convictions founded on a series of false statements made in one proceeding (here, a single day of a grand jury session)." *Guppy,* 30 Ill. App. 3d at 492. The court found it was "significant that the statute speaks of a 'false statement, material to the issue or point in question.' " *Id.* The court held that this meant "each false statement concerning a *different issue or point under inquiry* is a separate perjurious act and hence a separate offense." *Id.* (emphasis added).

The *Guppy* court noted that several federal courts and New York courts had held that a defendant could be convicted of multiple counts of perjury where each false statement concerned a different matter of inquiry. *Id.* at 492-94. The *Guppy* court found that "the interpretation of the question of separate charges in perjury cases adopted by the federal and New York courts is sound, and the same principles should be applied under the Illinois perjury statute which, although different in form, is similar in substance." *Id.* at 494. The court held that "insofar as each count is based on a separate act, *i. e.* a false answer to a question concerning

8 different material fact or point, then each count is a distinct offense of perjury as defined by the statute. *Id.* The court further explained that [t]he elements

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of proof required to establish guilt are different for each charge since the falsity of each answer and the materiality of each statement must be established by the evidence." *Id.*

The *Guppy* court explained that "separate counts of perjury were proper to the extent that each count alleged a false statement in answer to a question concerning a different fact or point in question." *Id.* at 494-95. In Guppy's case, the prosecutor asked Guppy the following three questions: (1) "Are you saying that you did not see any of the proceeds of an armed robbery or any unusual amount of money in your home that evening, or in any area at that time?"; (2) "Did you see any unusual amount of money in your home that evening?"; and (3) "You don't recall his coming home with say, about between *** $2000 or $3000 *** some night on or about February 9, 1973?" *Id.* at 490-91. The court found that these three questions involved Guppy's knowledge about unusual amounts of money in her home and were nearly identical questions and thus, two of those three convictions could not stand. *Id.* at 490,495. The court also found that two other counts "involved repetitive questions about large amounts of money in defendant's home during the month of February[,]" and thus, only one of those convictions could stand. *Id.* at 495.

In light of *Guppy,* one of Mr. Turner's two perjury convictions must be reversed. The indictment in 17-CF-104 charged Mr. Turner with two counts of perjury. (PC.28) CountOne of the indictment alleged that Mr. Turner committed perjury by testifying as follows:

STATE: Okay? First of all, do you have any idea who shot you?

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MR. TURNER: No, sir, not at all. (C.28)

The indictment alleged that this testimony was perjurious with the following reasoning:

> [I]n truth and in fact, as the defendant well knew, his answer was false in that he had shot himself while in a car with Juwan Jackson and others while they were shooting at and killed Detrick Rogers in a drive-by shooting on Shomaker Drive in Murphysboro Illinois on October 24, 2016, ***. (PC.28)

Count Two of the indictment alleged that Mr. Turner committed perjury during the following testimony:

> STATE: Okay. Tell everybody what you saw.
>
> MR. TURNER: All I know is, I'm walking down the street, talking on the phone. I really wasn't paying too much attention to nothing what was going on, 'cause I was trying to log into my Facebook, so I really—my face was basically down here the whole time. I'm just walking up and down the street as I do plenty of nights. People probably see me out there many of nights out there around that time, walking, talking.
>
> So I'm walking down the street. I'm talking, I mean texting on the phone or whatever. And all I hear is just a whole bunch of gunshots started going off, multiple gunshots. You know, I didn't think too much of it, you know. All I know is I turned, and I just started running, you know. And I ran. And by the time I got to the house, I feel my pants, you know what I'm saying, I feel a leakage coming out from my leg, you know. I didn't even know what was going on, so I—
>
> STATE: Where on your leg?
>
> MR. TURNER: On my leg right here, the back of my leg right here. (PC.29)

The indictment alleged that this was perjured testimony, explaining:

> [H]e was not walking down the street when he heard a bunch of shots go off, and did not run, but was instead in the car with the shooters during the shooting incident which resulted in the death of Detrick Rogers, when he accidently shot himself in the leg and into the car

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> seat while in a car with Juwan Jackson and others who shot at and killed Detrick Rogers in a drive-by shooting on Shoemaker Drive in Murphysboro Illinois, on October 24, 2016, ***. (PC.29)

At the bench trial, the defense and the State stipulated to the admission of a portion of the transcript from the Grand Jury proceedings, and that transcript reflected thatMr. Turner gave the quoted testimony in the indictment. (R.308-310; PC.334, 340-41)

The materiality of a false statement is "derived from the relationship between the proposition of the allegedly false statement and the issues in the case." *People v. Acevedo, 275* Ill. App. 3d 420, 423 (2d Dist. 1995). "The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case." *Id.* Here, the question on which Count One is based is, "First of all, do you have any idea who shot you?" (PC.28) Count Two's charge is based on the prosecutor telling Mr. Turner, "Okay. Tell everybody what you saw." (PC.29) The grand jury transcript attached to the stipulation of fact shows that Count One's testimony occurred on page 31, and the testimony for Count Two was on the very next page. (PC.340-42) This demonstrates that Mr. Turner's testimony was a continuing explanation of how he was shot on October 24. The language used in the indictment to explain why the grand jury testimony in Counts One and Two amounted to perjury is nearly identical. (PC.28-29) Both counts alleged that Mr. Turner's testimony was perjured because he shot himself in the leg during the drive-by shooting that killed Detrick Rogers. (PC.28-29) Both counts were based on the same issue or point of inquiry— how Mr. Turner was shot on October 24, 2016. Thus, only one perjury conviction may stand. See *Guppy,* 30 Ill. App.

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3d at 494-96.

This issue was not raised in the trial court, and thus, this error is not preserved. However, Illinois' plain-error rule pursuant to Rule 615(a) allows reviewing courts to consider unpreserved clear or obvious error when "the error is so serious it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Piatkowski,* 225 Ill. 2d 551, 565 (2007). Because an improper conviction affects a defendant's substantial rights, this should be reviewed as second-prong plain error. See *People v. Boyct,* 307 Ill. App. 3d 991, 998 (3d Dist. 1999). This error was plain error, but it was also forfeited through counsel's ineffective assistance. A defendant is deprived of effective assistance of counsel when: (1) defense counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that the result of the proceeding would have been different but for the unprofessional errors. *Strickland v. Washington,* 466 U.S. 668, 687 (1984); *People v. Albanese,* 104111.2d 504,525-26 (1984). Here, counsel's failure to move to vacate one perjury conviction and his failure to preserve the issue in a post-sentencing motion was objectively unreasonable, as it could have served no strategic benefit to Mr. Turner.

Accordingly, Mr. Turner respectfully requests that this Court reverse one of his two convictions for perjury.

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CONCLUSION

For the foregoing reasons, Cortez Turner, defendant-appellant, respectfully requests that this Court reverse and remand for a new trial. Alternatively, he requests that this Court reverse his conviction for conspiracy to commit aggravated discharge of a firearm and reverse one of his perjury convictions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 48 pages.

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No. 5-19-0329 & 5-19-0330 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court) of the First Judicial Circuit,) Jackson County, Illinois
Plaintiff-Appellee,	)) 16-CF-466 & 17-CF-104
-vs-	)
CORTEZ TURNER,	)) Honorable) Ralph R. Bloodworth, III,
Defendant-Appellant.	) Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Mr. Patrick D. Daly, Deputy Director, State's Attorneys Appellate Prosecutor, 730 East IL Hwy 15, Ste. 2, Mt. Vernon, IL 62864, 05dispos@ilsaap.org

Mr. Cortez Turner, Register No. Y36527, Menard Correctional Center, P.O. Box 1000, Menard, IL 62259

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 15, 2021, the Brief and Argument was filed with the Clerk of the Appellate Court using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, Illinois, with proper postage prepaid.

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5-19-0329

No. 5-19-0329 & 5-19-0330 (consolidated)

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IN THE

APPELLATE COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court) of the First Judicial Circuit,) Jackson County, Illinois
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	) 16-CF-466 & 17-CF-104
-vs-	)
	)
CORTEZ TURNER,	) Honorable) Ralph R. Bloodworth, III,
Defendant-Appellant.	) Judge Presiding.

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ORAL ARGUMENT REQUESTED

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POINTS AND SUPPLEMENTAL AUTHORITIES

I. Mr. Turner had a reasonable expectation of privacy in his hospital room, and police violated his right to be free from unreasonable searches when they seized his clothing without a warrant. Therefore, the trial court erred in denying the motion to suppress and in denying the motion for a new trial..........1

People v. Pearson, 2021 IL App (2d) 190833 2,5,9

20 ILCS 2630/3.2 5,8

People v. Hayes, 2018 IL App (5th) 140223 11

People v. Slater, 228 Ill. 2d 137.......... 12

People v. Wright, 2012 IL App (1st) 073106.......... 13

II. S. Ct. Rule 341(h)(7),(i) 13

II. Mr. Turner's conviction and sentence for conspiracy to commit aggravated discharge of a firearm must be vacated because he was also convicted of the principal offense.......... 20

III. Where Mr. Turner's two perjury convictions are based on the same issue or point of inquiry, only one perjury conviction may stand. 21

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ARGUMENTS

I. Mr. Turner had a reasonable expectation of privacy in his hospital room, and police violated his right to be free from unreasonable searches when they seized his clothing without a warrant. Therefore, the trial court erred in denying the motion to suppress and in denying the motion for a new trial.

The State argues that officers lawfully seized Mr. Turner's clothing because it was in plain view, and additionally, that Mr. Turner provided affirmative and voluntary consent for officers to take his clothing. (St. Br. 2) Because Mr. Turner had a reasonable expectation of privacy in his hospital room, officers did not have lawful access to the room, and thus, Mr. Turner's clothing could not have been in plain view. For the plain view exception to apply, officers must first have lawful access to the place from which they viewed the evidence. *People v. Gill,* 2018 IL App (3d) 150594, 88. Thus, the officers were required to obtain a warrant in order to enter the room and seize the clothing.

The State cites *People v. Hillsman* and *People v. Torresto* argue that officers have a lawful right to be in the emergency room where a defendant is being treated and that a defendant has no reasonable expectation of privacy in an emergency room, respectively. (St. Br. 14) The State asks this Court to "rely on both *Hillsman* and *Torres* to find that the defendant's clothing was properly seized under the plain-[view] doctrine." (St. Br. 17) However, "the determination of whether there is a reasonable expectation of privacy must be made on a case-by-case basis, taking

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into account the totality of the circumstances. *People v. Pearson,* 2021 IL App (2d) 190833,1) 41. Furthermore, a review of *Hillsman* and *Torres,* both decisions from the Fourth District Appellate Court, reveals that the analyses conduct in both cases was flawed and incomplete. Thus, this Court should rely on *People v. Pearson* and *People v. Gill,* discussed below, which provide a thorough discussion of the relevant principles of law.

In *People v. Torres,* the defendant was found guilty of possession o controlled substance. *People v. Torres,* 144 Ill. App. 3d 187,188 (4th Dist. 1986). At the suppression hearing, Torres testified that he had a history of blackouts and had a seizure. *Id.,* 188. Torres blacked out and remembered nothing until he awoke in the emergency room. *Id.* As Torres awoke, an officer was present and informed him he was "in a lot of trouble." *Id.* The officer showed him a plastic bag containing cannabis and a small packet containing what was later identified as LSD, which had been found in Torres' possession. *Id.* Subsequently, Torres was moved to another room in the hospital, but he later left the hospital that evening without being formally discharged. *Id.* Torres conceded on appeal that he had a plastic bag containing marijuana in his front pants pocket and that it was visible to those in the room with him. *Id.,* 188-89. He also admitted that a packet containing LSD was in his wallet while he was in the emergency room. *Id.,* 189.

An officer testified that he went to the emergency room after the ambulance service informed him that they had taken Torres to the hospital for possibly suffering from a drug overdose. *Id.* Upon arrival, the officer observed Torres in the emergency room. The officer saw a plastic bag containing a leafy substance sticking out of

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Torres blue jeans. *Id.* The officer also detected the odor of burnt cannabis about Torres. *Id.* The officer said he seized the plastic bag containing cannabis and ordered Torres to empty his pockets, and Torres then handed him the packet containing LSD. *Id.* Torres was not under arrest in the hospital emergency room. *Id.*

The trial court in *Torres* determined the baggie containing cannabis was in plain view of those in the emergency room, and the court found that the LSD was discovered pursuant to a search. *Id.* The court found this search proper, finding a necessary exigency due to the ease with which Torres could have destroyed the evidence. *Id.,* 189-90. The appellate court agreed, finding that Torres did not have

reasonable expectation of privacy in a hospital emergency room. *Id.,* 190.

The court noted that the record contained no suggestion that Torres could permit or deny anyone, including officers, access to the emergency room. *Id.,* 190-91. Then, the court briefly noted that Illinois law required medical personnel to notify authorities of a person requesting treatment when one of their injuries might have been caused by criminal conduct. *Id.,* 191. Without any real discussion or application of factors relevant to whether a defendant has a reasonable expectation of privacy, the court found that Torres did not have such an expectation of privacy in the emergency room. *Id.* The court found the bag of cannabis was in plain view and noted its holding was not "an open invitation for the police to rifle the belongings of emergency room patients." *Id.* As for the LSD, the court found the officer had probable cause to search Torres and agreed with the trial court that an exigency existed. *Id.*

First, *Torres* is distinct factually because an exigency existed in Torres

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that did not exist in the present case. In *Torres,* the defendant was being treated for blacking out, while Mr. Turner was being treated for a gunshot wound, and the risk of Torres destroying evidence after waking up was real while Mr. Turner risk of doing so was non-existent in his state. More importantly, the *Torres* opinion provides *no* description of the emergency room where Torres was treated, and in fact, the appellate court in *Torres* pointed out that the "present facts are not clear***." *Id.,* 190. There was no discussion about the layout of the emergency room, and the appellate court in *Torres* entirely failed to analyze the relevant factors that are so thoroughly discussed in *People v. Gill,* which was discussed at length in the opening brief.

The State argues that this case is similar to *People v. Hillsman* because Hillsman and Mr. Turner were both in emergency rooms when they spoke with police. (St. Br. 15) A review of *Hillsman* shows the decision, like *Torres,* is entirely void of any physical description of the emergency room. Hillsman argued the trial court erred by denying his motion to suppress evidence that was seized while he was an emergency-room patient. *People v. Hillsman,* 362 Ill. App. 3d 623, 631 (4th Dist. 2005). Hillsman had gone to the hospital with a gunshot wound and informed staff he had been shot. *Id.,* 626. When officers arrived, Hillsman told them that, at the time of the shooting, he had been wearing the jeans and shoes in the basket underneath his hospital gurney. *Id.,* 626. Officers noticed that the shoes had what appeared to be blood and seized Hillsman's jeans and shoes according to the police department's standard procedure to retrieve the clothing of shooting victims. *Id.*

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The reviewing court in *Hillsman* looked to its earlier *Torres* decision for guidance. Because medical personnel were required to notify police when they had a patient seeking treatment for injuries that may have been caused by criminal conduct, the reviewing court, in a rather conclusory fashion, determined that Hillsman did not have a reasonable expectation of privacy. *Hillsman,* 362 Ill. App. 3d at 633 (citing 20ILCS 2630/3.2)). The *Hillsman* decision, just like *Torres,* failed to address the details of the emergency room in which Hillsman was treated, and the court also failed to properly address the relevant factors.

In *People v. Pearson,* the Second District Appellate Court explained that "any assessment of expectations of privacy in a hospital must take into account the highly personal nature of the usual activity conducted there— medical treatment— as well as the fact that persons in a hospital may be especially vulnerable: ill or in pain, unclothed or garbed only in a flimsy gown, and often lacking their usual capacity to resist intrusion." *People v. Pearson,* 2021 IL App (2d) 190833, T| 30. Pearson went to the hospital to be treated for gunshot wounds to his legs. *Id.,* **H** 1. After being notified, police went to the hospital and entered the trauma room where Pearson was being treated. *Id.,* **TH|** 1, 4.

The responding officer testified that he entered the room and saw Pearson's clothes loosely folded and with blood on them. *Id.,* T| 6. The reviewing court in *Pearson* noted that there was no evidence that the officer asked permission from anyone to enter the room. *Id.* The officer talked to Pearson about what happened, and then, the officer went over to the clothes and inspected them because they were evidence of a crime and were going to be recovered. *Id.,* **1)1)** 7, 8. He also testified

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that he wanted to remove any valuables that Pearson might want to keep. *Id.,* If 9. While the court initially suppressed the evidence, the State cited *Hillsman* in its motion to reconsider, and the trial court granted reconsideration and reversed its previous ruling. *Id.,* 11-12

Pearson moved for reconsideration and argued that the trauma room he was in was not accessible to the public and that his expectation of privacy was reasonable. *Id.,* 13. Pearson cited *People v. Gill,* and the parties filed a stipulation about the trauma room in which Pearson received treatment. *Id.* The stipulation explained that the trauma room was located in the emergency area of the hospital but was separated by locked doors from a waiting area. *Id.* Anyone entering the area had to be "buzzed in" by hospital staff. *Id.* The trauma room had a single bed, four walls, and a door, and the door was kept closed while Pearson was in the room. *Id.* Pearson argued the evidence showed the trauma room was more like a hospital room in *Gill* than the emergency rooms in *Hillsman* and *Torres. Id.*

The appellate court in *Pearson* explained that the officer "did not search Pearson's hospital trauma room in the sense of going through its furnishings." *Id.,* 22. "However, if Pearson had a reasonable expectation of privacy in his hospital trauma room, the room was a constitutionally protected area and [the officer's] entry and visual observation of the room was a search." AZ The *Pearson* court cited the factors necessary for consideration of an expectation of privacy, and the court noted that the issue of whether a defendant has a reasonable expectation of privacy must be resolved in view of the totality of the circumstances of the

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particular case. *Id*.. T| 24.

The *Pearson* court explained that a defendant does not waive his right to deny entry to others, such as police, just because he has implicitly consented to the intrusion of medical personnel into a private room. *Id*.. 29. The court explained that "consent for some to enter does not equal consent for all to enter." *Id.* The court noted that a hospital contains both public and private areas, and the court rejected the idea that there could be no reasonable expectation of privacy just because many of the usual incidents of personal dignity are already sacrificed to the medical process. *Id*.. 29-30. Instead, the court found that "under these circumstances society recognizes as reasonable the right of hospital patients to maintain the little privacy that remains to them." *Id*.. 30.

The *Pearson* court applied the six factors and compared the facts regarding Pearson's case to those in *Gill,* and ultimately, the court held that Pearson had 8 reasonable expectation of privacy m his trauma room. *Id*.. TJ5T 32-41. The *Pearson* court explained that Pearson had no ownership or possessory interest m the room and that these factors weighed against an expectation of privacy. *Id*.. 36. However, Pearson was legitimately present in the room, and there was no indication that he had any less ability to exclude others from the room than the defendant in *Gill. Id*.. **UK** 36-37. Finally, Pearson did not take any actions to undermine his expectation of privacy. *Id*.. T| 37.

In *Pearson,* the State argued that *Gillw&s* distinguishable from Pearson case because Gill was in a private room on the seventh floor of the hospital while Pearson was in an emergency room. *Id*.. 39. However, the reviewing court rejected

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this claim, noting that Pearson was not m an open emergency room; he was m

separate enclosed trauma room with four walls and a door. *Id.* The court noted that the fact the trauma room was in the emergency area of the hospital did not dictate that Pearson's expectation of privacy was less reasonable than Gill's. *Id.* In fact, the court noted that entry to Pearson's room might have been more restricted than Gill's because the emergency area in Pearson's case was behind locked doors, whereas there did not appear to be any restriction to entering the seventh floor in Gill's case. *Id.* Ultimately, the court held Pearson had a reasonable expectation of privacy in the trauma room where he was being treated and that the officer' s entry into the room without a warrant or consent violated the Fourth Amendment. *Id.,* 38-41.

The *Pearson* court rejected the State's argument that the officer's presence was mandated by law in response to Pearson arriving with a gunshot wound. *Id.,* H 43. The court explained that while 20 ILCS 2630/3.2 might require medical personnel to notify police, it did not require them to admit police to any area of the hospital and it did not mandate that police be allowed to enter patient rooms. *Id.,* II 44. The court also noted that statute could not grant the police powers beyond the bounds of the fourth amendment" and that such a statute would be unconstitutional. *Id.*

Particularly relevant here, the *Pearson* court distinguished both *Torres* and *Hillsman.* The court explained that "the physical attributes of the emergency room in *Torres axe* not described, and, given the reviewing court's focus on whether the defendant was able to control access to the emergency room as a whole, it does

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not appear that [Torres] occupied any individualized treatment space that was shielded from the rest of the emergency area." *Id,* 49. The court found it significant that Torres might have been in an open area with other patients but that Pearson was "being treated in an enclosed individual room." *Id.* As for the *Hillsman* decision, the *Pearson* court noted that it was "factually distinguishable and analytically flawed for the same reasons as *Torres! Id.,* **H** 50. The *Pearson* court found the two cases were not entitled to "decisive weight[.]" *Id.*

Just as the *Pearson* court has done, this Court should disregard the flawed and incomplete analyses in the *Hillsman* and *Torres* decisions and look to guidance from *Pearson* and *Gill,* the latter of which was discussed at length in the opening brief. See (Op. Br. 29-35, 37-39) As *Pearson* and *Gill* explained, the six factors relevant to whether a defendant has a reasonable expectation of privacy include: "(1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched; (3) whether defendant has a possessory interest in the area or property seized; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the defendant himself has a subjective expectation of privacy in the property." *Pearson,* 2021 IL App (2d) 190833, | 24; *Gill,* 2018 IL App (3d) 150594, If 84.

Here, like in *Pearson* and *Gill,* at least four of the factors weigh in favor of finding that Mr. Turner had a reasonable expectation of privacy. The G-zT/court distinguished *Hillsman* and *Torres* and noted that Gill was in a single-occupancy room with a single bed. *Id.,* **1)** 93. The court found it significant that Gill's room

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presumably had four walls and a door that closed, and the court noted that the door "alone implied a certain layer of privacy." *Id.,* 94. Like Gill, Mr. Turner was in a "relatively small room" with a door, and the room contained a single bed and a single patient. (R.97,98,107-08) The door to Mr. Turner's room appears closed in People's Exhibit 4. See (Vol. 1, E.60) This is distinct from being in an ER with an open floor plan that holds multiple patients at once and separates them by mere curtains. *See Gill,* 2018 IL App (3d) 150594, TH 92-93.

In *Gill,* the court noted that while doctors could come and go to provide care, Gill's room was not open to the public in general. *Id.,* 93. Similar to *Gill* and *Pearson,* here, Mr. Turner's room was not open to the general public. Detective Etherton said Mr. Turner's room was the second or third room past the emergency main desk and that one had to pass the main desk to gain access to the treatment room. (R. 126-27) Patrice Turner testified that she could not get into Mr. Turner' room immediately and had to wait m a waiting room for about an hour before she was allowed to see Mr. Turner. (R. 119-20) Thus, while medical personnel could come and go freely, Mr. Turner's room was not open to the public. Just as in *Gill* and *Pearson,* Mr. Turner was legitimately present there and acted in a manner typical of an occupant of that space. Only two of the six factors do not weigh in Mr. Turner's favor; he did not have ownership or possessory interest in the room. Because the other factors cut in Mr. Turner's favor, the clothing should have been suppressed, and the trial court's ruling was in error.

The State argues that should this Court find that the clothing was not lawfully seized under the plain view doctrine, this Court should find that Mr. Turner

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consented. (St. Br. 17) The State recognizes that in order for a defendant's consent to be valid, it must be voluntary. (St. Br. 17) The State argues that Mr. Turner "only challenges the fact that affirmative consent was given, not the voluntary nature of the consent***." (St. Br. 18-19) However, this is incorrect. In his opening brief, Mr. Turner argued that he did not consent and to the extent that the State argued he had consented, it was a mere acquiescence to a show of police authority. (Op. Br. 38) A review of this record shows that there was nt? evidence that Mr. Turner ever consented to police entering his room, and any consent to police taking the clothing once they were in the room was nothing more than acquiescence to a show of police authority.

This Court has explained that the validity of a search depends on whether the defendant's consent was truly voluntary and that "[acquiescence to apparent authority is not the same thing as consent." *People v. Hayes,* 2018 IL App (5th) 140223, 33 (citing *Bumper v. North Carolina,* 391 U.S. 543, 548-49 (1968)). "Consent to a search 'must be received, not extracted.'" *Hayes,* 2018 IL App (5th) 140223, | 33 (quoting *People v. Anthony,* 198 Ill. 2d 194, 202 (2001)). The State agrees that mere acquiescence to a show of police authority does not amount to consent. (St. Br. 17) When the State relies on consent to justify the lawfulness of a search, it must prove by a preponderance of the evidence that the consent was, in fact, freely and voluntarily given. *Bumper,* 391 U.S. at 548.

The testimony from Nurse Womick, Detective Etherton, and Detective Liggett demonstrates that Mr. Turner, at best, acquiesced to a show of police authority once police were already in his hospital room. It should be noted that it is proper

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for a reviewing court "to consider the testimony adduced at trial, as well as at the suppression hearing." *People v. Slater,* 228 Ill. 2d 137, 149 (2008). At the suppression hearing, Womick testified that she documented the police encounter as well as her treatment of Mr. Turner. (R.74) Womick could not recall what the officers said to Mr. Turner about his clothing and only remembered that he was "extremely cooperative the entire time he was there." (R.74) While Womick's notes in Mr. Turner's hospital record noted that police requested to see his clothing, her notes also said, that police "tell patient taking clothing***." (E.5) When counsel asked Womick if police asked Mr. Turner if they could take his clothing out of the hospital, Womick testified that "[a]t that point it was an investigation, so they were collecting evidence." (R.94) When asked if she specifically remembered if police asked to take the clothing, Womick responded that she did not think they had to ask at that point. (R.94)

Detective Liggett testified at the suppression hearing that he could not recall whether he or Detective Etherton requested the clothes, but he claimed that Mr. Turner said police could take them. (R.98-99,102) Liggett did not write 8 report about the interaction with Mr. Turner, and he acknowledged that Etherton s report did not state that they asked for the clothing and did not state that Mr. Turner consented to them taking the clothing. (R. 101-02) Detective Etherton claimed that he thought Liggett requested the clothes and that Mr. Turner agreed. (R. 138) However, at trial, Etherton testified that officers *toldMx.* Turner they were taking his clothes:

[THE STATE]: And did you ask Mr. Turner if you could take those?

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> [ETHERTON]: Oh, we told him we were going to, yes. It's part of the investigation.
>
> [THE STATE]: Did he acquiesce in that?
>
> [ETHERTON]: Say that again, sir.
>
> [THE STATE]: Did he agree with that? (R.574-75)

Etherton then testified that Mr. Turner agreed and was only concerned about getting his shirt back because it was a gift. (R. 575) The evidence here shows that this was nothing more than mere acquiescence to a show of police authority, and thus, this was not voluntary consent. There were no exceptions to this warrantless search, and the trial court erred in denying the motion to suppress and the motion for a new trial.

This issue was litigated prior to trial, and the State was given the opportunity to argue that Mr. Turner did not have a reasonable expectation of privacy in his hospital room. (C.218,233; R. 147-55) The error was raised again in the post-trial motion. (PC.354) Thus, the issue was fully preserved and should be reviewed for harmless error. *See People v. Wright,* 2012 IL App (1st) 073106, H 128 (The State must demonstrate that a preserved error was harmless beyond a reasonable doubt.) Furthermore, in its brief, the State does not assert that Mr. Turner failed to preserve the error regarding the illegal search and seizure that occurred in this case. Accordingly, this Court should find the State has forfeited any argument that the suppression argument raised in Argument I was not preserved. See II. S. Ct. Rule 341(h)(7),(i) (Points not argued are forfeited.)

This error was not harmless because the State used the illegally seized evidence to support its argument that Mr. Turner was in the car during the shooting.

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While there was strong evidence of guilt against Juwan Jackson, the evidence against Mr. Turner was *much* weaker and in no way overwhelming. Mr. Turner reported to the hospital and told Nurse Womick that he had been outside on his phone on Facebook trying to get a ride and was shot in the crossfire of a shooting. (R.400-01) Mr. Turner also told Detective Etherton that he had been outside using his phone to get on Facebook when he saw two vehicles driving around the block, heard shots, and realized he had been shot. (R.578-79) Lakesha Ross testified that she saw Mr. Turner walking outside on the sidewalk prior to the shooting. (R.879-80, 883) Ross also explained that it was common for Mr. Turner to walk on the sidewalk in that area. (R.883)

While Brianna Phipps testified that she observed Juwan Jackson with guns at the party prior to the shooting, she said she had *ne ver* seen Mr. Turner with any weapons. (R.447-60) Similarly, Jacie Marble testified that she never saw Mr. Turner with a gun on the night of the shooting and said she never heard him plan a shooting. (R.849-50)

At trial, Cleophas Gaines testified that he "vaguely" and "somewhat" remembered the shooting. (R.408,410) Gaines admitted he was under the influence of cocaine as well as promethazine with codeine on the night of the shooting. (R.408-09) Gaines claimed he had seen Juwan Jackson earlier that night and that Jackson was by himself with a gun in each hand, cussing and calling Gaines a "bitch ass

[.] (R.412-13) Jackson pointed the guns at Gaines and Detrick Rogers, and the confrontation ended when Gaines and Rogers went into Lakesha Ross home. (R.415-16,874-76) However, Gaines never claimed to see Mr. Turner with Jackson

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at that time.

Simply put, Gaines was not a credible eyewitness to the shooting. By the time of trial, Gaines had been using cocaine and promethazine with codeine for 10 years, though he claimed to have no effects from it. (R.432-33) He contradicted himself and later claimed he had only used cocaine for "[m]aybe a year." (R.436) Gaines said he was pouring himself "another cup of promethazine" and cutting lines of cocaine on a CD case when the white car belonging to Jacie Marble drove down the street. (R.421-24) Gaines said that Garret was driving and that Jackson was in the front seat, pointing two guns out the car window. (R.421,425) Gaines said that he heard Jackson say, "That's what you motherfuckers is on[,l" and Gaines claimed he '[g]ot down in the car he was standing by after hearing Jackson s statement. (R.421,426) Gaines azstfclaimedthathe kept watching the white car. (R.426) However, on cross-examination, Gaines said, "At the time of the shooting, I was on the floorboard. (R.438) Thus, Games, contradicted himself about a crucial fact—whether he observed the car and its occupants during the shooting. His testimony is clear; he could not have observed the white car during the shooting if he got down into the floorboard of the car he was near immediately after hearing Jackson's statement.

Gaines' testimony lacked credibility and consistency on other points as well. Gaines claimed he did not have a gun and that neither he nor Detrick Rogers shot at the white car. (R.427,435) Gaines also claimed he never saw Terry Rogers with gun. (R.435) However, Officer Laughland testified that a flash of light that appeared to be a muzzle flash from a firearm could be seen in the yard area of

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1936 Shomaker. (R.495-96) Laughland believed someone in that yard fired at least one shot. (R.510) Investigator Glover testified that at least one of the bullets that shot the Pontiac G6 in the Shomaker yard had to have been fired from someone standing near that car. (R.748; Vol. 2, E. 16) This means that Detrick Rogers, Terry Rogers, or Cleophas Gaines had to have fired a gun from the yard. This further demonstrates that Gaines was not a credible witness and had motives to lie during Mr. Turner's trial.

The record makes it clear that Gaines either lied about Terry Rogers' involvement in the shooting, possibly in an effort to protect Rogers, or that Gaines' memory was simply unreliable by the time of trial. Devanna Priget said that Terry Rogers came to her house immediately after the shooting and had blood on his clothes. (R.529) While Priget claimed she did not tell police that Terry Rogers said he had gunshot residue on his hands and that he could not go back to the house because of that residue, her testimony was impeached by Officer Laughland who testified she did make those statements. (R.529-30; R.1054) While Gaines claimed he did not see Terry Rogers at the scene with him and Detrick Rogers at the time of the shooting, he said he remembered seeing Terry Rogers with Detrick after the shooting. (R.433) Terry Rogers' jacket recovered during the search of 1849 Alexander Street had Terry's blood and DNA on it, and Terry's blood was found on the driver's side of the Pontiac G6 parked at 1936 Shomaker Street. (R.937-38,940-42) Thus, the evidence overwhelmingly established Terry Rogers was present during the shooting, and thus, Gaines either lied to protect himself and Rogers, or Gaines' memory was impaired and inaccurate.

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As for recognizing Mr. Turner as one of the shooters, Gaines claimed that he saw Mr. Turner in the backseat on the passenger side of the vehicle, but then, he claimed it was "kind of hard to see at that point in time***." (R.431,429) Gaines admitted that he had told the prosecutor "from the very start that [he] didn't see Cortez." (R.430) However, he claimed he lied because he did not want police involved. (R.430-31) When asked whether his drug use might have affected his memory, Gaines testified, "Well, cocaine is an upper and promethazine-codeine is a downer, but, at that point in time, I was like Superman, X-ray vision." (R.436) Gaines explained that "when you do an upper, it make you feel like, you know, run through anything, you can see through anything or just gives you that filling, up filling [sz?]." (R.437) Gaines did not recall telling police that he was "so messed up on drugs" that he would be unable to tell who was present. (R.434)

Gaines also said that another man, Jayion Moore, might have also been in the vehicle, but Gaines was uncertain. (R.431) While Moore might have been one of the shooters, Jacie Marble's testimony suggested that Quan Scruggs might have been one of the shooters, because Marble testified that, after the shooting, Scruggs pulled something, that she assumed to be a gun, from his waist after the shooting and threw it out the window. (R.828-29) Additionally, Scruggs talked to Marble and made it clear that she needed to clean the shell casings out of her vehicle, which further implicates him in the shooting. See (R.830)

It seems clear that Scruggs was one of the shooters, because Marble also testified that, days after the shooting, she heard Mr. Turner say that he "had the gun on his lap and Quan was shooting and bumped into him, and [Mr. Turner]

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shot himself in the leg." (R.842-43) While Marble s statement implicated Mr. Turner as being involved in the shooting, she also admitted that she had smoked "a few blunts" on the day when she heard the statement. (R.845) Additionally, while Marble claimed her trial testimony was truthful, Marble admitted that she had given police a number of different statements and admitted that she had told police that Mr. Turner was shot while walking around Shomaker Drive. (R.846-52) While Cara Howerton claimed that she heard Mr. Turner admit he shot himself, Howerton also admitted she had probably smoked marijuana on that date and that she habitually smoked one or two times per day, though she claimed the drug use did not affect her memory. (R.870-71) Like Marble, Howerton admitted to giving multiple different statements to police. (R.870-71)

review of the ballistics evidence shows that Mr. Turner s account of events—that he was shot while walking around Shomaker and waiting for a ride—was entirely plausible. Investigator Sutton testified that the bullets fired from South 20th Street could have traveled more than 300 yards east to west. (R.726-27) Sutton also explained that a .223 rifle round or a .357 SIG round would travel even farther, and the former could potentially go miles. (R.725-26) Investigator Glover agreed that bullets fired from South 20th Street could have continued on down Shomaker Street until they struck something. (R.792-93) Thus, if Mr. Turner was standing outside on Shomaker Street using his phone and looking for a ride when the shooters in the white car fired from 20th Street, he very well could have been struck by one of their bullets. Had the evidence from the illegally seized clothing not been admitted at trial, Mr. Turner very likely could have been acquitted

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of the murder charge.

Mr. Turner had a reasonable expectation of privacy in his hospital room, and thus, officers were required to obtain a warrant to enter that room and seize Mr. Turner's clothing. The clothing could not have been in plain view since officers could not legally access that room, and the evidence demonstrates that Mr. Turner merely acquiesced to the taking of his clothes and did not voluntarily consent to officers taking them. Officers violated Mr. Turner's state and federal rights to be free from unreasonable searches where officers entered the room and seized his clothing without a warrant and where no exceptions to the warrant requirement applied. Therefore, Mr. Turner's clothes should have been excluded from evidence during his trial. The trial court erred in denying the motion to suppress and erred in denying the motion for a new trial on these grounds. Accordingly, Mr. Turner requests that this Court reverse his convictions and remand for a new trial, with the unlawfully seized clothing excluded from evidence.

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II. Mr. Turner's conviction and sentence for conspiracy to commit aggravated discharge of a firearm must be vacated because he was also convicted of the principal offense.

In its brief, the State concedes that only the conviction and sentence for the principal offense of aggravated discharge of a firearm may stand. (St. Br. 20-21) Accordingly, Mr. Turner respectfully requests that this Court vacate the conviction and sentence for conspiracy to commit aggravated discharge of a firearm.

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III. Where Mr. Turner's two perjury convictions are based on the same issue or point of inquiry, only one perjury conviction may stand.

The State concedes that Mr. Turner's two perjury convictions are based on the same issue or point of inquiry and that only one conviction may stand. (St. Br. 22-25) Accordingly, Mr. Turner respectfully requests that this Court vacate one of the two convictions for perjury.

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CONCLUSION

For the foregoing reasons, Cortez Turner, defendant-appellant, respectfully requests that this Court reverse and remand for a new trial. Alternatively, he requests that this Court reverse his conviction for conspiracy to commit aggravated discharge and one conviction for perjury.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341 (a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,766 words.

/s/ Jennifer M. Lassy
JENNIFER M. LASSY
ARDC No. 6317224
Assistant Appellate Defender

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No. 5-19-0329 & 5-19-0330 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court) of the First Judicial Circuit,) Jackson County, Illinois
Plaintiff-Appellee,	)) 16-CF-466 & 17-CF-104
-vs-	))
CORTEZ TURNER,	) Honorable) Ralph R. Bloodworth, III,
Defendant-Appellant.	) Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Mr. Patrick D. Daly, Deputy Director, State's Attorneys Appellate Prosecutor, 4114 North Water Tower Place, Suite C, Mt. Vernon, IL 62864, 05dispos@ilsaap.org

Mr. Cortez Turner, Register No. Y36527, Hill Correctional Center, P. O. Box 1700, Galesburg, IL 61402

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are trueand correct. On April 11, 2022, the Reply Briefwas filed with the Clerk of the Appellate Court using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, Illinois, with proper postage prepaid.

/s/ Debra Zurliene
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NOTICE
Decision filed 10/31/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 190329

NOS. 5-19-0329, 5-19-0330 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	Nos. 16-CF-466, 17-CF-104
	)	
CORTEZ TURNER,	)	Honorable
	)	Ralph R. Bloodworth III,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court, with opinion.
Justices Cates and Wharton concurred in the judgment and opinion.

OPINION

1 Defendant appeals from his convictions of first degree murder (720ILCS 5/9-1 (a)(1) (West 2016)), aggravated discharge of a firearm *(id.* § 24-1.2(a)(1)), conspiracy to commit aggravated discharge of a firearm *(id.* §§ 8-2, 24-1.2(a)(1)), and two counts of perjury (AZ § 32-2(a)). He argues that the court erred in denying his motion to suppress, because he had a reasonable expectation of privacy in his trauma room located in the emergency department of a hospital. He also contends that his conspiracy conviction and one of his perjury convictions should be vacated. For the reasons below, we affirm the court's denial of defendant's motion to suppress and vacate one of defendant's perjury convictions and the conspiracy to commit aggravated discharge ∘ ꞡ firearm conviction.

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112 I. BACKGROUND

T| 3 In the early morning of October 24, 2016, a shooting occurred on the 1900 block of Shomaker Drive in Murphysboro, Illinois, which resulted in the death of Detrick Rogers. Defendant sustained a gunshot injury during the incident. At a grand jury proceeding regarding the murder of Rogers, defendant denied knowing how he was shot or who fired the gun. After police discovered evidence implicating defendant in the shooting that resulted in the death of Rogers, the State charged defendant with two counts of perjury (A/). Roughly a month later, on April 12,2017, defendant was also charged, by indictment, with three counts of first degree murder *(id.* § 9-l(a)(l), (2), (3)), one count aggravated discharge of a firearm *(id.* § 24-1.2(a)(1)), and conspiracy to commit aggravated discharge of a firearm *(id.* §§ 8-2, 24-1.2(a)(1)), in that defendant, while acting together and in concert with others, discharged a firearm in the direction of Rogers, on October 24, 2016, which resulted in Rogers's death.

114 Defense counsel filed motion to suppress clothing, arguing that police violated defendant's fourth amendment right when they—without a warrant, consent, or meeting the plain view doctrine—seized defendant's clothing while defendant was in an emergency department trauma room at St. Joseph Memorial Hospital. Thereafter, the court allowed defendant's counsel to withdraw and appointed new counsel.

5 New counsel filed another motion to suppress defendant's clothing. The motion alleged that the officers did not have a warrant, defendant did not give consent, the clothing was not in plain view, and the seizure was not incident to arrest.

6 At the motion to suppress hearing, the emergency room nurse that treated defendant, Janet Womick, testified. She averred that defendant presented to the emergency room at St. Joseph Memorial Hospital with a gunshot wound to his left thigh close to his groin. Immediately after

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arriving, defendant was taken to a trauma room in the emergency department and triaged. After counsel refreshed Womick's memory with defendant's chart and her notes, she testified that defendant's triage began at 1:44 a.m., and she administered morphine at 3 a.m. and 3:30 a.m. Defendant told Womick that he was outside with his friend trying to find a ride and borrowed someone's phone when he heard shots and dropped to the ground. Defendant also informed her that he realized he was bleeding from his leg when he stood up.

7 Womick remembered that she bagged defendant's pants and underwear in a clear bag because they were bloody. Womick testified that the presence of blood was apparent when you looked at the bag. She placed the bag and defendant's shirt on the counter to the right of the door. She explained that the room was about 8 feet by 10 feet. The counter abutted the door. The bed, counter, and everything else in the room was observable from the door.

T| 8 Womick testified that two officers came into the triage room and told defendant that they were going to need his stuff and defendant "was very cooperative with the police." She could not remember the exact exchange but remembered defendant "was extremely cooperative the entire time he was there." When counsel asked if Womick remembered defendant specifically agreeing to the police taking his clothing, she answered, "My documentation says that I do, therefore, I would have to say that I did witness that."

119 Womick's notes revealed that, at 1:50 a.m., police detective was speaking with the patient. At 2 a.m., two additional officers arrived, spoke with defendant, and requested to see defendant's clothing, and patient agreed. The note further indicated "tell patient taking clothing patient shakes head in agreement." A note entered at 3:15 a.m. indicated that police bagged and took defendant's clothing and "[patient] and [patient's] family aware that police took custody of clothing shoes/socks sweatshirt, boxer briefs, [and] camo sweat pants." At 3:30 a.m. defendant's

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mother was at his bedside when defendant was transferred to another hospital. Police were following defendant to the other medical facility with his clothing bagged as evidence.

H 10 On cross-examination, Womick stated that immediately prior to defendant's arrival, she received a call that an ambulance was bringing a gunshot wound victim, and the ambulance was expected to arrive in four to six minutes. When the doors of the hospital opened, she expected an ambulance, but instead, it was defendant. The other victim arrived two minutes after defendant.

11 Womick stated that hospital personnel are mandated to notify the police when a gunshot victim presents to the hospital. However, they did not call the police because they were notified that the police were already en route. Womick testified that the police did not exhibit any pressure or intimidation. She also believed defendant had no difficulty communicating.

II 12 Defense next called Detective Chris Liggett. He averred that he was required to respond to

hospital s call informing him that a gunshot victim presented to the hospital. Upon arriving at the hospital, Detective Liggett met with Detective Corey Etherton, who was already speaking with defendant in the emergency department trauma room. Defendant, Detective Etherton, a nurse, and he were the only people in defendant's room. Defendant told the detectives that he was outside trying to use a telephone, heard some shots, realized he was shot, and had Jacie Marble take him to the hospital.

13 Detective Liggett described defendant's room as about half the size of a jail cell with one bed, one patient, a bunch of medical equipment, and a kitchen counter with a sink in it that was against the door. He stated that the counter was roughly three feet, or maybe less, from the bed.

14 While the detectives were asking defendant about the circumstances that resulted in his gunshot wound, Detective Liggett noticed a bag containing bloody pants on a countertop that was behind him. He could not remember the exact conversation but testified that either Detective

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Etherton or he asked defendant something like "Are these your clothes?", "Do you mind if we have a look?", and "Is it all right if we take these as evidence and see what we can find out from them?" Detective Liggett averred that defendant answered affirmatively to each question. He stated that defendant's only real issue was with his tennis shoes because someone bought them for him, and he was concerned about how quickly he would get his shoes back. Despite his concern, defendant at no point stated they could not take his shoes or any of his other clothing. Detective Liggett could not remember if defendant's mother was in the room at that time but did not believe she was there.

5| 15 Detective Liggett testified that defendant seemed to communicate effectively, was not confused, and overall cooperated. He stated that defendant was clear when he told him that they could take his clothes and there was no question in his mind that defendant was allowing them to look at his clothes. He averred that they try to always take the clothing from the gunshot victim. He further testified that he did not use any coercive police tactics during his communication with defendant.

5116 Detective Liggett confirmed that he did not write a report, but Detective Etherton did. Counsel refreshed Detective Liggett's memory with Detective Etherton's report, and Detective Liggett testified that there was no indication in the report that the detectives obtained consent to seize defendant's clothing.

5[17 The defense's last witness was defendant's mother, Patrice Turner (Patrice). After defendant's aunt informed Patrice that defendant had been shot, she went to the hospital. Upon arriving, Patrice saw officers exiting the emergency room doors. She was not allowed to immediately go back to defendant's room but had to sit in the waiting room for about an hour before she could see defendant. Patrice averred that officers were never in the room while she was

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there; it was only defendant, a nurse, and her. She stated she was only in defendant's room for 20 to 30 minutes because they were getting ready to transfer him. She did not see any of defendant's clothing in the room and did not remember seeing any bag with defendant's clothing on the countertop.

II18 The State argued that—at this point—defendant failed to make a *prima facie* showing that the seizure of his clothes was illegal, but it called Detective Etherton to testify so the court had full record. Detective Etherton testified that he responded to a call informing him of a shooting with two victims and went to St. Joseph Memorial Hospital's emergency department. Detective Etherton spoke with defendant in his treatment room. He determined defendant had been shot in the left thigh and asked defendant what led him to be shot. Defendant told Detective Etherton that he was walking around using a phone to find a ride and heard some shots. Defendant further stated that he believed he was shot, and when the shots stopped, he had his friend, Marble, take him to the hospital.

19 Detective Etherton explained that once you enter the outside exit doors of the hospital, you turn right into the main emergency department, and the emergency department main desk is there. He stated that defendant was in the second or third treatment room on the left beyond the main desk. Detective Etherton described the treatment room as small containing a bed, all kinds of medical equipment, and a counter with a sink to the right of the door.

T| 20 Detective Etherton testified that he observed clothing on the countertop as soon as he walked in the treatment room. He saw a pair of pants in a clear plastic bag, a shirt, and a pair of shoes. He stated that pants were a camouflage cargo-style and had blood on them. Defendant stated that this clothing was what he wore when he was shot. Detective Etherton could not remember if Detective Liggett or he asked defendant, "Are these your clothes? Do you care if we take a look?",

but he knew that defendant responded, "yes, they're my clothes" and "sure", respectively. He recalled that Detective Liggett then asked defendant if they could take his clothing, and defendant indicated yes. Detective Etherton stated that defendant's only concern was about getting his shoes back, but the concern did not rise to a level of defendant stating they could not take the shoes. Defendant was just concerned about when he would get them back. Detective Etherton averred that it was common to collect clothing from gunshot wound victims because it was a valuable source of evidence including DNA and gunshot residue testing.

21 Detective Etherton testified that defendant appeared to be in pain but was never confused and able to communicate clearly. He estimated that he was there for about 30 to 45 minutes before defendant was transported to another hospital. He also stated that Patrice was not in the room.

22 Defense counsel argued that there were inconsistencies between the detectives' testimonies and the nurse's notes. He further contended the failure to note consent in the police report was concerning. Counsel further argued that even if consent was given, it was provided after morphine was administered and defendant did not have capacity to consent. Finally, counsel asserted that even if the clothing was in plain sight, the indescribable alleged stain inside of a bag on dark camo cargo pants could not be determined by the detectives.

T| 23 The State, relying on *People v. Hillsman,* 362 Ill. App. 3d 623 (2005), argued that defendant did not have an expectation of privacy in his patient room because the police were required to be there pursuant to section 3.2 of the Criminal Identification Act (20 ILCS 2630/3.2 (West 2016)). The State also argued that based on all the testimony that the bloody clothing was observable as soon as you walked in the room, the detectives legally took the clothes under the plain view exception to the warrant requirement. The State also argued that there was overt, undisputed evidence that defendant consented to the police taking the clothing and there was no

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evidence that defendant was administered morphine prior to defendant consenting to the police's request to take his clothing.

24 On January 26, 2018, the court denied defendant's motion to suppress his clothing. The court found that defendant's clothing was in plain view when law enforcement entered the trauma room, and the officer could view the clothing items upon entry into the room. During this time, defendant was compliant and cooperative. It further found after law enforcement asked for permission to take the clothing, defendant consented. The court held that while hospital staff administered pain medication to defendant, he "did not appear to be under the influence to an extent where his consent was not voluntarily, understandingly and knowingly given."

K 25 Following a four-day bench trial, the court found defendant guilty of two counts of first degree murder, aggravated discharge of a firearm, and conspiracy to commit aggravated discharge of a firearm. The third count of first degree murder was abandoned. It also found defendant guilty of both counts of perjury.

T| 26 On January 18, 2019, defendant moved for a new trial. The motion alleged the court erred in denying his motion to suppress his clothing because defendant did not consent to law enforcement entering and searching his hospital room and exigent circumstance or exceptions did not apply. The motion—relying on *People v. Gill.* 2018 IL App (3d) 150594—argued that defendant had a reasonable expectation of privacy in his hospital room and the State failed to establish an exception to the search warrant requirement. Because law enforcement did not view defendant's clothing until after entering defendant's hospital room, they did not view the evidence from a place where they had a legal justification for being and any alleged consent was invalid.

T[27 At the hearing on the motion for a new trial, defense counsel noted that *Gill*—which was filed late in 2018—provided support that defendant had a reasonable expectation of privacy in his

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treatment room. He argued that the area was enclosed by four walls, and there was no opportunity for the public to come in. Because the detectives were illegally in the room, the plain view exception to the warrant requirement did not apply where the detectives saw the clothing while illegally present in the room.

H 28 The court denied defendant's motion for a new trial. It sentenced defendant to 29 years' imprisonment for first degree murder, 8 years for aggravated discharge of a firearm, 6 years for conspiracy to commit aggravated discharge of a firearm, and 3 years for each perjury conviction. The court ordered the aggravated discharge of firearm sentence to be served consecutively to the murder sentence and the sentences for conspiracy and perjury to run concurrently with the other sentences.

29 Upon defendant's motion to reconsider, the court reduced his first degree murder sentence to 25 years' imprisonment and his aggravated discharge of a firearm sentence to 5 years. The other sentences remained unchanged. Defendant timely appealed.

H 30 II. ANALYSIS

31 On appeal, defendant challenges the court's denial of his motion to suppress his clothing seized in the trauma room of the hospital. He also asserts that his conspiracy conviction and one of his perjury convictions should be vacated. We address each issue in turn.

32 A. Motion to Suppress Clothing

33 "When a defendant files a motion to suppress evidence, he bears the burden of proof at hearing on that motion." *People v. Brooks*. 2017 IL 121413, II 22. "A defendant must make *prima facie* case that the evidence was obtained by an illegal search or seizure." *Id.* "A*prima facie* showing means that the defendant has the primary responsibility for establishing the factual and legal bases for the motion to suppress." *Id.* "If a defendant makes a *prima facie* case, the burden

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shifts to the State to present evidence to counter the defendant's*prima facie* case." *Id.* "However, the ultimate burden of proof remains with the defendant." *Id.*

5| 34 A ruling on a motion to suppress involves mixed questions of fact and law. See *People v. Aljohani.* 2022 IL 127037, 5[28. We give deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *Id.* The ultimate determination of suppression, however, is a legal question that we review *de novo. Id.*

3 5 The fourth amendment of the United States Constitution guarantees citizens the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV. Generally, reasonableness under the fourth amendment requires a warrant supported by probable cause. *People v. Love.* 199 Ill. 2d 269, 275 (2002). However, there are "a few specifically established and well-delineated exceptions" to the warrant requirement. *Katz v. United States.* 389 U.S. 347, 357 (1967).

5| 36 The trial court here relied on two such exceptions—consent and plain view—to determine the seizure of the defendant's clothing was constitutional. Under the consent exception, police may conduct warrantless search when they obtain voluntary consent from whom the fourth amendment protects. *People v. Hayes.* 2018 IL App (5th) 140223, 5f 28. Under the plain view doctrine, police may [illegible] evidence of a crime without a warrant when (1) the officer is lawfully located in a place from which the evidence could be plainly viewed, (2) the incriminating character of the evidence is immediately apparent, and (3) the officer has lawful access to the evidence itself. *People v. McCavitt.* 2021 IL 125550, 51 111. Important to this case, both exceptions apply only when the police did not violate the fourth amendment in arriving at the place that they obtained consent or viewed the evidence. See *People v. Patrick.* 93 Ill. App. 3d 830, 833 (1981).

5) 37 On appeal, defendant does not dispute the trial court's determination that, once in the trauma room, defendant provided police voluntary consent to seize his clothing and the bloody

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clothing was in plain view. Rather, he argues that police violated his fourth amendment right because he had a reasonable expectation of privacy in his trauma room and police failed to secure warrant to search the room. Because police failed to obtain a warrant, the plain view of the clothes and defendant's consent after police entered the room did not justify the seizure.

38 We note that defendant did not argue that he had a reasonable expectation of privacy in the trauma room at the suppression hearing and raised it for the first time in his motion for a new trial. Under these circumstances, a defendant is usually subjected to forfeiture of the argument. See *People v. Brengettsy,* 25 Ill. 2d 228, 232 (1962) (an objection to evidence based upon a specific ground cannot be advanced for the first time in a motion for a new trial); *Ono v. Chicago Park District,* 235 Ill. App. 3d 383, 392 (1992). However, "[t]hc doctrine of forfeiture applies to the State as well as to the defendant and the State may forfeit an argument that the defendant forfeited an issue by not properly preserving it for review." *People v. Lucas,* 231 Ill. 2d 169, 175 (2008). The State here neither raised a forfeiture argument at the motion for a new trial hearing nor argues forfeiture on appeal.

39 Moreover, the purpose of the forfeiture is to ensure the trial court has an opportunity to correct any errors prior to appeal. *People v. Denson,* 2014 IL 116231, 13. Such purpose was achieved here where the State presented its argument regarding this issue at the suppression hearing and reiterated it at the motion for a new trial hearing, defense counsel presented its argument at the motion for a new trial, and the trial court decided the issue on the merits at the motion for new trial hearing. As such, we address the merits of defendant's contentions on appeal.

40 There are two tracks of fourth amendment jurisprudence that are complementary and overlapping: a property-based approach and a privacy-based approach. *People v. Lindsey,* 2020 IL 124289, 5| 17. The former is recognized by violations onto a person's property *(id.* (citing

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Florida v. Jardines, 569 U.S. 1, 5 (2013))); the latter involves a person's societally recognized privacy *(id.* (citing *Jardines,* 569 U.S. at 12 (Kagan, J., concurring, joined by Ginsburg and Sotomayor, JJ.))). Here, given the facts and arguments, our review is limited to the privacy-based approach.

41 Under the privacy-based approach, the fourth amendment protects a person only to the extent that the person has a subjective expectation of privacy in the area searched that society recognizes as reasonable. *People v. Pitman,* 211 Ill. 2d 502, 514 (2004). "Whether one has a legitimate expectation of privacy in an area searched is measured by an objective standard drawn from common experience." *People v. Rosenberg,* 213 Ill. 2d 69, 78 (2004). The burden of establishing a legitimate expectation of privacy lays with defendant. *Id.*

TJ 42 We resolve whether defendant has a legitimate expectation of privacy in light of the totality of the circumstances of the particular case. *People v. Johnson,* 114 Ill. 2d 170, 192 (1986). There is no bright-line rule. *McCavitt,* 2021 IL 125550, 1)60. The Illinois Supreme Court provides guidance by stating that courts should consider whether defendant (1) owned the area searched, (2) was legitimately present in the area, (3) had a possessory interest in the area, (4) used the area before, (5) had the ability to control or exclude others from the area, and (6) had a subjective expectation of privacy in the area. *Johnson,* 114 Ill. 2d at 191-92.

T| 43 The United States Supreme Court has identified other factors such as " 'the intention of the Framers of the Fourth Amendment, the uses to which the individual has put a location, and our societal understanding that certain areas deserve the most scrupulous protection from government invasion.' " *O'Connor v. Ortega,* 480 U.S. 709, 715 (1987) (quoting *Oliver v. United States,* 466 U.S. 170, 178 (1984)). While warrantless entry into one's home is the primary evil to which the fourth amendment's language is directed—based on the above factors—the United States Supreme

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Court has found legitimate expectation of privacy in another's residence for overnight guests *(Minnesota v. Olson.* 495 U.S. 91, 99-100 (1990)), hotel rooms for its occupants *{Stoner v. California.* 376 U.S. 483, 490 (1964)), and employees' workplaces *{O'Connor.* 480 U.S. at 716).

5| 44 Defendant contends that *Gill.* 2018 IL App (3d) 150594,5[5I 93-94, which held a person has reasonable expectation of privacy in his private, single-occupancy room on the seventh floor of hospital, is directly on point. *Gill* reasoned that the room had four walls and a door, which alone imply a certain layer of privacy. *Id.* It also explained that the room was likely suitable for longer stays, and defendant likely had some control over visitation. *Id.* The court determined that defendant's subjective expectation of privacy was objectively reasonable based on Illinois laws that regard the importance of privacy and confidentially in a hospital. *Id.* T| 94 (citing 735 ILCS 5/8-802 (West 2016) (codifying doctor-patient privilege); 45 C.F.R. § 160 *etseq.* (2007) (Health Insurance Portability and Accountability Act privacy rule)).

45 *Gill* distinguished itself fromPeqp/e *v. Torres.* 144 Ill. App. 3d 187 (1986), and *Hillsman.* 362 Ill. App. 3d at 633, both of which held there is no reasonable expectation of privacy in hospital emergency rooms. *Torres Hillsman* primarily based their holdings on the fact that Illinois law requires medical personnel to inform authorities of injuries that may result from criminal conduct, concluding that an "obvious consequence of requiring such reports is that police officers will begin their investigations at the medical facility." *Torres.* 144 Ill. App. 3d at 191; 362 Ill. App. 3d at 633. *Torres* additionally reasoned that medical personnel control access to the emergency room and there was no evidence indicating defendant had the authority to permit or deny anyone access to the emergency room. *Torres.* 144 Ill. App. 3d at 190-91.

T| 46 According to *Gill,* emergency rooms (ERs) differ from private rooms in that "ERs are designed for temporary, rather than extended stays." *Gill.* 2018 IL App (3d) 150594,5[92. It further

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noted that *Torres* and *Hillsman* did not explain the nature of the ERs specific surroundings—*i.e.,* whether the ER was an open floor plan or multiple personal rooms—but stated defendant's single occupancy room with a door located on the seventh floor was "a far cry from an ER." *Id* 92-93.

47 The circumstances before us present an intersect of these cases. Like *Torres* and *Hillsman,* the trauma room was located in the emergency department of the hospital. However, like *Gill,* defendant was in a single occupancy room with four walls and a door.

48 The court in *People v. Pearson,* 2021 IL App (2d) 190833, addressed a situation similar to that found here. In *Pearson,* defendant presented to the emergency room with gunshot wounds to both legs. *Id.* 4-5. He was not suspected of committing any crime at that time. *Id.* 4. An officer entered the trauma room where defendant was being treated to question him about his gunshot wounds. *Id.* 6. Knowing the jeans were likely evidence of a crime, one officer inspected them and searched the pockets. *Id.* 7. The search revealed a bag of a controlled substance, which was the basis for defendant's conviction of possession of a controlled substance. *Id.* 7, 14.

49 Defendant challenged the search, arguing the officer violated his reasonable expectation of privacy in the trauma room. *Id.* T| 13. A stipulation by the parties revealed "[t]he trauma room was located in the emergency area of the hospital, which was separated by locked doors from a waiting area." *Id.* Staff had to buzz in anyone who wanted access to the secured area. *Id.* Staff denied access to the evidence technician who returned to the hospital on a later date to photograph and diagram the trauma room. *Id.* The room had four walls, a single bed, and a door that was kept closed while defendant was in the room except for ingress and egress of hospital personnel. *Id.* The trial court found that defendant did not have a reasonable expectation of privacy in the trauma room. *Id.* 11, 13.

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K 50 The Second District reversed the denial of defendant's motion to suppress. Acknowledging that hospitals contain both public and private areas, it characterized patient rooms as private and noted "limits placed on public access to particular areas in a hospital likewise may restrict the authority of police to enter freely." *Id.* 29. It stated that a patient's implied consent for hospital staff to enter "does not equal consent for all to enter." *Id.* (citing *Stoner*. 376 U.S. at 489). It also noted that highly personal activities are conducted at hospitals and that patients are often vulnerable. *Id.* 30. While conceding some might view this vulnerability as undermining any reasonable expectation of privacy, *Pearson* took "the opposite view, that under these circumstances society recognizes as reasonable the right of hospital patients to maintain the little privacy that remains to them." *Id.*

U 51 Applying the pertinent factors, *Pearson* determined that defendant did not have ownership or a possessory interest (first and third factors) in the room but that defendant "was 'legitimately present' in the room as a patient being treated by hospital personnel." *Id.* 36. It also found the fourth factor—prior use of the area—was not clear-cut because the record did not indicate how long defendant had been in the room before police entered it. *Id.*

52 In regard to the fifth factor, *Pearson* concluded defendant had no less ability to exclude others from the room than that seen in *Gill,* as the trauma room was located behind locked doors in an area not accessible to the public. *Id.* | 37. It determined the fact that an evidence technician was denied access to the trauma room was evidence that the general public did not have free access to the area where Pearson's room was located. *Id.* It determined the hospital room was analogous to a hotel room, and on such basis, concluded hospital staff—like hotel staff—could not waive defendant's fourth amendment protections although hospital staff had some level of control over and access to the room. *Id.* 40.

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5| 53 *Pearson* held that defendant's expectation of privacy in the room was one that society is prepared to consider reasonable based on the laws in effect at the time which protect the privacy and confidentiality of medical treatment. *Id.* 138. Such laws include the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d-6 (2012)) and the physician-patient privilege in Illinois (735 ILCS 5/8-802 (West 2016)). *Pearson.* 2021 IL App (2d) 190833, H35.

51 54 The *Pearson* court rejected the argument that section 3.2 of the Criminal Identification Act (20 ILCS 2630/3.2 (West 2016))—which requires medical personnel to notify the authorities of injuries that may have resulted from criminal conduct—authorizes police presence in the trauma room. *Pearson.* 2021 IL App (2d) 190833, 5144. It explained that section 3.2 only requires notification to authorities, not admitting authorities into any area of the hospital. *Id.* The court further reiterated that—even if section 3.2 could be read so broadly—a reasonable expectation of privacy is based on the totality of circumstances and that a statute cannot grant the police authority beyond what is constitutionally permissible by the fourth amendment. *Id.*

5| 55 Upon these considerations, *Pearson* found the defendant's trauma room was comparable to that in *Gill* rather than *Torres* and *Hillsman. Id.* 515149-50. It further noted that *Torres* and *Hillsman* were analytically flawed because—instead of analyzing the appropriate factors to determine whether there was a legitimate expectation of privacy—they generally held any expectation of privacy in an emergency treatment area was *per se* unreasonable. *Id.*

5| 56 Moreover, *Pearson* explained—although *Torres* failed to describe the physical attributes of the emergency room—*Torres* did not involve an individual "treatment space that was shielded from the rest of the emergency area." *Id.* 5149. The *Pearson* court concluded "the distinction between the undescribed general emergency room *** and the relatively private trauma room ***

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is legally significant." *Id. Pearson* found the emergency area at issue was behind locked doors and was arguably less accessible to the public than the treatment room in *Gill. Id.* 39.

57 In considering the above caselaw and legal principles, we do not find defendant had legitimate expectation of privacy in the trauma room. It is undisputed that the second factor is established. Defendant was legitimately present in the trauma room to seek medical treatment for his gunshot wound. However, none of the other factors support finding a reasonable expectation of privacy. Defendant had neither ownership over (first factor) nor a possessory interest (third factor) in the area. He was in the room about 15 minutes before officers arrived, and there was no evidence that defendant had prior use of the trauma room (fourth factor).

T| 58 With respect to the fifth factor—ability to control others' access to the area—there is also no evidence to conclude defendant could exclude persons from the area. Defendant's mother testified that she was excluded from the room until hospital staff allowed her to go back. We find this demonstrates the hospital's control over the area, not defendant's. We also find significant that while defendant may invite guests to the room, the hospital would have the controlling authority on whether defendant's invitees were allowed in the room. Without evidence of defendant's authority to include or exclude others from the trauma room, we find this factor does not support

finding of an ability to control others' access to the area required to evidence a legitimate expectation of privacy. See *Rosenberg*. 213 Ill. 2d at 78 (It is the defendant s burden to establish that he had a legitimate expectation of privacy that was violated by the challenged search.").

T| 59 We further find no evidence of the sixth factor, defendant's subjective expectation of privacy. There is no indication that defendant wanted the trauma room door closed or that defendant requested to have no visitors. By all accounts, defendant voluntarily spoke to and

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cooperated with the officers. The record does not reveal defendant took any steps to proclaim his privacy beyond his presence in the trauma room.

60 Defendant relies on *Gill.* 2018 IL App (3d) 150594, | 85, to argue that this factor was established based on him acting as a typical occupant of the trauma room. However, to support such contention, *Gill* cited *Pitman.* 211 Ill. 2d at 522, a case distinguishable from the one here.

51 61 In *Pitman,* the Illinois Supreme Court determined defendant had a legitimate expectation of privacy in a bam located on a farm owned by his mother. *Id.* The court found defendant had possessory interest in and the ability to control or exclude others from the bam. *Id.* at 521. Then, quoting *Rakas v. Illinois.* 439 U.S. 128, 143 n.12 (1978), the court explained that " 'one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude.' " *Pitman.* 211 Ill. 2d at 521-22. In light of this principle, the court found that defendant need not take steps to affirmatively claim a subjective expectation of privacy and only "must outwardly behave as a typical occupant of the space ***, avoiding anything that might publicly undermine his or her expectation of privacy." *Id.* at 522. It held defendant's legitimate presence, possessory rights, and ability to exclude others—alone—was sufficient to establish a legitimate expectation of privacy. *Id.*

T| 62 *Pitman* does not therefore support the contention that, under every circumstance, a person need only to act as a typical occupant of a space to establish a subjective expectation of privacy in that space. Rather, we read *Pitman* to hold that a person need not take affirmative steps to establish his or her subjective expectation of privacy when such person has a possessory interest in and the ability to exclude others from an area based on the assumption in *Rakas* that one likely has legitimate privacy interest in an area in which they lawfully possess and control.

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63 Defendant here had no possessory interest in the area, and there is no evidence that defendant had the ability to exclude others. It therefore cannot be assumed that defendant likely had a legitimate expectation of privacy in the trauma room, and *Pitman* is inapplicable. See *Lindsey.* 2020 IL 124289,142 (although defendant was typical hotel occupant, Illinois Supreme Court found no evidence of subjective expectation of privacy in hotel's alcove).

64 Looking beyond the factors and at the totality of the circumstances, we do not find the fact that defendant was in a room with four walls and a door bears significant weight in our analysis. We first note that, unlike *Pearson,* there was no evidence as to whether the door of defendant's trauma room was open or closed. Nor was there any evidence that defendant's room was behind a locked door precluding entry of the public.

65 More importantly, a structure s boundaries have no significance standing alone. *City of Champaign v. Torres.* 214 Til. 2d 234, 246 (2005). It is the reason a person is located within a structure or the use of that structure that is the significant consideration. See *Minnesota v. Carter.* 525 U.S. 83, 90 (1998) ("an overnight guest in a home may claim the protection of the Fourth Amendment, but one who is merely present with the consent of the householder may not"); *Torres.* 214 Ill. 2d at 245-46 (a party guest has no reasonable expectation of privacy). Compare *Stoner.* 376 U.S. at 490 ("[n]o less than a tenant of a house, or the occupant of a room in a boarding house [citation], a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures"), with *United States v. Agapito.* 620 F.2d 324, 334 (2d Cir. 1980) (casual visitor of hotel room has no legitimate expectation of privacy in hotel room).

66 In light of this consideration, we do not find a patient in a trauma room comparable to an overnight guest, hotel occupant, or the patient in *Gill.* Staying overnight in another's home or hotel involves similar attributes of a personal residence, in that it provides safety and security of one's

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belongings as they sleep. See *Olson.* 495 U.S. at 98-99. An overnight guest "seeks shelter in another's home precisely because it provides him with privacy." *Id.* at 99. On the contrary, a trauma room is a temporary placement where medical staff can assess injuries and provide initial medical care until a more permanent place becomes available or a patient is discharged. See generally *Buchanan v. State.* 432 So. 2d 147, 148 (Fla. Dist. Ct. App. 1983) (defendant "could have expected to remain only a few hours at most [in emergency room]"). Unlike hotels or staying overnight in another's home, "people are constantly coming and going from the [trauma] room to provide medical services." *United States v. Mattox.* 27 F.4th 668, 674 (8th Cir. 2022); *Commonwealth v. Welch.* 167 N.E.3d 1201, 1212 (Mass. 2021); *Matthews v. Commonwealth.* 517 S.E.2d 263, 264 (Va. Ct. App. 1999); *Buchanan.* 432 So. 2d at 148. A trauma room simply does not have the same indicia of a residence. *Mattox.* 27 F.4th at 674 ("Being admitted to the hospital for a gunshot wound does not serve the same valuable societal function [as an overnight guest].").

67 Defendant here did not seek refuge of the trauma room for an extended period of privacy. Rather, he remained in the room for roughly two hours for initial assessment and care of his injury before being transferred to another hospital. Defendant's transitory presence in the trauma room is insufficient to establish a legitimate expectation of privacy. *People v. Slavin.* 2011 IL App (2d) 100764, U *US. People v. Brown.* 277 Ill. App. 3d 989, 994-95 (1996); see *Matthews.* 517 S.E.2d at 264 (no reasonable expectation of privacy in emergency department treatment room where defendant was not assigned private room, door to room was open, and his hospital stay lasted five hours).

T| 68 We also find that neither the laws concerning medical privacy nor the law concerning notification to authorities of injuries that likely resulted from a crime control the outcome here.

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We agree with *Pearson* that a statute cannot grant police authority beyond that allowed by the fourth amendment. *E.g.. Payton v. New York.* 445 U.S. 573 (1980) (New York statute allowing warrantless enter to a private residence to make felony arrest violated fourth amendment); *Torres v. Puerto Rico.* 442 U.S. 465 (1979) (Puerto Rico statute allowing police to search the luggage of any person arriving in Puerto Rico from the United States violated fourth amendment). However,

statute also does not determine the reach of the fourth amendment protections. *California v. Greenwood.* 486 U.S. 35, 43-44 (1988). The inquiry is whether—considering the totality of the circumstances—society accepts the expectation of privacy as reasonable. *Rosenberg.* 213 Ill. 2d at 78.

T| 69 Although not determinative, we acknowledge that laws are one source to analyze in determining what expectations of privacy society accepts as reasonable. See *United States v. Miller.* 425 U.S. 435, 442-43 (1976); see generally *Tennessee v. Garner.* 471 U.S. 1, 15-16 (1985) (considered the rules of individual jurisdictions to determine reasonableness of police procedures under the fourth amendment). Laws express public policy. *American Access Casualty Co. v. Reyes.* 2012 IL App (2d) 120296, 8, *afFd.* 2013 IL 115601, 8. In construing laws, we strive to give effect to the intent of the legislature and view the law in light of other relevant statutory provisions. *McDonald v. Symphony Bronzeville Park, LLC.* 2022 IL 126511, 17. We therefore find—in determining society's view of reasonableness—viewing all statutes relevant to disclosure of medical as a whole embodies the public policy of this State.

TJ 70 HIP A A and the patient-doctor privilege indicate significant privacy interests in medical care; however, several exceptions to HIPAA and the patient-doctor privilege allow for the disclosure of protected medical information. See 45 C.F.R. § 164.512 (2016) (listing exceptions to the nondisclosure of private medical information under HIPAA); 735 ILCS 5/8-802 (West 2016)

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(listing 14 exceptions to the physician-patient privilege). These exceptions include, among others, reporting of suspected child abuse or neglect (325 ILCS 5/4(a)(l), (g) (West 2016)), suspected abuse or neglect of persons over 60 years old living in a non-licensed facility or adults with disabilities (320 ILCS 20/4 (West 2016)), when a person poses a clear danger to himself or others (430 ILCS 65/8.1(d) (West 2016)), and that in this case—an injury likely resulting from criminal activity *{People v. Kucharski.* 346 Ill. App. 3d 655, 660 (2004); see 20 ILCS 2630/3.2 (West 2016); 45 C.F.R. § 164.512(f)(l)(i) (2016)). Adhering to a common principle of statutory construction, these more specific exceptions control over the general provisions of the physician-patient privilege. *E.g.. Kucharski.* 346 Ill. App. 3d at 660; see *People exrel. Madigan v. Burge.* 2014 IL 115635,131 ("[IJt is a commonplace of statutory construction that when two conflicting statutes cover the same subject, the specific governs the general." (Internal quotation marks omitted.)). In our view, these exceptions support a diminished expectation of privacy in medical information. *Mattox.* 27 F.4th at 674 (law requiring reporting of gunshot wounds diminishes privacy interest in medical care).

TI 71 Considering the totality of the circumstances of this case, we conclude defendant did not establish a legitimate expectation of privacy in his trauma room. Federal caselaw and opinions from several of our sister states support this conclusion. See *id.* (defendant had no reasonable expectation of privacy in hospital room); *Welch.* 167 N.E.3d at 1212 (defendant had no reasonable expectation of privacy in ICU room); *State v. Rheaume.* 2005 VT 106, 10, 889 A.2d 711 (defendant had no reasonable expectation of privacy in hospital's emergency treatment room); *Matthews.* 517 S.E.2d at 264 (same); *State v. Thompson.* 585 N.W.2d 905, 911 (Wis. Ct. App. 1998) (defendant had no reasonable expectation of privacy in emergency room or surgery room); IFagzzer *v. Hedrick.* 383 S.E.2d 286, 291-92 (W. Va. 1989) (defendant had no reasonable

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expectation of privacy in a curtained off area of an emergency room); *Buchanan.* 432 So. 2d at 148 (same); *State v. Cromb.* 185 P.3d 1120, 1126-27 (Or. Ct. App. 2008) (same); *State v. Lomax.* 852 N.W.2d 502, 506-07 (Iowa Ct. App. 2014) (defendant had no reasonable expectation of privacy in emergency room). Accordingly, the court did not err in denying defendant's motion to suppress.

72 B. Inchoate Offense

T| 73 Next, defendant contends, and the State concedes, that his conviction for conspiracy to commit aggravated discharge of a firearm must be vacated. Section 8-5 of the Criminal Code of 2012 provides, "[n]o person shall be convicted of both the inchoate and the principal offense." 720 ILCS 5/8-5 (West 2016). "[A] judgment of conviction and sentence may be entered on either the inchoate *or* the principal offense, but not both." (Emphasis in original.) *People v. Gomez.* 286 Ill. App. 3d 232, 235 (1997).

74 Defendant here was convicted and sentenced for aggravated discharge of a firearm and conspiracy to commit aggravated discharge of a firearm, both of which stemmed from the shooting that resulted in the death of Detrick Rogers. Conspiracy is an inchoate offense. *People v. Allen.* 221 Ill. App. 3d 737, 741 (1991); see also *People v. Johnson.* 250 Ill. App. 3d 887, 905 (1993). Accordingly, we vacate defendant's conviction and sentence of conspiracy to commit aggravated discharge of a firearm. See *Johnson.* 250 111. App. 3d at 905 ("Where defendant has been convicted of both the principal and inchoate offenses, the proper procedure is to vacate the conviction and sentences with respect to the inchoate offenses.").

75 C. Perjury Conviction

76 Lastly, defendant argues that one of his perjury convictions should be vacated because both perjury charges were grounded in the same material issue—how defendant was shot on October

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24, 2016. Defendant's argument invokes the one-act, one-crime doctrine in that his two separate untruthful statements made in one proceeding and concerning the same material issue do not constitute two separate acts to which the State can charge perjury. Defendant forfeited this issue by failing to raise it in a postsentencing hearing motion. However, because an alleged violation of the one-act, one-crime doctrine presents the risk of a surplus conviction and sentence, such violation satisfies second-prong plain error. *People v. Schaefer.* 2020 IL App (5th) 180461, | 24. We will therefore address it.

II 77 Under the one-act, one-crime doctrine, defendant cannot be convicted for multiple offenses that are based on the same physical act. *Id.* 25. An "act" is "any overt or outward manifestation which will support a different offense." *People v. King.* 66 Ill. 2d 551, 566 (1977). "Two separate acts *** do not become one common act solely by virtue of being proximate in time." *People v. Coats.* 2018 TL 121926, U 26. To determine whether an overt manifestation supported multiple counts of the same offense, we must determine the legislative intent behind the perjury statute and whether the evidence supports multiple violations of the statute. *Id.* 24. We review issues concerning statutory interpretation and whether a conviction must be vacated under the one-act, one-crime doctrine *de novo. People v. Ward.* 326 Ill. App. 3d 897, 902 (2002); *People v. Johnson. 231* Ill. 2d 81, 97 (2010).

T| 78 We find *People v. Guppy.* 30 Ill. App. 3d 489 (1975), provides a sound analysis of the Illinois perjury statute. The Criminal Code of 2012 defines perjury as: "A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes a false statement, material to the issue or point in question, knowing the statement is false." 720 ILCS 5/32-2(a) (West 2016).

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79 Tn *Guppy.,* the court found the statute's reference to [44] [4]a false statement, material to the issue or point m question' " significant. *Guppy.* 30 Ill. App. 3d at 492. The Third District found this language "plainly means that each false statement concerning a different issue or point under inquiry is a separate perjurious act and hence a separate offense." *Id.* Relying on federal and New York caselaw, the court agreed that the State should not be allowed to charge multiple perjury counts where a defendant may have repeatedly lied but in response to repeated questions or a singlo inquiry that the State fractured into multiple questions. *Id.* at 493-94. It held that separate counts of perjury are "proper to the extent that each count alleged a false statement in answer to a question concerning a different fact or point in question." *Id.* at 494-95.

T| 80 Here, it is undisputed that both counts of perjury concerned questions regarding how defendant was shot on October 24, 2016. The first count of perjury was based on the following exchange at the grand jury proceeding:

> "[PROSECUTOR]: Okay? First of all, do you have any idea who shot you?
>
> [DEFENDANT]: No, sir, not at all."

The second count of perjury was based on the following exchange:

> "[PROSECUTOR]: Okay. Tell everybody what you saw.
>
> [DEFENDANT]: All I know is, I'm walking down the street, talking on the phone. I really wasn't paying too much attention to nothing what was going on, 'cause I was trying to log into my Facebook, so I really—my face was basically down here the whole time. I'm just walking up and down the street as I do plenty of nights. *** I'm talking, I mean texting on the phone or whatever. And all I hear is just a whole bunch of gunshots started going off, multiple gunshots. You know, I didn't think too much of it, you know. All I know is I turned, and I just started

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running, you know. And I ran. And by the time I got to the house, I feel my pants, you know what I'm saying, I feel a leakage coming out from my leg, you know."

81 While there is less than a page redacted between both questions, it is clear that "[t]ell everybody what you saw," the question concerning the second count of perjury, intended to extract an explanation of defendant's general denial of knowing who or what caused his injury, which was the basis of the first count of perjury. Moreover, the indictment asserted the same reason as to why defendant's answers for both counts amounted to perjury, Ze., defendant falsely denied being the source of his own injury when involved in a shooting that resulted in the death of Detrick Rogers. The issue or point in question—defendant's knowledge of how he was shot on October 24,2016—remained the same. The State concedes both counts were premised on essentially the same question on the same point at issue. Accordingly, we vacate one of defendant's perjury convictions and sentences.

1182 III. CONCLUSION

II 83 The court properly denied defendant's motion to suppress because he did not have legitimate expectation of privacy in the emergency department trauma room. However, his conviction for conspiracy to commit aggravated discharge of a firearm cannot stand where he was convicted of the principal offense of aggravated discharge of a firearm, and one of defendant's perjury convictions violates the one-act, one-crime doctrine. We therefore vacate one of defendant's perjury convictions and his conspiracy conviction and affirm the remaining judgment.

T| 84 Affirmed in part and vacated in part.

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People v. Turner, 2022 IL App (5th) 190329

Decision Under Review:	Appeal from the Circuit Court of Jackson County, Nos. 16-CF-466, 17-CF-104; the Hon. Ralph R. Bloodworth III, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Ellen J. Curry, and Jennifer M. Lassy, of State Appellate Defender's Office, of Mt. Vernon, for appellant.
Attorneys for Appellee:	Joseph A. Cervantez, State's Attorney, of Murphysboro (Patrick Delfino, Patrick D. Daly, and Max C. Miller, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

No. 5-19-0329 & 5-19-0330 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

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John J. Flood, Clerk of the Court
APPELLATE COURT 5TH DISTRICT

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court of
	) the First Judicial Circuit,
	) Jackson County, Illinois
Plaintiff-Appellee,	)
	) 16-CF-466 & 17-CF-104
-vs-	)
	)
CORTEZ TURNER,	) Honorable
	) Ralph R. Bloodworth, III,
Defendant-Appellant.	) Judge Presiding.

PETITION FOR REHEARING FOR DEFENDANT-APPELLANT

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ARGUMENT

This Court should grant rehearing because the Court misconstrued the law when determining whether Mr. Turner had a reasonable expectation of privacy in his trauma room and because this Court's decision is irreconcilable with the Second District Appellate court's decision in *People v. Pearson.*

This Court held that Mr. Turner did not have a reasonable expectation of privacy in his trauma room and, consequently, that the trial court did not err in denying his motion to suppress. *People v. Turner,* 2022 IL App (5th) 190329,

71. This Court's finding was in error because this court misconstrued the relevant law.[1] Additionally, this Court's decision is irreconcilable with the decision in *People v. Pearson,* from the Second District Appellate Court.

The Illinois Supreme Court has explained that six factors should be examined when determining whether a defendant has a reasonable expectation of privacy. *People v. Johnson,* 114 Ill. 2d 170, 191-92 (1986); *People v. Pitman,* 211 Ill. 2d 502, 520-21 (2004). In *Pearson,* the appellate court considered the factors discussed in *Johnson* and *Pitman,* held the defendant had a reasonable expectation of privacy in his trauma room, and found that the "distinction

[1] This Court vacated one of Mr. Turner's two perjury convictions as well as his conviction for conspiracy to commit aggravated discharge of a firearm. *Turner,* 2022 IL App (5th) 190329, 73-83. Mr. Turner does not challenge this Court's holdings with respect to the vacation of his perjury conviction or the conviction for conspiracy to commit aggravated discharge of a firearm.

between the undescribed general emergency room" and the "relatively private trauma room" like the one Pearson occupied was "legally significant." *People v. Pearson,* 2021 IL App (2d) 190833, T| 49.

Even though *Pearson* was directly on point with Mr. Turner's case, this Court found that the only factor that weighed in finding an expectation of privacy was that Mr. Turner was legitimately present in the trauma room. *Turner,* 2022 IL App (5th) 190329, K 57. This Court misconstrued the *Pitman* factors and this Court's decision is irreconcilable with the decision in *Pearson.*

The first, second, and third factors are whether the defendant has ownership of the area searched, whether he is legitimately present in the area, and whether he has a possessory interest in the area. *Pitman,* 211 Ill. 2d at 520-21. The *Pearson* court found the defendant did not have ownership or a possessory interest in the trauma room he occupied but that he was legitimately present as he was a patient receiving treatment. *Pearson,* 2021 IL App (2d) 190833, I) 36. Similarly, here, Mr. Turner conceded that he did not have ownership or possessory interests in his trauma room. (Op. Br. 37) Just as in *Pearson,* this Court correctly found that Mr. Turner was legitimately present in the trauma room where he sought treatment for his gunshot wound. *Turner,* 2022 IL App (5th) 190329, 57. Thus, Mr. Turner does not challenge this Court's finding with respect to the first, second, and third *Pitman* factors.

The fourth factor considers whether the defendant had prior use of the area searched. *Pitman,* 211 Ill. 2d at 520. The *Pearson* court found that this factor did "not have a clear-cut application" since the record did not show how

long Pearson had been in the trauma room before Officer Misiaszek entered and rummaged through his clothing. *Pearson,* 2021 IL App (2d) 190833, H 36.

However, the reviewing court noted "it was at least long enough for hospital personnel to have removed [Pearson's] clothing and to have begun treating his wounds." *Id.*

This Court erred in applying the fourth factor. This Court, in a conclusory fashion, found that Mr. Turner failed to satisfy this factor, noting that Mr. Turner was in the trauma room for about 15 minutes before police arrived and that there was no evidence he had prior use of the trauma room. *Turner,* 2022 IL App (5th) 190329, 57. However, by the time officers arrived to the trauma room, Mr. Turner's clothing had been removed and placed in bags, he had been placed in a hospital gown, and his wounds had been triaged by the nurse. *Turner,* 2022 IL App (5th) 190329, 6-7. This Court erred in failing to find this factor weighed in favor of finding an expectation of privacy.

Particularly relevant to this factor is the *Pearson* court's urging to courts to find a right to privacy for hospital patients, explaining:

> [A]ny assessment of expectations of privacy in a hospital must take into account the highly personal nature of the usual activity conducted there—medical treatment—as well as the fact that persons in a hospital may be especially vulnerable: ill or in pain, unclothed or garbed only in a flimsy gown, and often lacking their usual capacity to resist intrusion. Some might argue that this vulnerability should undermine any reasonable expectation of privacy, because many of the usual incidents of personal dignity are already sacrificed to the medical process. *We take the opposite view, that under these circumstances society recognizes as reasonable the right of hospital patients to maintain the little privacy that remains to them. Pearson,* 2021 IL App (2d) 190833, I) 30 (emphasis added).

With respect to the fifth factor, the ability to control or exclude others from the use of the property, this Court's decision is simply irreconcilable with *Pearson. See Pearson,* 2021 IL App (2d) 190833, If 37. The *Pearson* court explained that Pearson's trauma room was behind locked doors in an area not open to the general public and that an evidence tech was denied entry to the room by hospital staff. *Id.* The court found there was "no indication that Pearson had any less ability to exclude others from the room than the defendant in *Gill."* *Id.* The *Pearson* court explained, "Thus, the record clearly contains evidence that the police, like the general public, did not have free access to the area where Pearson's room was located." *Id.* The court noted that "Pearson did not take any public actions or otherwise do anything to undermine his expectation of privacy***." *Id.*

The *Pearson* court distinguished a "separate enclosed trauma room with four walls and a door" from open emergency areas in other cases. *Id.,* If 39. The court outright rejected the State s argument that Pearson could not have reasonable expectation of privacy in his trauma room since it was "an area where entry was controlled by others," noting that "our supreme court long ago rejected that argument." *Id.,* 40 *{quotingPeople v. Bankhead,* 27 Ill. 2d 18, 22-23 (1963)).

However, this Court reached the opposite conclusion in Mr. Turner's case. In assessing the fifth factor, the ability to control others' access to the area, this Court acknowledged that Mr. Turner's mother could not access his trauma room until hospital staff allowed her to do so. *Turner,* 2022 IL App (5th) 190329, H 58.

However, this Court found that "this demonstrates the hospital s control over the area, not [Mr. Turner's]." *Id.,* 58. This Court held that without evidence of Mr. Turner's ability to include or exclude others from his trauma room, this Court could not find that he had the ability to control others' access to the area. *Id.* This exact argument was rejected by the *Pearson* court. *See Pearson,* 2021 IL App (2d) 190833, 40.

The *Pearson* court explained that the "undescribed general emergency room in 7bzres"and the "relatively private trauma room" in Pearson's case was legally significant. *Id.,* 49. Although Pearson's "room was located in the emergency area of the hospital, it was a separate room with four walls and door. *Id.* The *Pearson* court explained that this was important because it affects the extent to which a patient could reasonably hope to exclude the gaze or entry of others besides medical personnel." *Id.* Similarly, Mr. Turner's room was a private trauma room, with four walls and a door, and the room contained a single bed with a single patient. Additionally, it was past the emergency room mam desk and could not be accessed by the general public, such as Mr. Turner s mother. (R. 126-27,119-20) Thus, this Court erred m failing to find that the fifth factor weighed in Mr. Turner's favor.

When evaluating the sixth factor, this Court's reasoning was especially problematic. This factor considers whether the defendant had a subjective expectation of privacy in the property. *Pitman,* 211 Ill. 2d at 520-21. The supreme court has explicitly held that defendant need *not* have taken affirmative steps to proclaim his expectation of privacy. *Id.* at 522 (emphasis

added). The supreme court has made clear that "defendant simply must outwardly behave as a typical occupant of the space in which the defendant claims an interest, avoiding anything that might publicly undermine his or her expectation of privacy." *Id. Pearson,* quoting the supreme court, likewise explained that defendant does not have to take affirmative action to demonstrate his subjective expectation of privacy. *See Pearson,* 2021 IL App (2d) 190833, 34 *(quotingPitman,* 211 Ill. 2d at 522).

Even so, this Court required Mr. Turner to have taken an affirmative action demonstrating a subjective expectation of privacy, finding there was "no indication that defendant wanted the trauma room door closed or that defendant requested to have no visitors." *Turner,* 2022 IL App (5th) 190329, TJ 59. This Court explicitly stated, "The record does not reveal defendant took any steps to proclaim his privacy beyond his presence in the trauma room." *Id.* This Court required Mr. Turner to take affirmative action when the supreme court has explicitly held this is not required. Mr. Turner was merely required to act as an occupant typical of the trauma room— which he did.

This Court's finding that Mr. Turner failed to affirmatively demonstrate his subjective expectation of privacy is problematic on a second and equally significant ground; this Court used the officers' testimony that Mr. Turner was cooperative *after* the officers had entered the trauma room to justify their *entrance into the room. See Turner,* 2022 IL App (5th) 190329, 59.

This Court found that a patient in a trauma room was not comparable to an overnight guest, hotel occupant, or the patient in Gill, and this Court found

that Mr. Turner's "transitory presence failed to establish legitimate expectation of privacy. *Turner,* 2022 IL App (5th) 190329, UK 66-67. This Court's ruling is irreconcilable with the *Pearson* decision, and this Court s application of the *Pitman* factors was in error. Accordingly, Mr. Turner respectfully request that this Court grant his petition for rehearing.

CONCLUSION

For the foregoing reasons, Cortez Turner, defendant-appellant, respectfully requests that this Court grant rehearing and reverse Mr. Turner's convictions and remand for a new trial, with his clothing excluded from evidence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this petition conforms to the requirements of Supreme Court Rule 341(a) and 367(a) and (c). The length of this petition, excluding the pages or words contained in the Rule 341(d) cover, the Rule 367(a) certificate of compliance, and the certificate of service, is 8 pages.

/s/ Jennifer M. Lassy
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No. 5-19-0329 & 5-19-0330 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court) of) the First Judicial Circuit,
Plaintiff-Appellee,	) Jackson County, Illinois)
-vs-	) 16-CF-466 & 17-CF-104)
CORTEZ TURNER,	)) Honorable
Defendant-Appellant.	) Ralph R. Bloodworth, III, Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Mr. Patrick D. Daly, Deputy Director, State's Attorneys Appellate Prosecutor, 4114 North Water Tower Place, Suite C, Mt. Vernon, IL 62864, 05dispos@ilsaap.org

Mr. Cortez Turner, Register No. Y36527, Hill Correctional Center, P. O. Box 1700, Galesburg, IL 61402

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 18, 2022, the Petition for Rehearing was filed with the Clerk of the Appellate Court using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, Illinois, with proper postage prepaid.

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5-19-0329

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CORTEZ TURNER, Defendant-Appellant.	Jackson County Trial Court/Agency No.: 16CF466, 17CF104

ORDER

This cause coming on to be heard on defendant-appellant's petition for rehearing and the court being advised in the premises:

IT IS THEREFORE ORDERED that the petition for rehearing is denied.

No. 129208

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- CORTEZ TURNER, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 5-19-0329 & 5-19-0330 (consolidated). There on appeal from the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, No. 16-CF-466 & 17-CF-104. Honorable Ralph R. Bloodworth, III, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 11, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Debra Geggus
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