No. 127678

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- MATTISON J. GALARZA, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-19-0129. There on appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 16DT1132, 16TR60437 & 16TR60438. Honorable Theodore Jarz, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

THOMAS A. KARALIS
Deputy Defender

ADAM N. WEAVER
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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CYNTHIA A. GRANT
SUPREME COURT CLERK

ARGUMENT

I. The State did not prove Mattison Galarza guilty of failure to reduce speed to avoid a collision where the stipulated evidence only showed that Galarza was driving while intoxicated and jerked the steering wheel for an unknown reason.

In defendant's opening brief, he argued that, in order to show he had been driving carelessly, the State was required to prove he failed to exercise a duty of due care, which is to say, that he failed to act as an ordinary prudent person would act under similar circumstances. The trier of fact could not conclude that defendant did not act as an ordinary prudent person would have acted under the circumstances because the stipulated evidence did not provide sufficient facts about the circumstances that led to defendant's collision with a tree (Def.Br.7-14).

The State does not dispute that it had the burden to prove defendant failed to act as an ordinary prudent person would have acted under the same or similar circumstances. It argues that defendant's careless driving can be inferred only by his high rate of speed, intoxication, and jerking of the steering wheel without an apparent explanation (St.Br.7-10). On the contrary, the limited evidence of defendant's collision was insufficient to prove guilt beyond a reasonable doubt.

Defendant cited *People v. Brant*, 82 Ill. App. 3d 847 (4th Dist. 1980), and *People v. Sampson*, 130 Ill. App. 3d 438 (4th Dist. 1985), to argue that evidence of intoxication and a collision, without more information, does not prove that he was driving carelessly (Def.Br.11-12). The stipulated evidence did not provide any insight into the circumstances surrounding defendant's jerking of the wheel in order to show that he did not exercise a duty of care. 625 ILCS 5/11-601(a) (2016).

The State attempts to discredit *Brant* by claiming it relied on a pre-*Bryant* burden-of-proof standard. Since *Bryant*, this Court has held that the evidence

need not exclude all reasonable theories of innocence (St.Br.8 (citing *People v. Bryant*, 133 Ill. 2d 497 (1986))). The State's argument suggests that all pre-*Bryant* cases should be summarily ignored regardless of their individual reasoning and conclusions. The State's suggestion is untenable, and its characterization of *Brant* is inaccurate.

Brant did recite the prevailing law at the time, which held that a criminal conviction could not be upheld if circumstantial evidence pointed to a reasonable hypothesis of innocence (St.Br.8-9). *Brant*, 82 Ill. App. 3d at 850. However, the court's statement was immediately followed by several paragraphs describing the reasons why the defendant's explanations did not constitute a reasonable hypothesis of innocence that required reversal. *Id*. at 850-51.

The *Brant* court's analysis and conclusion upon which defendant relies was not based on the court's search for an innocent explanation. *Brant* held that the State failed to provide evidence that the defendant was driving recklessly. *Id*. at 851-52. There is no indication in the decision that the court arrived at this opinion by concluding that circumstantial evidence gave rise to a reasonable theory of innocence. The court simply decided that the State failed to provide necessary evidence to meet its burden of proof. *Id*.

The State similarly claims that *Sampson* should be ignored because it is also a pre-*Bryant* case (St.Br.9-10). As in *Brant*, the *Sampson* court's decision was not based on a conclusion that the circumstantial evidence gave rise to a reasonable theory of innocence. The court held the stipulated facts showed that the defendant was driving while intoxicated when he lost control of his car, which was insufficient to prove the elements of the offense. *Sampson*, 130 Ill. App. 3d

at 444. Consequently, this Court should rely on *Brant* and *Sampson* to find that the State failed to provide the necessary evidence to prove the offense in this case.

The State speculates that defendant's car was traveling at a high rate of speed but does not explain how defendant's allegedly high rate of speed contributed to the accident (St.Br.7-10). Crucially, failure to reduce speed to avoid a collision "can be committed regardless of the speed of the defendant's vehicle or the relevant speed limit." *People v. Sturgess*, 364 Ill. App. 3d 107, 116 (1st Dist. 2006). Instead, the State is required to show that the defendant was operating his or her vehicle "at a speed that was unsafe under the relevant conditions." *Id.* at 117.

The State cannot argue that defendant's speed was unreasonable under the relevant conditions because it did not provide any evidence about the relevant conditions. *Id.* There is no evidence that defendant was traveling at a speed that was reckless under the circumstances or that the vehicle's speed contributed to the accident at all. Defendant could have been driving at a speed that was reasonable under the circumstances and well under the speed limit–which is also unidentified–when he jerked the steering wheel for some unknown reason. Consequently, defendant's unknown speed cannot imply that he was driving carelessly.

The State concedes that there was no evidence of road conditions to explain defendant's collision and it is possible that road conditions could have caused the accident (St.Br.9-10). However, it argues that the trier of fact is not required to disregard natural inferences or "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." (St.Br.10 (citing *People v. Hall*, 194 Ill. 2d 305, 332 (2000)).

The State attempts to shift the burden of proof onto defendant by claiming that a fact finder can infer carelessness "from evidence of a single-car collision involving an intoxicated driver that cannot be explained by any known road conditions" (St.Br.10). It comments that neither defendant's nor Taylor's stipulated statements ever suggested that a road condition contributed to the collision (St.Br.10). The State relies on the absence of evidence addressing the circumstances surrounding the accident as affirmative proof that no conditions caused the collision. Yet, the State had the burden to show that defendant was driving carelessly under the circumstances and its failure to address the relevant conditions of the accident in the stipulated evidence cannot be inferred as proof that none existed. Again, the State's evidence did not reveal any information about the road conditions or the circumstances surrounding defendant's collision with the tree.

The State was required to provide affirmative proof that defendant drove carelessly, other than the fact that he was intoxicated and his vehicle collided with a tree. It did not do so. Consequently, an open question remains as to whether defendant was driving carelessly *under the circumstances* when he jerked the steering wheel. The evidence was so unsatisfactory that a reasonable doubt of defendant's guilt remains. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Mattison Galarza asks this Court to reverse his conviction and vacate the fine for failure to reduce speed to avoid a collision.

II. Mattison Galarza's stipulated bench trial was tantamount to a guilty plea, and the trial court failed to admonish him under Supreme Court Rule 402, where he did not present or preserve a meaningful defense when he stipulated to all of the facts in the State's case-in-chief and only attempted to deny one of the stipulated facts.

This Court must decide if a defendant presents or preserves a defense at a stipulated bench trial by stipulating to the entirety of the State's evidence and only arguing that the evidence is insufficient to convict. *People v. Horton*, 143 Ill. 2d 11, 22 (1991). Holding that a reasonable doubt argument presents or preserves a defense would negate *Horton* and its progeny and frustrate the purpose for admonishing defendants before a stipulated bench trial. Accordingly, this Court should reverse defendant's convictions and remand for further proceedings in compliance with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012).

In its brief, the State argues that defendant has forfeited his argument for failing to raise it in the trial court and that this Court should not review the issue under the plain-error doctrine, which it cites as the applicable standard of review on this issue (St.Br.6, 11, 14, 17). However, the plain-error rule is not a standard of review but "a standard to help a reviewing court determine when to excuse forfeiture." *People v. Herron*, 215 Ill. 2d 167, 180 n.1 (2005). Defendant maintains that this Court reviews *de novo* the trial court's failure to comply with Supreme Court Rule 402 (Def.Br.16).

Citing *People v. Givens*, 237 Ill. 2d 311, 326, 329 (2010), the State argues that defendant cannot ask this Court "for a change in the law because such a change is necessarily not 'controlled by clear precedent.' " The State claims that there cannot be clear or obvious error in this case because *People v. Foote*, 389 Ill. App. 3d 888 (2d Dist. 2009), held that a defendant preserves a defense by arguing that the evidence is insufficient (St.Br.14).

Givens in inapplicable, as it dealt with the appellate court improperly deciding an unbriefed issue that "did not amount to obvious error controlled by clear precedent." *Givens*, 237 Ill. 2d at 326. The appellate court could not determine whether defense counsel was ineffective because the facts and issue were not developed by the parties so "there was no obvious answer to the issue that was controlled by clear precedent." *Id*. at 338-39. In that context, "obvious error" referred to addressing unbriefed issues that would not require speculation to resolve. *Id*. at 328-29 (citing *People v. Rodriguez*, 336 Ill. App. 3d 1, 13-14 (1st Dist. 2002)). Regardless, this Court is not prevented from deciding a procedurally defaulted issue even though appellate court precedent previously held otherwise. See *In re Samantha V.*, 234 Ill. 2d 359, 375 (2009) (holding, under the plain-error rule, that one-act, one-crime applied to juveniles and overruling decisions that held otherwise); *People v. Donoho*, 204 Ill. 2d 159, 187 (2003) (solving, under the plain-error rule, conflict in authority over whether trial court should apply sentencing enhancement based on the elements or the classification of prior convictions).

Finally, insofar as the State's argument generally suggests that this Court should adopt the federal plain-error rule, this Court should continue to reject the invitation. *People v. Nitz*, 219 Ill. 2d 400, 415 (2006).

Notwithstanding defendant's citation to second-prong plain error (Def.Br.16), the trial court's failure to admonish a defendant under Supreme Court Rule 402 is not subject to forfeiture. *People v. Whitfield*, 217 Ill. 2d 177, 188 (2005); *In re Westley A.F., Jr.*, 399 Ill. App. 3d 791, 795 (2d Dist. 2010) (refusing to apply forfeiture to Supreme Court Rule 402A admonishments before accepting an admission to a probation violation); *People v. Curry*, 2019 IL App (3d) 160783, ¶ 22 (same).

Rule 402 directs the trial court to determine if a defendant understands the rights that he or she is waiving by agreeing to a stipulated bench trial. Ill. S. Ct. R. 402(a) (eff. July 1, 2012). Requiring a defendant to object to the trial court's failure to admonish under Rule 402 "would place the onus on defendant to ensure his own admonishment in accord with due process." *Whitfield*, 217 Ill. 2d at 188. Even if forfeiture applied to Rule 402 admonishment issues (and second-prong plain error did not apply), forfeiture is a limitation on the parties and this Court "may overlook any forfeiture in the interest of maintaining a sound and uniform body of precedent." *Klaine v. S. Illinois Hosp. Services*, 2016 IL 118217, ¶ 41.

The State does not dispute that the court did not substantially comply with Supreme Court Rule 402 (Def.Br.25-28). It only argues that Rule 402 admonishments were not required because defendant presented or preserved a defense by arguing that the State could not prove he was driving the vehicle (St.Br.11-17).

The State characterizes defendant's argument as inviting this Court to expand the number of circumstances that require Rule 402 admonishments (St.Br.13). Defendant does not ask this Court to *expand* the two circumstances under *Horton* that make a stipulated bench trial tantamount to a guilty plea. Rather, defendant asks this Court to find that arguing only against the sufficiency of the evidence does not present or preserve a defense at a stipulated bench trial. *Horton*, 143 Ill. 2d at 22; *People v. Clendenin*, 238 Ill. 2d 302, 322 (2010).

Defendant asks this Court to hold that a defendant presents or preserves a defense by making an argument, other than against the sufficiency of the evidence, that is unique to the facts and law of a defendant's trial (St.Br.15). For example, in *People v. Russ*, 31 Ill. App. 3d 385, 393 (1st Dist. 1975), the court found the

defendant's claim that he did not intentionally start the fire to be a defense of accident or a lack of specific intent. Courts have found many examples where a defendant has presented or preserved a defense. See *Horton*, 143 Ill. 2d at 22 (preserving motion to suppress identification in a lineup); *People v. Ford*, 44 Ill. App. 3d 94, 98 (4th Dist. 1976) (preserving motion to suppress confession); *People v. Bonham*, 106 Ill. App. 3d 769, 772 (3d Dist. 1982) (preserving unconstitutional classification of cocaine as a narcotic); *People v. Garrett*, 104 Ill. App. 3d 178, 183 (5th Dist. 1982) (preserving speedy trial issue); *People v. Young*, 25 Ill. App. 3d 629, 634-35 (1st Dist. 1975) (presenting affirmative defense of self-defense); *People v. Bellmyer*, 199 Ill. 2d 529, 539 (2002) (presenting insanity defense). The State inaccurately claims that *Russ* supports its position because the court in *Russ* held that the defendant presented a defense by challenging the sufficiency of the evidence (St.Br.14 (citing *Russ*, 31 Ill. App. 3d at 393)). To the contrary, the court explained that the defendant "presented a genuine defense of accident or lack of specific intent" to the offense of arson by claiming that he unintentionally set the fire. *Russ*, 31 Ill. App. 3d at 393. The defendant did not simply argue that the State could not prove that he started the fire.

The State attempts to discredit *Russ* by characterizing it as *dicta* (St.Br.14-15). Even without *Russ* as a guide, this Court can find that arguments directed at the sufficiency of the evidence do not present or preserve a defense under *Horton* and its progeny and are incompatible with the function of stipulated bench trials. If arguing against the sufficiency of the evidence presents or preserves a defense, it would negate this Court's first prong in *Clendenin*, and no stipulated bench trial would be tantamount to a guilty plea. *Clendenin*, 238 Ill. 2d at 322 ("(1) the State's entire case is to be presented by stipulation *and* the defendant does not

present or preserve a defense" (emphasis in original)).

This Court recognizes that "[a] guilty plea waives all nonjurisdictional defenses or defects," including challenges to the sufficiency of the evidence to sustain the conviction. *Horton*, 143 Ill. 2d 11, 22 (1991); see generally *People v. Jackson*, 199 Ill. 2d 286, 296 (2002) (explaining that a guilty plea waives the State's burden to prove every element of the offense beyond a reasonable doubt). By proceeding to a stipulated bench trial, however, a defendant "can avoid the waiver rule while still allowing the parties to proceed with the benefits and conveniences of a guilty plea procedure." *Horton*, 143 Ill. 2d at 22. Thus, by choosing to have a stipulated bench trial, every defendant preserves a challenge to the sufficiency of the evidence instead of waiving the argument by pleading guilty.

The appellate court in *Foote* and in this case held that a defendant presents or preserves a defense by arguing against the sufficiency of the evidence.[1] Compare *People v. Foote*, 389 Ill. App. 3d 888, 894-95 (2d Dist. 2009); *People v. Galarza*, 2021 IL App (3d) 190129-U, ¶ 27, with *People v. Burns*, 239 Ill. App. 3d 169, 171-72 (2d Dist. 1992) (finding defendant did not present a defense where he made no closing argument). Yet, the appellate court's holdings negate the first prong of *Clendenin*. If arguing against the sufficiency of the evidence preserves a defense,

[1] Defendant notes that this Court in *Rowell* generally agreed with the appellate court's justification that the defendant's stipulated bench trial was not tantamount to a guilty plea where he argued that the evidence was insufficient to convict him of a felony offense and that the charging instrument was deficient. *People v. Rowell*, 229 Ill. 2d 82, 102 (2008) (citing *People v. Rowell*, 375 Ill. App. 3d 421, 434 (4th Dist. 2006)). Nevertheless, in *Rowell*, the defendant's stipulated bench trial was not tantamount to a guilty plea because he preserved his argument against the sufficiency of the charging instrument, and this Court was not called upon to specifically determine if arguments against the sufficiency of the evidence present or preserve a defense.

and every defendant preserves a challenge to the sufficiency of the evidence in a stipulated bench trial, then every defendant preserves a defense in every stipulated bench trial. No stipulated bench trial would be tantamount to a guilty plea.

If this Court were to agree with the State and adopt the reasoning in *Foote* and the lower court in this case, which focuses on a defendant's express arguments at trial, it will create an arbitrary and inequitable distinction between defendants who do or do not require admonishments at a stipulated bench trial.

On the one hand, the appellate court has held that a defendant does not present or preserve a defense at a stipulated bench trial when a defendant does not present any evidence or make closing arguments. *Burns*, 239 Ill. App. 3d at 171-72. In those instances, the defendant's stipulated bench trial was tantamount to a guilty plea and he should have been admonished according to Supreme Court Rule 402. *Id.*; see also *People v. Davis*, 286 Ill. App. 3d 686, 689-90 (5th Dist. 1997) (finding that the defendant did not present or preserve a defense where defense counsel only argued that defendant was not guilty of felony driving while license revoked because the offense could not be enhanced to a felony).

On the other hand, the appellate court has held that a defendant shows an intent to plead not guilty by expressly arguing that the State could not prove guilt beyond a reasonable doubt. *Foote*, 389 Ill. App. 3d at 894-95; *Galarza*, 2021 IL App (3d) 190129-U, ¶ 27. In those cases, the trial court was not required to admonish the defendant under Rule 402 because the stipulated bench trial was not the functional equivalent of a guilty plea. *Id.*

The obvious distinction is that the defendant in *Foote* expressly argued his innocence while the defendant in *Burns* stood silent. But there is no appreciable difference between the two situations. Both defendants showed their intent to

not plead guilty by pleading not guilty and proceeding to a stipulated bench trial. *Foote*, 389 Ill. App. 3d at 894-95. In both cases, the trial court had a duty to analyze the evidence and reach a verdict of guilty or not guilty regardless of the defendants' arguments. Comments made during closing argument are not evidence and arguing that the State cannot satisfy its burden of proof is a mere formality. *Horton*, 143 Ill. 2d at 21; *People v. Enoch*, 122 Ill. 2d 176, 190 (1988) (holding that challenges to the sufficiency of the evidence cannot be forfeited). Both defendants in *Burns* and *Foote* preserved their right to appeal the sufficiency of the State's evidence. However, the appellate court found that the defendant in *Burns* should have been advised of the rights that he was waiving but the defendant in *Foote* was undeserving of the same admonishments. Such an arbitrary distinction runs contrary to the purpose of requiring the trial court to admonish defendants to ensure that they understand the dangers of stipulated bench trials, the significance of their stipulation, the rights they are waiving by agreeing to the stipulation, and the consequences of doing so. *People v. Campbell*, 2015 IL App (3d) 130614, ¶ 16; *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 22.

In this case, the lower court held that Rule 402 admonishments were not required because defendant expressly argued that he could not be proven guilty beyond a reasonable doubt. *Galarza*, 2021 IL App (3d) 190129-U, ¶ 26. Yet, defendant stood in the same position as the defendant in *Burns* who idly presented the same argument. It is equally necessary to warn both defendants that they will be stipulating to the entirety of the evidence and, in doing so, agree to waive their rights to a trial where they could testify and call and confront witnesses. Ill. S. Ct. R. 402(a) (eff. July 1, 2012). There is no reason to treat these two defendants differently.

The State argues that Rule 402 admonishments served no purpose where defendant pleaded not guilty and defense counsel argued that defendant cannot be proven guilty at trial (St.Br.13). On the contrary, in this situation, the court's admonishments would have made defendant aware that he was not required to stipulate to the entirety of the evidence and that he had the right to a genuine trial where he could testify or call other witnesses to be questioned and cross-examined. By stipulating to the entirety of the evidence he would be giving up those rights. Ill. S. Ct. R. 402(a) (eff. July 1, 2012). These admonishments would have been significant where defendant later asked the trial court to reopen the proofs so that he and an EMT could testify for his defense (Def.Br.27; C63-67).

The State criticizes defendant's "proposal" as impractical because a court will only be able to determine whether a defendant presented a genuine defense, and that admonishments were necessary, after hearing the evidence and deciding the question of guilt. At that point, admonishments "are of no value" (St.Br.15-16). The State ignores that every argument that a stipulated bench trial was tantamount to a guilty plea, and therefore needed admonishments, requires the reviewing court to look backward at what was actually stated at trial. The procedure that the State calls unworkable and confusing is no different than the legion of convicted defendants who have asked the reviewing court to find that their stipulated bench trials were tantamount to a guilty plea and retrospectively determine that the trial court should have admonished them according to Rule 402. See *Horton*, 143 Ill. 2d at 18; *People v. Mitchell*, 353 Ill. App. 3d 838, 845-46 (2d Dist. 2004); *Campbell*, 2015 IL App (3d) 130614, ¶ 13. Once courts determine that Rule 402 admonishments should have been given, they do not find that the admonishments are "of no value" at that point. On the contrary, they reverse and remand for the

trial courts to give the admonishments as they should have. See *Horton*, 143 Ill. 2d at 27; *Mitchell*, 353 Ill. App. 3d at 845-46; *Campbell*, 2015 IL App (3d) 130614, ¶ 22.

The State's argument is more of a comment on the confusing nature of considering stipulated bench trials to be tantamount to a guilty plea and retrospectively determining that Rule 402 admonishments were necessary. Some courts agree that this procedure sows confusion. See, *e.g.*, *People v. Bonham*, 106 Ill. App. 3d 769, 772-73 (3d Dist. 1982). For over 40 years, the appellate court has criticized the use of stipulated bench trials and suggested that the better practice would be for the trial court to admonish defendants under Rule 402 at the outset of every stipulated bench trial. See *People v. Sullivan*, 72 Ill. App. 3d 533, 538 (3d Dist. 1979); *People v. Gonzalez*, 313 Ill. App. 3d 607, 618 (2d Dist. 2000). This Court could easily solve this issue by amending Supreme Court Rule 402 to direct the trial court to admonish every defendant of his or her rights before proceeding to a stipulated bench trial. Ill. S. Ct. R. 3(a)(2) (eff. Dec. 1, 2021) (reserving right to depart from rulemaking procedures); see *People v. Deroo*, 2022 IL 126120, ¶ 40 (amending Illinois Rule of Evidence 803(6)). Requiring admonishments in all stipulated bench trials would "take little effort to deliver and provide great benefit" for the parties and the court. *Bonham*, 106 Ill. App. 3d at 773.

In sum, this Court should find that Mattison Galarza's stipulated bench trial was tantamount to a guilty plea where he stipulated to the entirety of the State's evidence and only argued that the State could not prove him guilty. Mattison Galarza asks this Court to reverse his convictions and remand for further proceedings in compliance with Supreme Court Rule 402.

CONCLUSION

For the foregoing reasons, Mattison Galarza, defendant-appellant, respectfully requests that this Court reverse his conviction for failure to reduce speed and vacate the fines imposed for that conviction, as argued in Issue I. For the reasons argued in Issue II, Galarza requests that this Court reverse his conviction for driving under the influence and remand for further proceedings in compliance with Supreme Court Rule 402(a). Alternatively, if this Court decides not to reverse Galarza's conviction for failure to reduce speed to avoid a collision, he requests that this Court reverse his conviction for this offense and remand for further proceedings, as argued in Issue II.

Respectfully submitted,

THOMAS A. KARALIS
Deputy Defender

ADAM N. WEAVER
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 14 pages.

/s/Adam N. Weaver
ADAM N. WEAVER
Assistant Appellate Defender

No. 127678

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NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

James Glasgow, Will County State's Attorney, 121 N. Chicago St., Joliet, IL 60432;

Mr. Mattison Galarza, 135 S. Bloomington Road, Grand Ridge, IL 61325

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 30, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy each is being mailed to the Will County State's Attorney and the appellant in envelopes deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Nicole Weems
LEGAL SECRETARY
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
Service via email will be accepted at
3rddistrict.eserve@osad.state.il.us