No. 130207

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JATTERIUS YANKAWAY, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-22-0982. There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 20-CF-212. Honorable Kevin Lyons, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

CHRISTOPHER MCCOY
Deputy Defender

ANTHONY J. SANTELLA
Assistant Appellate Defender
Office of the State Appellate Defender
Second Judicial District
One Douglas Avenue, Second Floor
Elgin, IL 60120
(847) 695-8822
2nddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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ARGUMENT

I.

This Court should reverse Jatterius Yankaway's convictions outright because he was denied the effective assistance of counsel where defense counsel failed to make an affirmative statement in the record demanding a speedy trial and failed to file a demand under the correct statute.

The determinative issue here is whether defense counsel's deficient performance in failing to correctly demand a speedy trial prejudiced Jatterius Yankaway. (*See* Def. Br. at 16–17), *citing People v. Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42 ("Defense counsel's performance fell below a reasonably competent standard because he should have known the Intrastate Detainers Statute governed [Yankaway]'s speedy trial right."). In response, the State asserts it simply would "have changed its pretrial strategy" had defense counsel not performed deficiently. (St. Br. at 30). But decisional law from this Court explaining how to analyze prejudice in a claim of ineffective assistance based on a speedy-trial violation both undermined the State's argument and showed that Yankaway's claim of prejudice was *not* speculative. (Def. Br. at 34–36), *citing People v. Staten*, 159 Ill.2d 419, 432–33 (1994). In fact, the State's brief makes clear that it is the party engaging in speculation in response to Yankaway's claim. (*See* St. Br. at 30) (discussing "possible ripple effects" if counsel correctly demanded trial).

Since the State cannot credibly counter Yankaway's claim of prejudice, it presents additional arguments to bait this Court to affirm the appellate court on other grounds. These red herring arguments include the erroneous claim that the Intrastate Detainers Statute did not govern Yankaway's speedy-trial claim. (St. Br. at 21). And, despite the record showing that the only continuances in this

case either were requested by the State or ordered by the court, the State accuses defense counsel of engaging in "gamesmanship" to explain why Yankaway was arrested in April of 2020 but not tried until September of 2022. (St. Br. at 42–43). For the following reasons, this Court should reject all of the State's arguments, find that Yankaway received ineffective assistance of counsel, and reverse his convictions outright.

To start, Yankaway's argument established actual prejudice by assessing the circumstances "as they existed" on the day his pre-trial motion to dismiss was argued because it showed a reasonable probability of a different outcome on that motion. (Def. Br. at 34, 38–39); *Staten*, 159 Ill.2d at 432–33. *Staten* concerned an ineffective-assistance claim based on a speedy-trial violation and, for the prejudice prong, this Court said it "must assess the circumstances as they existed" on the day the motion to dismiss would have been argued. *Staten*, 159 Ill.2d at 432–33. The State tries to downplay this Court's precedent by saying the above-quoted rule was made "in passing." (St. Br. at 33).

To the contrary, this Court did not engage in speculation when reviewing "the circumstances as they existed," but rather reviewed the proceedings from the record in making its final determination. *Staten*, 159 Ill.2d at 432–35. Likewise, reviewing courts in similar cases have looked at "the actuality" of how a defense counsel's deficient performance affected the pre-trial proceedings to make a determination on prejudice. *People v. Mooney*, 2019 IL App (3d) 150607, ¶¶ 28–29, *citing People v. Beyah*, 67 Ill.2d 423 (1977). Either way, the State notably does not challenge the correctness of *Staten*'s rule to "assess the circumstances as they

existed" when reviewing for prejudice, but rather points out that *Staten* found no error because defendant's trial in that case was held within the statutory speedy-trial period. (St. Br. at 33). Here, however, Yankaway's trial was held outside the applicable 160-day term, and the circumstances, as they existed on September 19, 2022, showed he would have succeeded in his motion to dismiss but for defense counsel's deficient performance. (*See* Def. Br. at 17–29).

In addition, this Court should reject the State's attempts to paint Yankaway's argument as purely speculative. (St. Br. at 29–30). As noted above, it is instead the State that purely speculates on its actions had defense counsel not performed deficiently. (*See* St. Br. at 30) (discussing "possible ripple effects" and "several contingencies"). For example, the State asserts it "could have, for instance, accelerated preparation for trial or expedited forensic testing." (St. Br. at 31). The State notably makes this argument without so much of an acknowledgment that it was the only party—not including the trial court itself—that moved for a continuance during the pendency of this case. (*See* Def. Br. at 38).

And while satisfying the prejudice prong of an ineffective-assistance claim requires a showing of actual prejudice, "not simply speculation," the State's citations to case law in support of its argument are unpersuasive. *People v. Johnson*, 2021 IL 126291, ¶¶ 54–55; (St. Br. at 30), *citing People v. Bew*, 228 Ill.2d 122 (2008), *and United States v. Miller*, 953 F.3d 804 (D.C. Cir. 2020). *Bew* concerned a situation where a defendant contended his defense counsel could have forced a better plea deal despite the record not showing the parties even engaged in plea negotiations. (Def. Br. at 37); *Bew*, 228 Ill.2d at 135. Unlike the claim raised in *Bew*, an ineffective-

assistance claim based on a speedy-trial violation first must show lawful grounds to move for dismissal, and, in this case, Yankaway showed those lawful grounds existed. *People v. Cordell*, 223 Ill.2d 380, 385 (2006); (Def. Br. at 17–29). As for the foreign *Miller* case, the D.C. Circuit Court explained that defendant "d[id] not allege (nor d[id] the record support)" the circumstances that could have established prejudice of his claim, but rather forwarded "two unique circumstances," which were rejected. *Miller*, 953 F.3d at 812. Unlike *Miller*, Yankaway did not present a "parade of hypotheticals" to argue he was prejudiced, *id.*; in this case, Yankaway presented lawful grounds for dismissal and, assessing the circumstances as they existed on the day he argued his pre-trial motion to dismiss, he showed defense counsel's deficient performance caused prejudice. (Def. Br. at 32–39).

Accordingly, this Court should reject the State's arguments and find that Yankaway established prejudice—not through speculation, but through a review of the record. Here, it was the State that continually sought continuances in this case, and, at a point where the State believed a speedy-trial violation would occur, the State *allowed* Yankaway's trial to be set outside the term. (R. 271–72; Def. Br. at 38–39). The State should not be permitted, as here, merely to claim that any argument of prejudice in an ineffective-assistance claim is too speculative, especially where the State's only response is that it would "have changed its pretrial strategy" where a trial attorney performed deficiently. (St. Br. at 30). Evidence in the record showed a reasonable probability that the outcome of Yankaway's motion to dismiss would have been different and this Court should find the same.

Next, the State presents a specious argument that the Intrastate Detainers

Statue did not govern Yankaway's speedy-trial claim. (St. Br. at 21). The State essentially argues that defense counsel did not need to file a speedy-trial demand and, therefore, his failure to do so was not deficient performance. (St. Br. at 22). Put simply, reviewing courts recognize the Intrastate Detainers Statute governs the speedy-trial rights of person incarcerated in DOC. *See, e.g., People v. Wentlent*, 109 Ill.App.3d 291, 297 (2d Dist. 1982):

> [W]here following conviction a defendant is committed to the Department of Corrections (as opposed to a county jail), and a charge is pending against him in any county in the State, a still different class of case controls. In that situation, [Intrastate Detainers] governs, and the 160-day speedy trial term does not begin to run until defendant files his speedy trial demand.

And, a person committed to DOC must make a demand pursuant to the Intrastate Detainers Statute "as a *precondition* to the running of the 160-day period." *Staten*, 159 Ill.2d at 429 (emphasis in original).

While the State suggests that the Intrastate Detainers Statute applies only "to defendants who are charged with new offenses while already incarcerated," (St. Br. at 24), the statute by its plain language is not limited to offenses originating in DOC, but rather applies "to persons committed to any institution or facility or program of the Illinois Department of Corrections[.]" 730 ILCS 5/3-8-10 (2024)*; see also Staten*, 159 Ill.2d at 428 ("We do not view as 'technical' or 'meaningless' the conditions that the legislature has attached to the speedy-trial right of section 3-8-10."). For example, this Court found the Intrastate Detainers Statute applied to a defendant making a speedy-trial demand on a DUI case while incarcerated in DOC for a separate DUI conviction—all of which necessarily originated outside of DOC. *People v. Sandoval*, 236 Ill.2d 57, 59 (2010); *see also People v. Smith*, 42

Ill.App.3d 731, 735 (5th Dist. 1976) (explaining that the Intrastate Detainers Statute applies to defendants alleged to commit an offense while incarcerated *and* to defendants with pending charges at the time of their commitment to DOC).

Therefore, the State's claim that the Intrastate Detainers Statute did not govern Yankaway's speedy-trial is wholly meritless. Reviewing courts have found that the failure to demand a speedy trial under the Intrastate Detainers Statute was deficient performance. *E.g., People v. Jackson*, 235 Ill.App.3d 732, 738 (4th Dist. 1992). And this Court noted that "a defendant who claims a violation of a speedy-trial right cannot prevail if the demand for trial fails to comply with the terms of the governing speedy-trial provision." *Staten*, 159 Ill.2d at 429–30. Here, defense counsel knew Yankaway wanted a speedy trial and knew Yankaway was in DOC, but failed to comply with the terms of the Intrastate Detainers Statute. (*See* Def. Br. at 31–32). This Court accordingly should reject the State's arguments and find that defense counsel performed deficiently in this case.

Finally, but for defense counsel's deficient performance, Yankaway's trial was held outside the applicable 160-day term by 89 days—specifically, the trial court abused its discretion in attributing a 134-day continuance from February 24, 2022, to July 11, 2022, to both parties. (Def. Br. at 19). The State responds that the trial court's attribution of the February 24 continuance to Yankaway was not an abuse of discretion because the defense did not object and demand a speedy trial at that time. (St. Br. at 41). It asserts that defense counsel's acquiescence and "[t]he court's familiarity with the parties" supports a finding of proper discretion from the court. (St. Br. at 41).

But the State's assertion that defense counsel engaged in "gamesmanship" and its reliance on the trial court's finding that the defense "hobbled this case along in a somewhat slow fashion" wholly undermine this argument. (St. Br. at 42–43; R. 975–76). Any fair review of the record from the February 24 hearing showed that the trial court proposed and interjected the continuance on that date, and defense counsel's mere acquiescence to the date selected should not be attributable to Yankaway, who was not present for that hearing. *People v. Beyah*, 67 Ill.2d 423, 428–49 (1977); (R. 256–60). While the State points out amendments made to Section 103-5 following the decision in *People v. Healy*, 293 Ill.App.3d 684, 693 (1st Dist. 1997), which distinguished between agreements to continuances and mere acquiescence to continuances offered by the court, the circumstances surrounding the February 24 continuance show that it was not attributable to Yankaway. (St. Br. at 36–38).

This Court has explained that "[w]here is not clear that a delay is attributable to the defendant, the court will inquire into the circumstances surrounding the granting of the continuance to ascertain if the delay was occasioned by the defendant." *Beyah*, 67 Ill.2d at 427. The record of the February 24 hearing showed the court—and the court alone—proposed the continuance at issue. (R. 256–58). Notably, one of the reasons the court gave for continuing the trial was the complaining witness's alleged unavailability over a coronavirus-related lockdown at his DOC facility, even though the court did not know if the complaining witness was in DOC. (R. 256–57). And while the State points to the trial court's comments that defense counsel waited until Yankaway was writted to Peoria County to prepare

for trial instead of traveling to Yankaway's DOC facility, defense counsel *never* moved for a continuance on that basis. (St. Br. at 42). Indeed, the fact that defense counsel prepared for trial when Yankaway returned to Peoria County did not inhibit counsel's trial preparation—the defense presented the same alibi defense at trial as it did at the preliminary hearing. (R. 77–85, 838–48).

Not only that, but the State's attempt to compare the facts in this case to *Staten*, 159 Ill.2d at 433–34, is unpersuasive. (St. Br. at 41–42). It is true this Court found in *Staten* that defendant was bound to his counsel's acceptance of a rescheduled trial date. (St. Br. at 41–42). But defendant in *Staten* "was present in court" when his trial continued and "[n]othing in the record suggest[ed] that defense desired an earlier trial date or that he told his counsel he was opposed to the brief continuance of trial." *Staten*, 159 Ill.2d at 434. By contrast, Yankaway was not present at the February 24 hearing and registered his disapproval with counsel's conduct immediately afterward by mailing a *pro se* pleading titled "Ineffective Counsel" explaining he told defense counsel he did not want a continuance and defense counsel "did not honor my request." (C. 269–70). Here, Yankaway did not acquiesce to counsel's conduct—he opposed it—and took affirmative action when he became aware his trial was being delayed. (C. 269).

Not only that, but the State's citation to *People v. Mayo*, 198 Ill.2d 530, 537 (2002), for the proposition that delay caused by a continuance will be attributed to defendant "[w]hen a defense attorney requests a continuance on behalf of a defendant" cannot be countenanced. (St. Br. at 44). As already noted, defense counsel did not request this continuance—the court did. (R. 256–58). Regardless, "a

defendant cannot be bound by his attorney's actions when he clearly and convincingly attempted to assert his right to discharge his attorney and proceed to an immediate trial." *Mayo*, 198 Ill.2d at 537. Again, Yankaway's immediate response to the February 24 hearing was to mail a *pro se* pleading in which he sought to discharge defense counsel. (C. 269–70). In that pleading, Yankaway wrote that informed defense counsel he wanted a speedy trial and told the court he did not want any continuances to his trial. (C. 270, 272). Then, in a separate *pro se* pleading, Yankaway reasserted his speedy-trial demand and requested a writ back to Peoria County in order to prepare for trial. (C. 283). Yankaway continued to inform the court of his desire for a speedy trial while his case continued to pend. (C. 304) ("I do not give up my rights to a speedy trial."). In other words, Yankaway clearly and convincingly repudiated defense counsel's conduct, sought discharge of defense counsel, *and* sought an immediate trial.

The circumstances showed that the February 24 hearing resulted from a decision of the trial court based on incomplete information. (R. 256–58). It was unreasonable and an abuse of discretion for the court to order a continuance without confirming the complaining witness's availability and the fact that Yankaway was housed at a DOC facility. (R. 256–58). Even if this Court disagrees with Yankaway's reliance on *Healy*, reviewing courts still have found that a continuance occasioned by the trial court where the defense acquiesced to that decision was *not* delay attributable to the defendant. *People v. Kliner*,185 Ill.2d 81, 119 (1998) (delay could not be charged to defendant where it was occasioned by court's schedule); *People v. Wynn*, 296 Ill.App.3d 1020, 1029 (4th Dist. 1998) (defense counsel's conduct

of not showing up to a proceeding after a memorandum from trial court continuing that specific date was acquiescence to court's continuance, not delay attributable to defendant). And, Yankaway himself sought to discharge counsel and seek immediate trial after the February 24 hearing. (C. 269–70). For all these reasons, this Court should find the trial court's attribution of the February 24 hearing to both parties was an abuse of discretion.

As a final note, even if this Court disagrees that the trial court abused its discretion in attributing the February 24 continuance to both parties, it still should find that defense counsel provided ineffective assistance of counsel by not affirmatively objecting and demanding a speedy-trial on that date. (Def. Br. at 27). The State complains that such an argument allows a defendant "two bites at the apple," (St. Br. at 45), but this Court has found an argument that defense counsel performed deficiently for failing to demand trial during a hearing on a continuance to be a cognizable claim. *People v. Hartfield*, 2022 IL 126729, ¶ 38. Nor should this Court be persuaded by the State's argument that defense counsel "agree[d] to a lengthy continuance to give [him] addition time to consult with [Yankaway]." (St. Br. at 44). As explained above, defense counsel's trial strategy never changed throughout the duration of this case and counsel never suggested a continuance would change his trial strategy. (R. 73–85, 838–48). And, since counsel believed a 120-day term applied to Yankaway, he performed deficiently by allowing a continuance of 134 days despite knowing Yankaway wanted a speedy trial. (*See* Def. Br. at 27). Accordingly, if this Court finds the trial court did not abuse its discretion at the February 24 hearing, it should still find defense counsel provided

ineffective assistance at that hearing.

For all these reasons, this Court should reject the State's arguments and find that Yankaway received ineffective assistance where counsel failed to correctly demand a speedy trial. A review of the record showed that a speedy-trial violation occurred in this case where the trial court abused its discretion in misattributing the continuance from the February 24 hearing to both parties, and that defense counsel performed deficiently by not filing a demand compliant with the Intrastate Detainers Statute. As to the determinative issue in this appeal—prejudice—this Court should find that counsel's deficient performance caused Yankaway prejudice by looking at the circumstances as they existed on the date Yankaway's pre-trial motion to dismiss was argued. But for counsel's deficient performance, there was a reasonable probability of success on Yankaway's motion and this Court should find the same and reverse his convictions outright.

II.

Alternatively, the trial court's misapprehension of the sentencing range influenced its sentencing decision and was plain error.

Even though the State agrees the trial court's understanding of the sentencing range was wrong, it argues for a finding of no error. (St. Br. at 46–47) ("To be sure, the court misstated the sentencing range[.]"). The State's argument is that the court's use of the wrong range when imposing sentence was not a clear or obvious error. (St. Br. at 47). It then argues that the court's error was not structural and accordingly not second-prong plain error. (St. Br. at 49). For the following reasons, this Court should reject the State's arguments.

To start, the State's argument incorrectly applies the initial analytical step of the plain-error test. (St. Br. at 47). The initial analytical step of the plain-error test is "determining whether there was a clear or obvious error at trial." *People v. Sebby*, 2017 IL 119445, ¶ 49. Yankaway's sentence violated *People v. Eddington*, 77 Ill.2d 41, 48 (1979), which held that a misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing when it appears that the mistaken belief of the judge arguably influenced the sentencing decision. (*See also* Def. Br. at 41–42). But the State improperly conflates the "clear or obvious error" prong of the plain-error test with *Eddington* to create a new rule: "[T]he defendant must show that the misunderstanding *clearly or obviously* influenced the sentence." (St. Br. at 47) (emphasis in original).

Nowhere in this Court's precedent does it say the "clear or obvious" step *modifies* an existing legal rule—instead, the plain-error doctrine simply has as its first step "whether there was a clear or obvious error." *Sebby*, 2017 IL 119445,

¶ 49. Indeed, this Court also has described "clear or obvious error" as "plain error," *People v. Herron*, 215 Ill.2d 167, 186–87 (2005), and even as "*any* error" in plain-error analyses. *People v. Thompson*, 238 Ill.2d 598, 613 (2010) (emphasis added).

Yankaway did not need to show the error clearly or obviously influenced the sentence, but rather that the trial court made a clear or obvious error by misapprehending the sentencing range and that this error appeared to influence the court's sentencing decision. (St. Br. at 47); *Eddington*, 77 Ill.2d at 48. Again, even the State concedes that the court erred in misapprehending the sentencing range. (St. Br. at 47). And, the trial court used the wrong minimum as a reference point, as shown by its comment that it imposed a 44-year sentence "because it's a 20-year tack-on with a six-year minimum." (R. 1003). Therefore, a clear and obvious error occurred in the imposition of Yankaway's sentence for Count I.

The State also is unavailing in arguing that the court's error in misapprehending the sentencing range cannot be second-prong plain error because it is not structural. (St. Br. at 48–49). Although often equated with "structural error," second-prong plain error can be invoked where "necessary to preserve the integrity and reputation of the judicial process." *People v. Jackson*, 2022 IL 127256, ¶ 28; *see also People v. Artis*, 232 Ill.2d 156, 167–68 (2009) ("plain errors affecting substantial rights may be reviewed on appeal"). For determining whether an error in sentencing constituted second-prong plain error, this Court also has looked at whether the error was "so egregious as to have deprived the defendant of a fair sentencing hearing." *People v. Beals*, 162 Ill.2d 497, 511 (1994).

Notably, the State's argument omits any mention of the cause of the court's

misapprehension of the sentencing range—the prosecutor told the court a 20-year add-on applied to Count I despite seeking only the 15-year add-on at trial. (R. 314–15, 984; St. Br. at 48–49). Whether the error was the result of a mistake or willful, the fact that the State told the court a different add-on applied at sentencing than what it sought at trial should be deemed so egregious as to have denied Yankaway a fair hearing. *Beals*, 162 Ill.2d at 511; *see also People v. Crespo*, 203 Ill.2d 335, 348 (2001) (reviewing court may correct unpreserved error that seriously affects the fairness or public reputation of judicial proceedings).

Nor can the State find safe harbor in its claim that "*Apprendi* errors are not structural" for the reason that *this* error was not an *Apprendi* violation. (St. Br. at 49). Under *Apprendi*, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury[.]" *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). But here, the State did submit the add-on to the jury. (C. 366). The error was that the court then imposed a sentence while misapprehending the minimum term and using the wrong sentencing range. (R. 984–85, 1003). Rather than an *Apprendi* violation, this issue presents an instance of the imposition of unauthorized sentence, and this Court should find the same. *People v. Stewart*, 2022 IL 126116, ¶ 12.

Therefore, this Court should reject the State's arguments and find the misapprehension of the sentencing range was plain error. And, alternative to the relief requested in Issue I of the Open Brief, it should vacate his sentence for Count I and remand for a new hearing on that count.

III.

The invited-error doctrine precludes remand for sentencing on Yankaway's unsentenced conviction for UPWF.

The State agrees that the appellate court erred in remanding the case for resentencing on Yankaway's conviction for unlawful possession of a weapon by a felon (UPWF). (St. Br. at 50–51). The State's reasoning is based on the one-act, one-crime doctrine, rather than the invited error doctrine as argued in Yankaway's opening brief. (St. Br. at 50–51; Def. Br. at 45–49). Whichever reasoning this Court adopts, the result remains the same, which is that the appellate court's order remanding the case for resentencing on the UPWF conviction must be reversed.

CONCLUSION

For the foregoing reasons, Jatterius L. Yankaway, defendant-appellant, respectfully requests that this Court reverse his convictions outright. In the alternative, Yankaway respectfully requests that this Court vacate his sentence under Count 1 and remand for a new sentencing hearing on only that count, and reverse the order remanding for sentencing for Count 3.

Respectfully submitted,

CHRISTOPHER MCCOY
Deputy Defender

ANTHONY J. SANTELLA
Assistant Appellate Defender
Office of the State Appellate Defender
Second Judicial District
One Douglas Avenue, Second Floor
Elgin, IL 60120
(847) 695-8822
2nddistrict.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 contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 16 pages.

/s/Anthony J. Santella
ANTHONY J. SANTELLA
Assistant Appellate Defender

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NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Mr. David J. Robinson, Deputy Director, State's Attorneys Appellate Prosecutor, 725 South Second Street, Springfield, IL 62704, 4thdistrict@ilsaap.org;

Ms. Jodi Hoos, Peoria County State's Attorney, 111 Courthouse, 324 Main St., Peoria, IL 61602-1366, sao@peoriacounty.org;

Mr. Jatterius L. Yankaway, Register No. M54484, Pinckneyville Correctional Center, 5835 State Route 154, Pinckneyville, IL 62274

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 August 2, 2024, 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 is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, 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/Norma Huerta
LEGAL SECRETARY
Office of the State Appellate Defender
One Douglas Avenue, Second Floor
Elgin, IL 60120
(847) 695-8822
Service via email will be accepted at
2nddistrict.eserve@osad.state.il.us