No. 130595

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, First Judicial District,
Respondent-Appellee,	)	No. 1-23-0669
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois, No. 03 CR 23217
JAMES REED,	)	The Honorable Erica Reddick,
Petitioner-Appellant.	)	Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

In 2003, petitioner was charged with four counts of aggravated unlawful use of a weapon (AUUW). C30-33.[1] He pleaded guilty to Count 1 in exchange for a recommended sentence and the People's dismissal of the remaining counts. Sup. R. 5, 12-14. In 2021, petitioner moved to vacate his guilty plea and conviction because the statute on which Count 1 was based had since been declared unconstitutional. C66-72. The circuit court vacated petitioner's conviction. R4-5.

Petitioner then filed a petition for a certificate of innocence (COI), C115-21, which the circuit court denied, C168-69, because petitioner failed to show that he was innocent of all four offenses charged in the indictment. Petitioner appealed, C173-74, and the appellate court affirmed the circuit court's judgment, A15. This Court granted petitioner leave to appeal.

ISSUE PRESENTED

The issue presented is whether the circuit court's denial of petitioner's COI petition was not against the manifest weight of the evidence where

(a) petitioner did not prove his innocence of "the offenses charged in the indictment or information," 735 ILCS 5/2-702(g)(3), and

[1] "C_;" "R_;" "Sup. R. _;" "Pet. Br _;" and "A_" refers to the common law record, report of proceedings, supplemental report of proceedings, petitioner's brief, and appendix to petitioner's brief, respectively.

(b) petitioner voluntarily caused his conviction, *see* 735 ILCS 5/2-702(g)(4), by entering a fully negotiated guilty plea in exchange for the People dismissing the additional charges against him.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court allowed leave to appeal on May 29, 2024.

STATEMENT OF FACTS

Guilty Plea

In 2003, petitioner was charged with four counts of AUUW, two for carrying an uncased, loaded, and immediately accessible firearm in public or on a public street, *see* 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (2003) (Count 1); 720 ILCS 5/24-1.6 (a)(2), (a)(3)(A) (2003) (Count 3); and two for carrying a firearm in public or on a public street without a valid Firearm Owner's Identification (FOID) card, *see* 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (2003) (Count 2); 720 ILCS 5/24-1.6(a)(2), (a)(3)(C) (2003) (Count 4). C30-33. Following a Rule 402 conference, petitioner pleaded guilty to Count 1 (carrying a loaded, uncased, and readily accessible firearm in public) in exchange for a sentence of two years' probation and six months in the Cook County Department of Corrections. Sup. R. 5. The People also agreed to dismiss the remaining charges. *Id.*

At the plea hearing, petitioner said that he understood the charge to which he was pleading guilty and the possible penalties, Sup. R. 6-7, that he had a right to plead not guilty, Sup. R. 8, and that he was giving up various

trial rights, such as the right to a jury, to testify, to present evidence, and to cross-examine witnesses, *id*. Petitioner also stated that no one had threatened him or forced him to plead guilty, and no one had promised him anything outside of the plea agreement in exchange for his guilty plea. Sup. R. 9-10.

The factual basis for the guilty plea stated that on October 6, 2003, petitioner was involved in a shooting on the south side of Chicago, and that when he was arrested, he possessed a loaded semi-automatic handgun. Sup. R. 10.

The circuit court found that petitioner was pleading guilty knowingly and voluntarily, and that there was an adequate factual basis for the plea. Sup. R. 11. The court then accepted petitioner's guilty plea to Count 1. *Id.*

The court proceeded immediately to sentencing and said, "I'll do what I said I would do." Sup. R. 12. The court then sentenced petitioner to two years of probation and six months in jail with day-for-day credit. Sup. R. 12-13. Following sentencing, the remaining counts were dismissed nolle prosequi. Sup. R. 14. Petitioner was later resentenced to one year in prison following a probation violation. C65.

Section 2-1401 Petition

In 2013, this Court held that the Class 4 felony form of 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), the AUUW provision under which petitioner pled guilty and was convicted, was facially unconstitutional. *See People v. Aguilar*, 2013

IL 112116, ¶ 22. Eight years later, in 2021, petitioner filed a petition under 735 ILCS 5/2-1401 to vacate his conviction pursuant to *Aguilar*. C66-67. The People conceded that petitioner had pleaded guilty to the form of AUUW held unconstitutional by *Aguilar*, and that his conviction should be vacated. R4. The circuit court agreed, vacated petitioner's conviction, and dismissed the charge. *Id.*

Certificate of Innocence

Petitioner then filed a pro se COI petition and supplement pursuant to 735 ILCS 5/2-702 (the COI statute). C115-35.[2] The People responded, arguing that petitioner could not prove by a preponderance of the evidence that he was innocent of all offenses charged in the information, as required by 735 ILCS 5/2-702(g)(3) (subsection (g)(3)). C140-47. The circuit court agreed and denied the petition. C168. Specifically, the court held that petitioner would have to prove by a preponderance of the evidence that he was innocent of not only the AUUW provision under which he was convicted, but also the AUUW without a FOID card charges that the People had dismissed as part of the negotiated plea agreement, and he had not done so. R48.

[2] As noted in petitioner's brief, Pet. Br. 5, petitioner's pro se petitions are improperly paginated in the record on appeal. The original petition appears (when viewed in the correct order) at C133 and C132, and the supplemental petition appears in order at C134, C131, C130, C129, C128, C127, C126, C125.

Appeal

On appeal, petitioner argued that the circuit court erred in denying his petition because he was not required to prove that he was innocent of all four charged counts of AUUW, but instead needed only prove his innocence of the count for which he was convicted. A4 ¶ 13. The appellate court disagreed, noting that petitioner "did not prove that he was innocent of counts II and IV," which "were premised on defendant's possession of a firearm without a valid FOID card." A7-8 ¶ 19. Those charges remained valid because "Post-*Aguilar*, it remains illegal to possess a firearm without a FOID card." A8 ¶ 19 (citing *People v. Mosley*, 2015 IL 115872, ¶ 44). Thus, the appellate court concluded, petitioner "did not meet the requirements of subsection (g)(3), so the circuit court correctly denied his petition for a certificate of innocence." A8 ¶ 19. Accordingly, the appellate court affirmed the circuit court's judgment. A33 ¶ 69.

STANDARDS OF REVIEW

The construction of a statute is a legal question that is reviewed de novo. *People v. Palmer*, 2021 IL 125621, ¶ 53 (citing *People v. Johnson*, 2019 IL 123318, ¶ 14). Whether petitioner must prove his innocence by a preponderance of the evidence of the charges of AUUW without a FOID card is a question of statutory interpretation.

In addition, although this Court has not decided which standard of review applies to COI determinations, *see People v. Washington*, 2023 IL

127952, ¶ 47 (recognizing but not resolving "the split in authority regarding the appropriate standard of review to be applied to certificate of innocence determinations"), the Court should apply the manifest weight of the evidence standard because resolving whether a petitioner proved that he can satisfy the requirements for a COI requires the reviewing court to determine whether the circuit court properly weighed the petitioner's evidence. *See, e.g.*, *People v. McIntosh*, 2021 IL App (1st) 171708, ¶ 41. Accordingly, this Court should reverse the circuit court's denial of a COI only if the court's determination that petitioner had not met his burden of proving each of the COI statute's requirements is against the manifest weight of the evidence.

ARGUMENT

The circuit court correctly denied petitioner's COI petition. To obtain a COI, a petitioner must prove four elements "by a preponderance of the evidence":

> (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

> (3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and
>
> (4) the petitioner did not voluntarily cause or bring about his or her conviction.

735 ILCS 5/2-702(g).

The circuit court correctly denied petitioner's COI petition for two reasons. First, petitioner cannot establish by a preponderance of the evidence that he "is innocent of the offenses charged in the . . . information." *See* 735 ILCS 5/2-702(g)(3).[3] Petitioner was charged with two counts of AUUW without a FOID card, and he has never offered any evidence that he is innocent of those charges. It is of no consequence that the People dismissed those charges, especially because it did so as part of a negotiated plea agreement. Absolving petitioner of the evidentiary burden of proving that he is innocent of AUUW without a FOID card, as he asks, is contrary to both the plain language and the purpose of the COI statute.

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[3] Petitioner argued in the circuit court that, under the circumstances of his case, the "acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State," A4; *see also* 735 ILCS 5/2-702(g)(3), because the AUUW provision underlying the charge to which he had plead guilty had been declared unconstitutional. However, he explicitly abandoned that argument below, A7 ("Defendant has abandoned, on appeal, his petition's argument under the second approach."),, and, in any event, could not show that possessing a firearm in public without a FOID Card did not constitute a felony.

Second, petitioner cannot show by a preponderance of the evidence that he "did not by his . . . own conduct voluntarily cause or bring about his . . . conviction." 735 ILCS 5/2-702(g)(4). Petitioner knowingly and voluntarily entered into a negotiated plea agreement in which the People agreed not to try him on the constitutionally valid charges for AUUW without a FOID card. Petitioner offered no evidence, and the record contains no indication, that he was coerced into entering this beneficial agreement, and thus petitioner has offered no evidence that he did not voluntarily bring about his conviction.

The Circuit Court's Denial of a COI Was Not Against the Manifest Weight of the Evidence.

A. Subsection (g)(3) Requires a Petitioner Who Enters into a Negotiated Plea of Guilty to Prove His Innocence of the Charges in the Information.

Petitioner is not entitled to a COI because he cannot prove by a preponderance of the evidence that he is innocent of the charged offenses. *See* 735 ILCS 5/702(g)(3). Accordingly, the appellate court's judgment affirming the circuit court's denial of a COI should be affirmed.

1. The plain language of subsection (g)(3) unambiguously requires petitioner to prove his innocence of all offenses charged in the information, not merely the one charge to which he pleaded guilty.

The plain language of the COI statute provides that a petitioner must prove that he is "innocent of the *offenses charged* in the indictment or information," 735 ILCS 5/2-702(g)(3) (emphasis added), and not merely the offense for which he was convicted.

"'The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent.'" *People v. McChriston*, 2014 IL 115310, ¶ 15 (quoting *People v. Davison,* 233 Ill. 2d 30, 40 (2009)). "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning." *Id.* "When the statute contains undefined terms, it is entirely appropriate to employ a dictionary to ascertain the plain and ordinary meaning of those terms." *Id.* And "[w]here the language is clear and unambiguous, [the Court] will apply the statute without resort to further aids of statutory construction." *Id.*

Here, the analysis begins and ends with the plain, unambiguous language of the COI statute. Subsection (g)(3) requires that a petitioner prove that he is "innocent of the offenses charged in the indictment or information." 735 ILCS 5/2-702(g)(3). The operative word is "charged." A "charge," in this context is the "formal accusation of an offense as a preliminary step to prosecution." *Charge*, Black's Law Dictionary (12th ed. 2024). In other words, the plain language of the COI statute provides that petitioner had to prove his innocence of the offenses with which he was formally accused in the indictment or information, not merely the offense for which he pled guilty and was convicted.

Had the General Assembly intended to limit petitioner's burden to the latter, it knew how to do so. Subsections (b) and (h), for example, use the phrase "offenses for which [the petitioner] was incarcerated," and do not

mention the offenses the petitioner was charged with. 735 ILCS 5/2-702(b), (h). This Court has long held that when the General Assembly uses certain language in one part of a statute and different language in another, the Court may assume different meanings were intended. *See Carver v. Bond/Fayette/Effingham Reg'l Bd. of Sch. Trs.*, 146 Ill. 2d 347, 353 (1992). So, contrary to petitioner's argument, Pet. Br. 8-10, 17-18, 24-25, the General Assembly's choice of language for subsections (b) and (h) does not show that it intended the different language it used in subsection (g)(3) to mean the same thing as subsections (b) and (h). Rather, petitioner is asking this Court to rewrite subsection (g)(3) by replacing "innocent of the offenses charged in the indictment or information," with "offenses for which he or she was incarcerated." This the Court may not do, as it is "not free to rewrite legislation or to ignore an express requirement contained in a statute." *People v. Reyes*, 2023 IL 128461, ¶ 34 (citing *People v. Palmer*, 148 Ill. 2d 70, 88 (1992)).

And petitioner is incorrect to suggest that this interpretation of subsection (g)(3) renders subsections (b) and (h) "mere surplusage." Pet. Br. 18. Subsection (b) directs a petitioner to request a COI finding that he "was innocent of all offenses for which he . . . was incarcerated." *See* 735 ILCS 5/2-702(b) ("The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated."); *People v. O'Brien*, 197 Ill. 2d 88, 93 (2001) ("shall" is "a clear expression of

legislative intent to impose a mandatory obligation"). And subsection (h) dictates that if a petitioner carries his burden on all elements of his claim, then he is entitled to a "finding that [he] was innocent of all offenses for which he or she was incarcerated." 735 ILCS 5/2-702(h). But neither subsection sets forth the evidentiary burden a petitioner must satisfy to obtain a COI.

That burden is set by subsection (g), and subsection (g)(3) unambiguously requires a petitioner to prove his innocence of the offenses "charged" in the indictment or information, rather than merely the offenses for which he was "incarcerated." 735 ILCS 5/2-702(g)(3). Indeed, whenever the COI statute discusses a petitioner's evidentiary burden, it refers to the offenses charged, as opposed to the offenses for which the petitioner was incarcerated. For example, when setting forth the pleading standards to warrant a hearing, the statute states that "[t]he petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information." *See* 735 ILCS 5/2-702(d).

It is neither surprising nor instructive that the scope of an eventual certificate, by contrast, is limited to the "offenses for which [the petitioner] was incarcerated," and does not include all charged offenses, because a petitioner may obtain relief in the Court of Claims only with respect to the offenses of which he was wrongfully convicted. *See* 735 ILCS 5/2-702(a); *see*

also Pet. Br. 18, 27 (acknowledging same). For similar reasons, it is self-evident that one element a petitioner must prove to receive a COI is that he was convicted and incarcerated for at least one offense. *See* 735 ILCS 5/2-702(g)(1). But, contrary to petitioner's assertion, *see* Pet. Br. 26, that in no way suggests that a petitioner's evidentiary burden is limited to proving that he is innocent of the offenses for which he was "incarcerated" and does not extend to all "charged" offenses.

Indeed, petitioner's argument conflates the basis for damages in a subsequent civil lawsuit with the burden of showing injury in a COI proceeding and, in so doing, turns the burden of proof set by the COI statute on its head. *See* Pet. Br. 27-29. While petitioner is correct that he cannot seek civil damages based on charges for which he was never convicted*, id.* at 27, that is irrelevant to whether the General Assembly deemed it appropriate to require petitioners, before receiving a COI, to show they are innocent of any valid charges that were dismissed. A COI serves as "conclusive evidence" that a petitioner was unjustly imprisoned for purposes of a subsequent lawsuit, *see* 705 ILCS 505/8(c), but unless the petitioner proves that he is innocent of all valid dismissed charges, he has not shown that his imprisonment was unjust. For this reason, petitioner, and the appellate court case on which he relies, *see* Pet. Br. 27-28 (citing *Green*, 2024 IL App (2d) 220328, ¶¶ 35-36), miss the mark when they reason that charges dismissed pursuant to a negotiated plea agreement are irrelevant to whether

a petitioner's incarceration was unjust. Indeed, as the appellate court elsewhere noted, "a valid dismissed charge is relevant to the issue of whether the petitioner was injured." *Lesley*, 2024 IL App (3d) 210330, ¶ 40.

In short, the language of subsections (b) and (h) provides no basis for this Court to ignore the plain language of subsection (g)(3). Language elsewhere in the COI statute that petitioner points to is similarly unavailing. For example, petitioner cites subsection (c), which describes a claim under the statute as seeking a "'certificate of innocence of an unjust conviction and imprisonment,'" *see* Pet. Br. 25 (quoting 735 ILCS 5/2-702(c)), but a conviction is not "unjust" if the petitioner cannot demonstrate that he could not have been lawfully imprisoned for other valid offenses charged. Likewise, subsection (f) "permits the court to take judicial notice of evidence related 'to the convictions which resulted in the alleged wrongful incarceration,'" Pet. Br. 26 (quoting 735 ILCS 5/2-702(f)), but does not describe the elements a petitioner must prove to which that evidence will be relevant. In other words, subsections (c) and (f), like subsections (b) and (h), say nothing about what a petitioner must show to obtain a COI.

Nor does this Court's reasoning in *People v. Fair*, 2024 IL 128873, dictate that the phrase "for which [the petitioner] was incarcerated" be read into the COI statute after the word "offenses" wherever it appears, including in subsection (g)(3). *See* Pet. Br. 19-20. In *Fair*, this Court held that the circuit court's "consideration" of cases referred by the Torture Inquiry and

Relief Commission (TIRC) under subsection (a) of the TIRC Act were limited by restrictions imposed by the other sections of that Act. 2024 IL 128373, ¶ 69. In other words, the Court used the modifier from elsewhere in the TIRC Act to fill subsection (a)'s silence as to the scope of "consideration" applicable there. But petitioner's argument that the word "offenses" in subsection (g)(3) of the COI statute should similarly be limited by a modifier — "for which [the petitioner] was incarcerated" — from elsewhere in the statute ignores that the General Assembly has chosen to apply a *different* modifier to the word "offenses" in subsection (g)(3): "charged in the indictment or information." 735 ILCS 5/2-702(g)(3). And adding this additional, contradictory modifier to the word "offenses" in subsection (g)(3) where it is already modified would render subsection (g)(3) nonsensical, requiring that a petitioner prove he is "innocent of the offenses for which he . . . was incarcerated charged in the indictment or information."

Because there can be no offenses for which a petitioner was incarcerated with which he was *not* charged in the indictment or information, if the word "offenses" in subsection (g)(3) were limited to those for which petitioner was incarcerated, it would render the limitation to the offenses "charged in the indictment or information" superfluous. So, rather than giving effect to the phrase "offenses charged in the indictment or information," petitioner's interpretation instead effectively replaces that phrase with "offenses for which [the petitioner] was incarcerated."

Accordingly, this Court should reject petitioner's proposed approach because it flies in the face of established canons of statutory construction. *See, e.g.*, *People v. Shunick*, 2024 IL 129244, ¶ 58 (interpretation rendering language superfluous "is unacceptable"); *People v. Ellis,* 199 Ill. 2d 28, 39 (2002) (court "must not depart from the statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express").[4]

Nor, contrary to petitioner's assertion, Pet. Br. 10, did this Court read such a limitation into subsection (g)(3) in *Palmer*. In *Palmer*, the Court stated "that subsection (g)(3) requires a petitioner to prove by a preponderance of the evidence his or her innocence of the offense as it was charged in the indictment or information that resulted in the wrongful criminal conviction." 2021 IL 125621, ¶ 72. Far from supporting petitioner's position, this statement supports the People's interpretation of subsection (g)(3), as this case illustrates. Here, the "information that resulted in" petitioner's conviction included two counts of AUUW without a FOID card; thus, consistent with this Court's statement in *Palmer*, petitioner must prove his innocence of those charges, which he did not do.

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[4] Petitioner acknowledges that the title of the COI statute, on which he also relies, is irrelevant unless the language of the statute is ambiguous. *See* Pet. Br. 24 (citing *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org.*, 2014 IL 115526, ¶ 40). As explained, subsection (g)(3) is not ambiguous, so, as petitioner admits, the statute's title cannot be used to impose limitations on subsection (g)(3)'s plain language. *Id.*

To be sure, petitioner need not prove his innocence offenses charged in a wholly unrelated information or indictment or, as in *Palmer*, offenses that were not charged. *See* 2021 IL 125621, ¶ 68 ("it is unreasonable to conclude that the legislature intended subsection (g)(3) to require a petitioner to prove his innocence of a novel theory of guilt that was never charged"). Indeed, because *Palmer* concerned "a novel theory of guilt that was never charged," petitioner's reliance on *Palmer* is misplaced. *See* Pet. Br. 13-17. In *Palmer*, the People advanced an accountability theory "for the first time in petitioner's attempt to obtain a certificate of innocence." 2021 IL 125621, ¶ 71. By contrast, the People charged petitioner with AUUW without a FOID card in the information that initiated the criminal proceedings against him, and the People pursued those charges until petitioner pleaded guilty pursuant to a negotiated plea agreement.

Thus, although this Court wrote in *Palmer* that the "allegations, as charged and prosecuted in petitioner's criminal trial, are the proper focus of subsection (g)(3)," 2021 IL 125621, ¶ 72; *see also* Pet. Br. 13 (citing similar language in *Palmer*), the words "as prosecuted" were not germane to resolution of the issue presented and were not intended to rewrite subsection (g)(3). At issue in *Palmer* was the meaning of the word "offenses," rather than the meaning of the word "charged." *See* 2021 IL 125621, ¶¶ 60-63. The petitioner had argued (and this Court ultimately agreed) that because the word "offenses" was modified by the words "charged in the indictment or

information," "the legislature intended a petitioner to prove his or her innocence only of those offenses actually described in the charging document." *Id.* ¶ 60*; see also id.* ¶ 64 ("We agree with petitioner that, because the word 'offenses' is modified by the phrase 'charged in the indictment or information,' the legislature intended that a petitioner establish his or her innocence of the offense on the factual basis *charged* in the indictment or information." (emphasis in original)). But neither the petitioner, nor this Court, suggested that the word "offenses" was further limited to those for which the petitioner was incarcerated. So, *Palmer* does not support the interpretation petitioner advances here.

Indeed, most appellate court opinions interpreting subsection (g)(3) have held, like the appellate court below, that subsection (g)(3), consistent with its plain language, requires petitioners to prove their innocence of the offenses charged in the indictment or information, regardless of whether they were convicted of those charges or, as here, the charges were nol-prossed pursuant to a plea agreement. *See* A14; *see also, e.g.*, *People v. Jones*, 2024 IL App (3d) 210414, ¶ 17; *People v. Lesley*, 2024 IL App (3d) 210330, ¶¶ 29-34, 41; *People v. Hilton*, 2023 IL App (1st) 220843, ¶ 46; *People v. Brown*, 2022 IL App (4th) 220171, ¶ 14; *People v. Warner*, 2022 IL App (1st) 210260, ¶ 28. As *Warner* explained, "[i]f the legislature had intended that a petitioner was required to allege and show only that they were innocent of the 'offenses for which he or she was incarcerated,' subsections (d) and (g)(3) would contain

the same language as found in [other subsections]." 2022 IL App (1st) 210260, ¶ 28. "Instead, the legislature chose the phrase 'offenses charged in the . . . information,' demonstrating its clear intent that a petitioner must allege and prove that they are innocent of all of the offenses charged in the information." *Id.*

The sole case — other than the decision below — to interpret subsection (g)(3) differently, *People v. Green*, 2024 IL App (2d) 220328, on which petitioner relies, was wrongly decided. Pet. Br. 16-17. *Green* held that a petitioner does not have to prove his innocence of the charges in the indictment, but only the charges for which he was convicted. 2024 IL App (2d) 220328, ¶¶ 30, 36, 53. But that holding is inconsistent not only with the weight of appellate court authority but also with the plain language of the COI statute, which, as explained, unambiguously refers to the offenses charged in the indictment.[5]

[5] The appellate court's contention in *Green* that *Palmer* supports its reading of subsection (g)(3) because this Court did not discuss the residential burglary charge against Palmer is misplaced. *See* Pet. Br. 16-17 (citing *Green*, 2024 IL App (2d) 220328, ¶ 43). Palmer consistently denied any involvement in the burglary, *Palmer*, 2021 IL 125621, ¶ 25; the only evidence of his involvement came from a single witness whose fingerprints were on the victim's stolen property, *id.* ¶ 41; the jury acquitted Palmer of the burglary, *id.* ¶ 28; and the People never contended that Palmer could not prove his innocence of the burglary, *see id.* ¶ 45 ("the question raised on appeal to the supreme court was specific to the first degree murder charge"). *Palmer* thus is silent as to whether the petitioner there was required to separately prove his innocence of burglary.

Notably, the other jurisdictions cited by petitioner have imposed similar — and, indeed, often more onerous — conditions on obtaining a COI. *See* Pet. Br. 22-23. Petitioner argues that these foreign statutes "demonstrate how our legislature could have used language requiring a showing of innocence of offenses other than the offenses of conviction and incarceration," *id.* at 23, but that is precisely what the General Assembly did: it unambiguously required a showing of innocence of "the offenses charged in the indictment or information." *See* 735 ILCS 5/2-702(g)(3). Moreover, unlike the plain language of subsection (g)(3), the alternative language in the foreign statutes that petitioner asserts the General Assembly could have employed to require a petitioner to prove his innocence of the offenses charged in the information or indictment often set much higher burdens on petitioners. For example, petitioner acknowledges that the Massachusetts statute goes further, Pet. Br. 23, but so, too, does the federal statute, which petitioner suggests as a model, *id.* at 22. The federal statute, which requires a petitioner to prove he "did not commit any of the acts charged," *id.* (citing 28 U.S.C. § 2513(a)(2)), requires that "'the claimant must be innocent of the particular charge *and of any other crime or offense that any of his acts might constitute*.'" *Betts v. United States*, 10 F.3d 1278, 1284 (7th Cir. 1993) (quoting *Osborn v. United States,* 322 F.2d 835, 840 (5th Cir. 1963) (emphasis added)).

Thus, rather than demonstrating different language more consistent with the People's interpretation, petitioner's citation to foreign statutes demonstrates how unambiguously the plain language of subsection (g)(3) describes the requirements for a COI. Petitioner must prove his innocence of the offenses charged in the information — no more and no less — and, here, he cannot meet that burden.

2. Legislative history confirms that the General Assembly intended to deny COIs where petitioners could have been convicted of other, valid offenses charged in the information.

Although it is unnecessary to discuss legislative history or other policy considerations because the plain language of subsection (g)(3) is clear, *see People v. Clark*, 2019 IL 122891, ¶ 28; *accord id.* at ¶ 47 ("[n]o rule of construction authorizes this [C]ourt to declare that the legislature did not mean what the plain language of the statute imports"), requiring petitioners to prove their innocence of all offenses charged in the indictment or information is most consistent with the policies embodied by the COI statute. The showing required by subsection (g)(3)'s plain language prevents petitioners from obtaining a windfall by entering into negotiated plea agreements pursuant to which the People dismiss valid charges in exchange for the petitioner's plea of guilty to a different (then-valid) charge. That is consistent with the legislative history of the COI statute and longstanding public policy favoring and encouraging plea bargaining, s*ee People v. Donelson*, 2013 IL 113603, ¶ 18, by requiring that, when a defendant enters a

negotiated guilty plea in exchange for concessions from the People, both parties are bound to the terms of the agreement, *see In re Derrico G.*, 2014 IL114463, ¶ 99; *People v. Whitfield*, 217 Ill. 2d 177, 190 (2005).

Here, petitioner received the benefits to which he was entitled under the terms of his plea agreement. He pleaded guilty to AUUW under the provision of that statute subsequently declared unconstitutional. Among the benefits he received in exchange, the People dropped other charges, including charges under the constitutionally valid AUUW provisions that criminalize possession of a weapon without a FOID card. When the offense to which petitioner pleaded guilty was deemed unconstitutional, his conviction for that offense was properly vacated. Because the statute of limitations had run on the offenses charging AUUW without a FOID card, the People are unable to reinstate them, and petitioner faces no further criminal liability for conduct that remains illegal to this day. But that does not mean he is entitled to a COI, or related financial compensation, for the offense to which he pleaded guilty.

Indeed, as the sponsor of the bill that became the COI statute made clear, it was never the General Assembly's intent that everyone whose conviction was overturned be entitled to a COI. On the contrary, the sponsor stated: "[T]hat's not the nature of this legislation. This legislation is about men and women who have been wrongfully convicted of a crime; *they never should have been in jail in the first place*." Ill. Gen. Assem., House

Proceedings, May 18, 2007 (statement of Representative Flowers) (emphasis added). Thus, as the appellate court has recognized, when enacting the COI statute, the General Assembly decided "that a COI and the advantages it provides toward obtaining a money judgment against the State should be granted only where a petitioner has demonstrated their innocence of all charges." *Warner*, 2022 IL App (1st) 210260, ¶ 32; *accord Brown*, 2022 IL App (4th) 220171, ¶ 25 ("Where a defendant secures dismissal of charges through a plea agreement, it is consistent with the legislative intent to condition a [COI] on the defendant being innocent of all valid charged offenses.").

To be sure, as petitioner points out, the legislature also intended that the COI statute would provide compensation for people who were "wrongfully incarcerated," *see* Pet. Br. 27, but that purpose has no relevance here. A petitioner cannot establish that he was wrongfully incarcerated if he cannot show that he is innocent of all charges brought against him. This case proves the point. While petitioner can show that he is innocent of the offense to which he pleaded guilty — in that the relevant provision of AUUW was subsequently held unconstitutional — he has never offered evidence that he had a FOID card when he was arrested in possession of a handgun after being involved in a shooting. Accordingly, petitioner cannot show that he was innocent of the charges of AUUW without a FOID card and therefore that he was wrongfully incarcerated. Indeed, confirming that petitioner

suffered no wrongful incarceration, he could have received the same class 4 felony sentence had he been convicted of AUUW without a FOID card that he received for the AUUW offense to which he pled guilty. *See* 720 ILCS 5/24-1.6(d)(1) (2003).

Contrary to petitioner's argument that the General Assembly intended that every defendant whose conviction was overturned be entitled to a COI, the drafting history of the COI statute shows that the legislature set the requirements that a COI petitioner must prove with the financial consequences for local governments in mind. Indeed, much of the debate over the bill centered around limiting COIs — and the financial compensation that often follows — to the proper recipients. *See*, *e.g.*, Ill. Gen. Assemb., House Proceedings, May 18, 2007 (statements of Rep. Reboletti) (expressing concerns that an "inmate will get a COI and then use that as additional evidence at a 1983 hearing in federal court," and that "[m]ost of the counties are self-insured and basically it's going to cost them millions and millions of dollars"). This prediction was correct, insofar as a COI can be powerful evidence in the civil lawsuit that usually follows its issuance. *See, e.g.*, *Patrick v. City of Chicago*, 974 F. 3d 824, 832-34 (7th Cir. 2020) (admitting COI as relevant to section 1983 malicious prosecution claim); *see also Betts*, 10 F.3d at 1283 ("[a] COI serves no purpose other than to permit its bearer to sue the government for damages").

Nor does applying subsection (g)(3) as written lead to absurd results. Petitioner's examples to the contrary, *see* Pet Br. 35-37, reflect nothing more than a disagreement with the result the General Assembly reached after balancing the relevant considerations. But "parties can have strong policy disagreements about the law without that law being *absurd*." *People v. Bowers*, 2021 IL App (4th) 200509, ¶ 42 (emphasis in original). Petitioner does not explain how requiring a COI petitioner to prove his innocence of nol-prossed charges (as in this case), charges in a second indictment that is dismissed as part of a negotiated plea agreement, other offenses for which the petitioner was convicted, or even other offenses on which the trier of fact found the People's evidence insufficient to convict at trial, *see* Pet. Br. 37, would be absurd given that, in each of these hypotheticals, it is not necessarily the case that the petitioner should not "have been in jail in the first place." Ill. Gen. Assem., House Proceedings, May 18, 2007 (statement of Representative Flowers); *see also People v. Britz*, 174 Ill. 2d 163, 202 (1996) (Harrison, J., concurring) (where there was "nothing inherently absurd or irrational about" a law, "one may disagree with it as a matter of policy, but the policy judgment was for the legislature to make").

Nor is it absurd that a petitioner must prove his innocence of a charged offense by a preponderance of the evidence to receive a COI, even if he was never deprived of his liberty for that offense because the People could not meet their burden at trial. *See* Pet. Br. 37. The plain language of the statute

unambiguously requires as much, and petitioner's mere disagreement with the statutory burden set by the General Assembly is insufficient to overcome that language. Finally, even if it would be absurd to require a petitioner to prove his innocence of offenses charged only against a co-defendant, *see* Pet. Br. 36, "*the* indictment or information" for purposes of subsection (g)(3) could plausibly be read to include only the charges brought against the petitioner. *See Evans v. Cook Cty. State's Att'y*, 2021 IL 125513, ¶ 35 ("when a plain or literal reading of the statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the literal reading should yield"); *see also People v. Thanthorey*, 404 Ill. 520, 526 (1950) ("Indictments, though joint in form, are regarded as a several charge against each defendant.").

In the whole, it is the People's interpretation of the COI statute that avoids absurd results. *See Lesley*, 2024 IL App (3d) 210330, ¶ 6 ("'We doubt the legislature envisioned compensating people who could have been lawfully imprisoned for more serious offenses but who happened to plead guilty to a lesser offense that was later recognized to be void *ab initio*.'" (quoting *Brown*, 2022 IL App (4th) 220171, ¶ 25)). Illinois's General Assembly drew a distinction between persons whose convictions have been vacated and those who are innocent of the offenses charged in the information or indictment. Because petitioner's proposed reading of the statute would undermine this distinction, it should be rejected. Petitioner's interpretation would require

compensating people who could have been lawfully imprisoned for one or more charged offenses but who happened to plead guilty to a different offense that was later held invalid. Reading subsection (g)(3) as requiring petitioners to prove their innocence of the charges in the information or indictment avoids such an absurd result.

3. It is of no matter that the charges were dismissed as a part of the plea agreement.

Nor, contrary to petitioner's assertion, does the People's agreement to dismiss the AUUW without a FOID card charges as part of a negotiated plea agreement "'leave[ ] the prosecution just as though no such count had ever been inserted in the indictment.'" Pet. Br. 30 (quoting *Dealy v. United States*, 152 U.S. 539, 542 (1894)).

That is so because the nolle prosequi was not entered as a unilateral act by the People, but rather as part of a bilateral agreement with petitioner. Indeed, this Court recently recognized this distinction between a unilateral and bilateral nolle. *See People v. Smollett*, 2024 IL 130431, ¶ 58. So, while petitioner argues that "dismissal by nolle prosequi is different than striking a count with leave to reinstate," Pet. Br. 30 (citing *Green*, 2024 IL App (2d) 220328, ¶ 29), this Court held otherwise in *Smollett*, explaining that "if a dismissal is entered as part of a nonprosecution agreement between the State and the defendant, the manner of the dismissal is not important." *Id.* ¶ 60. Put differently, while a unilateral nolle "'reverts the matter to the same condition that existed before the commencement of the prosecution,'" Pet. Br.

30 (quoting *Green*, 2024 IL App (2d) 220328, ¶ 29 (cleaned up)), a bilateral nolle does not.[6]

This is because where the People have nol-prossed some of the charges in an indictment in exchange for the defendant's agreement to plead guilty to another charge, the parties have entered into a contract. *See People v. Wells*, 2024 IL 129402, ¶ 21 (plea agreements are governed "to some extent" by contract law principles). Consistent with contract principles, neither party to a plea agreement should be able "'unilaterally to renege or seek modification simply because of uninduced mistake or change of mind.'" *Id.* (quoting *People v. Evans*, 174 Ill. 2d 320, 327 (1996) (cleaned up)). Thus, for example, a defendant may not seek credit for additional time served — even though he was potentially entitled to such credits — where the plea agreement provided for a specific period of credit. *Id.* ¶ 25. Nor may a defendant who enters into a negotiated plea agreement challenge his sentence on the basis that the court relied on improper statutory sentencing factors without first seeking to withdraw his guilty plea. *People v. Johnson*, 2019 IL 122956, ¶ 57. Instead, the proper recourse is to withdraw the guilty plea and return the parties to the status quo before the plea. *Id.* Here, when the court vacated petitioner's

[6] For this reason, *People v. Smith*, 2021 IL App (1st) 200984, on which petitioner relies, Pet. Br. 31, is inapposite. While *Smith* did not "read the COI statute to suggest that a petitioner would have to demonstrate his innocence of nol-prossed charges," 2021 IL App (1st) 200984, ¶ 25, it did so in the context of a conviction following a trial, and so did not address a bilateral nolle.

conviction for AUUW — to which he pleaded guilty in exchange for the People's agreement to nol-prosse the charges of AUUW without a FOID card — it returned the parties to the status quo before the plea, which is to say, when the AUUW without a FOID card charges still existed. *People v. Shinaul*, 2017 IL 120162, ¶ 9 (where defendant's AUUW conviction was vacated pursuant to *Aguilar*, the People could properly reinstate previously nol-prossed charges).

In sum, when charges are bilaterally nol-prossed pursuant to a negotiated plea agreement, contract principles dictate that if the petitioner's conviction is later vacated, the parties be returned to the state of affairs prior to the guilty plea. At that time, charges of AUUW without a FOID card were part of the information brought against petitioner. And because petitioner has offered no evidence to meet his evidentiary burden of proving his innocence of AUUW without a FOID card, the circuit court properly denied him a COI.

4. The presumption of innocence in criminal trials is irrelevant to a petitioner's burden when seeking a COI.

Petitioner is wrong that the presumption of innocence afforded to criminal defendants precludes a requirement that he prove his innocence of all charged offenses to receive a COI, *see* Pet. Br. 32-34, because the due process principles underlying the presumption of innocence are not relevant to a petitioner's pursuit of a COI. As the Court explained in *In re Winship*,

> Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt. To this end, the reasonable-doubt standard is indispensable, for it impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.

397 U.S. 358, 364 (1970). But the COI statute provides a mechanism for obtaining compensation for a past deprivation of liberty, *see Betts*, 10 F.3d at 1283 ("[a] COI serves no purpose other than to permit its bearer to sue the government for damages"), not a process for restoring the right to liberty. Indeed, a petitioner cannot seek a COI without first having had his liberty restored. Thus, the presumption of innocence that inheres in the due process right to a fair trial is irrelevant to seeking a COI.

For this reason, petitioner's reliance on *Nelson v. Colorado*, 581 U.S. 128 (2017), is misplaced. *See* Pet. Br. 33-34. *Nelson* held that a Colorado statute violated due process by offending the presumption of innocence insofar as it required a petitioner to show actual innocence to recoup "any fine, penalty, court costs, or restitution . . . paid . . . as a result of his or her wrongful conviction." 581 U.S. at 134, 139. Importantly, *Nelson* did not reach a similar holding as to the portion of the statute requiring such a showing before a petitioner could receive compensation for time served. Indeed, Colorado had argued that because the State could constitutionally require a showing of innocence before a petitioner could receive compensation for time served, the State must be able to require the same showing before a petitioner could recoup funds paid pursuant to a (now vacated) criminal

conviction. *Id.* at 138. The Supreme Court rejected that argument, explaining that the petitioners there sought "restoration of funds they paid to the State, not compensation for temporary deprivation of those funds." *Id.* The Court added: "Just as the restoration of liberty on reversal of a conviction is not compensation, neither is the return of money taken by the State on account of the conviction." *Id.* But compensation for deprivation of liberty, rather than restoration of liberty, is precisely what is at issue in a COI proceeding.

Accordingly, the presumption of innocence is not offended by requiring a petitioner to show his innocence on constitutionally valid charges that were included in the information but nol-prossed pursuant to a negotiated plea agreement before receiving a COI.

5. Judicial estoppel does not apply.

Finally, judicial estoppel does not preclude the People's reliance on charged offenses that they voluntarily nol-prossed as part of a negotiated plea agreement. *See* Pet. Br. 14. "Five elements are generally required for the doctrine of judicial estoppel to apply: the party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it." *People v. Caballero*, 206 Ill. 2d 65, 80 (2002). Here the People have not taken inconsistent

positions. The People charged petitioner with two counts of AUUW for possessing a firearm without a FOID card. That it nol-prossed those charges as part of a negotiated plea agreement is not inconsistent with an argument that petitioner must show that he is innocent of those charges to obtain a COI. Nor did the People intend for the trier of fact to believe that petitioner was innocent of AUUW without a FOID card merely because it nol-prossed those charges. Accordingly, judicial estoppel does not apply here.

In sum, petitioner can only demonstrate his innocence of the AUUW offense to which he pleaded guilty; he did not and cannot prove that he was innocent of all charges in the information. Accordingly, petitioner failed to satisfy his burden of proof under subsection (g)(3) and is not entitled to a COI.

B. Petitioner Voluntarily Pleaded Guilty in Exchange for the People's Agreement to Enter a Nolle Prosequi on Other Charges and so Voluntarily Brought About His Conviction.

There is a second way in which petitioner has failed to satisfy his evidentiary burden under the COI statute: he failed to prove that, as required by subsection (g)(4), he "did not by his . . . own conduct voluntarily cause or bring about his . . . conviction." 735 ILCS 5/2-702(g)(4).

Although the People did not press this argument below, this Court nevertheless can and should affirm on this alternate ground. *See, e.g.*, *People v. Wilmington*, 2013 IL 112938, ¶ 52 ("this [C]ourt is 'in no way constrained by the appellate court's reasoning and may affirm on any basis supported by

the record'"). Under the COI statute, a petitioner has the burden of proving by a preponderance of the evidence each of the requirements for a COI. 735 ILCS 5/2-702(g); *Washington*, 2023 IL 127952, ¶ 50. The requirement that the petitioner carry this burden is not subject to forfeiture by the People because — even absent the People's participation — the circuit court has a duty to consider the sufficiency of the petitioner's allegations and attached materials to determine whether the petitioner is entitled to a COI. *See Washington*, 2023 IL 127952, ¶ 50. Put differently, the court cannot grant a COI if a petitioner did not meet his evidentiary burden, even if the State did not identify for the circuit court all of the ways in which the petitioner failed to do so, Thus, even if this Court finds that petitioner satisfied subsection (g)(3), it should affirm on the ground that he did not satisfy subsection (g)(4).

A defendant who pleaded guilty is not categorically barred from obtaining a COI, *Washington*, 2023 IL 127952, ¶ 30, but, like any other COI petitioner, he must prove that he "did not by his . . . own conduct voluntarily cause or bring about his . . . conviction." 735 ILCS 5/2-702(g)(4). A guilty plea plainly "causes" a conviction. *See Boykin v. Alabama*, 395 U.S. 238, 242 (1969) ("[a] plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction"); *People v. Reed*, 2020 IL 124940, ¶ 27 ("A guilty plea is an admission of guilt and a conviction and in and of itself."). Accordingly, because a petitioner who has pleaded guilty has

caused his conviction, the COI statute requires him to demonstrate that he did not do so "voluntarily." *See* 735 ILCS 5/2-702(g)(4).

In *Washington*, this Court held that a petitioner who pled guilty did not voluntarily cause or bring about his conviction, 2023 IL 127952, ¶ 62, where his guilty plea followed a confession that was produced by "abusive and coercive conduct of the police," *id.* ¶ 59. In contrast, here, petitioner presented no evidence that he was subjected to similar abuse, or that his decision to plead guilty was otherwise "involuntary," making him ineligible for a COI. An act is done "voluntarily" if it is done freely and without coercion. *See, e.g., Brady v. United States*, 397 U.S. 742, 748 (1970) (describing "voluntary" plea as an "expression of [the defendant's] own choice"); *People v. Richardson*, 234 Ill. 2d 233, 253 (2009) (describing voluntary statement as one given "freely[ ] . . . and without compulsion or inducement of any sort"); *see also Voluntarily*, Black's Law Dictionary (12th ed. 2024) ("Intentionally; without coercion."). That the offense to which petitioner pleaded guilty was later ruled unconstitutional has no bearing on whether petitioner pleaded guilty freely and without coercion.

To be sure, this Court suggested in dicta in *Washington* that where a petitioner pleaded guilty to an offense subsequently held unconstitutional, the petitioner did not "'intentionally cause or bring about her conviction.'" 2023 IL 127952, ¶ 44 (quoting *People v. McClinton*, 2018 IL App (3d) 160648, ¶ 21). But *McClinton*, on which the Court relied for this proposition, did not

hold that a guilty plea is involuntary because the charged offense was subsequently held unconstitutional. *McClinton* held that an act that constituted a void offense was not conduct that voluntarily caused or brought about a conviction. 2018 IL App (3d) 160648, ¶ 21. It did not address whether *pleading guilty* to that offense voluntarily causes or brings about a conviction. Nor could *McClinton* have addressed the latter question because the petitioner there was found guilty after a bench trial. *Id.* ¶¶ 3-5.

Moreover, a holding that pleading guilty to an offense subsequently declared unconstitutional is necessarily an involuntary act would be inconsistent with the plain language of subsection (g)(4), which does not address the validity of the offenses charged. By contrast, subsection (g)(3) states that a petitioner is entitled to a COI if he was innocent of the charged offense *or* if his "acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State." 735 ILCS 5/2-702(g)(3). Plainly, then, whether the statute under which a petitioner was charged is unconstitutional is relevant to whether the petitioner can satisfy his burden under subsection (g)(3). But it has no bearing on whether petitioner can satisfy subsection (g)(4), which has no equivalent language.

That is, under the plain language of the COI statute, a petitioner could satisfy subsection (g)(3) by demonstrating that the offense or offenses that gave rise to his conviction were charged pursuant to an unconstitutional statute. But the petitioner *also* would be required to show that his conduct

causing his conviction — the guilty plea — was involuntary. Were he able to satisfy subsection (g)(4) by demonstrating that the charges were pursuant to an unconstitutional statute — the same exact basis by which he satisfied subsection (g)(3) — it would render subsection (g)(4) superfluous, in contravention of canons of statutory construction. *See, e.g.*, *People v. Stoecker*, 2014 IL 115756, ¶ 25 ("every clause of a statute must be given a reasonable meaning, if possible, and should not be rendered meaningless or superfluous").

In sum, in addition to showing either that he was innocent of the offenses charged or that the conduct underlying those offenses did not constitute a crime, *see* 735 ILCS 5/2-702(g)(3), petitioner was also required to show that his conduct causing his conviction — the guilty plea — was involuntary. That he cannot do. Petitioner voluntarily pleaded guilty, thus bringing about his conviction. That is especially true where petitioner directly benefitted from his guilty plea by inducing the People to drop the indisputably valid charges of AUUW without a FOID Card. For this reason, petitioner has failed to satisfy his burden under subsection (g)(4) and is not entitled to a COI.

CONCLUSION

This Court should affirm the appellate court's judgment.

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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 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 36 pages.

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 20, 2024, the foregoing Brief of Plaintiff-Appellee People of the State of Illinois was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by way this Court's Odyssey e-filing system:

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