No. 129208

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- CORTEZ TURNER, Petitioner-Appellant.	))))))))))))))	Appeal from the Appellate Court of Illinois, No. 5-19-0329 & 5-19-0330 (consolidated). There on appeal from the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, No. 16-CF-466 & 17-CF-104. Honorable Ralph R. Bloodworth, III, Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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ARGUMENT

I. This Court should hold that Mr. Turner had a reasonable expectation of privacy in his hospital room, and police violated his right to be free from unreasonable searches when they entered that room and seized his clothing without a warrant.

The parties agree that only three factors are in dispute regarding whether Mr. Turner has shown that he had a reasonable expectation of privacy in his hospital room: prior use, the right to exclude, and a subjective expectation of privacy. (St. Br. 17-18, noting agreement between the parties on the first three factors); *People v. Lindsey*, 2020 IL 124289, ¶ 40. Further, Mr. Turner agrees that whether he had a reasonable expectation of privacy is fact specific (St. Br. 17). He has never asserted that all trauma rooms would give rise to a reasonable expectation of privacy. But where Mr. Turner was taken to a private room with four walls and a door (R. 107-08), he had a reasonable expectation of privacy from government intrusion.

A. The fourth factor (prior use) demonstrates that Mr. Turner, who was shielded from the public by four walls and a door, had a reasonable expectation of privacy.

The State argues that in determining this factor, time is the only real consideration, arguing "how long a person has been in a particular place, or how often the person used the place in the past, bears on whether society recognizes a person's privacy interest in that place." (St. Br. 19) The State continues: "[S]ociety 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

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into only a few minutes ago." (St. Br. 19)

To be sure, how long a person is in a place may impact his reasonable expectation of privacy. But not always. Consider this Court's decision in *Lindsay*, 2020 IL 124289. This Court found that Lindsay did not have a privacy interest in the alcove outside his hotel room because: he did not own the room; could not control who used the alcove or walkways; and there was no evidence that he had a subjective expectation of privacy. *Id.* at ¶¶ 41-42. While this Court did not mention the fourth factor in its privacy-based analysis for Lindsay, elsewhere this Court noted that Lindsay had been "staying" at the motel for an undetermined amount of time. *Id.* at ¶ 28.

Under a privacy approach, how long Lindsay had been staying at the hotel didn't factor into whether he had a reasonable expectation of privacy in the public alcove outside his hotel room. This Court certainly did not factor time into its decision that Lindsay had no expectation of privacy. And this makes sense. Lindsay could have been using the alcove for 1 day or 100 days, but his prior use would never make his expectation of privacy in the public alcove outside of his hotel room reasonable.

Similarly, prior use or time matters far less when four walls and a door are involved. A person who is enclosed in a space necessarily has a greater expectation of privacy. This Court and the U.S. Supreme Court has long since recognized the reasonable expectation of privacy that four walls and a door give to overnight guests and hotel guests. (Op. Br. 21) The appellate court has recognized a similar right for hospital patients in private rooms with walls and doors. *People*

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v. Gill, 2018 IL App (3d) 150594, ¶ 94; *People v. Pearson*, 2021 IL App (2d) 190833, ¶ 51. In *Carter*, for example, the U.S. Supreme Court drew a distinction between visitors to a home for business and overnight guests. *Minnesota v. Carter*, 525 U.S. 83, 90 (1998). The Supreme Court remarked that "from the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside." *Id.* Perhaps most on-point for Mr. Turner, the Supreme Court explained that "[w]e are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. ...when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend." *Id.*

At no point did the Supreme Court mention time. Whether the overnight guest had been in the home for five minutes, barely having time to put his baggage down, or whether he had been there so long he might be mistaken for a resident, his privacy interest is the same. The walls and the door constitute a different barrier than "the public places" the Supreme Court mentioned in *Carter*. The same can be said of a hotel. Time in the hotel does not transform the privacy interest afforded a guest who has rented a room. Just as no amount of time or prior use could have given Lindsay a reasonable expectation of privacy in the public alcove outside of his room, the short duration of his visit could likewise not have divested him of his expectation of privacy *inside* the four walls and behind the door of his individual hotel room.

Finally, much like the guest of a home or a hotel, a person is most vulnerable

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when he is asleep. *Carter*, 525 U.S. at 90. If the Fourth Amendment is designed to protect our privacy when we are most vulnerable, then it is hard to imagine a person more vulnerable than an ER patient, who is naked, injured, medicated and attached to machines. *Pearson*, 2021 IL App (2d) 190833, ¶ 30. In fact, there is little difference between a hotel guest, an overnight guest, and a hospital patient, when they are protected by the four walls and a door of an individual room.

Just as time has little impact on a hotel guest, it is hard to imagine that the reasonable expectation of privacy for a patient who is firmly protected from the prying eyes of the public by four walls and a door depends on the number of minutes he has been in that room. The State passes on Mr. Turner's argument that the difference of minutes should not determine the reasonable expectation of privacy. (Op. Br. 20, questioning why a person in a room for 30 minutes has less of an expectation of privacy than someone who has been present for 31 minutes); (St. Br. 20). Rather, the State punts, noting that the fourth factor "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." (St. Br. 20-21) But this, of course, is no answer.

As Mr. Turner just pointed out, prior use or time means less in certain contexts, particularly those involving four walls and a door. A hotel guest's right to privacy is not premised on whether he has been in his room for 5 minutes or 24 hours. *Pearson*, 2021 IL App (2d) 190833, ¶ 26 ("[D]espite the fact that a hotel guest may have a relatively fleeting association with...[his] room, a hotel room is protected from police intrusion almost to the same extent as a home."), *citing*

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Stoner v. California, 376 U.S. 483, 490 (1964). Similarly, Mr. Turner's privacy interest should not likewise be connected to the length of the stay.

Further, the State's assertion that society places more weight on the length of time is not always true. Consider that society has deemed a number of places "private," where the user may be inside only moments. When a person is locked behind the walls and door of a public bathroom stall or a dressing room in a store, society would demand more than a modicum of privacy for the user, regardless of the length of time he might stay. Time in those circumstances doesn't seem to matter so much as the use of the "room."

Here, Mr. Turner was naked, in a thin hospital gown, hooked to machines, and in pain (R.70-73) – the very definition of vulnerable. But he was protected from the prying eyes of the general public, and presumably the government, by four walls and a door, and the amount of time he spent in the privacy of his room matters very little in determining whether he reasonably expected privacy.

Finally, the State argues that Mr. Turner is asking this court to "overturn its precedent and eliminate the fourth factor," arguing that Mr. Turner must show the requirements per *stare decisis* for disturbing settled points of law. (St. Br. 19) But the State's argument is, quite frankly, making a mountain out of a molehill. Here, Mr. Turner argued that this factor was not as relevant given the context: that four walls and a door had a mitigating effect on prior use and time. Just as this Court didn't mention the fourth factor in its decision in *Lindsay*, here, it is less relevant than other factors. Mr. Turner is not asking this Court to "overturn its precedent,"(St.Br. 19) but rather to apply the relevant factors to the situation,

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understanding that sometimes a factor has less relevance than in a different context. A private room with four walls and a door constitutes privacy in a way that is less bound by duration of time; because Mr. Turner was protected by the privacy of the walls and door, how long he was in the room had less relevance than the context of his seclusion.

B. The fifth factor (the right to exclude) indicates that Mr. Turner also had a reasonable expectation of privacy.

The State notes that in Mr. Turner's opening brief, he distinguished between the right to include and exclude, and it is this difference the State loses sight of in its argument. (St. Br. 23, 26) As evidence that Mr. Turner did not have the right to *exclude* people from his room, the State cited examples of the inability to include people. (St. Br. 26). For example, the State posited that Mr. Turner had no right to privacy because he might not be able to see a visitor after hours or that his mother was not able to immediately enter his room. (St. Br. 26)

But those examples matter little because the Fourth Amendment is focused on Mr. Turner's ability to *exclude* people (specifically the government) from his hospital room. Now the State makes much of the fact that it was the hospital that controlled the exclusions, but the hospital's ability to exclude does not also stop Mr. Turner from being able to exclude guests; nor does it affect his reasonable expectation of privacy. (St. Br. 25) The *Pearson* Court explained that the dual control of an area does not affect the defendant's right to privacy. 2021 IL App (2d) 190833, ¶ 40, (one can still have a reasonable expectation of privacy, even where the entry is controlled by others), *citing People v. Bankhead*, 27 Ill. 2d 18, 22-23 (1963).

Consider the State's examples in light of overnight guests or hotel guests.

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When determining whether an overnight guest has a reasonable expectation of privacy, the focus is on whether he can keep a guest out. In *People v. Parker*, the appellate court applied the six factors to a son staying with his mother. 312 Ill. App. 3d 607, 613-14 (1st Dist. 2000). The *Parker* Court concluded that "[b]ecause this was defendant's mother's home and because defendant had used this bedroom, it is also fair to conclude that defendant possessed the ability to control or exclude others from the use of his personal belongings." *Id.* at 614. Similar logic applies to hotels. While a guest may have the right to exclude, so too, does the hotel. Merely because someone else may also exclude does not indicate that the guest no longer has a reasonable expectation of privacy. Further, in *Parker*, the court did not analyze whether he could include people. The Court was disinterested in whether he could invite friends or co-workers over – in other words, his ability to include is irrelevant. Rather, the focus is entirely on whether the guest or patient may *exclude*, so it is of no moment that Mr. Turner's mother had to wait to come back to his room. So long as he could exclude her and others, he had a reasonable expectation of privacy.

The State also argues that *Gill* and *Pearson* do not support Mr. Turner's position. (St. Br. 26-27). But the State is wrong. Sure, in *Gill*, the appellate court explicitly noted that the private room on the seventh floor was a "far cry from an ER," but to be fair, the court wasn't looking at facts that involved an ER with an enclosed room. *People v. Gill*, 2018 IL App (3d) 150594, ¶¶ 92-93. In any event, *Gill*'s castigation of ER rooms was not of concern to the *Pearson* Court. Rather, the *Pearson* Court looked beyond the labels of the rooms and focused on the fact-specific physical set-up of each hospital room. Now, the State wants to gloss over

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this, noting only that *Gill* said it didn't apply to ER rooms, and *Pearson* relied on *Gill*, ergo, neither support Mr. Turner's position. (St. Br. 26).

But this reasoning does both *Gill* and *Pearson* a disservice. *Gill* rightfully focused on the defendant's private room and "likely…ability to exclude others from the room." *Gill*, 2018 IL App (3d) 150594, ¶¶ 92-93. *Gill* found it critical that ER rooms frequently do not have four walls and a door, noting that in other cases, ER patients are on gurneys rather than in a bed. *Id.*, *citing People v. Hillsman*, 362 Ill. App. 3d 623, 626 (4th Dist. 2005). *Gill* noted that it is not clear whether the ER rooms were open floor plans with nothing more than curtains separating patients, or whether each person had his own room. *Id.* at ¶ 92. In arriving at its conclusion that Gill had a reasonable expectation of privacy, the appellate court relied heavily on the fact that Gill's room was a far cry from an ER because Gill was located "on the seventh floor of the hospital, in a room occupied by him alone, with just a single bed. His room had a door that closed and, presumably, four solid walls." *Id.* at ¶ 93. And of course, Mr. Turner's room had the same.

In other words, the *Gill* Court's analysis of whether the defendant had a reasonable expectation of privacy had little to do with whether it was an ER and much more to do with the physical layout of the room. Again, four walls and a door equated to a reasonable expectation of privacy. Further, *Gill*'s statements regarding the ER are only as helpful as the ER resembles the one described by *Gill*. The State ignores the analysis of *Gill*, which supports Mr. Turner's position, regardless of what name the hospital gives the room. *Pearson* took a similar approach. In noting that "there was no indication that Pearson had any less ability

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to exclude others from the defendant in *Gill*," the appellate court looked to the layout of the room in question, as the fact-specific inquiry of the Fourth Amendment demands. *Pearson,* 2021 IL App (2d) 190833, ¶ 37. The *Pearson* Court found it persuasive that the trauma room "was behind locked doors in an area of the hospital not open to the general public." *Id.* at ¶ 37. Much like the State here, in *Pearson*, the State argued that an emergency room was distinguishable from *Gill*, because Gill's room was on the seventh floor. *Id.* at ¶ 39. But the *Pearson* Court rejected this reasoning for the same reason that this Court should reject it in Mr. Turner's case: "Pearson was not in an open emergency room; he was in a separate enclosed trauma room with four walls and a door." *Id.* In fact, the *Pearson* Court reasoned that Pearson's room was more secure than Gill's room, because while the Pearson ER was behind a locked door, nothing in the *Gill* facts indicated the seventh floor was closed to the general public. *Id.*

Just like *Gill* and *Pearson,* the facts of this case indicate that Mr. Turner was in a private room with a door. Based on the four walls and a door of each hospital room, both *Gill* and *Pearson* found it likely that each of the patients could exclude others from the room. *Gill*, 2018 IL App (3d) 150594, ¶¶ 92-93; *Pearson*, 2021 IL App (2d) 190833, ¶ 37. Like a guest in a hotel, those four walls and a door provide a reasonable expectation of privacy, including the ability to shut the door if Mr. Turner did not want police or other visitors to enter aside from medical personnel.

Finally, in his opening brief, Mr. Turner noted that it is understood that hospital patients can exclude visitors from their room. (Op. Br. 24). The State takes much issue with this, noting that it is a conclusory statement, and that

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Mr. Turner's "own authority states that patients 'cannot restrict access to an ER.'" (St. Br. at 24), *citing Gill*, 2018 IL App (3d) 150594, ¶ 92. But as noted *supra*, the *Gill* Court made these statements regarding ER rooms in the context of ER rooms from other cases or a hypothetical ER room in order to contrast it with Gill's private room with four walls and a door. So, rather than undercutting Mr. Turner's argument that he could exclude visitors, *Gill* and *Pearson* actually support this assertion. Both found that it was likely that the defendants could exclude based upon the layout of the building (Gill was on the 7th floor while Pearson's room was not accessible to the general public) and the presence of a private room with four walls and a door. Like *Gill* and *Pearson*, Mr. Turner would urge this Court to find that when a patient has a private room with four walls and a door, particularly where that room is not accessible to the public, this alone indicates that he may exclude visitors. Further, it is in keeping with the reasoning of the Fourth Amendment; private rooms with doors and walls have meaning, particularly to those that are the most vulnerable – be they sleeping or seeking medical treatment.

C. The Sixth Factor (subjective belief) supports Mr. Turner's reasonable expectation of privacy.

The State argues that more is required of Mr. Turner than simply behaving as a normal occupant of the space. (St. Br. 228-30). According to the State, the appellate court in *Gill* also misread *Pitman*. (St. Br. 31) But the State's argument just doesn't hold up under the plain language of this Court. In discussing the sixth factor explicitly, this Court has said: "A defendant simply must outwardly behave

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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." *People v. Pitman*, 211 Ill. 2d 502, 522 (2004). With respect to the State, it has offered no reasonable explanation for how this Court's very clear statement meant something other what it actually said.

The State cited to the dissent for an explanation, but of course, the dissent is not the law. When the State is forced to confront the actual opinion in *Pitman*, its reasoning for saying that both Mr. Turner and the appellate court in *Gill* misread the case is rather tenuous. (St. Br. 30) The State argues that even though this Court specifically stated that an occupant need only behave as a normal occupant of the space, this portion of the decision should be ignored because "when the majority listed the factors that supported the defendant's argument that he had protected privacy in his mother's barn ...[this Court] did not expressly state that he had proved he had a subjective expectation of privacy." (St. Br. at 30) But this Court had just stated as much in the prior two paragraphs, and it had no need to state the same again.

The State also relies on this Court's opinion in *Lindsey*, arguing that "[a]lthough the defendant apparently used the alcove in a manner a typical occupant would...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.'" (St. Br. 30), *citing Lindsey*, 2020 IL 124289, ¶¶ 41-42. The State draws parallels between the two, and argues that because Mr. Turner did not also put on actual proof of subjective expectations of privacy,

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this factor must also fail.

But this makes no sense. First, *Lindsay* is distinguishable . It is very difficult to make an alcove in a public location where any number of people may use it a private space, so an individual's subjective expectation that a public space was somehow private would necessarily have to overcome the strong presumption against it. The State's argument would be more apt if Mr. Turner had claimed a privacy interest in the lobby or elevator of the hospital, not his private room. After all, using the public location in the way it is intended in no way proves an individual's subjective belief in privacy; in contrast, using a private space for private matters (be it sleeping, undressing, or receiving medical attention) is in line with some belief that the room was private.

Like *Pitman*, Mr. Turner and Gill were enclosed behind four walls and a door in a space not readily accessible to the public. Further, like the barn in *Pitman*, the patients were using the room for its intended purpose: to undress, submit to a medical examination, and undergo medical treatment. Unlike a public alcove, it would be hard to imagine that someone taking off his clothes, getting into bed, and then undergoing medical treatment did not have, at the very least, a subjective expectation of privacy in his private hospital room with four walls and a door. Thus *Lindsey* is inapplicable to the current cases for the sixth factor, and both Mr. Turner and the appellate court in *Gill* rightfully read this Court's language in *Pitman.*

Finally, the State argues that Mr. Turner's position leads to "absurd results," because "under the defendant's view someone could 'prove' they had a subjective

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expectation of privacy in a public park – and thus, a trial court could 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." (St. Br. 31) Mr. Turner's position, and apparently the appellate court's position in *Gill*, would never lead to this absurd result for at least two reasons.

First, the sixth factor is not the only factor. Like in *Lindsey*, even if the defendant subjectively believed the alcove was private for a long period of time, the other five factors would strongly push against making a public park a place where a defendant had a reasonable expectation of privacy.

Second, neither the patient in *Gill*, the barn user in *Pitman*, nor Mr. Turner are claiming an expectation of privacy in a place that is designated a public area. The defendant in Pitman was on private land. Both Gill and Mr. Turner were in private rooms with four walls and a door. In other words, there is no interpretation of Mr. Turner's argument that would lead to a situation in which evidence from a public park would be suppressed merely because the defendant believed he had an expectation of privacy.

In conclusion, Mr. Turner has shown that he had a reasonable expectation of privacy in his private room with four walls and a door. He was more akin to a hotel guest or an overnight guest, and while he shared some control of his room with the hospital, he was not thrust into the public sphere either. Accordingly, the trial court should have granted Mr. Turner's motion to suppress.

II. Mr. Turner never advocated a bright-line rule for all hospital rooms, but rather, advocated that where four walls and a door exist, the

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duration of his stay has far less bearing on the outcome.

Mr. Turner has not advocated that every patient in a room with four walls and a door would have a reasonable expectation of privacy. Rather, Mr. Turner advocated this bright-line rule only under factor four (prior use or duration). Rather than forcing police to chase medical personal down for an accounting of how long the defendant has been in the room, or create a rule where mere minutes affects whether the patient has a reasonable expectation of privacy, Mr. Turner advocated that where a patient was in a private room with four walls and a door, a bright-line rule should be drawn as to the fourth factor only.

This does not mean that everyone in a room with four walls and a door would have a reasonable expectation of privacy. Some rooms might contain multiple patients. Other patients might take actions, to indicate that the patient had no subjective expectation of privacy. Some patients might violate their legal right to be present (such as a patient who threatens staff). In other words, the bright-line would only resolve the privacy interest associated with the fourth factor. To the extent that the State indicates that Mr. Turner argued for a larger rule, it was mistaken as to Mr. Turner's argument. As for its arguments that relate to the fourth factor, Mr. Turner would simply reference arguments already made *supra*.

The State argues that whether someone has a reasonable expectation of privacy as a hotel guest or an overnight guest is fact specific. (St. Br. 34) Mr. Turner has never disputed this. Mr. Turner's argument is only that a bright-line should be developed as to factor four, so that all patients in a private hospital room with four walls and a door would be treated equally, regardless of whether they had

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been a patient for 15 minutes, 15 hours, or 15 days.

III. The Good Faith Exception should not apply to Mr. Turner's case.

The State argues that the good faith exception should apply, where police were acting in accordance with binding precedent at the time. Certainly *Hillsman*, 362 Ill. App. 3d at 633, held that the defendant had no reasonable expectation of privacy in the emergency room. But this alone does not necessarily mean that the good faith exception applies.

As the State pointed out earlier in its brief, police are required to make judgments all the time regarding whether to obtain a warrant or whether probable cause existed. (St. Br. 20) Further, other binding precedent at the time would have mandated that where four walls and a door enclose the defendant, the area is not open to the public, and that a warrant must be obtained. Given the difference between *Hillsman* and Mr. Turner's case, and given the precedent at the time regarding hotels and overnight guests, police should have known to obtain a warrant. Thus, the good-faith exception does not apply.

In *Hillsman*, the patient was on a gurney, and nothing in the case indicated that he was in a private space, much less one with four walls and a door. 362 Ill. App. 3d at 626. Further, in *People v. Torres*, 144 Ill. App. 3d 187 (4th Dist. 1986), which *Hillsman* relies upon, the facts indicate that the defendant had drugs coming out of his pocket that were in the plain view of anyone – police or hospital personnel – when he entered the emergency room. *Id.* at 189-90. Nothing in *Torres* suggested that the defendant was in a private room with four walls and a door when he encountered police; further, given that the evidence was in plain view of everyone

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when he entered the hospital, *Torres* could have little reasonable expectation of privacy. The State also cites to *People v. Kucharski*, 346 Ill. App. 3d 655 (2d Dist. 2004), but this case is inapplicable because it involves physician-patient confidentiality as established by statute. *Id.* at 659-61. Regardless, when police encountered a private trauma room with four walls and a door, this alone should have been sufficient to alert them that they needed a warrant. Therefore, the good faith exception does not apply.

IV. The State cannot meet its burden that the inclusion of the evidence from the search was harmless beyond a reasonable doubt.

Both Mr. Turner and the State agree that it is the State's burden to prove the admission of Mr. Turner's clothes at trial was harmless beyond a reasonable doubt. (St. Br. 41) Mr. Turner explained in his opening brief why the State could not meet its burden to show the evidence was harmless beyond a reasonable doubt, and he relies on those arguments here. (Def. Br. 34-38)

As to the State's specific points, it is critical that only the Mr. Turner's seized clothes place him in the car during the drive-by. The State points to Marble and Howerton's testimony, which indicated that Mr. Turner confessed to them that he had shot himself while sitting in the car. (St. Br. 41, 44); see also (R.843-44, 867-68) To be fair, a reliable confession certainly is "powerful evidence" (St. Br. 41); had Mr. Turner confessed to police (which would be against his interest) or some disinterested party, the State would certainly have a point. But Marble and Howerton are hardly disinterested witnesses, and by their own accounts, were scared, had been using drugs, and had given inconsistent statements to police.

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(R.836,845-47,869-71) Whether Mr. Turner "confessed" to Marble and Howerton is a question of witness credibility. See *People v. Newell*, 103 Ill. 2d 465, 470 (1984)(accomplice testimony is "fraught with serious weaknesses" and "should therefore be accepted only with utmost caution and suspicion.").

The State wants to absolve Marble and Howerton of their inconsistent statements to police, arguing that they were scared and feared retaliation. (St. Br. 44) Perhaps this is so. As the State points out, no one disputes that Scruggs, Garrett, and Jackson were the shooters. (St. Br. 43) Marble was likewise involved in a murder because her boyfriend was the shooter while driving her car, and Scruggs threw out a firearm while in her car. But the State has zero evidence that Marble and Howerton lied because they were afraid of Mr. Turner or that they feared retaliation from *him*. Isn't it more likely that they feared retaliation from the known murderers, including Marble's own boyfriend?

Either way, the State and Mr. Turner may only speculate as to why Marble and Howerton's statements were inconsistent to police. Mr. Turner, by contrast, was absolutely consistent; he made no admissions and consistently told the hospital staff and police that he was a victim of a crime. (R.400-02,578-79) He was also not seen with a weapon earlier in the day or later in the evening. (R.447,460, 849) Of course, Mr. Turner and the State could come up with many reasons why Marble and Howerton might lie or even be confused about what Mr. Turner said to them, but the State's speculation can hardly be used to meet its burden to prove harmlessness.

The State also wants to point to the forensic evidence as support that

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Mr. Turner shot himself in the leg while in the back of the Kia. (St. Br. 42) But this argument, too, lacks merit. The clothes collected from Mr. Turner indicated that he was shot at a close range, much closer than would be possible had he been injured in a drive-by as he claimed. (R.1001-08) But if the State didn't have these clothes, then the forensics meant nothing other than someone fired into the seat at some point; nothing inside the car pointed to Mr. Turner's presence in the Kia.

Though the car had blood in the seat, DNA could not connect Mr. Turner to the car. (R.899-901) As to the potential match of the casing found in the car versus a shell casing recovered from the street (St. Br. 42), again, the State has no connection between the firearm and Mr. Turner, even if the two are a match for the same gun. No firearm was recovered or seen in Mr. Turner's possession. (R.447,460,849)

Finally, the State makes much of Mr. Turner's association with Scruggs, Jackson, and Garrett, finding that his apparent association can be used as circumstantial evidence of his guilt. (St. Br. 42-43) But association doesn't equal guilt, and Mr. Turner's story is supported by other people he saw that night. Lakeisha Ross testified that she saw Mr. Turner outside of her home shortly before the shooting; Ross noted that this was common for Mr. Turner. (R.879-80,883) Mr. Turner claimed that at the time of the shooting, he was outside on his phone. (R.80)

Really, the State must prove that the inclusion of Mr. Turner's clothing was harmless beyond a reasonable doubt. (Op.Br.34-35); (St. Br. 41). The State compiles a list of evidence in order to prove the evidence was "overwhelming":

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the defendant confessed to Marble and Howerton; Gaines placed him in the car at the time of the shooting; he was involved in a discussion about destruction of evidence; and forensics establish he was in the car and connect him to one of the guns used. (St. Br. 43)

But the State's argument is flawed. First, the forensic evidence only potentially establishes Mr. Turner's presence in the car if the seized items are used as evidence; without them, the State cannot make this connection. As to Mr. Turner's "participation" in a conversation regarding destruction of evidence, the State references a conversation between Marble and Scruggs. (St. Br. 43) Had Mr. Turner planned to destroy evidence, that should be taken as consciousness of guilt, but the record directly contradicts the State's assertion. Testimony indicated that Scruggs told Marble to get the shell casings out of the Kia (R.829-30), but there is no evidence that Mr. Turner participated in this conversation. Actually, the record supports the opposite conclusion; on cross-examination, Marble admitted that Mr. Turner never told her to clean the shells out of her car. (R.830,855) The State cited to no place in the record where Mr. Turner "participated" in a conversation about cleaning up evidence, presumably because it doesn't exist.

Thus, the State's only real evidence against Mr. Turner comes down to Marble and Howerton's statements and those of the single eyewitness, Gaines. Marble and Howerton's statements have been discussed *supra*, but as for Gaines, he is simply unbelievable. He testified at trial that he was high, felt like "Superman," and had "x-ray vision." (R.436) While he did testify that he saw Mr. Turner in the car, he also: told police he did not see Mr. Turner in the car (R.430); that the

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people in the car were on the floorboard (425-26,438); said it was hard to see (R.428-29,431); told police that he was "so messed up on drugs" that he "would not be able to tell who was present" (R.434); and told police that he did not see his brother fire shots and then flee the crime scene, though forensics strongly indicated this was not accurate (R.422,435). In other words, the only thing perfectly clear about Gaines on the night of the murder is that he was high and inconsistent.

In summary, it is important to remember that Mr. Turner bears no burden here; rather, it is the State's burden to prove that the proffer of the seized items was harmless beyond a reasonable doubt. Mr. Turner was never seen with a firearm, sought help from friends, and went to the hospital for treatment – all acts of an innocent man. The forensics from the car can't place him inside of the Kia without the seized clothing. Thus, all the State has are Marble's and Howerton's inconsistent statements about what Mr. Turner allegedly told them after the fact, and Gaines' testimony about x-ray vision. Without the seized items, the State cannot place Mr. Turner in the car with any degree of certainty, and as such, they cannot meet the burden of showing the error was harmless beyond a reasonable doubt.

CONCLUSION

For the foregoing reasons, Cortez Turner, petitioner-appellant, respectfully requests that this Court reverse the appellate court, reverse Mr. Turner's convictions, and remand for a new trial in both 16-CF-466 and 17-CF-104.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

/s/Amanda R. Horner
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No. 129208

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- CORTEZ TURNER, Petitioner-Appellant.	)))))))))))))	Appeal from the Appellate Court of Illinois, No. 5-19-0329 & 5-19-0330 (consol.) There on appeal from the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, No. 16-CF-466 & 17-CF-104. Honorable Ralph R. Bloodworth, III, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 March 25, 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 petitioner-appellant in an envelope deposited in a U.S. mail box in Mt. Vernon, 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.

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