No. 129208

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal from the Appellate Court) of Illinois, Fifth Judicial District,) Nos. 5-19-0329 & 5-19-0330 (cons.)
Plaintiff-Appellee,	)
v.	) There on Appeal from the Circuit) Court of the First Judicial District,) Jackson County, Illinois,) Nos. 16-CF-466 & 17 CF 104
CORTEZ TURNER,	)
Defendant-Appellant.	) The Honorable) Ralph R. Bloodworth, III,) Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Defendant appeals his convictions for first degree murder, perjury, and aggravated discharge of a firearm. No question is raised on the pleadings.

ISSUES PRESENTED

At defendant's bench trial, the People proved that defendant accidentally shot himself in the leg while participating in a deadly drive-by shooting, then went to a hospital for treatment, falsely claiming to be a victim. It is undisputed that police saw defendant's bloody clothes in plain view at the hospital and obtained defendant's consent to take the clothes for their investigation. Defendant contends that the trial court erred by denying his motion to suppress his bloody clothes, which raises the following issues:

1. Whether defendant failed to prove that he had a reasonable expectation of privacy, protected by the Fourth Amendment, in the room in the hospital emergency department where he was briefly triaged, such that police could not enter without a warrant or defendant's express consent.

2. Whether defendant failed to establish that this Court should adopt a "bright line rule" that police may not enter a hospital room without a warrant or the defendant's express consent.

3. Whether, if defendant had a reasonable expectation of privacy in the room, the good faith exception to the exclusionary rule applies.

4. Whether, if it was error to admit defendant's bloody clothes, that error is harmless because the remaining evidence of guilt is overwhelming.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b)(2). This Court allowed defendant's petition for leave to appeal on May 24, 2023.

STATEMENT OF FACTS

A. Defendant's Arrest for the Murder of Detrick Rogers

On October 24, 2016, Detrick Rogers was shot and killed during a drive-by shooting committed by multiple men in Murphysboro, Illinois. R338-44, 421-29.[1] Shortly after the shooting, defendant walked into a local hospital with a gunshot wound to his leg. R65-66. As he was being triaged, defendant spoke with police, told them that he had been hit by a stray bullet while walking on the street, and agreed that they could take his bloody clothes as evidence. R98-99, 105, 137-38.

Police later learned that after defendant left the hospital, he told two women that he had accidentally shot himself while participating in the drive-by shooting, a confession that was corroborated by other evidence, including testimony from an eyewitness who later identified defendant as one of the people in the car who committed the drive-by shooting. R429, 842-43, 867-68. The People charged defendant with multiple felonies, including first degree murder, aggravated discharge of a firearm, and perjury (for testifying falsely before the grand jury). C32-34, 637-38.

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[1] Citations to "C_," R_," and "E_," refer to the common law record, the report of proceedings, and the first volume of exhibits in Appellate Case No. 5-19-0239; defendant's brief and appendix are cited as "Def. Br. _" and "A_." Witnesses who share the same last name are referred to by their first name.

B. Defendant's Motion to Suppress His Bloody Clothes

Before trial, defendant moved to suppress his bloody clothes that police had recovered from the hospital. C218-20. At a hearing on defendant's motion, Janet Womick, a nurse at St. Joseph's Hospital, testified that she was working in the hospital's emergency department on the night of the shooting. R66. Defendant walked into the hospital at 1:44 a.m. with a gunshot wound to his leg. R65-66; E5. He was taken to a room in the hospital's emergency department and "triaged" (*i.e.*, preliminarily assessed and treated), then transferred to another hospital. R66; E15. As Womick triaged defendant, he claimed that he had been hit by a stray bullet while walking outside. R79-80. Womick put defendant's bloody clothes in a clear plastic bag and placed the bag on a counter in the room where he was being triaged. R71-72, 82. The bag was visible to anyone walking in the hallway past the room. R72, 84. Womick knew the hospital was required by law to notify the police of all gunshot wounds; however, it was unnecessary to call the police in this instance because police were already on the way to the hospital with a different gunshot victim (*i.e.*, the victim of the drive-by shooting, Detrick Rogers). R80-81.

Within 15 minutes of defendant arriving at the hospital, two police officers came to the room where he was being triaged. R84. Womick testified that defendant was "very cooperative with the police" and, in turn, the police were "cordial." R73-74, 90. The police asked defendant if they could look at his clothes, and defendant agreed that they could. R84-85. Police then told

defendant that they needed his clothes for their investigation and defendant agreed that the police could take them. R74, 84-85. Defendant did not appear to be confused, nor did he have any difficulty communicating. R88-89. The "Patient Care Summary" report that Womick prepared in the course of her duties stated that defendant was at St. Joseph's for only two hours before being transferred to another hospital. E5, 15.

Detectives Chris Liggett and Corey Etherton of the Jackson County Sheriff's Office both testified that they talked to defendant at St. Joseph's Hospital while he was being triaged for a gunshot wound. R96-97, 135. Defendant was "cooperative" and claimed to have been hit by a stray bullet as he was walking outside. R105-07, 126, 135. A clear bag containing bloody clothes was visible on a counter in the room where defendant was being triaged. R98-99, 130-31. They asked defendant whether they could take the clothes as evidence, and he said they could. R98-99, 136-38.

During the hearing, Etherton and Liggett were asked to describe the room where defendant was being triaged. They testified that it was an "emergency room" or "treatment room" in the "emergency department." R97, 107, 126-28.[2] The room contained one bed, a counter, a sink, and "all kinds of

[2] Defendant's brief occasionally refers to this room as a "trauma room," *e.g.,* Def. Br. 16, 19, 31, but it appears that in the trial court that no one used that terminology. Instead, for example, defendant's counsel sometimes referred to it as an "ER room." *E.g.*, R143, 144.

medical equipment." R97, 108, 126-27. Medical personnel came in and out of the room to triage defendant. R97, 136.

Lastly, defendant's mother, Patrice Turner, testified that she arrived at St. Joseph's Hospital sometime after midnight. R119. She was not allowed to see her son immediately, but instead had to wait in the waiting room as defendant spoke with police. *Id.* She was taken back to see her son after the police left; she saw defendant briefly and then he was transferred to another hospital. R120.

Defendant's counsel argued in closing that defendant did not consent to the police taking his clothes and the clothes were not in plain view. R146-47. The prosecution argued that the evidence showed (1) the police had the right to access the triage room, where defendant had no reasonable expectation of privacy; (2) defendant consented to the police taking his clothes; and (3) the clothes were in plain view. R148-55. The trial court denied defendant's motion to suppress. C233-35.

C. Defendant's Trial and Conviction

The parties agree that at 1:30 a.m. on October 24, 2016, Jacie Marble's white Kia Optima was used to commit a drive-by shooting in Murphysboro, Illinois, that resulted in the fatal shooting of Detrick Rogers. Def. Br. 5. The dispute at defendant's bench trial was whether defendant was in that car and, thus, was accountable for Detrick's murder. The prosecution contended that defendant was in the back seat of the car with a .357 handgun and,

during the drive-by shooting, accidentally shot himself in the leg. R318-22. The defense argued that defendant was not in the car and, instead, was hit by a stray bullet as he was walking down the street. R322-25.

The Prosecution's Case

A police officer testified that he responded to reports of a shooting near the corner of Shoemaker Drive and 20th Street, and found Detrick Rogers on the ground, with a gunshot wound to the head. R338-45. An ambulance arrived and took Detrick to a hospital, where he was later pronounced dead. R345-46, 803. The bullet that killed Detrick was lodged in his skull and was too damaged to be linked to a specific gun; however, the bullet was consistent with a bullet fired from a .223 rifle. R989-91, 1009. Police recovered many casings of several different calibers from the street where the shooting occurred, including .223 and .357 casings, evidencing that multiple guns were fired during the shooting. R681-700.

Detrick's brother, Cleophas Gaines, testified that on the night of the shooting, he and Detrick decided to meet their father at a bar. R409-10. As Detrick and Gaines were walking to the bar, they were approached by Juwan Jackson. R411-12. Jackson had a gun in each hand and kept saying, "You bitch ass n*gger, you bitch ass n*gger." R413. As he spoke, Jackson pointed his guns at Detrick and Gaines. R414. Detrick and Gaines ran inside a nearby house. R416. Gaines did not consider calling police; to the contrary, Gaines testified that a police officer was "the last person [he] thought about

calling." R416-17. Eventually one of Detrick's and Gaines's brothers arrived and drove them to a friend's house. R419.

Later that night, Detrick and Gaines were standing in front of that friend's house on Shoemaker Drive, when a "white car" drove slowly by. R421. Gaines recognized the car as belonging to "Jacie," and he saw that it was being driven by her boyfriend, Orlando Garrett. R423-25. Gaines saw Juwan Jackson "clear as day" leaning out the front passenger side window with two guns. R425. Jackson started yelling at Detrick and Gaines, Gaines jumped inside a nearby parked car, and then "a lot of gunfire" erupted. R426. Detrick was shot before he could get away. R426-27. Gaines saw Jackson shooting at them from the white car. R427. He also saw defendant in the backseat of the car, along with another man. R429. The car turned from Shoemaker Drive and down 20th Street as the shooting continued. R428.

Gaines admitted that on the night of the shooting, he was using promethazine with codeine (which had been prescribed by a doctor) and cocaine, but he testified that it did not affect his recollection of the events. R408-10. Gaines also admitted he had initially told prosecutors before trial that he did not see defendant in the car, but he explained that he had lied about not seeing defendant because he did not want police involved. R430-31.

Gaines's account of the shooting was corroborated by video recorded by a neighbor's security system. R492-93. The video showed the white Kia Optima driving down Shoemaker Drive, and gunshots were audible as the

Kia Optima passed Detrick and Gaines and turned onto 20th Street. R494-96. After the shooting began, a muzzle flash could be seen coming from the lawn near where Detrick and Gaines had been standing. *Id.* Based on the video, Officer Michael Laughland believed that the gunshot from the lawn came after the initial shots, and prosecutors said in closing that it appeared someone returned fire at the Kia Optima, likely Detrick and/or his brother Terry Rogers, because the evidence showed that both of those men had gunshot residue on their shirtsleeves. R510, 1076-77.

Prosecutors called several witnesses to corroborate Gaines's testimony that Juwan Jackson participated in the shooting. A local resident testified that she lived on 20th Street next to Jackson's girlfriend, Patyce Houston. R562-63. Shortly after the shooting, she saw Jackson running to Houston's house; Jackson and Houston spoke in the backyard, and the witness heard Houston telling Jackson to "hide the gun." R563-566. Police later recovered a .223 rifle hidden in Houston's backyard. R627, 638.

Houston testified that Jackson came to her house shortly after the shooting and was "frantic." R669. According to Houston, she and Jackson got in Houston's car and drove away; Jackson told her which way to drive, and she eventually dropped him off at a place that he "had some association with." R672-76.

The prosecution also presented additional evidence connecting defendant to the men who participated in the drive-by shooting. Brianna

Phipps testified that, earlier on the evening of the shooting, defendant, Juwan Jackson, Quan Scruggs, and Orlando Garrett attended a party at the home of her sister, Jacie Marble (the owner of the white Kia Optima used in the drive-by shooting). R443-45. Jackson brought several guns to the party, including a .357 handgun and an assault rifle. R447. During the party, Jackson seemed "agitated." R451.

Eventually the party broke up, the men left, and Phipps remained at the house and fell asleep. R451-52. Phipps was woken by gunfire and went to her sister's bedroom, where she saw Orlando Garrett coming in the window. R453-54. Someone started banging on the side door of the house, and defendant came "hobbling" inside the house with another man (whom she thought was possibly Quan Scruggs). R455-56. Garrett told Jacie to drive defendant to the hospital, which Jacie did. R456.

Jacie Marble testified that several people gathered at her house on the night of the shooting to "hang[] out" and "smoke weed," including defendant, Juwan Jackson, and Quan Scruggs. R819-21. After the party broke up, she went to sleep; later that night, her boyfriend Orlando Garrett woke her up and told her to take defendant to the hospital. R823. Marble got in her car with defendant and Quan Scruggs. R827. As they were driving, Scruggs threw something out of the car window; Marble thought it was a gun. R828-29. Marble dropped Scruggs off at a trailer park, then took defendant to the hospital. R830-31. During the drive, defendant, Scruggs, and Marble

discussed the fact that she needed to clean all the shell casings out of her car. R830. From the conversation, Marble thought that "something bad obviously happened and [her] car was involved." R831. When Marble returned home, she threw away the casings she was able to find in her car and cleaned a great deal of blood out of the backseat. R831-36. At the time of defendant's trial, Marble had pleaded guilty to obstruction of justice for destroying that evidence; it was an open plea for which she received probation. R836-37.

Marble further testified that, after defendant was released from the hospital, she met with defendant, Cara Howerton, and others. R841-42. During that meeting, defendant said that he had accidentally shot himself in the leg. R842-43. Specifically, defendant said he had been holding a gun in his lap during the drive-by shooting, Quan Scruggs was shooting a gun, Scruggs bumped into defendant, and defendant shot himself in the leg. *Id.* During cross-examination, Marble admitted that she had initially told police she did not know anything about the shooting; however, she testified that she was positive that she heard defendant say he shot himself in the leg. R847-48. She explained that she gave conflicting statements earlier because she was "scared" of several things, including "retaliation." R851.

Cara Howerton likewise testified that she met with defendant, Jacie Marble, and a few other people after defendant was released from the hospital. R862-64. They discussed the shooting, and defendant said that he

was in the backseat of a car, "someone bumped into him" in the backseat, and defendant accidentally shot himself. R867-68.

Police searched Marble's Kia Optima and recovered several .223 casings that Marble had missed while cleaning her car. R771-72. A forensic scientist testified that those .223 casings and the .223 casings police recovered on the street where the shooting occurred were fired from the same gun: the .223 rifle police recovered from the backyard of the house belonging to Patyce Houston (Juwan Jackson's girlfriend). R636, 693, 771, R971-81.

A crime scene investigator testified that there was a bullet hole in the rear seat of Marble's car that, based on the path the bullet traveled, had to have been fired from above the seat. R776-78. Police recovered a fired bullet jacket lodged in the car's frame below the seat; a forensic scientist testified that such a bullet jacket can be fired from a .357 handgun. R785-86, 985-89. Further, police recovered a .357 casing on the street where the drive-by shooting occurred and a .357 casing in Marble's car; a forensic scientist testified that those casings were fired from the same gun. R695-98, 774, 973-75. The prosecution contended that this evidence proved that (1) defendant had a .357 handgun during the drive-by-shooting; (2) he accidentally shot himself in the leg with that gun (resulting in the bullet hole in the seat and the bullet jacket in the frame below the seat); and (3) defendant fired at least once at Detrick and Gaines during the drive-by shooting (as evidenced by the .357 casing found in the street). R1080-81.

A forensic scientist, Angela Horn, testified that she examined defendant's pants that police recovered from the hospital and determined that they had a bullet hole that was caused by a gunshot fired at close range. R1001-08. And another forensic scientist, Mary Wong, testified that the sleeve of defendant's shirt had gunshot residue. R1038-42.

Janet Womick, the nurse who testified at the suppression hearing, also testified at trial. Womick attested that the hospital received a call reporting that there had been a shooting and that a gunshot victim (Detrick) would be arriving soon via ambulance. R396. While the hospital staff awaited arrival of the ambulance, defendant walked into the hospital with a gunshot wound to his leg. R396-98. Womick took defendant's clothes, put them in a clear plastic bag, and then placed the bag on the counter. R399-400. Defendant told Womick that he was outside when he was shot by stray bullet. R400-01. When police arrived, defendant was cooperative with them, and he agreed that the police could take his clothes as evidence. R402-03.

Detective Etherton testified, as he did at the suppression hearing, that defendant consented to police taking his clothes from the hospital. R574-76. Defendant told police he was a victim because he was walking around outside when he was shot by a stray bullet. R578-79.

Defendant did not testify. R1062. The defense recalled Officer Laughland, who testified that he interviewed a local resident, who said that shortly after the shooting, she heard Terry Rogers (one of Detrick's brothers,

whom the prosecution agreed may have returned fire at the Kia Optima) say that he had "gunpowder on [his] hands." R1054, 1076.

The court found defendant guilty of first degree murder, aggravated discharge of a firearm, conspiracy to commit aggravated discharge of a firearm, and two counts of perjury. R1093-94.

D. Defendant's Motion for a New Trial and Sentencing

Defendant's counsel moved for a new trial, arguing that the court erred by denying defendant's motion to suppress his bloody clothing because defendant "had a reasonable expectation of privacy" in the room where he was triaged. A42-47. The trial court denied the motion, R1156-57, and sentenced defendant to a total of 30 years in prison, R1234-36; C701.

E. Defendant's Appeal

On appeal, the appellate court agreed with the parties that defendant's conspiracy conviction should be vacated (because a defendant may not be convicted of both the inchoate and principal offense), as well as one of his perjury convictions (because the two counts of perjury were duplicative). *People v. Turner*, 2022 IL App (5th) 190329, ¶ 83.

But the appellate court rejected defendant's claim that he was entitled to a new trial because the trial court erred by denying his motion to suppress his bloody clothes. *Id.* ¶¶ 31, 71. Defendant did not dispute that he consented to the police taking his clothes and that the clothes were in plain view. *Id.* ¶ 37. Instead, defendant argued that the consent and plain-view

doctrines did not apply (and, thus, the trial court should have suppressed his bloody clothes) because he had a reasonable expectation of privacy in the room where he was being triaged, and police entered the room without a warrant or his consent. *Id.* The appellate court held that defendant failed to prove that he had a reasonable expectation of privacy that would be protected by the Fourth Amendment. *Id.* ¶¶ 38-71. Accordingly, the appellate court affirmed the trial court's denial of defendant's motion to suppress and affirmed his convictions for murder, aggravated discharge of a firearm, and one count of perjury. *Id.* ¶ 83.

STANDARD OF REVIEW

This Court reverses a trial court's findings of fact when ruling on a motion to suppress only if they are against the manifest weight of the evidence. *People v. Lindsey*, 2020 IL 124289, ¶ 14. This Court reviews de novo the legal effect of those facts. *Id.*

ARGUMENT

The Fourth Amendment generally requires police to obtain a warrant to search and seize evidence, but that requirement is subject to a number of exceptions. *Kentucky v. King*, 563 U.S. 452, 459 (2011). In particular, it is settled that where, as here, police do not have a warrant, they may search and seize items if they have consent to do so or the items are in "plain view." *E.g., People v. Absher*, 242 Ill. 2d 77, 83 (2011) ("[C]onsent has long been an exception to the need for a search warrant."); *People v. Edwards*, 144 Ill. 2d 108, 134 (1991) (the "plain view doctrine" is "an exception" to the Fourth

Amendment's warrant requirement). These exceptions apply, however, only if the police "are lawfully present" in the place where they obtain consent or see the item in plain view. *See, e.g., King*, 563 U.S. at 462-63.

Defendant does not dispute that his bloody clothes were in plain view when police entered the room or that he consented to police taking them. *Turner*, 2022 IL App (5th) 190329, ¶ 37. Instead, he argues that, under the Fourth Amendment's exclusionary rule, his bloody clothes (and any evidence obtained from them) should have been suppressed — and he should be granted a new trial — because police were not lawfully present in the room where he was being triaged. Def. Br. 17.

Defendant's claim fails for several independent reasons. First, defendant failed to establish that police did not lawfully enter the room because he did not show that he had a legitimate expectation of privacy in the room where he was briefly triaged, such that the Fourth Amendment would bar police from entering without a warrant or consent. *See infra* Section I. Second, defendant offers no compelling reason in support of his argument that this Court should dramatically depart from its precedent to adopt a "bright line rule" that police automatically violate the Fourth Amendment whenever they enter a hospital room without a warrant or the express consent of the defendant. *See infra* Section II. Third, even setting all that aside, defendant still would not be entitled to suppression of his bloody clothing, for the good faith exception to the exclusionary rule applies because

police reasonably believed they could enter the room. *See infra* Section III. Finally, any error in admitting defendant's bloody clothes at his bench trial was harmless because the remaining evidence against him is overwhelming. *See infra* Section IV.[3]

I. Defendant Failed to Prove He Had a Legitimate Expectation of Privacy in the Room Where He Was Briefly Triaged, Such That Police Could Not Enter Without a Warrant or Consent.

To succeed on his Fourth Amendment claim, defendant bears the "burden of establishing that [he] had a legitimate expectation of privacy" in the room where he was triaged. *People v. Johnson*, 237 Ill. 2d 81, 90 (2010). Courts apply two approaches to analyzing whether a defendant had a "legitimate expectation of privacy": a "property-based approach" and a "privacy-based approach." *E.g., People v. Lindsey*, 2020 IL 124289, ¶¶ 16-18 (noting that both approaches should be used). Defendant has forfeited any argument related to the property-based approach because he did not raise such an argument in his petition for leave to appeal or his opening brief. *See, e.g.*, *People v. Carter*, 208 Ill. 2d 309, 318-19 (2003); Ill. S. Ct. R. 341(h)(7). Moreover, any suggestion that defendant had a property interest in a room in a hospital that he occupied only briefly to be triaged would be meritless. *See Lindsey*, 2020 IL 124289, ¶ 17 (property-based approach focuses on "intrusion onto a person's property," such as their home).

[3] This brief presents certain arguments not raised below, but appellees "may raise any argument" supported by the record to affirm the lower court's judgment. *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010).

Defendant instead bases his claim on the "privacy-based" approach, *see* Def. Br. 17-32, which requires him to prove he had a "reasonable expectation of privacy," *i.e.*, a subjective expectation of privacy that "society is prepared to recognize as reasonable," *Lindsey*, 2020 IL 124289, ¶ 33. Whether defendant had a reasonable expectation of privacy is a "fact-specific" question. and it is his burden to prove that he did. *Id.* ¶ 40; *see also, e.g., Johnson*, 237 Ill. 2d at 90 (defendant "has the burden of establishing" that he had a reasonable expectation of privacy).

Under the privacy-based approach, whether defendant had a reasonable expectation of privacy in the room where he was triaged turns on (1) whether he had an ownership interest in that room; (2) whether he was legitimately in the room; (3) his possessory interest in the room; (4) his prior use of the room; (5) his ability to control others' use of the room; and (6) whether he had a subjective expectation of privacy in the room. *E.g.*, *People v. McCavitt*, 2021 IL 125550, ¶ 60.[4] The parties agree defendant was legitimately in the room in the emergency department where he was triaged (the second factor in the analysis) — that is, he was not trespassing there. Def. Br. 19. However, the remaining five factors show he did not have a reasonable expectation of privacy.

[4] Defendant refers to these six factors as the "*Pitman* Factors" in reference to *People v. Pitman*, 211 Ill. 2d 502 (2004). *See* Def. Br. 18-32. However, this Court has not referred to these factors as the *Pitman* factors; indeed, as *Pitman* itself makes clear, this Court used these factors for years before *Pitman* was decided. *Pitman*, 211 Ill. 2d at 520-21.

A. The first and third factors (ownership or possessory interest) demonstrate defendant did not have a reasonable expectation of privacy.

The first factor of the privacy-based approach asks whether defendant had an ownership interest in the room where he was briefly triaged, and the third factor asks whether he had a possessory interest in that room. *McCavitt*, 2021 IL 125550, ¶ 60. Clearly, defendant had no such interests in the room — a fact that he himself concedes. Def. Br. 19. Accordingly, the first and third factors of the analysis support the conclusion that defendant did not have a reasonable expectation of privacy. *See, e.g.*, *Johnson*, 237 Ill. 2d at 90 (lack of ownership or possessory interest supports the conclusion the defendant lacked a reasonable expectation of privacy).

B. The fourth factor (prior use) demonstrates defendant did not have a reasonable expectation of privacy.

The appellate court correctly found that the fourth factor — the defendant's prior use of the room before police "searched" it — also demonstrates that defendant did not have a reasonable expectation of privacy. As the appellate court noted, the record shows that defendant was in the hospital for only 15 minutes before police obtained his consent to take his clothes, and defendant presented no evidence that he had ever used the room before the night of the shooting. *Turner*, 2022 IL App (5th) 190329, ¶ 57; E5 (hospital report). Tellingly, defendant cites no precedent holding that the fourth factor is established when a defendant was in a room for only 15 minutes before police arrived and obtained evidence.

Instead, defendant essentially argues that this Court should overturn its precedent and eliminate the fourth factor from the privacy analysis, at least in cases involving hospitals. Def. Br. 19-23. However, stare decisis "expresses the policy of the courts to stand by precedents and not to disturb settled points." *People v. Williams*, 235 Ill. 2d 286, 294 (2009). To depart from stare decisis, defendant must show that the governing decisions "are unworkable or badly reasoned" such that they are "likely to result in serious detriment prejudicial to public interest," *id.*, requirements that defendant entirely fails to meet.

To begin, defendant does not argue that the Court's employment of the fourth factor in its privacy analysis is badly reasoned, nor could he credibly do so. The privacy-based approach is designed to determine "a person's societally recognized privacy." *Lindsey*, 2020 IL 124289, ¶ 17. And, plainly, how long a person has been in a particular place, or how often the person has used the place in the past, bears on whether society recognizes a person's privacy interest in that place. That is to say, everything else being equal, society is more likely to recognize that a person has a reasonable expectation of privacy in a place after staying there for several days than in a place that the person walked into only a few minutes ago. Therefore, the Court's inclusion of the fourth factor in the privacy analysis is well-reasoned.

Defendant's arguments that the fourth factor is unworkable or prejudicial to the public interest are similarly meritless. Defendant first

argues that police "may not know how long a patient was in a room" and "may not know how long is long enough" to establish a privacy interest that would require a warrant or consent to enter the room. Def. Br. 20. But, of course, the police can simply ask hospital staff when the defendant arrived and, if the staff is uncertain of that fact or police are otherwise unsure whether consent or a warrant is necessary under particular circumstances, the police can obtain consent or a warrant before entering the room. The law requires police to make judgments all the time — such as determining whether there is probable cause to believe a crime has occurred or exigent circumstances exist to enter a home — and defendant offers no reason to believe that police are unable to make similar judgments with respect to the fourth factor of the privacy analysis.

Defendant also argues that it "does not make sense" that "a difference of minutes or hours" could affect whether a defendant is found to have a reasonable privacy expectation in a room, and he expresses concern that a defendant who was in a room for 30 minutes will be treated differently than someone who was in a room for 31 minutes. *Id.* But defendant cites no cases holding that such small differences in time — such as 30 minutes vs. 31 minutes or 1 hour vs. 2 hours — determine whether someone has a reasonable privacy expectation in a room. Again, the fourth factor is one of several factors used in the privacy analysis and simply reflects that society is

more likely to find that someone has a reasonable expectation of privacy the longer they spend in a certain place.

Defendant also misses the mark when he speculates that the fourth factor is unworkable because hospital staff may not know how long a person has been in a room or "may estimate it wrong." *Id.* Contrary to defendant's speculation, in this case, the "Patient Care Summary" report Nurse Womick prepared in the course of her duties identified when defendant entered the hospital and agreed police could take his clothes (as well as the specific times when many other events occurred, such as when his bloody clothes were removed from his body, when he was given certain medications, when his vitals were taken, and when he was transferred to a different hospital). E5-15. Womick also testified that the documentation she prepares is reviewed "on a daily basis," and that in her 18 years as a nurse she had "never been cited for a mistake" in her reports. R75-76. And, of course, if a defendant believes a witness made a mistake when determining how long a defendant was in a room, or the witness is otherwise uncertain how much time elapsed, the defendant can pursue that issue through cross-examination or by presenting competing evidence at the suppression hearing, just like with any other factual issue.

Defendant also fails to cite any authority for his argument that the fourth factor of the privacy analysis causes police to interfere with medical treatment a person receives. *See* Def. Br. 22-23. And he mischaracterizes the

record when he states that "one detective explained in this case" that "the officers angered hospital staff by getting in their way as the hospital [sic] attempted to provide [defendant] care." *Id.* The detective actually testified that doctors and nurses were in and out of the room and the detectives "tried to stay out of their way." R136. The detective was then asked, "Do they get angry if you get in their way?" and the detective responded, "A little bit." *Id.* Defendant cites no evidence that police negatively affected the treatment he received or otherwise acted in an improper way — to the contrary, Nurse Womick described the police as "cordial." R90.

Lastly, neither of the two cases defendant cites support his argument that the fourth factor should be eliminated. *See* Def. Br. 22. In *People v. Gill*, 2018 IL App (3d) 150594, ¶ 93, it was unclear precisely how long the defendant was in a private hospital room that, unlike an emergency room, was designed for "extended stays." And in *People v. Pearson*, 2021 IL App (2d) 190833, ¶ 36, "the record [did] not establish" how long the defendant was in the room before the police entered and searched the pockets of his jeans. Despite the uncertainty regarding exactly how long the defendants were in the room, both cases held that the remaining factors showed the defendants had a protected privacy interest, which demonstrates that inclusion of the fourth factor is not unfair to defendants, even when a record does not show precisely how long the defendant was in a room. *See Gill*, 2018 IL App (3d) 150594, ¶ 94; *Pearson*, 2021 IL App (2d) 190833, ¶ 51.

In sum, defendant provides no basis to eliminate the fourth factor from the privacy analysis or dispute the appellate court's holding that this factor does not support his claim that he had a reasonable expectation of privacy.

C. The fifth factor (ability to control access) fails to show defendant had a reasonable expectation of privacy.

The appellate court correctly found that the fifth factor did not support defendant's claim that he had a reasonable expectation of privacy in the room where he was triaged because he presented "no evidence" he could control other people's access to the room. *Turner*, 2022 IL App (5th) 190329, ¶ 58; *see also Lindsey*, 2020 IL 124289, ¶ 28 (defendant bears the burden of proof).

Notably, defendant does not argue that he presented evidence showing that he could control other people's access to the room where he was triaged. Instead, he first argues that the appellate court "conflate[d] the idea of *inclusion* with the *right of exclusion*, and the appellate court overlooked [defendant's] *right to exclude*." Def. Br. 24 (emphasis in original). That argument is plainly incorrect, as the appellate court expressly stated that there was "no evidence to conclude defendant could exclude persons from the area." *Turner*, 2022 IL App (5th) 190329, ¶ 58.

Defendant next asserts in conclusory fashion, without citation to any evidence, that it "is well known that a hospital patient may deny visitors entry into his hospital room." Def. Br. 24. But such conclusory, self-serving statements are insufficient — defendant instead must point to evidence in the record proving that he controlled access to the room where he was

triaged. *See, e.g.*, *Lindsey*, 2020 IL 124289, ¶ 28 (because "defendant, who bore the burden of proof at the suppression hearing[,] . . . offered no evidence" regarding a disputed issue, that "alone is enough to decide the . . . question against him"); *Johnson*, 237 Ill. 2d at 90 (a privacy-based approach would fail where, among other things, the defendant failed to present evidence that he could exclude others from the area the police searched).

Even setting that aside, defendant's assertion that it is "well known" patients control access is incorrect, as his own authority states that patients "cannot restrict access to an ER." *Gill*, 2018 IL App (3d) 150594, ¶ 92 (cited in Def. Br. 22, 25, 27, 30, 32).

Indeed, courts across the country have recognized that a defendant does not have the right to control access to the hospital room where he is treated, especially where (as here) the defendant has not been in the room for an extended period. *E.g.*, *State v. Rheaume*, 2005 VT 106, ¶ 10 (Vt. 2005) (collecting cases and holding that the defendant lacked a reasonable expectation of privacy in "trauma room" because "a patient undergoing treatment for only a brief period of time cannot reasonably expect either to restrict access to the area, or to control" access); *Commonwealth v. Welch*, 167 N.E.3d 1201, 1211-12 (Ma. 2021) (collecting cases and holding that the defendant did not control access to the room in the intensive care unit where he was treated); *United States v. Howard*, No. 10 CR 121, 2011 U.S. Dist. LEXIS 41211, *27 (N.D. Ga. Apr. 14, 2011) (collecting cases and holding that

"as the foregoing case law makes clear, Defendant had no right to exclude individuals from — and could reasonably expect limited public access within — the trauma room").

As those cases recognize, it is hospitals, not defendants, who control access throughout the hospital and to specific rooms, and here defendant has presented no evidence that he could exclude a doctor, nurse, medical technician, police officer, janitor, employee in the billing department, security guard, medical student, or anyone else the hospital might choose to grant access to the room where he was triaged. *See, e.g., Rheaume*, 2005 VT 106, ¶ 10 (in emergency departments, "medical personnel, hospital staff, patients and their families, and emergency workers — including police officers — are, as a matter of course, frequently, and not unexpectedly, moving through the area"); *see also Welch*, 167 N.E.3d at 1211-12. Certainly, if defendant did not wish a particular person to enter the room where he was being triaged, the hospital could choose to grant that request — or not — but defendant plainly does not have the power to control access in the same way someone does in their home, for example, or even their hotel room.

While defendant notes that members of the public cannot simply enter any area of a hospital they wish, Def. Br. 28, that limit is due to control exercised by the hospital, not defendant. That is to say, the reason a person off the street cannot randomly walk through certain areas of the hospital is because the *hospital* does not permit it and takes steps to prevent it from

happening, such as, in this case, establishing a front desk in the emergency room to handle people who come to the hospital. *See* R127. Indeed, if defendant wanted to be visited by a member of the public, the hospital plainly had the power to exclude that person for a host of reasons, such as that the person did not arrive during visiting hours, the person might interrupt defendant's treatment, or defendant was speaking with police. For example, here the record shows that the hospital made defendant's mother wait to see defendant while he was being triaged and speaking with police. R119-20.

Lastly, none of the four cases involving hospitals that defendant cites support his argument that he controlled access to the room where he was triaged. *See* Def. Br. 25-28 (citing *Gill, Pearson*, *Brown*, and *Green*). As noted, *Gill* held that defendants "cannot restrict access to an ER." 2018 IL App (3d) 150594, ¶ 92. While defendant partially quotes *Gill* for the proposition that the defendant in that case "likely" had "some ability to exclude others from the room," Def. Br. 25, that portion of *Gill* was discussing a "private" room on the seventh floor of the hospital that was suitable for "longer stays," a room that *Gill* stated was a "far cry from an ER," 2018 IL App (3d) 150594, ¶¶ 92-93. Defendant's second case, *Pearson*, 2021 IL App (2d) 190833, ¶ 37, relied on *Gill*, which, as noted, does not support defendant's argument. Moreover, far from defendant's flat assertion that it is "well-known" that people have a right to exclude others from a room where

they are being treated, *Pearson* cautioned that "every case depends on its facts" and not all hospital rooms are the same. *Id.* ¶ 53. And here, defendant presented no evidence suggesting that he controlled access to the room where he was triaged. If anything, the evidence supported the contrary inference, for defendant does not claim that hospital staff ever asked defendant for permission to enter his room, to admit the police, or to exclude his mother.

Defendant's next case, *People v. Brown*, 88 Cal. App. 3d 283, 291-92 (Cal. App. Ct. 1979), does not support his arguments either, because there the appellate court affirmed the denial of the defendant's motion to suppress because (as here) there was no evidence that the defendant objected when a nurse allowed a police officer to enter the defendant's room, where the officer then seized the defendant's bloody shoes. And *Green v. Chicago Tribune Co.*, 286 Ill. App. 3d 1, 3-6 (1st Dist. 1996), is irrelevant, as it involved a civil lawsuit arising from hospital employees taking photographs of a patient and giving them to journalists; it does not address the Fourth Amendment or whether police may enter a room where a person is being triaged.

To be clear, this is not to say that a defendant can never establish the fifth factor of the analysis where police obtained evidence from a hospital — the analysis, after all, is fact-dependent and must be decided on a case-by-case basis. *Supra* p. 17. But here, defendant has not carried his burden of proving he controlled access to the room where he was briefly triaged in a manner that creates a privacy interest protected by the Fourth Amendment.

D. The sixth factor (defendant's subjective belief) fails to show defendant had a reasonable expectation of privacy.

The appellate court also correctly found that the sixth factor did not support defendant's claim that he had a reasonable expectation of privacy because he presented "no evidence" he had a subjective expectation of privacy in the room where he was triaged. *Turner*, 2022 IL App (5th) 190329, ¶ 59; *see also, e.g.*, *Lindsey*, 2020 IL 124289, ¶ 42 (motion to suppress failed where the defendant presented "no evidence he had a subjective expectation of privacy" in the area searched).

Tellingly, defendant does not identify any specific evidence that he had a subjective expectation of privacy in the room where he was briefly triaged. *See* Def. Br. 29-32. Instead, he essentially argues that he was not required to present evidence of his subjective belief because he behaved as a typical emergency room patient would. *See id.* In particular, he quotes *Pitman*, 211 Ill. 2d at 522 (cited at Def. Br. 31), for the proposition that a defendant "need not have taken affirmative steps to proclaim his expectation of privacy" and "simply must outwardly behave as a typical occupant of the space in which the defendant claims an interest, avoiding anything that might publicly undermine his or her expectation of privacy."

However, *Pitman* did not hold that a defendant establishes he had a subjective expectation of privacy as long as he behaved as a typical occupant of the area would. The question in *Pitman* was whether the defendant had a reasonable expectation of privacy in a barn his mother owned, but which the

defendant worked in and used to store illegal drugs. *Id*. at 520. The dissent found that the defendant did not have a protected privacy interest in the barn because, among other reasons, Fourth Amendment precedent regarding barns required defendants to take steps to impede access to the barn and protect its privacy, and the defendant in *Pitman* did not take "reasonable steps to protect the privacy of the barn's interior," such as closing its doors, and otherwise "failed to impede access to" the barn. *Id.* at 532-35 (Thomas, J. dissenting). The majority reached a different conclusion and, in the portion quoted by defendant, held

> [D]efendant need not have taken affirmative steps to proclaim his expectation of privacy. The fact that the public could have discovered the [drugs] by trespassing on the farm fails to legitimize an otherwise invalid search. The fact that parts of the barn's interior were visible did not mean that defendant threw open the interior of the barn to general public scrutiny. A defendant simply must outwardly behave as a typical occupant of the space in which the defendant claims an interest, avoiding anything that might publicly undermine his or her expectation of privacy.

Id. at 522 (internal citations omitted). Thus, the portion of *Pitman* that defendant cites merely means that the defendant could have a protected privacy interest in his mother's barn even though he (1) did not proclaim that he had a privacy expectation before the search; or (2) did not impose special safeguards to "impede access to" the barn, and instead treated it as if were a normal barn that was not storing illegal drugs. *Id.*

But *Pitman* does not state that a defendant establishes a subjective privacy expectation simply by behaving as a typical occupant of the space

would. Indeed, even though *Pitman* found that the defendant outwardly behaved as a typical barn owner would, when the majority listed the factors that supported the defendant's argument that he had protected privacy in his mother's barn, it stated that he "had a right to be in the barn" (the second factor), had a possessory interest in the barn (the third factor), and had the right to exclude others (the fifth factor) — but did not expressly state he had proven he had a subjective expectation of privacy (the sixth factor). *Id.*

That defendant misreads *Pitman* is further demonstrated by that fact that — in opinions citing *Pitman* — this Court has continued to hold that to establish the sixth factor of the privacy analysis, a defendant is required to present affirmative evidence proving he had a subjective expectation of privacy in the area the police searched, and those cases do not suggest that it is enough for the defendant simply to behave as a typical occupant of the area searched would. *E.g.*, *Lindsey*, 2020 IL 124289, ¶ 42. The issue in *Lindsey* was whether the defendant had a reasonable expectation of privacy in an alcove he passed through on the way to his hotel room. *Id.* Although the defendant apparently used the alcove in a manner a typical occupant would — the Court noted that he presumably used it for "ingress and egress" and there was no evidence he used it for anything else — the Court held that the defendant had not established the sixth factor of the analysis because he had presented "no evidence that he had a subjective expectation of privacy in the alcove." *Id.* ¶¶ 41-42. The same is true here and, thus, defendant has failed

to demonstrate that the sixth factor in the privacy analysis supports his claim that his bloody clothes should be suppressed.

Defendant's remaining authorities likewise fail to show he had a subjective expectation of privacy. His first case, *Gill*, 2018 IL App (3d) 150594, ¶ 85, misread *Pitman* like defendant does here, and incorrectly held that it is sufficient to prove a subjective expectation of privacy if a defendant simply behaves as a typical person would in the area searched by police. *Gill's* holding is not only inconsistent with this Court's precedent, as just explained, it also would lead to absurd results. For example, under defendant's view someone could "prove" they had a subjective expectation of privacy in a public park — and, thus, a trial court should suppress evidence police saw in plain view in the park — as long as the defendant acted like a person typically would in a public park.

Defendant's remaining two cases are inapposite. In *Pearson*, 2021 IL App (2d) 190833, ¶¶ 7, 37, it was conceded that the defendant had a subjective expectation of privacy in the room where he was being treated when police entered and searched the pocket of his jeans without his consent. And *Ohio v. Funk*, 177 Oh. App. 3d 814, 818-19 (Oh. Ct. App. 2008), held that the defendant did not abandon his privacy interest in his urine because, among other reasons, he "expressed his desire to maintain his privacy" by refusing to consent to the police officer's previous request to test his bodily fluids.

Simply put, this Court repeatedly has held that a defendant does not establish the sixth factor of the analysis unless he presents evidence proving that he had a subjective expectation of privacy and, here, the appellate court correctly concluded that defendant failed to present such evidence.

* * *

In sum, defendant has failed to demonstrate that he had a reasonable expectation of privacy in the room where he was briefly triaged. Accordingly, the trial court was correct to deny defendant's motion to suppress.

II. This Court Should Reject Defendant's Request That It Adopt a "Bright Line Rule" that Defendants Always Have a Reasonable Expectation of Privacy in Hospital Rooms.

In the alternative, defendant makes an extraordinary request: he asks this Court to create a "bright line rule" that every person in a "hospital room with four walls and a door" *always* has a reasonable expectation of privacy in the room, such that police may not enter without a warrant or the person's express consent. Def. Br. 16-17, 21. This Court should reject defendant's proposed rule because it is contrary to the Court's precedent and inconsistent with a just legal system.

To begin, this Court has consistently held that there "is no bright line rule indicating whether an expectation of privacy is constitutionally reasonable." *E.g., McCavitt*, 2021 IL 125550, ¶ 60. Whether a person has a protected privacy interest in a particular place is "fact specific" and "will vary from person to person and case to case." *E.g., Lindsey*, 2020 IL 124289, ¶ 40.

Defendant cites no case adopting the bright line rule he proposes — to the contrary, defendant's own authority rejects the idea that a bright line rule should apply to hospital rooms. *See Gill*, 2018 IL App (3d) 150594, ¶ 92 (cited at Def. Br. 22, 25, 27, 30, 32); *Pearson*, 2021 IL App (2d) 190833, ¶ 36 (cited at Def. Br. 19-22, 26, 29, 30). For example, *Gill* held that whether someone has an expectation of privacy "will vary from person to person and case to case," and, therefore, "our conclusion here does not imply that all private hospital rooms must be havens of fourth amendment protections." 2018 IL App (3d) 150594, ¶ 96. Similarly, *Pearson* "emphasized" that whether there is a reasonable expectation of privacy "must be made on a case-by-case basis, taking into account the totality of the circumstances," and cautioned that, "of course, every case depends on its facts, and different evidence regarding the characteristics of a particular hospital room may in the future give rise" to different conclusions about whether a reasonable expectation of privacy exists. 2021 IL App (2d) 190833, ¶¶ 41, 53.

Moreover, contrary to adopting the bright line rule that defendant proposes, courts across the country have found that, under the facts of their particular cases, a defendant did *not* have a reasonable expectation of privacy when he was being treated in a hospital. *See, e.g.*, *Welch*, 167 N.E.3d at 1212; *Rheaume*, 2005 VT 106, ¶ 10; *Howard*, 2011 U.S. Dist. LEXIS 41211, *27; *United States v. Mattox*, 27 F.4th 668, 674 (8th Cir. 2022).

Defendant misses the mark when he argues that this Court should adopt his bright line rule because someone being treated in an emergency room is similar to a "hotel occupant" or "guest" in someone's home. Def. Br. 21. To begin, whether a hotel occupant or guest in a home has a reasonable expectation of privacy depends on the facts of the case. *See, generally, Minnesota v. Carter*, 525 U.S. 83, 90 (1998); *see also, e.g., State v. Brooks*, 760 N.W.2d 197, 205 (Iowa 2009) (collecting cases and holding that "the mere fact that a premises may be characterized as a residence or a motel room does not, by itself, establish that a particular person has a reasonable expectation of privacy in the premises"). For example, the United States Supreme Court has recognized that a non-overnight guest "who is merely present with the consent of the householder" — a situation similar to defendant's two-hour stay at the hospital — generally does not have a reasonable expectation of privacy. *Carter*, 525 U.S. at 90 (cited at Def. Br. 18); *see also, e.g.*, *Brooks*, 760 N.W.2d at 205 (noting that someone visiting a hotel room who is not an overnight guest "usually lacks" a protected expectation of privacy).

Moreover, as courts have recognized, someone being treated at a hospital can expect even *less* privacy than an overnight guest in a hotel or someone's home. *E.g.*, *Mattox*, 27 F.4th at 674; *Rheaume*, 2005 VT 106, ¶ 10. For example, someone being treated in an emergency room may be asked to provide personal information, such as their age, weight, and medical history, and other intrusive questions. That person also can expect a number of

people coming in and out of the room, examining their body, perhaps seeing them fully or partially undressed, and in other ways invading their physical privacy, and they might also be required to share the room with one or more additional patients. And any expectation of privacy is further diminished by laws requiring hospitals to report certain injuries (such as gunshot wounds) to the police. *See, e.g.*, *Mattox*, 27 F.4th at 674 (state law requiring gunshot wounds to be reported to police further erodes expectation of privacy at a hospital); *see also* 20 ILCS 2630/3.2(1) (hospitals must report certain injuries to police, including gunshot wounds).

Defendant also misses the mark when he repeats his arguments that adopting a bright law rule would assist police (by removing the need for them to make judgment calls about whether they may enter a room) and hospital staff (by allowing them to focus on medical treatment). Def. Br. 22-23. As discussed, defendant cites no evidence or authority demonstrating that police need such assistance when determining whether to enter a room or that police interfere with medical treatment in hospitals. *Supra* pp. 19-22. Moreover, defendant's assertions are policy arguments; they do not show that the text of the Fourth Amendment requires a bright line rule that police may never enter a hospital room without a warrant or the defendant's consent.

Lastly, defendant argues that this Court should adopt his proposed bright line rule because people seeking treatment in hospitals "*may be*" "vulnerable" because they "*may be* ill or in pain, or unclothed," and are "*often*

lacking their usual capacity to resist intrusion." Def. Br. 16, 21, 29 (emphasis added). But defendant's telling use of qualifiers like "may be" and "often" recognizes that people seek medical treatment for a host of reasons and their actual condition can vary greatly from person to person. Defendant, for example, does not dispute the trial court's conclusion that he was physically and cognitively able to — and in fact did — give his valid consent to police taking his bloody clothes, which undermines his contention that people in the hospital "lack the capacity to resist intrusion." *See id.* Indeed, defendant's proposed bright line rule would lead to absurd results, such as providing that someone with a sprained ankle would automatically have a protected privacy interest in a hospital room that they occupied for only a few minutes while filling out insurance forms.

The more sensible rule is the rule that this Court, and courts across the country, have applied for decades: a person has a privacy interest protected by the Fourth Amendment if the facts and circumstances of the case at hand, analyzed under the six-factor test, prove that the person had a reasonable expectation of privacy. Defendant offers no compelling reason to set aside decades of settled precedent in favor of his proposed bright line rule.

III. Even if Defendant Had a Reasonable Expectation of Privacy, the Good Faith Exception to the Exclusionary Rule Applies.

Even if this Court concludes that the police should have obtained a warrant or defendant's express consent before entering the room where he was being triaged, the exclusionary rule should not apply to exclude the

evidence of defendant's bloody clothes because the police acted in good faith when they entered the room. The exclusionary rule is a "prudential doctrine" that courts created to deter culpable Fourth Amendment violations. *Davis v. United States*, 564 U.S. 229, 236 (2011). But "[e]xclusion exacts a heavy toll on both the judicial system and society at large, because it almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence" — its "bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment." *People v. LeFlore*, 2015 IL 116799, ¶ 23 (internal quotation marks omitted) (collecting cases). Thus, "for exclusion of the evidence to apply, the deterrent benefit of suppression must outweigh the substantial social costs." *Id.* ¶ 23 (internal quotation marks omitted). The "Supreme Court has repeatedly expressed the notion that 'exclusion has always been our last resort, not our first impulse.'" *Id.* ¶ 22 (quoting *Herring v. United States*, 555 U.S. 135, 140 (2009)).

The "deterrence rationale loses much of its force and exclusion cannot pay its way" when "police acted with an objectively reasonable good-faith belief that their conduct was lawful." *Id.* ¶ 24 (internal quotation marks and brackets omitted). In "determining whether the good-faith exception applies, a court must ask the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal in light of all of the circumstances." *Id.* ¶ 25 (internal quotation marks omitted). For example, the exclusionary rule does not apply if binding appellate precedent

at the time held that the place the police searched was not a constitutionally protected area. *Id.* ¶ 27. In addition, the exclusionary rule does not apply where the officer's alleged error was not made in bad faith but rather was "simple, isolated negligence." *Id.* ¶ 24; *see also Davis*, 564 U.S. at 238 (same).

The good faith exception applies here because, at the time the police obtained defendant's bloody clothes from the hospital in 2016, binding Illinois appellate precedent had held that defendants did not have a protected privacy interest in the emergency room when they were being treated for injuries. In 1986, the appellate court affirmed the denial of a defendant's motion to suppress and held that "we do not believe that an expectation of privacy in a hospital emergency room is objectively reasonable," because, among other reasons, state law required medical personal to notify police of gunshot wounds. *People v. Torres*, 144 Ill. App. 3d 187, 190-92 (4th Dist. 1986). Then, in 2005, the appellate court reaffirmed *Torres* for similar reasons and held that police officers "did not violate the fourth amendment by being present in the emergency room while defendant was being treated for a gunshot wound." *People v. Hillsman*, 362 Ill. App. 3d 623, 633 (4th Dist. 2005). Relatedly, in 2004 another Illinois case found that a defendant "held no reasonable expectation of privacy in the operating room" where he received emergency surgery. *People v. Kucharski*, 346 Ill. App. 3d 655, 661 (2d Dist. 2004).

The only two Illinois cases defendant cites holding that a defendant had a privacy expectation in a hospital room protected by the Fourth Amendment were decided in 2018 and 2021, respectively, several years *after* the police in this case obtained defendant's bloody clothes. *Gill*, 2018 IL App (3d) 150594, ¶ 94; *Pearson*, 2021 IL App (2d) 190833, ¶ 51. Accordingly, given the state of the law in 2016, an Illinois police officer would have an objective, good faith belief that they could enter the room in the emergency department where defendant was being briefly triaged for a gunshot wound. *See, e.g.*, *LeFlore*, 2015 IL 116799, ¶ 38 (even though the "facts are different," officers could reasonably believe they could attach a GPS device to a defendant's car because prior precedent held that police could trick defendants into taking a beeper into their car and then track the beeper).

That the police acted in good faith, and the exclusionary rule should not be applied, is also independently demonstrated by the undisputed facts of this case, which show that the alleged error defendant complains about was, at most, simple negligence. Specifically, it is undisputed that defendant came to the hospital claiming to be the victim of a drive-by-shooting. R79-80, 105. It was the officers' duty, of course, to investigate shootings, and it is undisputed that that is the reason the police entered the triage room. R80-81, 104. It also is undisputed that police were "cordial" with defendant and defendant was "very cooperative" with the police. R74, 90, 135. This is unsurprising given that defendant claimed he was the victim of a stray bullet

from the drive-by-shooting and not cooperating with police would have undermined that claim. And it is also undisputed that defendant's bloody clothes were in plain view and that defendant consented to the police taking his clothes as part of their investigation. R72, 84-85, 98-99, 137.

Given these undisputed facts, defendant's argument that his bloody clothes should be suppressed reduces to a claim that the police erred by not obtaining affirmative consent to enter the room. Not obtaining such affirmative consent in these circumstances was, at most, simple negligence, not the type of behavior the exclusionary rule was intended to address. *See, e.g., LeFlore*, 2015 IL 116799, ¶ 24 (exclusionary rule does not apply where the officer's alleged error was not done in bad faith action but rather was "simple, isolated negligence"). Indeed, given that it is undisputed that defendant wanted police to believe that he was a victim, and he consented to them taking his clothes, defendant cannot credibly argue that he would have refused entry to the police had they asked. All of which is to say, the conduct that defendant complains about here — the police entering a room where a person who claimed to be a victim was being briefly triaged without first obtaining express consent — is not the kind of conduct the exclusionary rule is intended to deter.

In sum, even if this Court holds that defendant had a reasonable expectation of privacy, it should not apply the exclusionary rule in this case because the police acted in good faith.

IV. Any Error in Not Suppressing Defendant's Bloody Clothes Was Harmless.

Lastly, this Court should affirm defendant's conviction because any error in admitting evidence related to his bloody clothes was harmless. When considering whether the erroneous admission of evidence was harmless, courts may consider whether the remaining evidence overwhelmingly supports the defendant's conviction. *E.g.*, *People v. Salamon*, 2022 IL 125722, ¶ 121. That is to say, a court should deem an error harmless if the People "prove beyond a reasonable doubt that the result would have been the same absent the error." *Id.* ¶¶ 121, 127 (erroneous admission of the defendant's confession was harmless because "the result of the trial would have been the same if the confession had been excluded"). Here, the evidence of defendant's guilt was overwhelming and, thus, he would have been convicted even absent evidence related to his bloody clothes.

To begin, Jacie Marble and Cara Howerton both testified that when they met with defendant after he was released from the hospital, he said that he had accidentally shot himself in the leg during the drive-by-shooting. R842-43, 867-68. Such confessions, of course, are powerful evidence. *E.g., People v. Simpson*, 2015 IL 116512, ¶ 36 ("[A] confession is the most powerful piece of evidence the State can offer[.]"). Defendant's confession that he was in the car during the drive-by shooting was corroborated by the testimony of an eyewitness, Cleophas Gaines, that he saw defendant in the backseat of the Kia Optima when the shooting occurred. R429; *see, e.g., People v. Colon*, 162

Ill. 2d 23, 31-32 (1994) (erroneous admission of evidence was harmless where prosecutors presented eyewitness testimony that the defendant was in the car that performed the drive-by shooting).

Furthermore, forensic evidence corroborated that defendant accidentally shot himself in the leg in the backseat of the Kia Optima during the drive-by-shooting and therefore was not only present during the shooting but armed with a firearm. Specifically, a crime scene investigator testified that there was a bullet hole in the backseat of the Kia Optima and, based on the path the bullet traveled, it had to have been fired from above the seat, which is consistent with someone accidentally shooting themselves in the leg while seated. R776-78. In addition, police found a fired bullet jacket in the frame below the seat that was consistent with a bullet fired from a .357 handgun, R785-86, 985-88, and police recovered one .357 casing from the street where the drive-by shooting occurred and another from Marble's car, both of which a forensic scientist testified were fired from the same gun, R695-98, 774, 973-75. This forensic evidence supports the prosecution's assertion that defendant accidentally shot himself in the leg with that gun (causing the bullet hole in the seat) and shot at least once at Detrick and Gaines (as evidenced by the police recovering.357 casings, including one in the street). R1080-81.

In addition, the testimony of other witnesses linked defendant with Juwan Jackson, Quan Scruggs, and Orlando Garrett both shortly before and

immediately after the shooting — and defendant does not dispute before this Court that those three men were involved in the drive-by-shooting. *See* Def. Br. 35. Specifically, the evidence shows that defendant was with those three men at a party at Marble's house on the night of the shooting, shortly before Detrick was murdered. R445-46, 819. The evidence also shows that immediately after the shooting, Orlando Garrett drove the Kia Optima to Marble's house, R516-18, 823-27, then defendant hobbled into the house with Quan Scruggs, R455-56, 823-27, which is strong circumstantial evidence that defendant was in the Kia Optima when the shooting occurred, then drove with his accomplices to Marble's house.

The evidence also shows that when Jacie Marble then left her house in the Kia Optima with defendant and Quan Scruggs, they discussed the need for her to clean all the casings out of her car, which shows consciousness of guilt. R830-31; *see, e.g., People v. Delhaye*, 2021 IL App (2d) 190271, ¶ 96 (collecting cases holding that plans to destroy evidence show consciousness of guilt). Thus, even absent his bloody clothes, the evidence overwhelmingly proved that defendant participated in the drive-by shooting that killed Detrick Rogers: defendant confessed to participating in the drive-by shooting, an eyewitness placed him in the car during the drive-by shooting, he was involved in a discussion about the need to destroy evidence, and forensic evidence corroborated that he was both in the car and armed with one of the guns that was fired during the drive-by shooting.

The few arguments defendant makes that the admission of his bloody clothes was not harmless are unpersuasive. Tellingly, the only evidence defendant can muster to attempt to corroborate his claim that he was walking outside and was hit by a stray bullet is that a local resident testified that she saw defendant walking outside 40 minutes before the shooting. Def. Br. 37. But, of course, testimony that defendant was walking outside 40 minutes before the shooting fails to prove he was not in the car during the shooting.

As to perhaps the most damaging evidence against him — Marble's and Howerton's testimony that defendant confessed that he shot himself during the drive-by shooting — defendant merely argues that Marble and Howteron are not credible because they smoked marijuana on the day defendant confessed and they initially told police they did not know anything about the shooting. Def. Br. 38. But Marble and Howerton testified that smoking marijuana did not affect their memory of what occurred, and defendant presents no evidence to the contrary. R845, 870. Moreover, their initial statements to police that they did not know anything about the shooting were plainly driven by fear, as Marble expressly testified that she was "scared" about "retaliation." R851; *see also, e.g.*, *People v. White*, 2011 IL 109689, ¶¶ 136-37 (evidence was not closely balanced, even though prosecution's witnesses recanted or otherwise provided inconsistent accounts, where changes in their accounts "appear[ed]" to be driven by "fear").

Most of defendant's other arguments attack the eyewitness, Gaines. Def. Br. 36-37. But the fundamental problem with defendant's criticisms of Gaines is that Gaines's testimony that he saw defendant in the Kia Optima during the drive-by shooting was corroborated by the other evidence discussed above, such as defendant's confession and the forensic evidence. And, even setting that aside, defendant's specific criticisms of Gaines are contrary to the record and this Court's precedent.

Defendant first notes that Gaines used drugs the night of the shooting, Def. Br. 36, but Gaines testified that that did not affect his recollection of what occurred, R410, and it was reasonable for the trial court to credit his testimony, especially given that it was corroborated by other evidence, *see, e.g.*, *People v. Gray*, 2017 IL 120958, ¶¶ 36-48 (jury could credit witness despite her intoxication, memory lapses, and inconsistencies). Although defendant argues that Gaines's testimony that he saw defendant is "contradicted by Gaines' own claims" that as the shooting began Gaines jumped "down in the car" he was standing next to, Def. Br. 36, defendant ignores Gaines's testimony that he continued to watch the Kia Optima from that position, R426-29. And while defendant notes that Gaines admitted he told prosecutors before trial that he had not seen defendant in the car, Def. Br. 36, Gaines explained that was because he did not want police involved, R430-31, and his desire not to involve police is corroborated by the

undisputed fact that Gaines did not call police when, earlier that evening, Juwan Jackson threatened him with a gun, R416-17.

Defendant's remaining arguments focus on alleged inconsistencies or uncertainties in Gaines's testimony, specifically that (1) Gaines thought it was possible a man named Jaylon Moore might have been in the car, though he was uncertain; (2) Gaines thought that defendant was on the passenger's side of the backseat, but the bullet hole in the backseat where defendant shot himself was on the driver's side of the backseat; and (3) Gaines testified that he did not see Terry Rogers on the lawn as the shooting occurred, even though evidence "suggested" Terry was there. Def. Br. 36. But uncertainties, discrepancies, and inconsistencies are not unusual when people witness a violent crime, and they do not render Gaines's eyewitness testimony incredible, especially given the other corroborating evidence. *See, e.g.*, *People v. Jackson*, 2020 IL 124112, ¶¶ 65-66 (discrepancies, including whether the defendant exited car from the passenger side or driver's side, did not render the eyewitnesses' testimony incredible).

The bottom line, therefore, is that even without defendant's bloody clothes, the evidence against defendant was overwhelming, as prosecutors presented: (1) testimony from two witnesses that defendant confessed; (2) eyewitness testimony that defendant was in the Kia Optima when the drive-by shooting occurred; (3) forensic evidence corroborating that defendant shot himself in the leg during the drive-by shooting and fired at least one

shot at the victims; (4) evidence showing defendant's consciousness of guilt; and (5) testimony from witnesses that defendant was with the other shooters shortly before, and immediately after, the drive-by shooting. Accordingly, if this Court finds it was error to admit evidence related to defendant's bloody clothes, this Court should find that error harmless.

CONCLUSION

This Court should affirm the appellate court's judgment.

January 26, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE

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 and the certificate of service, is 47 pages.

/s/ Michael L. Cebula
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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 26, 2024, 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, which provided notice to the following registered email address:

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Additionally, upon its 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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