No. 130585

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. ANZANO P. CHAMBLISS, Defendant-Appellee.	Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0492 There on Appeal from the Circuit Court for the 24th Judicial Circuit, Perry County, Illinois, No. 21 CF 87 The Honorable Jeffrey K. Watson, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE CASE

A Perry County jury convicted defendant of two counts of aggravated battery on a public roadway, C180-81,[1] and the trial court sentenced him to concurrent four-year prison terms, C234, 237. The People appeal from the appellate court's judgment, which reversed defendant's convictions. A1, 8, ¶¶ 1-2, 27, 29. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant waived his claim as to, or in the alternative invited or acquiesced to, any error by the trial court in not conducting a preliminary probable-cause hearing, such that the claim is not reviewable for plain error.

2. Whether, even if reviewable, defendant's claim that the trial court erred by not conducting a preliminary probable-cause hearing does not qualify as second-prong plain error.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On May 29, 2024, this Court allowed leave to appeal.

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[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," to the exhibits as "E__," to the impounded common law record as "CI__," to the impounded exhibits as "EI__," to the sealed common law record as "CS__," to the sealed exhibits as "ES__," and to the appendix as "A__."

STATUTORY PROVISIONS INVOLVED

725 ILCS 5/109-3. Preliminary examination

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

* * *

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

725 ILCS 5/109-3.1. Persons charged with felonies

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

(b) Every person in custody in this State for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand Jury as provided in Section 111-2, within 30 days from the date he or she was taken into custody. Every person released pretrial for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand Jury as provided in Section 111-2, within 60 days from the date he or she was arrested.

The provisions of this paragraph shall not apply in the following situations:

(1) when delay is occasioned by the defendant; or . . .

(3) when a competency examination is ordered by the court; or

(4) when a competency hearing is held . . .

(c) Delay occasioned by the defendant shall temporarily suspend, for the time of the delay, the period within which the preliminary examination must be held . . .

725 ILCS 5/114-1. Motion to dismiss charge

(a) Upon the written motion of the defendant made prior to trial before or after a plea has been entered the court may dismiss the indictment, information or complaint upon any of the following grounds:

* * *

(11) The requirements of Section 109-3.1 have not been complied with.

(b) The court shall require any motion to dismiss to be filed within a reasonable time after the defendant has been arraigned. Any motion not filed within such time or an extension thereof shall not be considered by the court and the grounds therefor, except as to subsections (a)(6) and (a)(8) of this Section, are waived.

* * *

(e) Dismissal of the charge upon the grounds set forth in subsections (a)(4) through (a)(11) of this Section shall not prevent the return of a new indictment or the filing of a new charge, and upon such dismissal the court may order that the defendant be held in custody or, if the defendant had been previously released on pretrial release, that the pretrial release be continued for a specified time pending the return of a new indictment or the filing of a new charge.

STATEMENT OF FACTS

I. Pretrial Proceedings

On October 5, 2021, law enforcement officers arrived at the scene of a roadside fight outside a Shell Liquor Mart in DuQuoin, Illinois. R224-27. Defendant was punching Emily Barnes, as well as Carolyn Spell, who

attempted to intervene. R238-39, 254-55, 290-91. Officers broke up the fight, took statements from the victims, and arrested defendant. R297-99.

On October 8, 2021, the People charged defendant by information with three counts of aggravated battery. C14-15. Counts I and II charged defendant with aggravated battery against Barnes, while Count III charged defendant with aggravated battery against Spell. C14.

Defendant's initial appearance before a judge took place on October 14, 2021. R2-3. At that hearing, the court observed that defendant's counsel, the Perry County public defender, also represented defendant in a pending misdemeanor matter. R3. In the misdemeanor case, the issue of defendant's fitness to stand trial had been raised but not yet resolved, and the court had ordered a fitness evaluation. *Id*. Counsel had represented defendant several times and defendant's fitness to stand trial was often an issue. *Id*. Counsel requested a fitness evaluation in this case as well. *Id*.

The court agreed and stated that it would order a fitness evaluation. R4. Given the need to conduct that evaluation, the court asked defense counsel whether he would agree to postpone defendant's arraignment and "any preliminary hearing" because "raising fitness at this time would push off any need for a prelim." *Id*. Counsel agreed that "given the circumstances [ ] it would be appropriate to delay the arraignment at this time. . . . I wouldn't have any objections to that and I think that's most appropriate under the circumstances." R4-5. Defense counsel further stated his understanding that

"a fitness evaluation would be cause for a delay in setting the prelim" and that "we still have plenty [of] time to schedule a preliminary hearing." R5. The court then entered an order appointing a clinical psychologist, Dr. James Peterson, to conduct a fitness evaluation and continued the case for a fitness hearing. C16.

Following his initial appearance, defendant sent the circuit court several letters in October 2021. *See* CS4-26. Defendant objected that holding a fitness hearing violated his "right not to speak to any [doctor] or officer," CS4, 6, and asked the court to instead "let a jury decide" whether the People's allegations against him had "legal merit," CS8. After Dr. Peterson attempted to speak with defendant on October 25, 2021, defendant wrote additional letters to the court in which he recounted a previous altercation with Dr. Peterson, CS23, and again complained that his right to remain silent was being violated, CS26. In a letter to the court that same day, Dr. Peterson wrote that he had attempted to interview defendant but defendant had refused to speak with him. ES47. Thus, Dr. Peterson could not render an opinion on defendant's fitness to stand trial. *Id*.

Three days later, on October 28, 2021, defendant appeared with counsel, waived formal arraignment, and entered a plea of not guilty. R8-9. The court noted that it had received Dr. Peterson's letter stating that defendant had refused to participate in the fitness evaluation. R9; *see* ES47. Defendant's letters to the court confirmed the court's view that there were

bona fide doubts as to defendant's fitness. R10. While the court discussed with defense counsel how to proceed, defendant interrupted to say that there was "nothing wrong with [his] fitness," R11, reiterated his belief that participating in any fitness evaluation would violate his right to remain silent, and persisted in his refusal to speak with Dr. Peterson, R11-13. After defendant repeatedly interrupted the court and used profane language to address the court, the court ordered defendant removed from the courtroom and continued the case. R13-14.

On November 9, 2021, defendant wrote the court another letter, in which he stated that he never requested to have an attorney represent him. CS27. Defendant also claimed that his mental illness did not excuse the court's delay in moving his case forward, which he viewed as an attempt "to stall and prevent justice to the defendant." CS30.

Defendant next appeared before the court a month later, on December 9, 2021. R16-17. At that time, defense counsel reported that defendant still refused to participate in the court-ordered fitness evaluation and that defendant had asked counsel to withdraw from the case. R17-18. The court stated that it would not consider defendant's request for counsel to withdraw until the fitness issue was resolved. R18. As the court attempted to discuss scheduling matters with defense counsel, defendant repeatedly interrupted the proceedings to interject that he was disabled. R20-23.

The court[2] conducted the next hearing a little more than a month later, on January 13, 2022. R25-26. Defense counsel reported that defendant still refused to speak with any psychologist seeking to evaluate his fitness. R27. The People asserted, and the court agreed, that the court was required to resolve the fitness issue before proceeding to any other aspect of the case. R27-28. The court attempted to explain the necessity of a fitness evaluation, but defendant interrupted to state that his civil rights were being violated. R28-29. Defendant maintained that he was not unfit and refused to speak with any fitness evaluator. R31-32. The court appointed Dr. Daniel Cuneo to evaluate defendant's fitness and continued the case. R32-33; C48. Defense counsel observed that "[w]e have not proceeded with a preliminary hearing yet because . . . the issue of fitness has been unresolved." R33.

At the next hearing, on April 14, 2022, the parties reported that Dr. Cuneo had met with defendant and filed a report opining that defendant was fit to stand trial. R36-38. Defendant agreed that he was fit and stated he did not want a fitness hearing. R38-39. Through counsel, defendant stipulated to the report and to Dr. Cuneo's qualifications, and the court accepted those stipulations. R39. The court found defendant fit. *Id.*

Having resolved the fitness question, the court turned to defendant's requests that counsel be permitted to withdraw. *Id.* Defendant confirmed

[2] Judge Jeffrey Watson replaced Judge Julia Gomric in December 2021, pursuant to the circuit court's internal procedures. *See* R19, 25-26.

that he wanted counsel to withdraw and sought to represent himself. R39-40. The court admonished defendant as to the nature of the charges against him, the possible penalties, his right to appointed counsel, and the challenges inherent in representing himself. R40-42. Defendant confirmed that he understood the admonitions, including his rights and the consequences of proceeding pro se. R41-43. Defendant further stated that he had previously successfully defended himself against Class X felony charges, R41-42, and that he was ready to defend himself in this case and that he had been "ready in January," R43. The court found that defendant had knowingly and voluntarily waived his right to counsel and permitted counsel to withdraw. *Id*.

After defendant then complained that he had not been arraigned, the court arraigned defendant by again summarizing the charges and advising defendant of the possible penalties. R44-45. Defendant interrupted the court as it admonished him and attempted to answer his questions. R46-47. At defendant's request, the court set bond at $50,000. R45-47.

Defendant twice asked the court to proceed to a "[j]ury trial next month." *Id*. Before defendant was removed from the courtroom for his repeated disruptions, he told the court, "I am ready for trial in May." R48-49. The court responded, "We are going to give you [a jury trial in May]." R49.

At a pretrial conference in May, the People advised that they were dismissing Count I and would be filing an amended information to reflect

that dismissal, which they did the following day. R53, 55-56; *see* C121. On May 24, 2022, the court conducted the final pretrial conference, at which the parties discussed discovery issues and introduced testimony related to video surveillance footage of the incident. R73-100. Neither party mentioned or requested a preliminary hearing at either pretrial conference.

II. Trial

Two days later, on May 26, 2022, the case proceeded to a jury trial. The evidence showed that Barnes and Spell were talking outside the Shell Liquor Mart, R236-37, when defendant approached them in an intoxicated and angry state and began yelling that he would soon be going to jail and calling them "bitches and hoes," R237-38, 254. Barnes asked defendant to leave them alone, but defendant refused and spat on Barnes. R238, 254. Defendant then punched Barnes, knocked her down, and continued punching her. R238-39, 254-55. Spell grabbed defendant, and defendant hit Spell and forced her to the ground. R239, 255.

Trevor Pullum and Chris Cates, both employees at Pinckneyville Correctional Facility, were driving home from work when they saw defendant attacking Barnes and Spell. R287-91. Pullum and Cates pulled over, got out of their vehicles, and attempted to stop defendant from assaulting the women. R239, 255, 290-91. Barnes and Spell remained at the scene to speak with police. R255-56.

Officer Reid Bastien of the DuQuoin Police Department and Steve Ingram, DuQuoin Chief of Police, arrived at the scene after the altercation had ended. R224-27, 297-98. Bastien was familiar with defendant from prior incidents. R227. Barnes had a swollen eye, *see* E4-7, and she told police that defendant had battered her, R298. The officers detained defendant without incident. R299. Footage from Bastien's body worn camera, showing the officers' investigation of the incident and their arrest of defendant, was admitted and published to the jury. R303-05.

Defendant testified that he did not attack Barnes and Spell and labeled the case against him "nonsense" and illogical. R333-35. The jury found defendant guilty of both counts of aggravated battery. R355-57; C180-81.

The trial court sentenced defendant to concurrent four-year prison terms. R425; C234, 237. Defendant appealed his convictions and sentences. C241-42.

III. Appellate Court Decision

The appellate court reversed defendant's convictions on the ground that defendant was not either afforded a prompt preliminary hearing or indicted by a grand jury. A1-2, 8, ¶¶ 1-2, 27, 29. As defendant did not raise the preliminary-hearing issue before trial and failed to file a posttrial motion, the appellate court reviewed defendant's claim for plain error. A3, ¶¶ 10-11. The appellate court concluded that the trial court had committed a clear or

obvious error because, under article I, section 7 of the Illinois Constitution and 725 ILCS 5/109, a felony defendant must either receive a preliminary hearing or be indicted by a grand jury within 30 days of entering custody. A3-5, ¶¶ 12, 16. The appellate court further concluded that the error was structural — and, accordingly, constituted prong two plain error — because the People did "never confirmed that the defendant was the individual who allegedly committed the crime." A8, ¶ 25. In the appellate court's view, the appropriate remedy was to reverse defendant's convictions and vacate his sentences without the possibility of a retrial. *See* A8, ¶¶ 26-27.

STANDARD OF REVIEW

Whether a forfeited claim is second-prong plain error is a question of law that this Court reviews de novo. *People v. Jackson*, 2022 IL 127256, ¶ 25.

ARGUMENT

The appellate court's judgment reversing defendant's convictions and vacating his sentences was error. First, defendant's claim cannot be reviewed. Pursuant to 725 ILCS 5/114-1(b), defendant waived his claim by not filing a pretrial motion to dismiss the information, which waiver precludes review of defendant's claim, even for plain error. Alternatively, the claim cannot be reviewed because defendant invited or acquiesced to any error through his conduct. Through counsel, defendant agreed with the trial court that any preliminary hearing should not be conducted until the court determined whether defendant was fit to stand trial. Once the court found

defendant fit and permitted him to represent himself, defendant demanded an immediate trial rather than seeking a preliminary hearing. Accordingly, defendant's unpreserved claim that the trial court erred by not conducting a preliminary probable-cause hearing is not subject to plain-error review.

Second, even if merely forfeited, the asserted error does not constitute second-prong plain error because it was not structural. This Court's caselaw correctly supports the principle that omitting a preliminary probable-cause hearing is not a structural error; such errors do not affect the integrity of the judicial process and are amenable to harmless error review.

I. Defendant's Claim that the Trial Court Erred in Not Conducting a Preliminary Probable-Cause Hearing is Not Reviewable for Plain Error.

A. Defendant waived his claim by not filing a pretrial motion.

Defendant waived his claim that the trial court erred by not conducting a preliminary probable-cause hearing as required by 725 ILCS 5/109-3(a) because he did not file a written motion before trial seeking dismissal of the information. 725 ILCS 5/114-1(a)(11). Under section 114-1, any motion to dismiss not filed "within a reasonable time after the defendant has been arraigned . . . shall not be considered by the court and the grounds therefor[e] . . . are *waived*." 725 ILCS 5/114-1(b) (emphasis added). Accordingly, defendant waived his claim that he did not receive a preliminary hearing by not filing a motion to dismiss the information on that ground, which waiver bars review of that claim. *See People v. Marcum*, 2024 IL

128687, ¶ 41 (enforcing defendant's waiver of statutory right under section 114-1); *People v. Pearson*, 88 Ill. 2d 210, 213-19 (1981) (enforcing pro se defendant's waiver of statutory right).

Defendant's waiver of the statutory right to a preliminary hearing also waived any constitutional claim based on the failure to provide a preliminary hearing. The statutory right to a preliminary hearing, 725 ILCS 5/109-3(a); *id*. § 109-3.1; is not equivalent to, or coextensive with, the constitutional right to such a hearing. *Cf. Marcum*, 2024 IL 128687, ¶ 25 (observing that statutory speedy trial right is neither equivalent to, nor coextensive with, constitutional speedy trial right). The statutory right to a preliminary hearing is more specific than the constitutional right, and only the statute provides that a preliminary hearing must take place within a prescribed time period — 30 days from the date a defendant is taken into custody, or 60 days from the date of a defendant's arrest, subject to exceptions. 725 ILCS 5/109-3.1(b). The constitutional provision establishing a right to a preliminary hearing, Ill. Const. 1970, art. I, § 7, neither specifies what constitutes a violation of that right nor a remedy for a violation.

In fact, the legislative history of 725 ILCS 5/109-3(a) illustrates that the statute provides the sole remedy for the failure to provide a preliminary hearing. In 1983, the General Assembly amended the Code of Criminal Procedure by enacting Public Act 83-644 (eff. Jan. 1, 1984). That statute added section 109, which for the first time set out timing requirements for a

preliminary probable-cause hearing or an indictment. Public Act 83-644 also specified a remedy for a violation of those requirements by amending section 114-1 to provide for motions to dismiss on grounds of noncompliance with section 109's timing requirements.

This Court has observed that before Public Act 83-644, the legislature had never fashioned a remedy for a violation of the constitutional right to a preliminary hearing. *See People v. Howell*, 60 Ill. 2d 117, 120 (1975) (citing *People v. Hendrix*, 54 Ill. 2d 165, 169 (1973)). Indeed, as appellate courts correctly held, in the absence of such a legislative remedy, no remedy for such a violation existed. *See People v. Kilgore*, 39 Ill. App. 3d 1000, 1002 (5th Dist. 1976) (concluding that under *Howell*, any remedy "must come from the legislature"); *People v. Eisele*, 77 Ill. App. 3d 766, 771 (2d Dist. 1979) (same); *see also People v. Johnson*, 2013 IL 114639, ¶ 12 (power to fashion remedies generally lies with legislature, not with courts). It necessarily follows that when a defendant waives his statutory right to a preliminary hearing by not filing a motion to dismiss, he also waives the constitutional right to such a hearing, which is only enforceable through the statute.

Section 114-1's rule that a defendant waives any claim based on a violation of the right to a preliminary hearing by not filing a motion to dismiss on that basis is consistent with the purpose of the right to a preliminary probable-cause hearing. A "preliminary hearing to establish probable cause," Ill. Const. 1970, art. I, § 7, has just that purpose — to ensure

that a defendant is not held without probable cause. *See People v. Horton*, 65 Ill. 2d 413, 416 (1976) (citing *Barber v. Page*, 390 U.S. 719, 725 (1968)) (holding that the "limited" purpose of preliminary hearing is to determine "whether probable cause exists to hold the accused for trial"); *see also Howell*, 60 Ill. 2d at 122 (preliminary hearing addresses defendant's right "not to be unduly detained" without probable cause). Because a preliminary hearing serves only this limited purpose, the General Assembly's decision to place the burden on defendants to raise the failure to provide a preliminary hearing — or waive any objection on that basis — is logical. "[T]he most important protection for the accused in our system of law is a fair trial itself," *People v. J.H.*, 136 Ill. 2d 1, 12 (1990) (citing *People v. Creque*, 72 Ill. 2d 515, 527 (1978)), not a preliminary hearing.

In sum, defendant waived his claim that he was denied a preliminary hearing when he failed to file a written motion to dismiss the charges before trial on that basis. Defendant's waiver, which bars him from raising the issue on appeal, should be enforced, barring review of his claim, even for plain error.

B. Defendant invited or acquiesced to any error by the trial court.

Statutory waiver aside, defendant's claim is not reviewable for plain error because he invited or acquiesced to any error by the trial court. Under the rule of invited error or acquiescence, "a party cannot complain of error which that party induced the court to make or to which that party

consented." *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004); *see also People v. Segoviano*, 189 Ill. 2d 228, 241 (2000) ("[I]t is well established that an accused may not ask the trial court to proceed in a certain manner and then contend in a court of review that the order which he obtained was in error.") (cleaned up). "The rationale behind this well-established rule is that it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings." *Swope*, 213 Ill. 2d at 217; *accord People v. Villarreal*, 198 Ill. 2d 209, 227 (2001) (allowing a defendant to object to a procedure he requested in the trial court "would offend all notions of fair play"). Thus, a defendant who invited or acquiesced to a purported error is estopped from raising such an error on appeal, such that plain-error review is inapplicable. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004); *see also People v. Patrick*, 233 Ill. 2d 62, 77 (2009) ("We decline to address [the defendant's] plain-error claim because [he] invited any error.").

Here, defendant's conduct during pretrial proceedings constituted acquiescence to, or even an invitation to commit, the alleged error. Defendant first agreed to postponement of any preliminary hearing until the question of his fitness had been resolved. Once the trial court found defendant fit, he sought to proceed immediately to trial rather than seeking or agreeing to a preliminary hearing, thereby inviting any error that the trial court committed in not conducting a preliminary hearing.

At defendant's initial appearance on October 14, 2021, the trial court asked for defendant's[3] agreement to postponing arraignment and "any preliminary hearing" because "raising fitness at this time would push off any need for a prelim." R4. Defense counsel agreed with the court and added, "I think we still have plenty [of] time to schedule a preliminary hearing." R4-5. While the issue of petitioner's fitness remained unresolved between October 2021 and April 2022, the court did not revisit the issue of holding a preliminary hearing, and defendant did not ask the court to do so. On April 14, 2022, the court found defendant fit to stand trial and permitted him to proceed pro se. R36-49. Defendant twice asked the court to hold a "[j]ury trial next month," R47, and told the court, "I am ready for trial in May," R49.

By agreeing to postponement of the preliminary hearing and then seeking an immediate trial upon assuming responsibility for conducting his own defense, defendant acquiesced to and then invited the alleged error. Defendant agreed that any preliminary hearing should be indefinitely postponed, and thus he "may not now attack" that postponement — "a procedure to which he agreed." *Swope*, 213 Ill. 2d at 217. Moreover, defendant is estopped from objecting to the very course of action he requested once he was granted leave to proceed pro se: trial as soon as possible. *See*

[3] During the period in which defendant was represented by counsel, defense counsel was responsible for "the day-to-day conduct of the defense," *People v. James*, 362 Ill. App. 3d 1202, 1206 (4th Dist. 2006), and thus he spoke on defendant's behalf regarding the strategic matter of how to proceed as to any preliminary hearing.

Villarreal, 198 Ill. 2d at 227-28; *Segoviano*, 189 Ill. 2d at 240-41. Plain-error review of defendant's unpreserved claim is therefore inappropriate for the reason of acquiescence, or invited error, as well. *See Patrick*, 233 Ill. 2d at 77; *Harvey*, 211 Ill. 2d at 385-86.

II. The Trial Court's Failure to Conduct a Preliminary Probable-Cause Hearing Does Not Constitute Second-Prong Plain Error.

A. A claim that the trial court erred by not conducting a preliminary probable-cause hearing does not allege a structural error, as is necessary to excuse forfeiture as second-prong plain error.

Alternatively, and at a minimum, defendant forfeited his claim, and he cannot carry his burden to establish second-prong plain error. The plain-error rule provides a narrow exception to the principles of forfeiture, and permits review of a forfeited error only if either (1) "the evidence was so closely balanced the error alone severely threatened to tip the scales of justice," or (2) "the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process," *People v. Moon*, 2022 IL 125959, ¶¶ 21, 23-24 (citations omitted). Before the appellate court, defendant invoked only the second prong of the plain-error rule to excuse his forfeiture, and the appellate court correctly recognized that second-prong plain error is synonymous with structural error. A4, ¶ 12. Yet because the asserted error is not structural, it may not be noticed as second-prong plain error. *Jackson*, 2022 IL 127256, ¶ 28.

The asserted error here — the trial court's failure to conduct a preliminary hearing — had *no* effect on defendant's trial, and therefore cannot constitute structural error, because an error is structural "only if it necessarily renders a criminal trial fundamentally unfair or is an unreliable means of determining guilt or innocence." *Moon*, 2022 IL 125959, ¶ 28. Indeed, the jury's verdicts of guilty at trial — where the People were held to the much higher standard of proof of guilt beyond a reasonable doubt — vitiated any error in not conducting a hearing to determine whether there was probable cause to hold defendant pending trial. *Cf. People v. Thompson*, 238 Ill. 2d 598, 610-11 (2010) (citing *People v. Glasper*, 234 Ill. 2d 173, 195-96 (2009)) (even violation of rule governing selection of impartial jury was not structural error where rule was not "indispensable to a fair trial").

For the same reason that the asserted error did not render defendant's subsequent trial fundamentally unfair — the absence of a preliminary probable-cause hearing had no effect on the trial — it was harmless. An error "that is amenable to harmless error analysis is not a structural error" and may not be noticed as second-prong plain error. *People v. Logan*, 2024 IL 129054, ¶ 80; *see also Jackson*, 2022 IL 127256, ¶ 37; *id.* ¶ 49 ("[S]econd-prong plain error can be invoked only for structural errors that are not subject to harmless error analysis."). Here, the jury found defendant guilty beyond a reasonable doubt of the charged aggravated battery counts, and defendant did not challenge any aspect of the trial on appeal. *See generally*

A1-8. Because the standard of proof at trial was substantially more demanding than probable cause, the jury's guilty verdicts necessarily encompassed, and went beyond, a finding that there was probable cause to believe defendant committed the offenses. Accordingly, any error that the trial court committed by not holding a hearing to determine whether the People had established probable cause was harmless, and the mere fact that the error can be evaluated for harmlessness demonstrates that it is not structural and cannot satisfy prong-two plain error. *Logan*, 2024 IL 129054, ¶ 80.

It is therefore unsurprising that this Court has consistently concluded that a violation of a defendant's right to a preliminary hearing is not structural error. In *Howell*, for instance, the Court held that the violation of the defendant's right to a preliminary hearing did not constitute plain error, as necessary to excuse the defendant's forfeiture of the issue, because the error did not "deprive[ ] the accused of a substantial means of enjoying a fair and impartial trial." 60 Ill. 2d at 121. The same is true here. Although the appellate court below cited *Howell*, it ignored *Howell*'s holding that the alleged error identified by the defendant there does not qualify as second-prong plain error. A5-6, ¶ 18.

The appellate court also impermissibly disregarded this Court's precedent holding that reversal of a conviction is not an appropriate remedy for a violation of a defendant's right to a preliminary probable-cause hearing.

More than 50 years ago, the Court observed that "a grant of immunity from prosecution" is not available "as a sanction for [the] violation" of a defendant's right to a preliminary hearing under article I, section 7 of the Illinois Constitution. *Hendrix*, 54 Ill. 2d at 169. Even after the General Assembly enacted a statutory remedy for the violation of that right, the Court reiterated that "dismissal with prejudice is not available to a defendant as a sanction." *People v. Holman*, 103 Ill. 2d 133, 155 (1984).[4]

In sum, defendant's alleged error does not rise to the level of second-prong plain error because it is not structural error. Nothing about the absence of a preliminary hearing affected whether defendant's trial was a reliable "means of determining guilt or innocence." *Moon*, 2022 IL 125959, ¶ 28. In other words, a preliminary probable-cause hearing, which functions only to ensure that a defendant is not detained pending trial in the absence of probable cause, is not in any way "indispensable to a fair trial." *Jackson*, 2022 IL 127256, ¶ 46. Moreover, such error is amenable to harmless error review. *See Logan*, 2024 IL 129054, ¶ 80. Accordingly, defendant cannot excuse his forfeiture as second-prong plain error.

[4] The appellate court compounded its error by declining to analyze whether reversal of defendant's conviction precluded the People from refiling charges against him. *See* A8, ¶¶ 26-27. Both this Court's precedent and the applicable statute establish that if reversal of a conviction is ever an appropriate remedy for a violation of the right to a prompt preliminary hearing, it must be without prejudice to reinstatement of charges. *Holman*, 103 Ill. 2d at 155; 725 ILCS 5/114-1(e).

B. The appellate court's contrary ruling is incorrect.

The appellate court below correctly understood that an error must be structural to excuse forfeiture under the plain-error rule's second prong, A7, ¶ 23, but erroneously concluded that the error alleged here met that standard. The appellate court's reasoning that the absence of a preliminary hearing was structural error because it affected defendant's rights under article I, section 7 of the Illinois Constitution, A8, ¶ 25, ignored the firmly established principle that "most errors of constitutional dimension are subject to harmless error analysis," *People v. Stoecker*, 2020 IL 124807, ¶ 23; *see also People v. Pingelton*, 2022 IL 127680, ¶¶ 44, 46 (same, and concluding constitutional error was subject to harmless error review). The appellate court's contrary view would turn every error that implicates a defendant's constitutional right into second-prong plain error, an approach that this Court has rejected. *See Jackson*, 2022 IL 127256, ¶¶ 36-37; *People v. Patterson*, 217 Ill. 2d 407, 424 (2005).

As explained, the denial of the right to a preliminary hearing does not render the subsequent trial an unreliable means of determining guilt or innocence. *See Moon*, 2022 IL 125959, ¶ 28; *Thompson*, 238 Ill. 2d at 609, 611. The appellate court's erroneous conclusion to the contrary, A8, ¶ 25, flowed from that court's misconception of the purpose of a preliminary hearing. The appellate court correctly recited that a preliminary hearing's function "is to determine whether there is sufficient indication that a crime has been committed by the accused to justify his further detention and to

screen out weak and unsubstantiated cases which do not justify any further attention." A4, ¶ 13 (citation omitted). But the appellate court was wrong when it stated that a preliminary hearing also serves to assist the defendant "'in effectively discovering the strengths and weaknesses in the State's case, preserving favorable evidence, and strengthening the defendant's claim for [pretrial release] and the suppression of incriminating evidence.'" A5, ¶ 17 (quoting *People v. Black*, 2011 IL App (5th) 080089, ¶ 16).

A preliminary hearing functions solely to establish probable cause. Indeed, article I, section 7 of the Illinois Constitution — from which the right to such a hearing emanates — specifies that a defendant has a right to a "prompt preliminary hearing *to establish probable cause*." Ill. Const. 1970, art. I, § 7 (emphasis added); *accord Horton*, 65 Ill. 2d at 416 (article I, section 7 "shows clearly" that the purpose of such a hearing "is so limited"). Thus, this Court has accurately characterized the constitutional right to a "prompt probable-cause determination" as a "constitutionally given right not to be unduly detained." *Howell*, 60 Ill. 2d at 122. Neither the Illinois Constitution nor this Court's precedent suggests that the preliminary hearing serves any other function. In purporting to expand the purposes of a preliminary hearing beyond requiring the prosecution to establish probable cause, the appellate court improperly ignored the text of the pertinent constitutional provision and this Court's reasoning in *Howell*.

When its purpose is properly viewed as solely to establish probable cause, it is evident that any error in conducting a preliminary hearing (or not conducting one at all) is not structural. Any such error does not undermine the fundamental fairness of a defendant's subsequent trial, *see Moon*, 2022 IL 125959, ¶ 28; *Jackson*, 2022 IL 127256, ¶ 46, and where defendant's guilt is determined beyond a reasonable doubt at that ensuing trial, any error at the preliminary hearing phase can readily be deemed harmless, *see Logan*, 2024 IL 129054, ¶ 80; *see also Jackson*, 2022 IL 127256, ¶¶ 37, 49. Accordingly, even if defendant's claim were amenable to plain-error review — and it is not under principles of both statutory waiver and invited error — his claim cannot satisfy second-prong plain error.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court and reinstate defendant's convictions and sentences.

October 16, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 25 pages.

/s/ Jeremy M. Sawyer
JEREMY M. SAWYER
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APPENDIX

TABLE OF CONTENTS TO APPENDIX

Document

Illinois Official Reports

Appellate Court

People v. Chambliss, 2024 IL App (5th) 220492

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANZANO P. CHAMBLISS, Defendant-Appellant.
District & No.	Fifth District No. 5-22-0492
Filed	March 12, 2024
Decision Under Review	Appeal from the Circuit Court of Perry County, No. 21-CF-87; the Hon. Jeffrey K. Watson, Judge, presiding.
Judgment	Reversed.
Counsel on Appeal	James E. Chadd, Ellen J. Curry, and Julie A. Thompson, of State Appellate Defender's Office, of Mt. Vernon, for appellant. David Rands, Special State's Attorney, of Springfield (Patrick Delfino, Patrick D. Daly, and Trent Marshall, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE McHANEY delivered the judgment of the court, with opinion. Justices Welch and Cates concurred in the judgment and opinion.

OPINION

¶ 1 On October 8, 2021, the defendant was charged by information with three counts of aggravated battery: count I alleged a battery resulting in great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2020)), and counts II and III alleged a battery on a public roadway (*id.* § 12-3.05(c)). After being found fit to stand trial on April 14, 2022, the defendant's jury trial was scheduled for May 26, 2022. On May 17, 2022, the State dismissed count I. After a jury trial, the defendant was convicted on counts II and III. On July 14, 2022, the defendant was sentenced on each count to concurrent four-year terms of imprisonment in the Department of Corrections.

¶ 2 Because the defendant was not provided with a preliminary hearing and was not alternatively indicted by a grand jury, there was no probable cause determination on the charges he faced as required by our Illinois Constitution. See Ill. Const. 1970, art. I, § 7. For the following reasons, we reverse the defendant's convictions.

¶ 3 I. Background

¶ 4 We recite only the facts relevant to the narrow issue on appeal. On October 8, 2021, defendant was charged by information with three counts of aggravated battery for attacking Emily Barnes and Carolyn Spell on a public roadway in Perry County, Illinois. There was never a preliminary hearing held before trial, and the defendant was not indicted.

¶ 5 When the defendant was arrested, he had a pending misdemeanor in which the issue of his fitness to stand trial had been raised but not resolved. At the defendant's first appearance in the present case, his fitness continued to be an issue due to his behavior in court, at the jail, and with his attorney. A fitness evaluation was ordered, and all parties agreed that the delay in all proceedings, including the preliminary hearing, would be charged to the defendant.

¶ 6 During the evaluation process, the defendant was uncooperative with the doctor and the jail staff. On October 14, 2021, jail staff reported to the trial court the defendant's court appearance in court was impossible, whether in-person or by Zoom, due to his "current behavior."[1] On more than one occasion, either the defendant was removed from the courtroom, or court was abruptly adjourned due to the defendant's inability to follow orders. On October 28, 2021, after the trial court informed the defendant that his pending city ordinance violations had been dismissed, he demanded a bench trial on the dismissed charges. When the court attempted to explain that a trial of any kind on those ordinance violations was now unnecessary, the defendant shouted at the judge, "F*** that, b***. I don't want to talk to you." On October 28, 2021, the defendant argued at length with the same judge about his interpretation of the law and his desire to have the fitness evaluation in open court and without his attorney present. On December 9, 2021, the defendant interrupted court proceedings to inform the judge that he was disabled, despite his attorney's acknowledgment of its irrelevance. On January 12, 2022, the defendant appeared before a different judge, who had been assigned to preside over the defendant's case, and asserted that the prior judge should have held him in contempt of court, while also claiming civil rights violations. The defendant also continuously requested his

[1]The record contains no description or explanation of the defendant's "current behavior."

attorney to withdraw and filed numerous *pro se* motions that were found to have no merit. Similar repeated events caused further delay and disruption throughout the case.

¶ 7 The defendant was finally found fit to stand trial on April 14, 2022, eight months after his first appearance. On that same day, the trial court heard defense counsel's motion to withdraw, which was granted, and the defendant was allowed to proceed *pro se*. A jury trial was set for May 26, 2022, and the defendant was again escorted out of the courtroom due to disruptive behavior. Forty-two days after the defendant was found fit to stand trial, the case proceeded to jury trial.

¶ 8 At trial, the State presented evidence that two correctional officers witnessed the defendant punching two women on the side of the road. The batteries occurred outside of a Shell Liquor Mart, which had video surveillance that recorded the incident, which was viewed by the jury. Emily Barnes testified that on October 8, 2021, she ran into an acquaintance, Carolyn Spell, and stopped to chat with her. While they were speaking, the defendant, who smelled of liquor and was shouting obscenities, approached the women. As the two women walked away, the defendant spit on Barnes and punched her on the side of her face and continued to strike Barnes after getting her to the ground. Spell testified that, as she attempted to get the defendant off of Barnes, he pushed her to the ground, where she scraped her knee and bent her toe backwards. The two correctional officers were able to intervene on behalf of both women, stopping the attack. During his case-in-chief, the defendant recalled Barnes and Spell and then testified on his own behalf. The jury convicted the defendant on both counts of aggravated battery. The trial court sentenced the defendant to concurrent terms of four years' imprisonment, and the defendant filed a timely appeal.

¶ 9 II. Analysis

¶ 10 The issue before us presents a matter of first impression in that the defendant was afforded neither a preliminary hearing nor a grand jury indictment as mandated by our Illinois Constitution. See *id.* The defendant did not raise this issue prior to trial and failed to file a posttrial motion.

¶ 11 "To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion." *People v. Thompson*, 238 Ill. 2d 598, 611-12 (2010). Therefore, the defendant has forfeited this issue. However, because the forfeiture rule is an admonition to the parties, and not a jurisdictional limitation on a reviewing court, we decline to apply forfeiture and, instead, will address the merits of the issue raised by the defendant. *People v. Chapman*, 379 Ill. App. 3d 317, 326 (2007). The normal forfeiture principles may be bypassed by the plain-error rule, which allows a reviewing court to consider unpreserved claims of error in specific circumstances. *Thompson*, 238 Ill. 2d at 613.

¶ 12 The first step in a plain-error review is to determine if an error occurred. *People v. Phillips*, 2022 IL App (1st) 181733, ¶ 125 (citing *Thompson*, 238 Ill. 2d at 613). If a clear or obvious error exists, a reviewing court will assess the error under one of the two prongs of plain-error review. See *id.* We apply the plain-error doctrine when

> " '(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity

of the judicial process, regardless of the closeness of the evidence.' " *Thompson*, 238 Ill. 2d at 613 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

If a defendant establishes plain error under the second prong, there is a presumption of prejudice. *People v. Moon*, 2022 IL 125959, ¶ 27. "This is true because, when a trial error is of such gravity that it threatens the integrity of the judicial process, the courts must act to correct the error so that the fairness and the reputation of the process are preserved and protected." *Id.* (citing *People v. Green*, 74 Ill. 2d 444, 455 (1979) (Ryan, J., specially concurring)). The Illinois Supreme Court has equated second prong plain error with structural error. See *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009).

¶ 13 Before we reach the issue of structural error, we review the rationale for, and the foundational requirement of, a probable cause determination in criminal cases by a preliminary hearing or a grand jury indictment. The primary function of a preliminary hearing "is to determine whether there is sufficient indication that a crime has been committed by the accused to justify his further detention and to screen out weak and unsubstantiated cases which do not justify any further attention." Note, *The Function of the Preliminary Hearing in Federal Pretrial Procedure*, 83 Yale L.J. 771, 772 (1974). This preliminary examination is critically important in a criminal prosecution "both because of the protection it affords the accused and because of its strategic position in the criminal justice system and intimate interrelation with other aspects of the process—arrest, bail, prosecutorial discretion, the grand jury, and the trial." *Id.* at 772-73. The function of a preliminary hearing is "to provide an early and independent check on the initial decision of the police or the district attorney to prosecute." Delmar Karlen, Anglo-American Criminal Justice 145 (1967). In the United States, "the prosecution is required to produce enough evidence to make out a prima facie case." *Id.*

¶ 14 The United States Supreme Court has provided guidance on the import of a prompt judicial determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). The probable cause determination is a prerequisite for an extended pretrial detention. *Id.* This protection for criminal defendants stems from the fourth amendment of the United States Constitution.[2] *Id.*; see U.S. Const., amend. IV. Recognizing that state systems of criminal procedure vary widely, *Gerstein* mandated that each state "provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein*, 420 U.S. at 125.

¶ 15 We continue our analysis by reviewing applicable United States and Illinois constitutional and statutory provisions. The United States Constitution does not require that a person charged with a crime have a preliminary hearing before being brought into a court with jurisdiction over the charge. *United States ex rel. Hughes v. Gault*, 271 U.S. 142, 149 (1926). However, federal statutory law, amended over the years, requires a preliminary hearing under certain

[2]"At common law it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest. [Citations.] The justice of the peace would 'examine' the prisoner and the witnesses to determine whether there was reason to believe the prisoner had committed a crime. If there was, the suspect would be committed to jail or bailed pending trial. If not, he would be discharged from custody. [Citations.] The initial determination of probable cause also could be reviewed by higher courts on a writ of habeas corpus. [Citations.] This practice furnished the model for criminal procedure in America immediately following the adoption of the Fourth Amendment [citations], and there are indications that the Framers of the Bill of Rights regarded it as a model for a 'reasonable' seizure." *Gerstein*, 420 U.S. at 114-16.

circumstances. See Fed. R. Crim. P. 5.1(a) (providing that, "[i]f a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless: *** (2) the defendant is indicted"). The purpose of this preliminary examination is "to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it." 18 U.S.C. § 3060(a) (2018).

¶ 16 The Illinois Constitution unequivocally provides a defendant in a felony criminal prosecution the right to a prompt preliminary hearing or an indictment by a grand jury, providing:

> "No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause." Ill. Const. 1970, art. I, § 7.

Our legislature has also included provisions on this subject. The defendant's right to a preliminary hearing is codified in the Code of Criminal Procedure of 1963 (Code). Section 109-3(a) of the Code provides:

> "The judge *shall* hold the defendant to answer to the court having jurisdiction of the offense if from the evidence it appears there is probable cause to believe an offense has been committed by the defendant *** if the offense is a felony." (Emphasis added.) 725 ILCS 5/109-3(a) (West 2020).

Section 109-3.1(b) of the Code provides the State with the mandatory timeline for holding a preliminary hearing or receiving a grand jury indictment:

> "Every person in custody in this State for the alleged commission of a felony *shall* receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand Jury as provided in Section 111-2, within 30 days from the date he or she was taken into custody." (Emphasis added.) *Id.* § 109-3.1(b).

Thus, without question, an Illinois felony defendant must either receive a preliminary hearing or be indicted by a grand jury within 30 days after entering custody.

¶ 17 With either process, the State's probable cause foundation is outlined for the defendant. "[T]he preliminary hearing is a 'critical stage' of the proceedings during which the accused must be afforded the assistance of counsel if he is to have a meaningful defense at trial as guaranteed in the Bill of Rights." *Coleman v. Alabama*, 399 U.S. 1, 12 (1970) (Black, J., concurring). An attorney is provided to a defendant at a preliminary hearing for many reasons. For example, defense counsel can cross-examine witnesses presented by the State, present his or her own witnesses, and a neutral party—the trial court judge—is required to decide whether sufficient probable cause exists to bind the defendant over for trial. See *id.* at 9 (majority opinion). "Illinois has long recognized that a preliminary hearing is a critical stage in prosecution." *People v. Black*, 2011 IL App (5th) 080089, ¶ 15.

> "The role of counsel at a preliminary hearing is not limited to assisting a defendant in his claim that there was no probable cause. Counsel at a preliminary hearing may assist the defendant in effectively discovering the strengths and weaknesses in the State's case, preserving favorable evidence, and strengthening the defendant's claim for [pretrial release] and the suppression of incriminating evidence." *Id.* ¶ 16.

¶ 18 Illinois caselaw provides additional guidance on these constitutional and legislative requirements. In *People v. Howell*, 60 Ill. 2d 117, 118 (1975), the defendant was arrested and

held in jail until he was indicted 65 days later. After review of comments by the Committee on Style, Drafting and Submission—the committee that submitted section 7 of article I to the convention—the Illinois Supreme Court stated: "under this constitutional provision the defendant held on a criminal charge punishable by imprisonment in the penitentiary must be afforded a prompt probable-cause determination of the validity of the charge either at a preliminary hearing or by an indictment by a grand jury." *Id.* at 119 (citing *People v. Kent*, 54 Ill. 2d 161, 163 (1972)). In *Howell*, the defendant was indicted by a grand jury, and thus, there was no need for the State to hold a preliminary hearing. See *id.* at 118-19. The Illinois Supreme Court noted that the 65-day delay, without providing the defendant with a prompt preliminary hearing or presenting his case to a grand jury, "violated the letter and intent of section 7 of article I of the 1970 Constitution." *Id.* at 119. "The delay in this case of 65 days is the most severe violation of section 7 that has been called to our attention." *Id.* at 122. Despite the delay, the Illinois Supreme Court affirmed the defendant's conviction because he failed to raise the issue at the trial court. *Id.* at 120. However, the court acknowledged that delays in giving the accused a prompt preliminary hearing constitute a serious deprivation of a defendant's constitutional rights. *Id.*

¶ 19 In *People v. Kirkley*, 60 Ill. App. 3d 746, 747 (1978), the defendants were arrested on January 23, 1975. Although the defendants filed motions requesting a preliminary hearing, no preliminary hearing was ever held. *Id.* at 748. On July 18, 1975, 176 days after their arrest, the defendants were indicted by a grand jury. *Id.* Finding that the case before it was the most flagrant section 7 violation called to the attention of Illinois reviewing courts, and noting the absence of any legislative guidelines or sanctions regarding such violations, the court reversed the defendants' convictions. *Id.* at 750. The *Kirkley* court stated, "[W]e feel compelled to provide a remedy for the defendants who have suffered an unjustifiable denial of a basic constitutional right." *Id.* We find that the facts of this case are more egregious than the facts in *Kirkley.*

¶ 20 The State's reliance upon this court's opinion in *People v. Riddle*, 141 Ill. App. 3d 97 (1986), is misplaced. For numerous reasons, we find that *Riddle* is distinguishable. In *Riddle*, the defendant was charged with a felony on February 14, 1983. *Id.* at 100. The defendant was not indicted by a grand jury, and a preliminary hearing was not held until May 9, 1983—84 days after his arrest. *Id.* The trial court denied the defendant's motion to dismiss the information. *Id.* Following his conviction, the defendant appealed to this court, arguing in part that he was denied a prompt preliminary hearing in violation of article I, section 7, of the Illinois Constitution. *Id.* In support of his argument, the defendant asked this court to follow the reasoning of *Kirkley*. *Id.* at 101. We opted not to follow *Kirkley*, finding that, although an 84-day delay between the defendant's arrest and preliminary hearing violated the letter and intent of section 7, "dismissal with prejudice is not available to a defendant as a sanction for such a violation." *Id.* at 100.

¶ 21 Initially, we note that, at the time *Riddle* was decided, section 109-3.1(b) of the Code had yet to be enacted by our legislature and so did not apply on the date that Glen Riddle was arrested—February 14, 1983. Section 109-3.1 of the Code took effect on January 1, 1984, and expressly only applied to persons charged with a felony "alleged to have been committed on or after January 1, 1984." Ill. Rev. Stat. 1983, ch. 38, ¶ 109-3.1(a). On or after January 1, 1984, the State was required to either conduct a preliminary examination or return a grand jury indictment within 30 days of the date the defendant was taken into custody. *Id.* ¶ 109-3.1(b).

¶ 22 In addition, we find *Riddle* to be factually distinguishable. First, in *Riddle*, the defendant remained free on bond, while the defendant here remained in custody. *Riddle*, 141 Ill. App. 3d at 100. Second, in *Riddle*, though certainly not prompt, there was a preliminary hearing, while the defendant in this case received neither a preliminary hearing nor a grand jury indictment. There is no question that, here, error occurred by the failure to either indict the defendant or conduct a preliminary hearing.

¶ 23 We must next determine if the error in not indicting the defendant or conducting a preliminary hearing was "structural" in nature, necessitating reversal. "An error is typically designated as 'structural' and requiring automatic reversal only if it necessarily renders a criminal trial fundamentally unfair or unreliable in determining guilt or innocence." *People v. Averett*, 237 Ill. 2d 1, 12-13 (2010) (citing *Glasper*, 234 Ill. 2d at 196). "Structural errors are systemic, serving to 'erode the integrity of the judicial process and undermine the fairness of the defendant's trial.' " (Internal quotation marks omitted.) *Thompson*, 238 Ill. 2d at 608-09 (quoting *Glasper*, 234 Ill. 2d at 197-98). The United States Supreme Court has held that an error constitutes structural error if the error has " 'consequences that are necessarily unquantifiable and indeterminate.' " *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993)). The United States Supreme Court has only classified error as "structural error" in a limited class of cases. *Thompson*, 238 Ill. 2d at 609 (citing *Glasper*, 234 Ill. 2d at 198, citing *Neder v. United States*, 527 U.S. 1, 8 (1999)). These cases include "a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction." *Id.* (citing *Washington v. Recuenco*, 548 U.S. 212, 218 n.2 (2006)).

¶ 24 Error can be classified as structural as a matter of state law, irrespective of whether the error is construed as structural under federal law. Illinois has found that a trial court's blanket policy of refusing to rule on motions *in limine* until after hearing the defendant's testimony does not constitute structural error. See *Averett*, 237 Ill. 2d at 13. While the error was deemed serious, the supreme court concluded that the error did not render the trial fundamentally unfair or unreliable and did "not affect the framework of the trial process." *Id.* at 13-14; see *People v. Stoecker*, 2020 IL 124807, ¶ 25 (holding that "a reasonable opportunity to respond to a dispositive motion in a collateral civil proceeding and lack of notice before it was dismissed as a matter of law," although serious, was not structural error because the error did not "necessarily render the proceedings automatically unfair or unreliable"); *People v. Rivera*, 227 Ill. 2d 1, 22 (2007) (if the error could be qualitatively assessed for harm to the defendant, the error is not structural, and would only require harmless error review). In *Arizona v. Fulminante*, 499 U.S. 279 (1991), the United States Supreme Court

> "explained that constitutional errors that occur during the course of a trial are susceptible to harmless-error review, because such errors can be 'quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt. As for those constitutional errors that remained *per se* reversible without a finding of harmlessness—such as violations of one's right to counsel, or one's right to be tried before an impartial judge—those errors cannot simply be 'assessed in the context of other evidence.' Instead, those are 'structural defects' that affect 'the constitution of the trial mechanism, which defy

> analysis by "harmless error" standards.' " Zachary L. Henderson, *A Comprehensive Consideration of the Structural-Error Doctrine*, 85 Mo. L. Rev. 965, 972 (2020).

More recently, the Illinois Supreme Court found that the trial court's failure to administer the trial oath to the jury at any time before the jury rendered its verdict constituted structural error. See *Moon*, 2022 IL 125959, ¶¶ 62, 65-66.

¶ 25 We hold that the failure to conduct either a preliminary hearing or return a bill of indictment must be included in that limited class of cases recognized as structural error. The Illinois constitutional mandate that an individual charged with a felony must receive a preliminary hearing or be indicted by a grand jury is connected to the State's obligation to establish probable cause to charge that individual. Ill. Const. 1970, art. I, § 7. Here, the State never set forth its foundation for the charge against the defendant and never confirmed that the defendant was the individual who allegedly committed the crime. We find that this error deprived the defendant of the basic protections afforded by our constitution and, thus, proceeding forward with the prosecution without providing that protection resulted in an unfair or unreliable process for the determination of the defendant's guilt or innocence. See *Neder*, 527 U.S. at 8-9 (citing *Rose v. Clark*, 478 U.S. 570, 579 (1986)).

¶ 26 With respect to the appropriate remedy for this constitutional violation, we believe that to grant the defendant a probable cause hearing after his constitutional rights have already been violated would be "ludicrous." *Kirkley*, 60 Ill. App. 3d at 750. "It would be senseless to reverse the defendants' conviction[ ] and remand this case so that they could be subjected to a reindictment." *Id.* (citing *People v. Hendrix*, 54 Ill. 2d 165, 169 (1973)). We conclude that the appropriate remedy in this case for failing to provide the defendant with a probable cause hearing or the return of a bill of indictment is to reverse the defendant's convictions.

¶ 27 As illustrated by our decision, this case is about due process—the right of every person charged with a crime punishable by imprisonment to a determination of probable cause for the charge, through either a prompt preliminary hearing or grand jury proceeding, even where the evidence of guilt is overwhelming. See Ill. Const. 1970, art. I, § 7; 725 ILCS 5/109-3(a), (b) (West 2020). There is no doubt this case was fraught with disruption and delay, much of it attributable to the defendant. Nonetheless, the error in this case was neither harmless nor excusable. Illinois courts—both trial courts and courts of review—have a solemn duty to safeguard the rights of every person to procedural due process when charged with a serious offense and to apply the law in an equal and fair manner. That has now been done here.

¶ 28 III. Conclusion

¶ 29 For the above reasons, we reverse the defendant's convictions and vacate his sentences.

¶ 30 Reversed.

Index to the Record on Appeal

***People v. Anzano Chambliss,* 2021 CF 87 (Perry Cnty. Cir. Ct.)**

I. Common Law Record (cited as "C__")

II. Report of Proceedings (cited as "R__")

III. Exhibits (cited as "E__")

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 16, 2024, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois using the Court's electronic filing system, which provided service to the following:

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