No. 126645

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DONALD LEIB, Defendant-Appellant.	))))))))))	On Appeal from the Appellate Court of Illinois, First Judicial District No. 1-17-0837 There on Appeal from the Circuit Court of Cook County, Illinois No. 15 CR 17207 The Honorable Kerry M. Kennedy, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant appeals from the judgment of the Illinois Appellate Court, First District, affirming his conviction, following a bench trial, for being a "child sex offender" "knowingly . . . present . . . on real property comprising any school," in violation of 720 ILCS 5/11-9.3(a). Def. Br. at A-4-18 (*People v. Leib*, 2020 IL App (1st) 170837-U).[1]

No question is raised on the sufficiency of the pleadings.

ISSUES PRESENTED

1. Whether the parking lot located across the street from the Queen of Martyrs Church and School constituted "real property comprising any school" under 720 ILCS 5/11-9.3(a).

2. Whether the evidence was sufficient to prove defendant's knowledge, beyond a reasonable doubt, that he was on "real property comprising any school."

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court allowed leave to appeal on January 27, 2021. *People v. Leib*, 163 N.E.3d 722 (Ill. Jan. 27, 2021) (Table).

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[1] "C__," "R. [letter]-[page number]," and "Def. Br. __" denote the common law record, the report of proceedings, and defendant-appellant's opening brief, respectively. The paper supplemental volume to the record on appeal is cited as "P.SUP __," and the electronic supplemental volumes to the record on appeal are cited as "E.SUP__ C__," "E.SUP__ R__," and "E.SUP__ E__."

STATEMENT OF FACTS

Defendant's Trial

Defendant is a child sex offender, having been convicted of abduction of a child under the age of 16, in violation of 720 ILCS 5/10-5(b)(10), in 2007. C62, 105; R. K-74-75. In September 2015, defendant attended the annual benefit carnival for the Queen of Martyrs Catholic School and Parish of Evergreen Park, Illinois. K-50-52. The People charged him with violating 720 ILCS 5/11-9.3(a), which provides that it is "unlawful for a child sex offender to knowingly be present . . . on real property comprising any school. . . when persons under the age of 18 are present in the building[or] on the grounds." C20-21.

At defendant's bench trial, his neighbor, Jeanne Cassidy, testified that on the evening of September 26, 2015, she attended the annual Queen of Martyrs Fest and observed defendant standing in front of a carnival ride in the parking lot across St. Louis Avenue from the Queen of Martyrs School gymnasium. R. K-49-52; R. K-54-55 (marking defendant's location on People's Exhibit 1); E.SUP2 E22 (People's Exhibit 1 with mark indicating defendant's location). Knowing defendant to be a registered sex offender, Cassidy informed a uniformed police officer of defendant's presence and showed the officer a photograph of defendant on her phone. R. K-50-51, 55-56. Cassidy watched the officer escort defendant out of the festival and, later that evening, filed a police report. R. K-56, 58-59. When Cassidy told

defendant the next morning that she had filed the report, he responded that he "understood what [her] concerns were." R. K-57-59.

Chicago Police Officer Daniel McGreal testified that he stopped by the Queen of Martyrs Fest to see his family during his shift that evening. R. K-65-66, 70. McGreal described the event as "a carnival held by the school, Queen of Martyrs, and the church that's located on [that] corner . . . extend[ing] through the back of the school into a parking lot in the back" on St. Louis Avenue. R. K-67. As McGreal was walking through that parking lot, Cassidy approached and notified him that defendant was at the festival despite the fact that "he wasn't allowed to be around" the school. R. K-67-68. McGreal confronted defendant, requested identification, and eventually asked defendant to walk to McGreal's squad car while he ran defendant's information. R. K-68-69. McGreal told defendant that "he shouldn't be here, and [defendant] agreed" and left. R. K-69; *see also* R. K-73-74.

Reverend Edward Mikolajczyk, pastor of Queen of Martyrs Parish for 18 years, was "responsible for. . . taking care of [both] the parish and the school." R. K-9. He testified that the parking lot at the corner of 103rd Street and St. Louis Avenue, where part of the Queen of Martyrs Fest was held, is "school property," and that the festival was a combined fundraiser for school and church. R. K-11, 13-14. The parish stretches "from 103rd [Street] and Kedzie to 103rd [Street] and Pulaski, from 99th Street to 107th Street"; in addition, along 103rd Street, there is a church, a school for children ages 3

years old through 8th grade, a rectory "connected to the school," and a gymnasium, also "connected to the school," known as the "Queen of Martyrs John Vitha Hall." R. K-10-11, 17, 21; *see also* Def. Br. at 5 (Google Maps overhead image of Queen of Martyrs campus); R. K-15-17, 23-24 (Mikolajczyk identifying parish buildings from overhead image); P.SUP 12 (Google Maps "Street View" image of Queen of Martyrs's Church from 103rd Street); R. K-20-21 (Mikolajczyk identifying exterior view of Queen of Martyrs's Church from "Street View" image); Def. Br. at 36 (Google Maps "Street View" image of Vitha Hall from 103rd Street); R. K-21-22 (Mikolajczyk identifying exterior view of Vitha Hall from "Street View" image); R. K-105-06 (admitting all three Google Maps images). The parking lot across St. Louis Avenue from the gym is used, among other things, for school drop-off and school recesses. R. K-18-20. With regard to whether the church or school controls the St. Louis Avenue parking lot, Mikolajczyk testified that "[t]he church and the school are synonymous." R. K-26-27.

Mikolajczyk testified that the Fest's flyer advertised the event to be "under [the] auspices of Queen of Martyrs" and that although the flyer did not refer directly to the school, "people underst[oo]d that as being the parish and the school fundraiser." R. K-13-14; P.SUP 9 (flyer); R. K-105-06 (flyer admitted). A permanent sign posted at the entrance of the St. Louis Avenue parking lot advertised the parish's weekly bingo night. *See* P.SUP 13; R. K-

22-24. Similarly, the Fest's raffle flyer referred generally to "Queen of Martyrs." R. K-14-15; P.SUP 8.

Kathleen Tomaszewski, principal of Queen of Martyrs School, described the annual Queen of Martyrs Fest as a parish fundraiser for both the school and the church, with a portion of the proceeds going directly to the school. R. K-29-30, 34. The event sprawled over the "whole area" of the Queen of Martyrs campus, from the St. Louis Avenue parking lot, across St. Louis Avenue — which was "blocked off" for the event — and into the Vitha Hall school gym and the school proper. R. K-29-31, 43, 46. Tomaszewski testified that the "school is connected" to the church, R. K-35, and several of the Fest's activities were available in the school's "St. Joe's room" located "off of the parking lot," R. K-44, as advertised in the flyer, P.SUP 9; *see* R. K-40 ("children's games in the St. Joe's room[,] which is a room in my school").

According to Tomaszewski, the parish's St. Louis Avenue parking lot was used for daily student drop-offs and pick-ups, as well as other school-related functions, such as "athletic events," "car washes," and "scouts." R. K-41; *see also* R. K-42 (St. Louis Avenue parking lot is available for school use "any time I wish"). She agreed that the bingo night sign did not specifically reference the Queen of Martyrs School but affirmed that, like the festival, the school does receive proceeds from bingo. R. K-37.

The parties then stipulated to defendant's 2007 offense, which defense counsel described as "attempted luring." R. K-74-76; P.SUP 3-7. The People rested. R. K-76

Following the denial of his motion for a directed verdict, *see* R. K-76-82, defendant called Robert Pellegrini, chairperson of the Queen of Martyrs Fest planning committee and a parishioner of 47 years, R. K-83-84. Pellegrini stated that the St. Louis Avenue parking lot was the "school, church, parish parking lot," and was used for "any activity. . . going on in the parish." R. K-86.

Irene Ahern Smith, the business manager at Queen of Martyrs Parish for 20 years, similarly testified that the St. Louis Avenue parking lot where the carnival was held is "owned by the [Queen of Martyrs] parish" and that "[y]ou can't really differentiate between the parish and the church or the church and the school because the Federal Government identifies us under one Federal ID number. . . . We're all one Federal ID number." R. K-99-104. The parish, consisting of the church and the school, occupies the "whole block" of 103rd Street from Central Park to St. Louis Avenue. R. K-99.

Finally, defendant's brother Robert testified that he invited defendant to attend the Queen of Martyrs Fest with him and his family. R. K-88-89. A Queen of Martyrs parishioner for seven years, Robert testified that he believed the St. Louis Avenue parking was "part of the church" and "not school property." R. K-89, 92-93. As he and defendant were looking at prizes

at the gaming booths, they were "approached by a Chicago police officer," who "asked [defendant] if he was a sex offender." R. K-94. According to Robert, the officer asked them to walk across the street to his squad car and, after further discussion, "told [them] to leave because people were uncomfortable [they] were there"; they then left "immediately." R. K-95. Robert was aware that his brother is not supposed to be around children in a school area and claimed that he "would not have allowed [defendant] to go" if he "didn't believe it was . . . a Church function" on "church property." R. K-95-97.

Defendant also presented the stipulated testimony of Evergreen Park Detective Anthony Signorelli that his police report of the offense described the "place of incident" as a "church, synagogue, or [ ] temple." R. K-104.

The circuit court found defendant guilty of being a child sex offender knowingly present on real property comprising a school, R. K120-21, and denied defendant's motion for new trial, C50-59; C89-93; R. M3-13. After a sentencing hearing, at which the People introduced evidence of defendant's 2003 conviction for indecent solicitation of a child, R. M22-43, as well as his 2007 child abduction conviction, R. M15-22, the court sentenced defendant to 12 months in prison, C96; R. N6.

Defendant's Appeal

The appellate court affirmed, rejecting defendant's claims that the St. Louis Avenue parking lot was not "real property comprising any school" under section 11-9.3(a), or that if it was, there was insufficient evidence that

defendant's presence on school property was "knowing." *See* Def. Br. at A-9-15. As a matter of law, the court found that because the Criminal Code's "definition of school includes its grounds, *i.e.*, the area around and belonging to school buildings," "the parking lot of a school would qualify as part of the school grounds" and, thus, as "'real property comprising any school' under section 11-9.3(a)." *Id.* at A-11-12 (citing 720 ILCS 5/11-9.3(a) & 720 ILCS 5/2-19.5). The court rejected defendant's argument that real property comprising a school must be contiguous with the school (i.e., not separated by a public street), reasoning that defendant's interpretation runs "counter to [both] the statute's intent[ ] to prevent the presence of child sex offenders on school grounds where children congregate" and "the reality of urban school campuses." *Id.* at A-12. The court then found that, "taking the evidence in the light most favorable to the State, a rational trier of fact could have found that the St. Louis parking lot qualified" as school property: among other things, the "evidence established that it was used for student drop-off and pickup, recess, and parking for athletic events, scout meetings, and car washes." *Id.* at A-12-13.

The appellate court further found that "a rational trier of fact could have found that defendant knew he was present on real property comprising a school." *Id.* at A-13. Multiple witnesses had testified "that the school and church were one entity and the parish operated an elementary school on the grounds," *id.*; the "school was situated between the St. Louis parking lot and

the church," *id.* at A-14-15; and "the festival's purpose was to raise funds for a parish that included a parochial elementary school," *id.* at A-13-14. In addition, Father Mikolajczyk "testified that the festival was 'underst[ood] as being the parish and the school fundraiser,'" *id.* at A-14-15; the flyer advertised "children's games available in the St. Joseph's room, which was located in the school," *id.* at A-13-14; "the St. Louis parking lot hosted carnival rides for children," *id.* at A-14-15; and "'hundreds' of children were present," *id.* at A13-14. Finding this evidence sufficient to establish defendant's knowledge, the court emphasized that "knowledge is generally established by circumstantial evidence rather than direct proof," and "a trier of fact is not required to disregard the inferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt." *Id.*

Justice Mikva agreed that "the parking lot where the festival occurred was part of the grounds of the school and that, therefore, [defendant] was prohibited from being there when 'persons under the age of 18 [were] present.'" *Id.* at A-15 (Mikva, J., dissenting) (quoting 720 ILCS 5/11-9.3(a)). But she disagreed that the evidence of defendant's knowledge was sufficient. *Id.* at A-15-16, A-18 (Mikva, J., dissenting).

ARGUMENT

With exceptions that are inapplicable here, it is unlawful for a "child sex offender" to be "knowingly" "present" "on real property comprising any

school" "when persons under the age of 18 are present . . . on the grounds." 720 ILCS 5/11-9.3(a) (eff. Jan. 1, 2014 - Dec. 31, 2017). A court considering a sufficiency challenge asks whether any rational trier of fact could have found each of these required elements beyond a reasonable doubt. *People v. Gonzalez*, 239 Ill. 2d 471, 478 (2011) (citing *Jackson v. Virginia*, 433 U.S. 307, 319 (1979)). All reasonable inferences from the evidence must be drawn in the People's favor, *id.*, with the same standard applying whether the evidence is direct or circumstantial, *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). The trier of fact, not the reviewing court, is the ultimate arbiter of issues of credibility or weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). This Court will not reverse the trial court's judgment "unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Newton*, 2018 IL 122958, ¶ 24.

There is no dispute that defendant is a "child sex offender"; the parties stipulated to defendant's 2007 child abduction conviction, and section 11-9.3 defines "child sex offender" to include a person convicted of this offense. *See* R. K-74-76; P.SUP 3-7; 720 ILCS 5/11-9.3(d)(1)(i)(A), (d)(2)(i). Nor is there any dispute that defendant was present at the Queen of Martyrs Fest on the evening of September 26, 2015, or that "persons under the age of 18" were also present. *See, e.g.*, R. K-49-52 (Cassidy observed defendant standing near carnival ride in St. Louis Avenue parking lot); R. K-67-69, 73-74 (Officer

McGreal approached defendant and escorted him off the property); R. K-53 (Cassidy testified that "hundreds" of kids were present).

The only questions for the Court are whether (1) the evidence sufficed to prove that the St. Louis Avenue parking lot was "real property comprising any school," and (2) defendant knew that he was on school property. Viewing the evidence in the light most favorable to the People and drawing all reasonable inferences in the People's favor, a reasonable trier of fact could have found both elements beyond a reasonable doubt.

I. The People Presented Sufficient Evidence to Show that Defendant was on Real Property Comprising a School.

Whether defendant was on real property comprising a school raises two separate but related issues: (1) whether, as a matter of law, a school parking lot located across a public street from the school can constitute "real property comprising any school," and (2) whether the evidence at trial was sufficient to establish that the St. Louis Avenue parking lot did, in fact, constitute "real property comprising any school." Under the statute's language, given its plain and ordinary meaning, a school parking lot separated from a school by a public street can constitute "real property comprising any school," and the evidence in this case sufficiently supported a finding that the St. Louis Avenue parking lot was, indeed, such property

A. A School Parking Lot Located Across a Public Street from the School Can Constitute "Real Property Comprising Any School" Under 720 ILCS 5/11-9.3(a).

Whether the St. Louis Avenue parking lot can be considered "real property comprising any school" under 720 ILCS 5/11-9.3(a) presents a question of statutory construction, which this Court reviews *de novo*. *Newton*, 2018 IL 122958, ¶ 14. "'The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent.'" *Hardman*, 2017 IL 121453, ¶ 19 (quoting *People v. Johnson*, 2017 IL 120310, ¶ 15). "'The best indication of legislative intent is the statutory language, given its plain and ordinary meaning.'" *Id.* (quoting *Hall v. Henn*, 208 Ill. 2d 325, 330 (2003)). "The words and phrases in the statute are to be construed in light of other relevant provisions and not in isolation." *Newton*, 2018 IL 122958, ¶ 14. "Where the language is plain and unambiguous, it must be applied without resort to further aids of statutory construction." *Id.* The Court "presumes that the legislature did not intend to create absurd, inconvenient, or unjust results." *Jackson*, 2011 IL 110615, ¶ 12.

Here, the plain and ordinary language of section 11-9.3(a), and specifically the phrase "real property comprising any school," includes the St. Louis Avenue parking lot across the street from the Queen of Martyrs School. 720 ILCS 5/11-9.3(d)(15). The statute does not define "real property," but the dictionary defines it as "property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures

permanently attached to the land or a structure on it." *Real Property*, Merriam-Webster, https://www.merriam-webster.com/dictionary/property #legalDictionary (last visited Nov. 3, 2021); *see People v. Witherspoon*, 2019 IL 123092, ¶ 21 (dictionary definition may be used to ascertain plain and ordinary meaning of undefined terms). The word "comprise" has several definitions, including "to include especially within a particular scope." *Comprise*, Merriam-Webster, https://www.merriam-webster.com/dictionary /comprise (last visited Nov. 3, 2021). Taken together then, "real property comprising any school" refers to the land and attached structures that are included within the scope of a school. A parking lot owned, like the school, by the parish, where students are dropped off and picked up, and where students participate in recess and other school activities, plainly falls within the scope of the school. Nothing in the dictionary definitions of these terms, or the remainder of section 11-9.3(a), creates an exception that would exclude the parking lot from the "real property comprising any school."

Indeed, following the phrase "real property comprising any school," section 11-9.3(a) also uses the term "grounds" to describe the same area, which lends support to a construction that includes a parking lot across the street. *In re Shelby R.*, 2013 IL 114994, ¶ 32 ("statutes must be read as a whole and not as isolated provisions"). Specifically, section 11-9.3(a) prohibits child sex offenders from being present in "any school building, on real property comprising any school, or in any conveyance," but limits its

prohibition to times when children are present "in the building, on the *grounds* or in the conveyance." 720 ILCS 5/11-9.3(a) (emphasis added). Given the repetition of "building" and "conveyance" when describing these areas, it is clear that "grounds" and "real property comprising any school" are intended to be construed identically. *See Maksym v. Bd. of Election Comm'rs*, 242 Ill. 2d 303, 321-22 (2011) (substantially same phrases in statute given generally accepted and consistent meaning, where no express legislative intent to contrary). The definition of "grounds" — "the area around and belonging to a house or other building" — further supports a finding that a parking lot across the street from a school is part of the "real property comprising any school." *Grounds*, Merriam-Webster, https://www.merriam-webster.com/dictionary/grounds (last visited Nov. 3, 2021). A school parking lot in common ownership with, in close proximity to, and frequently used by the school itself plainly satisfies the definition of "grounds."

Defendant's alternative construction conflates the term "contiguous" with "comprise" and "contain," but "contiguous" does not have the same meaning as these other words. *See* Def. Br. 15-16 (arguing that land that is "non-contiguous" with a school cannot be part of the real property that "contains" a school). "Contain" is merely a synonym of "comprise," meaning to "have within" or "include," *Contain*, Merriam-Webster, https://www.merriam-webster.com/dictionary/contain (last visited Nov. 3, 2021), while "contiguous" means "being in actual contact" or "touching along

a boundary or at a point," *Contiguous*, Merriam-Webster, https://www.merriam-webster.com/dictionary/contiguous (last visited Nov. 3, 2021). For example, the United States of America *contains* 50 states but only 48 of those states are *contiguous*. In other words, a school's real property can contain, or be comprised of, land with which it is not contiguous. Thus, defendant's proposed construction is not supported by the statute's plain and ordinary language.

Moreover, even if this Court finds that the statutory language is ambiguous, resort to extrinsic aids of construction leads to the same outcome. *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org., Ltd.*, 2014 IL 115526, ¶¶ 39-40 (if plain meaning is ambiguous, court may rely on extrinsic aids of construction to discern legislative intent). In resolving a statutory ambiguity, this Court may consider the "purpose behind the law," "the evils the law was designed to remedy," the "legislative history," and the consequences of construing the statute one way or another. *Id.* ¶ 24. Here, each of these considerations supports the People's interpretation.

As the appellate court found, section 11-9.3(a) was intended to "keep child sex offenders away from school grounds where children congregate." Def. Br. at A11, ¶ 26. This finding is consistent with *People v. Stork*, 305 Ill. App. 3d 714, 721 (2d Dist. 1999), where the appellate court concluded that the same statute was "intended to protect school children from known child sex offenders." This Court has similarly recognized section 11-9.3(a) as

among the laws intended to protect child welfare. *See People v. Ward*, 215 Ill. 2d 317, 329-30 (2005) (720 ILCS 5/11-9.3 intended to protect children and ensure welfare); *People v. Huddleston*, 212 Ill. 2d 107, 133 (2004) (same).

The relevant legislative history confirms this purpose. House Bill 157, which enacted section 11-9.3(a), declared that "the State has a special interest in protecting children who attend schools from child sex offenders." 90th Ill. Gen. Assem., House Bill 157, 1997 Sess. And during debate on the Senate floor, the bill was described as making it harder for sex offenders to "get access to our children." 90th Ill. Gen. Assem., Senate Proceedings, May 14, 1997, at 11 (statements of Senator Hendon).

With this purpose in mind, the term "real property comprising any school" must be interpreted in a way that best fulfills the General Assembly's goal of protecting school children from child sex offenders. To that end, "real property comprising any school" should be construed to include locations where children gather for school purposes, regardless of whether the property is contiguous to the school building. *Cf. State v. Mathias*, 936 N.W.2d 222, 233 (Iowa 2019) ("grounds of a school" included athletic parking lot across the street from school building, even though not on land contiguous with school).

Finally, the term "school zone" in the statute's title supports a construction that includes a school parking lot separated by a public way. *Home Star Bank*, 2014 IL 115526, ¶ 40 (title of statute may not limit plain meaning but may lend guidance when construing ambiguous statute). Like

"grounds," the word "zone" refers to "a region or area set off as distinct from surrounding or adjoining parts." *Zone*, Merriam-Webster, https://www.merriam-webster.com/dictionary/zone (last visited Nov. 3, 2021). The General Assembly's decision to use the term "school zone" in the statute's title shows that the law was intended to apply more generally to the area around a school, rather than strictly apply to contiguous tracts of lands, and thus that the statute's reach would encompass a school parking lot across the street from the school.

Defendant's arguments based on extrinsic aids of construction are unpersuasive. First, he contends that the term "real property comprising any school" should be construed narrowly because the legislature used different terminology in other, unrelated statutes. Def. Br. at 19-21. Specifically, he points to 105 ILCS 5/10-27.1A (establishing reporting requirements for school officials who observe a person possessing a firearm on school grounds) and 705 ILCS 405/5-407(e) (outlining processing procedures for juveniles detained for possessing firearms on school grounds), which both define "school grounds" to "include[ ] the real property comprising any school, any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or any public way within 1,000 feet of the real property comprising any school." But this definition of "school grounds" plainly does not apply to section 11-9.3(a), which, as discussed above, uses the term "grounds" interchangeably with the term "real property

comprising any school."[2] More importantly, defendant does not explain why the fact that these other statutes apply to areas like school busses and public streets near schools (areas not at issue in this case) suggests in any way that section 11-9.3(a) excludes non-contiguous school property. Defendant also points to 720 ILCS 5/10-5(d)(6) (child abduction statute), which uses the slightly-different formulation "real property *of a* school." Def. Br. at 21 (emphasis added). But again, he fails to explain why the terms used in this unrelated statute require his cramped reading of section 11-9.3(a).

Defendant concedes that a school parking lot located on property contiguous with land where a school building is located falls within the plain meaning of "real property comprising any school." Def. Br. at 18; *id.* at A-12, ¶ 27. He urges, however, that the same school parking lot is not covered by the statute if located across a public street from the school building. Def. Br. at 18. This construction would lead to absurd results. The General Assembly could not have intended to protect children in a school parking lot adjoining the land where Queen of Martyrs School buildings are located from child sex offenders, but not the children in the school parking lot across St. Louis Avenue from the same school buildings. *Jackson*, 2011 IL 110615, ¶ 12 ("[A]

[2] Defendant fails to mention a third definition of "school grounds" found in the Criminal Code under the statute prohibiting street gang recruitment on school grounds. That statute, 720 ILCS 5/12-6.4(c), defines "school grounds" as school buildings and the "real property comprising" the school. Like the instant statute, this definition of "school grounds" draws no distinction between contiguous and non-contiguous real property.

court presumes the legislature did not intend to create absurd, inconvenient, or unjust results.").

To reach this absurd result, the Court would have to read an exception into the statute its language does not support. *See People v. Burge*, 2021 IL 125642, ¶ 30 (Court "'may not add provisions that are not found in the statute'") (quoting *Schultz v. Ill. Farmers Ins. Co.*, 237 Ill. 2d 391, 408 (2010)). As the appellate court noted, the word "contiguous" is not in the statute; the court thus declined to read in a contiguity requirement. Def. Br. at A-12, ¶ 27. This Court should do the same and reject defendant's argument that section 11-9.3(a) should be construed to apply only to real property contiguous with a school building. Def. Br. at 15, 18.

Nor do defendant's cited cases support his proposed construction. *See* Def. Br. 16-17 (citing *Commonwealth v. Paige*, 768 N.E.2d 572, 574-75 (Mass. App. Ct. 2002), *State v. Peterson*, 490 N.W.2d 53, 54-55 (Iowa 1992), and *Stamps v. State*, 620 So. 2d 1033, 1033 (Fla. App. Ct. 1993)). *Paige* and *Peterson* both hold that the term "real property comprising a school" includes property contiguous with a school building but used for other purposes. *Paige*, 768 N.E.2d at 575; *Peterson*, 490 N.W.2d at 54-55. These cases did not consider whether non-contiguous property, in common ownership and used for school purposes, could also fit within the statutory terms. And *Stamps*, in a fact-bound analysis, held that property "used only as an overflow parking lot and [ ] separated from the school itself by a soccer field," fell outside the

meaning of "real property comprising a school." 620 So. 2d at 1033. Unlike the parking lot in *Stamps*, the evidence in this case shows that the St. Louis Avenue parking lot was regularly used for school purposes.

Defendant's reliance on the rule of lenity is similarly misplaced because that rule applies "only to statutes containing 'grievous ambiguities,'" where the Court is left to "'guess' the legislature's intent." *People v. Fiveash*, 2015 IL 117669, ¶ 34 (quoting *People v. Gutman*, 2011 IL 110338, ¶¶ 43-44). But here there is no ambiguity, much less a "grievous" one. As explained above, the plain text of the statute provides no reason to exclude non-contiguous school property. And this plain reading finds support in the statute's structure, purpose, and history. Applying the rule of lenity as defendant suggests and reading a contiguity requirement into the statute would impermissibly subvert the legislature's intent. *Jackson*, 2011 IL 110615, ¶ 21 ("The rule of lenity does not require a court to construe a statute so rigidly as to defeat the intent of the legislature.").

Defendant's remaining arguments are equally meritless. First, couched in defendant's criticism of the trial court's ruling, he appears to argue that section 11-9.3(a) should not have been applied to him because he was at the festival after school hours. Def. Br. at 27-28. Contrary to defendant's suggestion, the statute includes no after-hours exception. Rather, the statute prohibits child sex offenders from being on real property comprising a school *whenever* children under 18 are present. 720 ILCS 5/11-

9.3(a). Indeed, the statute plainly contemplates its application outside regular school hours because it includes an exception permitting a child sex offender to attend his child's parent-teacher conferences, which often occur after hours. *See* 720 ILCS 5/11-9.3(a).

Defendant's reliance on *People v. Haberkorn*, 2018 IL App (3d) 160599, for a contrary conclusion is misplaced. Def. Br. at 27. That case involved a child sex offender charged under section 11-9.3(c), which prohibits child sex offenders from being present at any "facility providing programs or services exclusively directed toward persons under the age of 18," among other restrictions. 720 ILCS 5/11-9.3(c); *Haberkorn*, 2018 IL App (3d) 160599, ¶¶ 8-10, 27. The court reversed the defendant's conviction because section 11-9.3(c) prohibited sex offenders from participating in nonprofit programming "exclusively" for persons under 18, and the organization at issue offered programming for adults. *Haberkorn*, 2018 IL App (3d) 160599, ¶¶ 28, 32. Unlike section 11-9.3(c), section 11-9.3(a) includes no such limitation. Instead, as explained, it provides a single limited exception, which is not applicable here, permitting a child sex offender to attend parent-teacher conferences for his own child and with the principal's permission.

Defendant also appears to argue that the parking lot at issue cannot qualify as "real property comprising any school" because it was sometimes used for church purposes, in addition to school purposes. Def. Br. at 30. Here again, defendant impermissibly reads language into the statute that is not

there. The statute does not limit "real property comprising any school" to property that is used *exclusively* by a school. 720 ILCS 5/11-9.3(a). Moreover, the statute expressly includes private schools in the definition of "school," and private schools are frequently affiliated with churches or other places of worship. 720 ILCS 5/11-9.3(d)(15). The General Assembly would not have intended to exclude children who attend private school from the statute's protection merely because their school's real property was sometimes also used for church purposes.

In sum, the plain language of the statute makes clear that "real property comprising any school" may include a parking lot across the street from a school. And if there were any ambiguity, given the clear intent of the legislature to protect children at school from child sex offenders, the statute should be interpreted to include this type of property within its scope to prevent unintended gaps in the law that would otherwise allow sex offenders to legally gain access to children at school.

B. The Evidence Sufficed to Prove that the Parking Lot Across the Street from the Queen of Martyrs School Was "Real Property Comprising Any School."

Having determined that a parking lot across the street from a school may, as a matter of law, constitute "real property comprising any school," the question remains whether the evidence here was sufficient to establish that fact. Here, the trial court's finding that the St. Louis Avenue parking lot was "real property comprising any school" should not be overturned "unless the

evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of [defendant's] guilt." *Newton*, 2018 IL 122958, ¶ 24.

Viewed in the light most favorable to the People, the evidence was sufficient to establish beyond a reasonable doubt that the parking lot across the street from the school was real property comprising a school. First, children regularly gathered on the lot for school purposes, such as student drop-off and pickup, R. K20, athletic events, R. K41, student car washes, R. K41, scouts, R. K41, and recess, R. K19.

Indeed, the Queen of Martyrs Fest itself served a school purpose and was attended by "hundreds" of children under the age of 18. R. K53. The organizing committee included school faculty and the school principal, in addition to the pastor and church parishioners. R. K34. Many students' family members attended the festival; festival passes were sold directly from the school's office to encourage students to attend; and a portion of festival proceeds went to the school. R. K-34, 44. Father Mikolajzyck testified that his parishioners understood the festival to be a joint fundraiser for both the church and school. R. K12-14. Cassidy and Officer McGreal, whose family attended the festival, described it as a "school carnival." R. K-62, 67.

Viewed in the light most favorable to the People, this evidence sufficiently demonstrated that the St. Louis Avenue parking lot was "real property comprising any school" because that evidence showed that children regularly used the lot for school purposes and the festival itself was, at least

in part, a school event attended by students. At a minimum, then, a rational trier of fact could find beyond a reasonable doubt that the lot was real property comprising a school. *Newton*, 2018 IL 122958, ¶ 24.

II. The Evidence Sufficed to Prove that Defendant Was "Knowingly" Present on "Real Property Comprising Any School."

Viewed in the light most favorable to the People, the trial evidence also permitted a rational trier of fact to conclude that defendant knew or, at the very least, was aware of the substantial probability, that he was on school property when he attended the Queen of Martyrs Fest. Although "[k]nowledge generally refers to an awareness of the existence of the facts which make an individual's conduct unlawful," *People v. Gean*, 143 Ill. 2d 281, 288 (1991) (citing 720 ILCS 5/4-5(a)), "[k]nowledge of a material fact includes awareness of the substantial probability that the fact exists," 720 ILCS 5/4-5(a) (2015). This standard did not oblige defendant to foretell the answer to the legal question before this Court, i.e., whether the St. Louis Avenue parking lot qualified as "real property comprising any school" under section 11-9.3(a). "Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such." *See* 720 ILCS 5/4-3(c) (2015).

The trial court's finding that defendant was *knowingly* on school grounds should not be overturned "unless the evidence is so unreasonable,

improbable, or unsatisfactory as to create a reasonable doubt of [his] guilt," keeping in mind that the "trier of fact may make reasonable inferences that flow from the facts presented and apply his or her common knowledge." *Newton*, 2018 IL 122958, ¶¶ 20, 24.

In this case, the trial evidence showed that it was readily apparent to anyone attending the Queen of Martyrs Fest that they were on school grounds, and a rational trier of fact could have reasonably inferred that defendant knew as much when he entered the St. Louis Avenue parking lot. There were rides and games geared towards children, *see* R. K-51, and "hundreds" of children in attendance, R. K-53. Moreover, the Fest flyer referred to children's games offered in a Queen of Martyrs School classroom. *See* P.SUP 9; R. K-40, 44. The various Google Maps images admitted into evidence (and the attendant witness testimony) showed that the sizable parochial school and gymnasium were readily visible to Fest attendees, *see* P.SUP 11; P.SUP 12; R. K-35; *see also* P.SUP 10. In fact, the St. Louis Avenue parking lot was closer to the school than it was to the church, which was located down the street at 103rd Street and Central Park Avenue, belying any suggestion that a Fest attendee must have naturally presumed that the parking lot was merely (and exclusively) a church parking lot. *See* P.SUP 11; Def. Br. at 33. In addition, the "Street View" image of the exterior façade of the Queen of Martyrs Church showed at least one streetlight along 103rd Street prominently bearing a "Queen of Martyrs Catholic School"

banner, further demonstrating the school's association with the church. *See* P.SUP 12.[3] Indeed, as Father Mikolajczyk attested, the Fest's flyer advertised the event "under [the] auspices of Queen of Martyrs," and "people underst[oo]d [that] as being the parish and the school fundraiser." R. K-13-14.

In addition to this powerful circumstantial evidence, defendant's own statement to Officer McGreal, agreeing that he should not have been at the Fest, plainly implied defendant's knowledge that he was on school grounds. R. K-69. Viewing this statement and all other evidence in the light most favorable to the People, a rational trier of fact undoubtedly could have inferred that defendant was at least aware of a substantial probability that he was on the grounds of a school when he attended the Queen of Martyrs Fest in the St. Louis Avenue parking lot.

Defendant argues that he must have shared his brother's mistaken belief that the festival was exclusively a church event on church property. Def. Br. 33 (citing defendant's brother's testimony to same); *see generally id.*

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[3] Although it can be difficult, after repeated photocopying, to decipher some of the details of this image as presented in the record on appeal, *see, e.g.*, P.SUP 12.; SUP2 E25; SUP3 E25, this Court may take judicial notice of the Google "Street View" of the church's exterior façade from November 2015 in its original, online form, in which the "Queen of Martyrs Catholic School" banner is more legible. *See People v. Clark*, 406 Ill App. 3d 622, 633 (2d Dist. 2010) ("[I]nformation acquired from mainstream Internet sites such as Map Quest and Google Maps is reliable enough to support a request for judicial notice."); West 103rd Street, Google Maps, https://tinyurl.com/ysj69h2b (last visited Nov. 3, 2021).

at 33-37. But a rational trier of fact could have discredited the brother's testimony. R. K-92-93. Considering that the brother regularly attended the church for seven years, *id.* at 89-90, 93, he likely would have learned that the St. Louis Avenue lot was frequently used for school, as well as church, purposes.

Defendant objects that there was no express testimony regarding the school's precise level of visibility from the parking lot, *e.g.*, Def. Br. 34, 36, but "[i]t is not necessary . . . that the jury be satisfied beyond a reasonable doubt as to each link in the chain of circumstances . . . if all the evidence taken together satisfies the jury beyond a reasonable doubt of the accused's guilt," *People v. Campbell*, 146 Ill. 2d 363, 380 (1992); *People v. Hall*, 194 Ill. 2d 305, 330 (2000). The pertinent question here is whether, after drawing all reasonable inferences from the evidence in the People's favor, "*any* rational trier of fact" could have found that defendant had the requisite knowledge beyond a reasonable doubt. *Jackson*, 443 U.S. at 319 (emphasis in original).

Defendant alternatively argues that, even if he knew the school was across the street from the St. Louis Avenue parking lot, there was still reasonable doubt that he knew he was on real property comprising a school. In particular, defendant maintains that Detective Signorelli's report, listing the "place of incident" as a "church, synagogue, or [ ] temple," and Smith's testimony that the lot was church property, rendered the evidence of defendant's knowledge insufficient. Def. Br. at 37-38. But it is unclear how

either of these statements is relevant to defendant's knowledge that he was on school property. The record does not show that either witness ever spoke to, or even met, defendant. Nor did these witnesses establish that there was general "confusion" about the lot that would have prevented the People from proving that defendant knew he was at a school. Def. Br. at 38. Although Smith said that the lot was church property, she later testified, consistent with other witnesses, that the lot belonged to both the church and school because they were the same entity. R. K-104: *see* R. K-27 (Father Mikolajczyk's testimony that school and church are synonymous), 86 (Pelligrini's testimony that lot belongs to "parish," meaning school and church). And Detective Signorelli's single statement is devoid of any context that explains his conclusion. The trial court clearly assigned little, if any, weight to this evidence when it came to assessing defendant's knowledge, and that determination was not "so unreasonable, improbable, or unsatisfactory" that it created a reasonable doubt of defendant's guilt. *Newton*, 2018 IL 122958, ¶ 24.

Defendant also highlights his prior compliance with sex offender registration obligations and with Officer McGreal's order to leave the festival, but he fails to articulate how either supports an inference that he did not know he was on school property. Def. Br. at 37-38. To the contrary, defendant's compliance with sex offender registration shows that he was well aware that he should avoid schools, and his interaction with Officer McGreal

tended to *confirm* his knowledge that he was at a school because he agreed that he should not be at the festival. R. K69.

Finally, there is no merit to defendant's allegation that the trial and appellate court mistakenly applied an objective, reasonable person standard and considered whether defendant "should have known" that he was on school property, rather than whether he was subjectively aware of a substantial probability that he was on school property. Def. Br. at 39-40. The trial judge recounted the evidence supporting defendant's knowledge that he was on school property and remarked that "it defies logic that you wouldn't know this." R. K-120-21. In other words, the judge found that defendant must have known he was on real property comprising a school. "This court presumes that a trial judge knows and follows the law unless the record affirmatively indicates otherwise." *See In re Jonathon C.B.*, 2011 IL 107750, ¶ 72. There is no such affirmative indication of error here.

Defendant's related contention that the appellate court also improperly considered what the defendant "should have known" is similarly meritless. Def. Br. at 39-40. Nowhere in the appellate decision did the majority discuss what defendant "should have known." Rather, the court correctly considered whether any rational trier of fact could find that defendant knew he was on real property comprising a school based on the evidence presented. Def. Br. at A13-14, ¶ 31.

Finally, regardless of the trial or appellate court decisions, this Court may affirm on any basis contained in the record, *People v. Burnett*, 237 Ill. 2d 381, 391 (2010), and as discussed, the record provides ample evidence that defendant knew that he was on real property comprising a school. This Court should affirm his conviction.

CONCLUSION

For all of these reasons, this Court should affirm the appellate court's judgment.

November 3, 2021

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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, is 30 pages.

/s/ *Jason F. Krigel*
JASON F. KRIGEL

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned deposes and states that on November 3, 2021, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and served upon the following e-mail addresses of record:

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Additionally, upon the brief's acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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