No. 127584

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JODON COLLINS, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, First District, No. 1-18-1746 There on Appeal from the Circuit Court of Cook County, Illinois, Criminal Division, No. 18 CR 825 The Honorable Charles P. Burns, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

The People appeal the appellate court's judgment reversing defendant's conviction for being an armed habitual criminal on the ground that the circuit court erred by admitting the recording from a police officer's body camera. No issue is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court acted within its discretion in admitting the body camera recording of a police officer chasing defendant, arresting him, and recovering his discarded firearm because the evidence was admissible by statute and not barred as hearsay.

2. Whether any error in admitting the officer's purported hearsay statements on the body camera recording was harmless because they were cumulative of the officer's trial testimony.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court granted leave to appeal on November 24, 2021.

STATUTE AT ISSUE

Excerpts of Law Enforcement Officer Body-Worn Camera Act

50 ILCS 706/10-5 (Purpose).

> The General Assembly recognizes that trust and mutual respect between law enforcement agencies and the communities they protect and serve are essential to effective policing and the

integrity of our criminal justice system. The General Assembly recognizes that officer-worn body cameras have developed as a technology that has been used and experimented with by police departments. Officer-worn body cameras will provide state-of-the-art evidence collection and additional opportunities for training and instruction. Further, officer-worn body cameras may provide impartial evidence and documentation to settle disputes and allegations of officer misconduct. Ultimately, the uses of officer-worn body cameras will help collect evidence while improving transparency and accountability, and strengthening public trust. The General Assembly creates these standardized protocols and procedures for the use of officer-worn body cameras to ensure that this technology is used in furtherance of these goals while protecting individual privacy and providing consistency in its use across this State.

50 ILCS 706/10-10 (Definitions).

As used in this Act:

* * *

"Officer-worn body camera" means an electronic camera system for creating, generating, sending, receiving, storing, displaying, and processing audiovisual recordings that may be worn about the person of a law enforcement officer.

* * *

50 ILCS 706/10-30 (Evidence).

The recordings may be used as evidence in any administrative, judicial, legislative, or disciplinary proceeding. If a court or other finder of fact finds by a preponderance of the evidence that a recording was intentionally not captured, destroyed, altered, or intermittently captured in violation of this Act, then the court or other finder of fact shall consider or be instructed to consider that violation in weighing the evidence, unless the State provides a reasonable justification.

STATEMENT OF FACTS

In January 2018, defendant was charged with unlawfully possessing a weapon as a felon and being an armed habitual criminal, among other crimes. C12-25; *see* C76-77, R33-34 (severing trial on counts for those other crimes).[1]

I. Motion in Limine

The charges arose after defendant discarded a firearm in the course of a police foot chase; the People sought to admit the police officer's "body camera [footage] of the chase of the defendant, then the arrest and recovery of the firearm." R262-63. On the audio portion of the body camera recording, the officer ordered defendant to surrender, then told officers over the radio that defendant had discarded a gun during the chase and urged his partner to hurry to its location. R263. Defendant argued in a motion in limine that the officer's statements were hearsay and were barred as "a prior consistent statement." R263. The circuit court explained that "it's not a prior consistent statement," but rather "a statement made at that time," during the investigation. R264. The circuit court held that it would "allow the audio as well as the video if there is nothing that's outrageous on this video," R265,

1 "C," "Sup. C," "R," "Peo. Exh.," and "Def. Exh." refer, respectively, to the common law record, supplemental common law record, report of proceedings, People's exhibits, and defendant's exhibits.

and defendant did not contend that the recording contained anything unduly prejudicial.

II. Jury Trial and Motion for New Trial

At defendant's jury trial, Chicago Police Officer Martin Hernandez testified that on December 16, 2017, he and his partner, Joel Lopez, were on patrol in a vehicle. R188-89. At around 1:00 a.m., they noticed a group of people gathered on the street who "looked in [the officers'] direction and immediately began walking" away. R189-90.

Hernandez explained that, as Lopez pulled the car over and Hernandez got out to investigate, defendant "immediately start[ed] running" while "holding his left side." R190-92. Hernandez ran after defendant, chasing him through a vacant lot and closing to within around five to eight feet of him. R192. Hernandez saw defendant "holding his left side and then [saw] him drop a black handgun with his left hand" onto the ground. R193. Hernandez hesitated and looked at the spot where the gun landed, then continued chasing defendant. R195-95. Hernandez lost ground after defendant jumped over a fence, then lost more ground after defendant jumped over a second fence. R195-96. They ran through a backyard, and defendant jumped over a third fence, at which point Hernandez lost sight of him momentarily. R196-97. After Hernandez surmounted the fence, he found defendant crouched

against a building. R197. Hernandez handcuffed him and called out their location over the radio. R198.

Hernandez further testified that he called Lopez on the radio and "g[a]ve instructions to [him] to go to the empty lot where everything. . . started"; then, after handing over defendant to other officers, he "immediately went to the empty lot where [he] saw [defendant] drop the handgun." R198-99. Hernandez recovered the gun from the spot where he had seen defendant discard it. R199. When Hernandez attempted to clear the gun of bullets, he found a live round in the chamber. R199-200.

Hernandez explained that he was wearing a body camera on his chest during the chase, R206-07, but he did not immediately turn it on because "[his] focus was on" defendant. R208. He activated the body camera as he approached the third fence, R208, when he momentarily lost sight of defendant, R196-97. The People presented the five-minute recording from Hernandez's body camera. R207; Peo. Exh. 3. The recording shows Hernandez jumping over a chain link fence and catching up to defendant where he is crouched. Peo. Exh. 3 at 0:00-0:50. As shown on the recording, Hernandez then orders defendant to "let me see your hands" and "get on the floor." *Id.* at 0:50-0:52. As Hernandez is handcuffing defendant, he tells his partner, "Joel, go back to the lot. Go back to the lot we ran through." *Id.* at 0:53-1:00. Over the next minute, he tells dispatch, "I got him detained,

squad," *id.* at 1:10-1:13, and repeats, "Joel, go back to the lot where it started. Get [to] that lot, dude, hurry up, he dropped it there. Get back to the lot where he ran through, dude, it's right in the middle of the lot. It's a black." *Id.* at 1:27-1:55. Hernandez then clarifies, "It's a pistol, squad, he dropped a pistol right there, right there in the lot over where it started." *Id.* at 1:55-2:10. After Hernandez hands defendant over to other officers, he retraces his path. *Id.* at 3:55-4:00. A minute later, Hernandez points a flashlight at the ground, says, "right here," dons gloves, and picks up a black gun. *Id.* at 4:00-5:07.

The People admitted certified copies of defendant's two prior convictions for possession with intent to deliver a controlled substance. R330-31.

Defendant called Officer Lopez to testify and presented Lopez's body camera recording from the incident. R338-39, R351; Def. Exh. 2. On questioning from defense counsel, Lopez confirmed that Hernandez had urged him to search the lot where he began chasing defendant:

> Q. And throughout that period of time [on your body camera recording] are you in radio communication with Officer Hernandez?
>
> A. Yes.
>
> Q. And does he tell you to go back to the lot where it started?
>
> A. Yes.

R339-40. Lopez explained that he searched the area where he believed the chase began, R339; his body camera recording shows him fruitlessly searching a vacant lot, *see* Def. Exh. 2. On cross-examination, Lopez testified that he had been driving when Hernandez suddenly got out and began chasing defendant, R341, and he was uncertain exactly where the chase had started. R343-44. Lopez continued driving, going down alleys, looking for Hernandez and defendant. R344-45. From a map of the area, Lopez noted that there were approximately 11 vacant lots in the immediate vicinity. R347-48.

In closing arguments, the People contended that the jury should credit Hernandez's testimony that he observed defendant discard a black handgun. R356-57. The prosecutor noted from the body camera recording that Hernandez accurately described the location of the gun to Lopez and then immediately went to the vacant lot after arresting defendant and recovered the gun. R360-63. Defense counsel emphasized that the jury should "listen closely to what you hear" on Hernandez's body camera recording, noting that Hernandez instructed Lopez to find the gun, but when Lopez searched the area, he was unable to find it. R368-70.

The jury convicted defendant of unlawfully possessing a weapon as a felon and being an armed habitual criminal. R407.

Defendant moved for a new trial, asserting, among other things, that the trial court erred by admitting Hernandez's body camera recording. Sup. C9-11. The circuit court denied the motion, R424, noting that the recording was "similar to just a regular video of a crime scene that was occurring at that point in time," R423. And the conversations between Hernandez and other officers were "taken in conjunction with what is seen on the video." *Id.*

The circuit court sentenced defendant to 7.5 years of imprisonment on the armed habitual criminal count; the remaining count merged. C93, R434-35.

III. Appeal

The Illinois Appellate Court reversed the judgment, holding that the circuit court erred by admitting the recording from Hernandez's body camera. *People v. Collins*, 2020 IL App (1st) 181746, ¶ 48. Over a dissent, the majority held that the statements on the audio component of the recording were inadmissible hearsay, and the court's error in admitting this hearsay was not harmless. *Id.* ¶¶ 30, 48. The appellate majority found that Hernandez's statements on the recording were offered "to prove the truth of the matter that they assert — that Collins 'dropped a pistol right in the middle of the lot where we started,'" and not for any nonhearsay purpose, such as "to chronicle the course of the police investigation." *Id.* ¶¶ 30-34.

Because the body camera recording included these purported hearsay statements, the appellate court concluded that the recording was inadmissible. It did not distinguish between the audio and video components in finding that error had occurred, instead emphasizing that the *video* was particularly prejudicial:

> Rather than testimony about the video, we are dealing with the video itself. As a justice of this court explained, and we agree, "a video is a most powerful piece of evidence, . . . an observation requiring no citation." *Hudson v. City of Chicago*, 378 Ill. App. 3d 373, 434 (2007) (O'Malley, J., dissenting). We have reviewed the video and find that it is of the type to easily overpersuade. The video depicts a chase at night, with frenetic movements caused by the camera's attachment to Hernandez's body. Hernandez calls over the radio in an urgent tone of voice, while he is breathing deeply from the chase. The video shows at least two police SUVs had responded to the scene with searchlights. Four officers, at minimum, take Collins into custody. Because there was no nonhearsay purpose to admitting the video with Hernandez's out-of-court statements, the nature of the video turns more prejudicial than probative.

Id. ¶¶ 36-37. For similar reasons, the appellate majority rejected the People's argument that any error in admitting the recording was harmless, noting that the People emphasized the manner in which the video corroborated Hernandez's testimony in closing arguments. *Id.* ¶ 46.

This Court granted leave to appeal.

STANDARDS OF REVIEW

This Court reviews evidentiary rulings for abuse of discretion. *People v. Lerma*, 2016 IL 118496, ¶ 23. "An abuse of discretion occurs only where

the trial court's decision is 'arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.'" *Id.* (quoting *People v. Rivera*, 2013 IL 112467, ¶ 37). This Court "may affirm the admission of evidence on any basis appearing in the record, regardless of whether it was relied on by the trial court." *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 56.

Whether the erroneous admission of evidence was harmless error presents a legal question that this Court reviews de novo. *See People v. Garstecki*, 234 Ill. 2d 430, 437 (2009).

ARGUMENT

I. The Circuit Court Did Not Abuse Its Discretion by Admitting Both the Visual and Audio Components of the Body Camera Recording of the Foot Chase of Defendant and the Immediate Recovery of His Discarded Firearm.

The circuit court did not abuse its discretion by admitting Officer Hernandez's body camera recording of his foot chase and detention of defendant, followed by his recovery of defendant's discarded firearm.

The Law Enforcement Officer-Worn Body Camera Act provides that body camera recordings "may be used as evidence in any administrative, judicial, legislative, or disciplinary proceeding." 50 ILCS 706/10-30. This evidentiary rule reflects the General Assembly's determination that body camera recordings "provide impartial evidence and documentation to settle disputes," and therefore "help collect evidence while improving transparency and accountability, and strengthening the public trust." 50 ILCS 706/10-5.

Such recordings provide direct and reliable evidence of crimes witnessed by police officers and their immediate investigation of those crimes. *See* 50 ILCS 706/10-20(a)(3) (body cameras "must be turned on at all times when the officer is in uniform and is responding to calls for service or engaged in any law-enforcement related encounter or activity"). Such recordings consist of both a visual component and an audio component. *See* 50 ILCS 706/10-10 (defining "[o]fficer-worn body camera" as "an electronic camera system for creating. . . *audiovisual* recordings that may be worn about the person of a law enforcement officer") (emphasis added). In short, as the provisions of the Act make plain, the legislature has determined that body camera recordings, including both of their components, should generally be admitted where relevant to issues at a criminal trial.

Notably, the Act makes no explicit reference to the rules governing hearsay, which reflects the General Assembly's understanding, consistent with judicial precedents, that recordings are generally not considered hearsay. *See People v. Hughes*, 2013 IL App (1st) 110237, ¶ 65 ("'It is well established that a taped conversation or recording, which is otherwise competent, material and relevant, is admissible so long as it is authenticated and shown to be reliable through proper foundation. A taped conversation is not hearsay; rather, it is "a mechanical eavesdropper with an identity of its own, separate and apart from the voices recorded.'") (quoting *People v. Theis*,

2011 IL App (2d) 091080, ¶ 32) (quoting, in turn, *People v. Griffin*, 375 Ill. App. 3d 564, 570-71 (1st Dist. 2007)). Here, the body camera recorded the foot chase, arrest, and the immediate recovery of evidence. It was akin to a surveillance camera recording key events, and the recording of those events was not hearsay. *See Collins*, 2021 IL App (1st) 181746, ¶ 63 (Coghlan, J., dissenting) ("the trial court correctly observed that this evidence is . . . admissible as just 'a regular video of a crime scene that was occurring at that point in time'") (quoting R423).

Beyond this general principle, neither the video nor the audio components of the body camera recordings were inadmissible as hearsay under the Illinois Rules of Evidence because neither contained any "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c). And it is not the case that the entire recording would be rendered inadmissible even if a statement on the audio recording were inadmissible hearsay. As demonstrated below, neither the video nor the audio components of the recording contained hearsay, but, to the extent any portion could be construed as hearsay, the proper remedy would be to redact that portion of the recording and admit the remainder.

A. The visual component of the body camera recording was not barred as hearsay because it contained no "statement" subject to the bar.

The visual component of the body camera recording — which depicted Hernandez chasing defendant, arresting him, and recovering his firearm — was plainly admissible, notwithstanding the purported error in admitting the audio portion. *See generally People v. Davis*, 2021 IL 126435, ¶¶ 20-21, 41 (even though recording of conversation was obtained in violation of overhear statute, only audio portion was inadmissible; "silent video recording" was not barred).

This is because the visual component contained no statement that could be subject to the hearsay bar. As explained, hearsay consists of a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c). A "statement" refers to "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Ill. R. Evid. 801(a). Although the rule against hearsay applies to non-verbal assertions such as a nod or point in response to a question, Hernandez's body camera recording contains no such gestures. Rather, it simply shows Hernandez chasing defendant, arresting him, and recovering his discarded firearm. Therefore, its admission was not barred by the rule against hearsay.

The appellate court's conclusion that the video component of the body camera recording was barred as hearsay was therefore wrong and its analysis was inconsistent with the General Assembly's intent that body camera recordings be broadly admissible. Rather than start with the presumption that the video recording was admissible pursuant to the Act, the appellate court parsed the *audio* component of the body camera recording to identify a statement that might be objectionable as hearsay, and then, finding one, barred the *entire* recording. But a hearsay statement in the audio recording would not render the video recording inadmissible as hearsay any more than a single hearsay statement in a recorded police interview would render the entire interview inadmissible. The appellate court's logic would render virtually any body camera recording capturing speech inadmissible in its entirety and deprive fact-finders of evidence that the General Assembly determined to be uniquely reliable.

And there is no other conceivable basis for excluding the visual component of the recording. The recording was unquestionably relevant to establishing that defendant unlawfully possessed a weapon. *See* Ill. R. Evid. 402 ("All relevant evidence is admissible, except as otherwise provided by law."); Ill. R. Evid. 401 (evidence is relevant if it "ha[s] any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence").

And the visual recording's probative value is not substantially outweighed by any risk of unfair prejudice (nor did defendant argue that it is subject to exclusion on that basis). *See* Ill. R. Evid. 403 (relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury"). In finding the admission of the recording to be error, the appellate majority emphasized that "the video . . . is of the type to easily overpersuade" because "[t]he video depicts a chase at night, with frenetic movements caused by the camera's attachment to Hernandez's body," and "[t]he video shows at least two police SUVs had responded to the scene with searchlights." *See Collins*, 2020 IL App (1st) 181746, ¶ 37. But the recording is persuasive only because it provides reliable, direct evidence of the crime and investigation, which is the purpose of requiring the use of body cameras. Any prejudice resulting from this evidence therefore would not be "unfair." Ill. R. Evid. 403; *see People v. Lewis*, 165 Ill. 2d 305, 329 (1995)) (unfair prejudice "means 'an undue tendency to suggest decision on an improper basis, commonly an emotional one, such as sympathy, hatred, contempt, or horror'" (quoting *People v. Eyler,* 133 Ill. 2d 173, 218 (1989)).

Thus, because the visual recording was admissible under the Act, relevant, and was not barred by the rule against hearsay or any other rule of

evidence, the circuit court acted within its discretion by admitting it into evidence.

B. The audio component of the body camera recording contained no inadmissible hearsay.

The circuit court similarly did not abuse its discretion in admitting the audio component of the body camera recording because it likewise did not include any inadmissible hearsay statements.

Most of the words spoken by Hernandez constituted instructions directed at defendant ("let me see your hands, get on the floor") or Officer Lopez ("Joel, go back to the lot. Go back to the lot we ran through."). Such commands are not hearsay. *See People v. Price*, 2021 IL App (4th) 190043, ¶ 139 ("'[C]ommands are generally not hearsay, because the significance is the command itself and there is no truth being asserted in a command.'") (quoting *People v. Saulsberry*, 2021 IL App (2d) 181027, ¶ 81); *People v. Sorrels*, 389 Ill. App. 3d 547, 553 (4th Dist. 2009) ("[N]o 'truth of the matter asserted' is present in a police officer's command[.]").

The only portions of the audio recording that that are potentially subject to exclusion as hearsay are Hernandez's statements (1) that defendant dropped a gun, (2) that the gun was black, and (3) that the gun was dropped in the vacant lot where the chase began; those statements contain factual assertions that may be true or false. However, those statements were admitted for the nonhearsay purpose of explaining the

course of the investigation and were, in any event, admissible as excited utterances.

1. The recorded statements were introduced for the nonhearsay purpose of proving the course of the investigation.

Hernandez's statements on the recording were not introduced as proof of the assertions that defendant dropped a black gun in a vacant lot. Rather, Hernandez's direct testimony was offered to prove those facts, and the assertions recorded by the body camera were instead offered to explain the course of Hernandez's investigation, as it was captured in real time. As such, these statements were not barred as hearsay. *See People v. Williams*, 181 Ill. 2d 297, 313 (1998) (statement is not hearsay if used to "show[ ] the course of a police investigation where such testimony is necessary to fully explain the State's case to the trier of fact"); *People v. Pulliam*, 176 Ill. 2d 261, 273 (1997) (statement offered to show course of investigation is not offered as proof of matter asserted and is not hearsay). Hernandez's statements explain why, after arresting defendant, he walked immediately to the vacant lot where the chase began and used a flashlight to recover an object from the ground.

In deeming the statements inadmissible hearsay, the appellate court cited precedent holding that police officer testimony detailing inculpatory statements by third parties generally should not be admitted to prove the course of an investigation. *See Collins*, 2021 IL App (1st) 181746, ¶¶ 31-35

(citing *People v. Jura*, 352 Ill. App. 3d 1080 (1st Dist. 2004)). In *Jura*, three police officers recounted a witness's statement that a man sporting defendant's teardrop face tattoo possessed a gun. 352 Ill. App. 3d at 1082. The witness did not testify at trial and was not subject to cross-examination. The appellate court held that the details of the non-testifying witness's inculpatory out-of-court statement should not have been admitted under the guise of explaining the course of a police investigation. *Id.* at 1086-87 (citing *People v. Gacho*, 122 Ill. 2d 221, 248 (1988)).

This limitation on the course-of-investigation doctrine exists because if the substance of a third party's statement is introduced, without providing an opportunity to cross-examine that third party, the concerns behind the hearsay rule are clearly implicated. *See People v. Carpenter*, 28 Ill. 2d 116, 121 (1963) (the value of hearsay turns "upon the credibility of the out-of-court asserter," and "the fundamental purpose of the hearsay rule . . . is to test the real value of testimony by exposing the source of the assertion to cross-examination by the party against whom it is offered"); *People ex rel. Banks v. Robinson*, 35 Ill. App. 3d 16, 18 (1st Dist. 1975) ("[t]he rationale behind the exclusion of hearsay evidence is indeed clear" because "[i]ts probative force depends upon the competency and credibility of some person other than the witness," and "'the credibility of such assertions cannot be tested in the glaring light of cross-examination'") (quoting *Naylor v. Gronkowski*, 9 Ill.

App. 3d 302, 307 (1st Dist. 1972)). As the court held in *Jura*, the People may not rely on the course-of-investigation doctrine to skirt the rules against hearsay and introduce the substance of a prejudicial statement that defendant had no opportunity to cross-examine. 352 Ill. App. 3d at 1086-87; *see also People v. Warlick*, 302 Ill. App. 3d 595, 598-601 (1st Dist. 1998) (noting that substance of reports from third parties introduced to show course of investigation may be prejudicial where they go to essence of whether crime occurred and jury may be tempted to rely on them for their truth).

Here, however, the People introduced evidence of Officer Hernandez's *own* statements in the course of his investigation, on which he was subject to cross-examination. Although the concerns behind the hearsay rule that motivated the holding of *Jura* might be implicated if a body camera recording relayed the inculpatory out-of-court statements of a non-testifying witness, that was not the case here.

Because the audio component of the body camera recording was properly admitted as non-hearsay evidence of Officer Hernandez's direct investigation of a crime that he had just witnessed, to explain the course of his investigation, the circuit court did not abuse its discretion in admitting this evidence.

2. The recorded statements were admissible even as proof of the matters asserted because they were excited utterances.

Furthermore, Hernandez's statements that defendant dropped a black gun in the vacant lot even could be admitted as proof of the matters asserted because they constitute excited utterances.

The People argued below that Hernandez's recorded statements were admissible under this hearsay exception. *See* R262-63; *see also* Peo. App. Ct. Br. 24. Although the appellate court found that the People "abandon[ed]" their reliance on the excited utterance exception on appeal by failing to provide sufficient support, *Collins*, 2021 IL App (1st) 181746, ¶ 20, and the issue was not included in the People's petition for leave to appeal, this Court may nevertheless consider it. *See People v. Brown*, 2020 IL 125203, ¶ 32 (addressing merits of argument where defendant raised both types of forfeiture). First, "[i]t is well settled that, when the appellate court reverses the judgment of the trial court and the appellee in the appellate court then brings the case to this court on appeal," the appealing party "may raise any issues properly presented by the record to sustain the judgment of the trial court, even if those issues were not raised in the appellate court." *Id.* ¶ 29 (citing *People v. Artis*, 232 Ill. 2d 156, 164 (2009)). Second, "[t]he failure to raise an issue in a petition for leave to appeal is not a jurisdictional bar to this court's ability to review an issue," and the Court may address a question

that "is 'inextricably intertwined' with other matters properly before the court." *Id.* ¶ 31 (quoting *People v. McKown*, 236 Ill. 2d 278, 310 (2010)). Here, whether Hernandez's statements were excited utterances is inextricably intertwined with whether the appellate court erred in excluding the statements as hearsay.

Under this doctrine, the hearsay bar does not apply to "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Ill. R. Evid. 803(2). Such an event "'temporarily stills the capacity for reflection, thus producing statements free of conscious fabrication,'" *People v. Abram*, 2016 IL App (1st) 132785, ¶ 71 (quoting *People v. Harris*, 134 Ill. App. 3d 705, 711 (1st Dist. 1985)), and statements made under these circumstances "'tend to be reliable,'" *Lerma*, 2016 IL 118496, ¶ 5 n.1 (quoting *People v. Nevitt*, 135 Ill. 2d 423, 442 (1990)). For the excited utterance exception to apply, there must be "an event or condition sufficiently startling to produce a spontaneous and unreflecting statement" and an "absence of time to fabricate." *Lerma*, 2016 IL 118496, ¶ 5 n.1 (citing *People v. Smith*, 152 Ill. 2d 229, 258 (1992)).

Hernandez's discovery that the person he was chasing was armed with a deadly weapon was sufficiently startling to exempt his comments regarding that discovery only a minute or two later from the rule against hearsay. "Even for a police officer who presumably is trained to react in such

potentially dangerous situations, involvement in a chase with an armed suspect would be an exciting and startling event." *United States v. Campbell*, 782 F. Supp. 1258, 1262 (N.D. Ill. 1991). Moreover, seeing defendant discard a gun in a public place during the foot chase was startling because it created a clear and immediate danger to public safety. The excitement of these events had not dissipated when Hernandez made his statements over the police radio urgently calling out the gun's location and seeking other officers' assistance in recovering it. And therefore the statements, made while Hernandez was still audibly panting from the chase and in an urgent tone, Peo. Exh. 3 at 01:08-02:08, were "made while the excitement of the event predominated," *Smith*, 152 Ill. 2d at 260.

Under these circumstances, Hernandez's out-of-court statements concerning defendant's discarded handgun were admissible under the excited utterance exception to the rule against hearsay. Although Hernandez's statements about the gun were introduced for a nonhearsay purpose of proving the course of the investigation, it would not have been error, as the People argued in the circuit court, for that court to have admitted them for the hearsay purpose of establishing the truth of the matter asserted.

For this reason as well, the appellate court erred in reversing defendant's conviction due to admission of the body camera recording, which was admissible in its entirety.

II. Any Error in Admitting the Police Officer's Recorded Statements Was Harmless Because They Were Cumulative of His Trial Testimony.

In any event, any error in admitting Officer Hernandez's recorded statements about defendant having dropped a black gun in the vacant lot was harmless and does not warrant reversal. *See People v. Barner*, 2015 IL 116949, ¶ 78 (declining to reverse convictions where admission of testimonial hearsay was harmless). Reversal is unwarranted if "'there is no reasonable probability the jury would have found the defendant not guilty had the hearsay been excluded.'" *People v. Ruiz*, 2019 IL App (1st) 152157, ¶ 43 (quoting *People v. Ochoa*, 2017 IL App (1st) 140204, ¶ 58). The admission of hearsay is harmless if it "is merely cumulative or duplicates properly admitted evidence." *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008); *see also Barner*, 2015 IL 116949, ¶ 78 (erroneous admission of non-testifying expert opinion was harmless because it was "cumulative or duplicative of the properly admitted DNA evidence").

Here, the purported hearsay statements on the body camera recording duplicated Hernandez's live testimony under oath. Hernandez testified that he chased defendant, saw defendant drop the black handgun, detained defendant, then returned to the site and recovered defendant's gun. The visual component of his body camera recording corroborated these events. Only a portion of the audio component of the recording — limited to

Hernandez's statements describing defendant's discarded gun — was potentially subject to the hearsay bar. *See* discussion *supra* pp. 12-16. The video component of the recording, which was indisputably admissible, confirmed that Hernandez, after detaining defendant, immediately and without hesitation walked to the location where he had seen defendant discard the gun and recovered it. Peo. Exh. 3 at 3:55-5:07. Defendant offered no plausible alternative explanation for Hernandez's recovery of a gun at this precise location moments after defendant's arrest.

Hernandez's credible and corroborated testimony overwhelmingly proved defendant's possession of a handgun, and defendant's prior convictions overwhelmingly demonstrated that this possession rendered him an armed habitual criminal. Accordingly, there is no reasonable probability that the jury would have acquitted defendant but for hearing Hernandez's recorded statements that defendant had discarded a black gun.

The appellate majority, in finding error, emphasized that the video recording was "of the type to easily overpersuade" and was prejudicial. *Collins*, 2020 IL App (1st) 181746, ¶ 36. The prejudice that the appellate majority identified did not arise from the audio recording of the statements that the appellate majority found improperly admitted, but from the video recording, which was properly admitted and contained no statements that could be barred as hearsay. Whether the improper admission of a piece of

evidence was so prejudicial as to warrant reversal turns on the prejudicial effect of the improperly admitted piece of evidence, not the prejudicial effect of other, properly admitted pieces of evidence. Accordingly, the appellate majority erred in finding that the improper admission of Hernandez's audio-recorded statement was not harmless based on the effect of the properly admitted video recording of the chase, arrest, and recovery of defendant's firearm.

CONCLUSION

This Court should reverse the appellate court's judgment and reinstate defendant's judgment of conviction.

May 18, 2022

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 25 pages.

/s Erin M. O'Connell
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APPENDIX

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2020 IL App (1st) 181746
No. 1-18-1746
Opinion filed December 21, 2020
Modified on denial of rehearing July 26, 2021

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 18 CR 825
	)	
JODON COLLINS,	)	
	)	Honorable
Defendant-Appellant.	)	Charles P. Burns,
	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Presiding Justice Walker concurred in the judgment and opinion.
Justice Coghlan dissented on denial of rehearing, with opinion.

OPINION

¶ 1 A jury found Jodon Collins guilty of unlawful possession of a weapon by a felon and of being an armed habitual criminal. Officers arrested Collins after a foot chase partially caught on body camera video. The trial court admitted the video over repeated objections by Collins's counsel that the audio included inadmissible hearsay statements from Chicago police officer Martin Hernandez. We agree with Collins. Officer Hernandez's statements captured on the video served no nonhearsay purpose and were inadmissible. The State's evidence almost exclusively

consisted of Hernandez's testimony, further leading us to conclude the error not to be harmless beyond a reasonable doubt. We reverse and remand for a new trial.

¶ 2 Background

¶ 3 Chicago police officers Martin Hernandez and Joel Lopez were on patrol shortly after 1 a.m. on December 16, 2017. As they turned onto Walnut Street, they saw a group of three people standing near 3300 West Walnut Street. The group looked in the officers' direction and started walking away from them. As the officers got closer to 3300 West Walnut Street, Hernandez got out of the car to "conduct an investigation."

¶ 4 Hernandez saw one member of the group, who he identified as Jodon Collins, "turn around, look at us and immediately start running west and then northbound." Before Collins ran, Hernandez did not observe anything illegal. Specifically, he did not see anyone in the group engage in a hand-to-hand transaction, did not see Collins holding a gun, and did not see a bulge in Collins's pants. Collins ran through a vacant lot, "holding his left side," with Hernandez five-to-eight feet behind. From that distance, Hernandez saw Collins "drop a black handgun" on the ground.

¶ 5 Hernandez, after hesitating on seeing the gun, kept chase. To get to Fulton Street, Collins had to jump two fences. Hernandez also cleared the fences, but it slowed him down. From about 40 feet away, Hernandez saw Collins jump another fence into the yard of a house on Fulton Street. Once Collins hopped that fence, Hernandez lost sight of him. Hernandez went into the back yard and found Collins "crouched down" against the wall of the house. Hernandez arrested Collins and handed him off to other officers before going back to the vacant lot, where he recovered a black handgun in the spot where he saw Collins drop it.

¶ 6 Hernandez wore a body camera. To activate his body camera, he had to twice push a button on the front of it. Once activated, the camera captures "a 15-second period that it goes back and records." Over an objection from Collins's counsel, the court allowed the State to play video footage with the audio. The video starts as Hernandez runs "towards the third fence area" because, as Hernandez explained it, when the chase began, his "focus was on the person that's fleeing." Hernandez agreed that a Chicago Police Department special order required him to start the camera at the beginning of an incident and "leave it recording till the scene is safe."

¶ 7 During the video, Hernandez made the following statements on his radio, after putting Collins in custody:

> "Get to that lot, dude. Hurry up. He dropped it there."
>
> "Go back to the lot where he ran through, dude. It's right in the middle of the lot. It's black."
>
> "It's a pistol, squad. He dropped a pistol right there in the middle of the lot over there where it started."

Before trial, Collins's counsel had moved *in limine* to bar the video, arguing that the statements it contained constituted hearsay and improper prior consistent statements. The trial court denied the motion, overruled counsel's objection to the video, and overruled counsel's objection to the video when the court formally admitted it into evidence.

¶ 8 Chicago police evidence technician Robert Franks analyzed the gun for fingerprints but found none. The State admitted certified copies of two convictions for possession of a controlled substance with intent to deliver.

¶ 9 Collins did not testify. His counsel called Sergeant Joel Lopez, who laid the foundation for the admission of his body camera video. He explained that his video starts after Hernandez had already gotten out of the car. The video shows Lopez driving for a while, eventually getting out of his car and searching unsuccessfully for the gun. Collins's counsel played the video for the jury, without objection by the State.

¶ 10 During closing argument, the State discussed Hernandez's body camera video, rhetorically asking the jury how Hernandez could have directed his fellow officers back to the lot where they found the gun if he had not seen Collins drop it there. The State then played the entire video for the jury. Collins's counsel played Lopez's body camera video for the jury, arguing that Hernandez's instructions to go back to the lot (audible in both officers' body camera videos) were confusing because it took Lopez so long to get to the right area.

¶ 11 The jury found Collins guilty of unlawful use of a weapon by a felon and being an armed habitual criminal. Collins filed a motion for a new trial, repeating the argument that the audio from Hernandez's body camera video to have been improperly admitted. The State responded that Collins's counsel had used the officers' videos for her own benefit, to which Collins's counsel replied that she had used the videos because "the court ruled that the audio portions *** would be admissible." The trial court reiterated its view that the videos were "obviously admissible" and denied the motion for a new trial.

¶ 12 The trial court merged the unlawful use of a weapon by a felon count into the armed habitual criminal count and sentenced Collins to 7½ years in the Illinois Department of Corrections.

¶ 13 Analysis

¶ 14 Collins argues the trial court erred in admitting the audio from Hernandez's body camera because it exposed the jury to "inadmissible hearsay." Collins takes issue with several statements Hernandez made throughout the audio, telling other officers that Collins dropped a "black pistol" as he ran from Hernandez. The State responds that Collins has waived the issue by using the body camera video to his advantage in closing arguments and by introducing Lopez's body camera video. On the merits, the State argues that Hernandez's statements were not hearsay because they were only offered to explain the officers' course of conduct, not for the truth of the matter asserted. See Ill. R. Evid. 802 (eff. Jan. 1, 2011).

¶ 15 Waiver Argument

¶ 16 We start by considering, and rejecting, the State's waiver argument. The State contends Collins either invited or acquiesced to the admission of Hernandez's body camera video because he later "used the 'error' " by incorporating the video into his arguments about the unreliability of Hernandez's testimony. The doctrine of invited error prevents a defendant from raising a claim on appeal where he or she "procures, invites, or acquiesces in the admission" of otherwise improperly admitted evidence. *People v. Bush*, 214 Ill. 2d 318, 332 (2005). The doctrine rests on "notions of fair play" (*People v. Villarreal*, 198 Ill. 2d 209, 227 (2001)), and we apply it where a defendant " 'sit[s] by' " and deprives the State of the opportunity to cure any alleged error (see *Bush*, 214 Ill. 2d at 332-33 (quoting *People v. Trefonas*, 9 Ill. 2d 92, 98 (1956))).

¶ 17 Both cases the State relies on, *Bush* and *Villarreal*, involve a defendant whose counsel behaved far differently than Collins's counsel. In *Bush*, the defendant's counsel stipulated to admission of evidence that he possessed cocaine. *Id.* at 333. In *Villarreal*, the defendant on appeal attempted to attack verdict forms that his own counsel submitted at trial. *Villarreal*, 198 Ill. 2d at

227. Here, Collins's counsel (i) filed a motion *in limine* objecting to the admission of Hernandez's body camera video, (ii) objected at the time the video was offered as a trial exhibit, (iii) objected again when the trial court formally admitted the State's exhibits at the close of evidence, and (iv) preserved her objection in a motion for a new trial by expressly arguing that Lopez's video was offered only in response to the admission of Hernandez's video.

¶ 18 The record demonstrates that Collins's counsel never acquiesced to the admission of Hernandez's body camera video. Instead, she used Lopez's video and her argument to make the best of the jury viewing Hernandez's video over her objection. We reject the State's waiver argument.

¶ 19 Hearsay Issue

¶ 20 On the merits, Collins claims the video from Hernandez's body camera—the audio in particular—should not have been admitted because it exposed the jury to inadmissible hearsay. In the trial court, the State argued both that the statements in the body camera video were not hearsay and, in the alternative, were admissible as excited utterances. The State abandons the latter argument on appeal and asserts only that the statements in the video were not hearsay. We review the denial of Collins's motion *in limine* and the admission of the contested video evidence for an abuse of discretion. *People v. Dunmore*, 389 Ill. App. 3d 1095, 1105-06 (2009).

¶ 21 The parties focus almost entirely on the disputed hearsay character of Hernandez's body camera video. In their initial briefs, neither party discussed the applicability of the Law Enforcement Officer Body-Worn Camera Act (Act) (50 ILCS 706/10-1 *et seq.* (West 2016)), but we hypothesized about its scope in our original opinion. In a timely filed petition for rehearing, the State argues the Act renders the entire video "admissible irrespective of its compliance with

hearsay rules." We requested a response from Collins, who argues the Act contains no express exception to the hearsay rule. After reviewing the Act, we agree with Collins's reading of the Act.

¶ 22 We review questions of statutory construction *de novo*. *People v. Bensen*, 2017 IL ¶ App (2d) 150085, ¶ 20, We ascertain and give effect to legislative intent by giving the statutory language its plain and ordinary meaning. *Id.* ¶ 21. Where the language is plain and unambiguous, we need proceed no further. *Id.* The Act provides that body-worn camera "recordings may be used as evidence in any administrative, judicial, or disciplinary proceeding." 50 ILCS 706/10-30 (West 2016). We see two features of the statutory text showing that the General Assembly did not intend limitless admission of body-worn camera video.

¶ 23 First, the statute does not mandate the admission of body-worn camera recordings; it provides that they "may" be used. We generally regard the legislature's use of the word "may" as permissive or directory. *People v. Robinson*, 217 Ill. 2d 43, 53 (2005). Where the subject of the verb "may" is the trial court, we read the statute to indicate "the court has discretion in [the] matter." Compare *People ex rel. Cizek v. Azzarello*, 81 Ill. App. 3d 1102, 1107 (1980) (word "may" directed at trial court indicates discretion), with *In re R.C.*, 338 Ill. App. 3d 103, 111 (2003) (word "may" directed at party indicates party has discretion to request but trial court does not have discretion to deny it if made).

¶ 24 That the statute uses the passive voice makes it a bit difficult to discern who the legislature meant as the subject of the verb phrase "may be used." While we typically think of the parties as the ones who "use" the evidence to prove their version of events, it is axiomatic that the trial court has the ultimate provenance over whether either party is permitted to "use" a particular item of evidence. *E.g.*, *People v. Becker*, 239 Ill. 2d 215, 234 (2010) ("admission of evidence is within the

sound discretion of a trial court"). We find the Act to apply the phrase "may be used" to both the parties and the trial court. The parties may, but do not have to, put forward evidence of a body-worn camera recording; the trial court then may, but does not have to, allow the evidence to be admitted. Ultimately, we find the word "may" permits trial courts to exclude body-worn camera recordings where appropriate.

¶ 25 The State correctly argues that the General Assembly used the word "evidence" without any express limitation. But the General Assembly could not have put express limitations on the word "evidence"; otherwise, it would have run into potential conflicts with a host of other rules. We know this because the Act specifically sets out the types of proceedings body-worn camera recordings may be used in—"administrative, judicial, or disciplinary proceedings"—and the rules of evidence vary across these different types of proceedings. For example, in administrative proceedings, the rules of evidence for civil cases, with express exceptions, apply. 5 ILCS 100/10-40(a) (West 2016) ("The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, *** if it is of a type commonly relied upon by reasonably prudent [people] in the conduct of their affairs."). In police disciplinary proceedings, however, the rules of evidence are typically "not as rigidly applied." (Internal quotation marks omitted.) *Kelley v. Sheriff's Merit Comm'n*, 372 Ill. App. 3d 931, 933 (2007). According to the Chicago Police Board Rules of Procedure: "The Hearing Officer shall not be bound by the formal or technical rules of evidence; however, hearsay evidence shall not be admissible during the hearing, unless an Illinois statute or rule of evidence provides otherwise." Chicago Police Board Rules of Procedure, art. III(D) (eff. Feb. 18, 2021),

https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesofProcedure20210218.pdf (last visited July 5, 2021) [https://perma.cc/6DNL-QBA9]. Finally, judicial proceedings are governed by the Illinois Rules of Evidence. Ill. R. Evid. 101 (eff. Jan. 6, 2015).

¶ 26 Where does all this lead? In short, it makes sense that the General Assembly would not put any limits on the word "evidence" in the text of Act. The reason: the proceedings to which the Act applies all use different parts of the Illinois Rules of Evidence or do not use the Illinois Rules of Evidence at all. The word "evidence" broadly allows the presiding officer in each type of proceeding—judicial, administrative, or disciplinary—to employ the word "evidence" as it is used in that specific context without creating a conflict with the Act's language. In criminal judicial proceedings, then, "evidence" must be subject to the Illinois Rules of Evidence applicable to criminal cases.

¶ 27 We also can look outside the Act to see other instances in which the General Assembly has expressly provided for exceptions to the Rules of Evidence when it means to do so. For instance, the legislature has expressly delineated hearsay exceptions in prosecutions for sexual acts against children under the age of 13 and those with intellectual, cognitive, or developmental disabilities (725 ILCS 5/115-10 (West 2016) (listed evidence "shall be admitted as an exception to the hearsay rule")) and in actions for orders of protection on behalf of high-risk adults with disabilities in certain circumstances (750 ILCS 60/213.1 (West 2016) (same)). Here, the Act contains no exceptions to any rule of evidence as demonstrated by the General Assembly's silence. *E.g.*, *Estate of Howell v. Howell*, 2015 IL App (1st) 133247, ¶ 30 (looking to evidence "that when the General Assembly wishes to dictate a certain result, it knows how to do so and it has done so expressly").

¶ 28 The State's position leads to absurd results it makes no attempt to explain. What about relevance, a threshold requirement that must be met by every item of evidence? *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010). Irrelevant evidence is not admissible. Ill. R. Evid. 402 (eff. Jan. 1, 2011). Under the State's expansive reading, it could seek to admit body-worn camera footage entirely unrelated to a particular judicial proceeding. With that, counsel might improperly impeach witnesses by way of opinion or reputation evidence, so long as any out-of-court statements constituting that evidence were captured by on an officer's body-worn camera. See Ill. R. Evid. 608 (eff. Jan. 1, 2011). Officers' audible speculation could find its way into the trial record, uninhibited by the personal knowledge requirement. See Ill. R. Evid. 602 (eff. Jan. 1, 2011). Perhaps most worrisome, trial judges would find themselves powerless to exclude evidence even when the danger of unfair prejudice, confusion of the issues, or misleading the jury substantially outweighs its probative value. See Ill. R. Evid. 403 (eff. Jan. 1, 2011). We must construe the Act to avoid these absurd results. See *People v. Burchell*, 2018 IL App (5th) 170079, ¶ 8.

¶ 29 The dissent argues that our analysis runs counter to the purpose of the Act, which is to "promote trust and mutual respect." We fail to see how a trial court promotes "trust and mutual respect" by allowing irrelevant or unduly prejudicial evidence when it happens to be recorded on a police body-worn camera. Like the State, the dissent makes no attempt to explain why the rule against hearsay happens to be the only rule of evidence the Act ignores. Of course, the State may think rules of relevancy or undue prejudice fall by the wayside as well. As we have explained, however, that result would be absurd and, as even the dissent reminds us, contrary to the Act's truth seeking and trust building purposes.

¶ 30 Having concluded the Act does not allow the admission of body-worn camera video without evidentiary limitation, we adhere to our original analysis of the statements in Hernandez's video as hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c) (eff. Oct. 15, 2015). Neither party disputes that the recording contains "statements" Hernandez made. Neither party disputes that Hernandez made the relevant statements "other than *** while testifying at the trial." See *id.* The only dispute involves admitting the statements to prove the truth of the matter they assert—that Collins "dropped a pistol right there in the middle of the lot where we started"—or whether the statements were admitted for some other purpose, namely, to chronicle the course of the police investigation.

¶ 31 Collins relies heavily on *People v. Jura*, 352 Ill. App. 3d 1080 (2004), to argue that Hernandez's statements were offered to prove the truth of the matter asserted, not to show the course of the investigation. We find *Jura* persuasive.

¶ 32 The court in *Jura* analyzed the testimony of three officers. All of them testified that they received a radio call of " 'a person with a gun' " at " '2845 West 38th Street in the alley.' " *Id.* at 1082-84. The radio call also described the suspect as a " 'male White' " and included information about height and a face tattoo. *Id.* The court's analysis began by acknowledging that officers may testify to statements made out of court where the statements are used to show the officers' investigative steps and not for the truth of the matter asserted. *Id.* at 1085. The court cautioned, however, that the statements must be " 'necessary and important' " to a full explanation of the State's case. *Id.* The court rejected the State's argument of a nonhearsay purpose because "[t]here was no issue regarding the reason why the officers proceeded to the alley behind 38th Street." *Id.*

at 1086. Here, similarly, there is no issue about why officer Hernandez returned to the lot Collins ran through. Hernandez's nonhearsay testimony sufficed to explain that the officers went back to search for the gun Hernandez claimed to have seen Collins drop.

¶ 33 We conclude, as the court did in *Jura*, that the hearsay statements in Hernandez's body camera video were not "necessary and important" to explain the State's case. The State implies that the jury may have been confused because Hernandez arrested Collins and then went back "several blocks removed from where the incident eventually came to an end" to recover the gun. See *People v. Cameron*, 189 Ill. App. 3d 998, 1004 (1989) (" 'arresting or investigating officer should not be put in the false position of seeming just to have happened upon the scene' "). Here, no risk existed that the jury would believe Hernandez just "happened upon the scene" where the gun was found because Hernandez was both the arresting officer and the pursuing officer who saw Collins toss the gun.

¶ 34 After finding no nonhearsay purpose, the court in *Jura* allowed that the State's argument would have been reasonable had it not been for multiple witnesses testifying to the hearsay statements and the State emphasizing the statements in opening and closing arguments. *Jura*, 352 Ill. App. 3d at 1088-89. Here, we do not have multiple witnesses repeating the hearsay, but do have Hernandez repeating the relevant hearsay statements in some form at least three times throughout the video. And, as in *Jura*, the State not only relied on the hearsay statements during its closing argument, it replayed the video in full. Like the court in *Jura*, we cannot accept that Hernandez's statements in the body camera video were admitted for anything but the truth of the matter it asserted—namely, that the black gun was in the lot through which Collins ran and that Collins dropped it there.

¶ 35 As this court has cautioned, "[t]he 'police procedure' shibboleth has not proved persuasive" in many cases. *People v. Warlick*, 302 Ill. App. 3d 595, 600 (1998) (collecting cases). Where it is enough for an officer to explain that an event happened (observation, radio message, witness description) and he or she responded to it, the substance of an out-of-court statement memorializing that event is inadmissible. *Id.*

¶ 36 We also find that the admission of Hernandez's statements through the body camera video to be even more prejudicial than the testimony in *Jura* or many of the cases described in *Warlick*, where the officers merely testified about the radio dispatch they heard. *Jura*, 352 Ill. App. 3d at 1082-84; *Warlick*, 302 Ill. App. 3d at 600 (citing, *e.g.*, *People v. Hazen*, 104 Ill. App. 2d 398, 402-03 (1969) (error to admit account of radio message)). Rather than testimony about the video, we are dealing with the video itself. As a justice of this court explained, and we agree, "a video is a most powerful piece of evidence, *** an observation requiring no citation." *Hudson v. City of Chicago*, 378 Ill. App. 3d 373, 434 (2007) (O'Malley, J., dissenting).

¶ 37 We have reviewed the video and find that it is of the type to easily overpersuade. The video depicts a chase at night, with frenetic movements caused by the camera's attachment to Hernandez's body. Hernandez calls over the radio in an urgent tone of voice, while he is breathing deeply from the chase. The video shows at least two police SUVs had responded to the scene with searchlights. Four officers, at minimum, take Collins into custody. Because there was no nonhearsay purpose to admitting the video with Hernandez's out-of-court statements, the nature of the video turns more prejudicial than probative.

¶ 38 The State raised a second argument in its petition for rehearing based on *People v. Theis*, 2011 IL App (2d) 091080, and *People v. Griffin*, 375 Ill. App. 3d 564 (2007), contending that the

audio portions of Hernandez's body camera video were admissible because they were mechanical recordings. The State did not cite these cases in its initial briefing, and the cases were decided well before briefing. More troubling still, the State's new cases raise a new theory for the admissibility of Hernandez's camera audio. We admonish the State that a petition for rehearing does not present an opportunity to raise old cases or new theories. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued *** shall not be raised *** on petition for rehearing."). But because we asked for a response from Collins and the matter is fully briefed, we will address the State's new theory.

¶ 39 Both *Theis* and *Griffin* include a broad assertion, on which the State now relies. The State contends that "[a] taped conversation is not hearsay; rather, it is a 'mechanical eavesdropper with an identity of its own, separate and apart from the voices recorded.' " *Theis*, 2011 IL App (2d) 091080, ¶ 32 (quoting *Griffin*, 375 Ill. App. 3d at 571). In *Theis*, the court rejected a criminal defendant's argument that a detective's recorded statements constituted hearsay. *Id.* ¶ 32. Because the defendant's answers would have been "nonsensical" without the detective's statements, the court concluded they were nonhearsay statements admissible to show their effect on the listener. *Id.* ¶ 33. In *Griffin,* the court also dealt with statements of a party to a conversation with the defendant. *Griffin*, 375 Ill. App. 3d at 570-71.

¶ 40 The broad pronouncements in both *Theis* and *Griffin* are *dicta* because the relevant statements in each were admissible under an exception to the hearsay rules. *Theis*, 2011 IL App (2d) 091080, ¶ 33; see also *Exelon Corp. v. Department of Revenue,* 234 Ill. 2d 266, 277 (2009) (defining *dicta*).

¶ 41 Aside from countering that the statements in *Theis* and *Griffin* about mechanical eavesdropping are not *dicta*, the dissent makes no attempt to reconcile *Theis* and *Griffin* with the

earlier cases on which they purport to rely. *Theis* relied on *Griffin*, which in turn relied on *People v. Harvey*, 95 Ill. App. 3d 992, 1004-05 (1981) ("The recording *** is not treated as hearsay but as a mechanical eavesdropper ***."). *Harvey* pulled the "mechanical eavesdropper" rule from *Belfield v. Coop*, 8 Ill. 2d 293 (1956), but examining *Belfield*, we see its rule had nothing to do with hearsay.

¶ 42 In *Belfield*, the question presented dealt with witness competency. There, a conversation between two witnesses was critical to the case. *Belfield*, 8 Ill. 2d at 299-300. One of the parties to the conversation, however, lacked competency to testify under evidentiary rules governing the cause of action. *Id.* at 300. The incompetent witness could provide the same information to the court, however, because the admissibility of the mechanical recording of the conversation between the two witnesses was the same as if an otherwise competent witness had overheard the conversation and testified to it. *Id.* at 303. Once again and critically, the conversation would have been admitted as an exception to the hearsay rule because at least one conversation participant was a party. See *id.* at 297. The statements in *Theis* and *Griffin* on which the State relies are overly broad and do not accurately reflect the principle they purport to convey.

¶ 43 Having found error, we must determine whether it was harmless. The State, whose burden it is to establish harmless error beyond a reasonable doubt, cites no authority discussing harmless error. Instead, the State cites *People v. McNeal*, 2019 IL App (1st) 180015, ¶ 83, for the proposition that Collins's flight shows consciousness of guilt. Whatever the merits of that proposition, the State reads *McNeal* out of context. There, our discussion of flight as evidence of guilt occurred during an examination of whether the evidence was closely balanced for the purposes of the plain error rule. *Id.* When a defendant raises plain error based on forfeited arguments, it is his or her

burden to show the evidence as closely balanced; here, it is the State's burden to show admitting hearsay as harmless beyond a reasonable doubt. *People v. Magallanes*, 409 Ill. App. 3d 720, 746 (2011) (explaining different standards). We do not know what the court in *McNeal* would have held had the relevant issues been preserved and been subject to harmless error review, especially because we also have held that "[w]hile flight provides some evidence of consciousness of guilt, it is far from overwhelming" (*People v. Melchor*, 376 Ill. App. 3d 444, 457 (2007)).

¶ 44 The only other case the State cites, *People v. Gray*, 2017 IL 120958, was not a harmless error case and stands for the unremarkable proposition that testimony of a single eyewitness can suffice to prove guilt beyond a reasonable doubt. *Id.* ¶ 36. But on harmless error review, the question is not what the jury could have done, but what "the jury *would have* done." (Emphasis in original.) *People v. Parmly*, 117 Ill. 2d 386, 396 (1987). We must determine whether the erroneous admission of hearsay evidence serves as "the weight that tipped the scales against the defendant." (Internal quotation marks omitted.) *Id.* Even if the evidence is "minimally sufficient," evidentiary error constitutes reversible error if "we cannot say that retrial without this evidence would produce the same result." *People v. Manning*, 182 Ill. 2d 193, 215 (1998) (citing *Parmly*, 117 Ill. 2d at 396).

¶ 45 We do not quarrel with the idea that Hernandez's testimony was "minimally sufficient" to sustain Collins's conviction. We cannot conclude, however, that admitting the hearsay statements in the body camera video constitutes harmless beyond a reasonable doubt. Collins's theory at trial centered on the officers' "tunnel vision" about his guilt and their not finding the gun until after Collins's arrest. In short, Collins attacked the officers' (especially Hernandez's) credibility. During

the State's closing argument, not only did the prosecutor play and walk the jury through the entire video, but he told the jury the video corroborated Hernandez's credibility:

> "And what do you see when he goes back to that location? Do you see an officer who is confused about where he is? Do you see an officer looking around with his flashlight, oh, maybe it's over here, maybe it's over here, I'm not sure? No. He walks directly to where he saw that gun at. You see it on this video. *** It makes you ask a question in this situation. If Officer Hernandez didn't see the defendant drop that gun in that lot then how is he able to describe it so accurately to his partners? *** If he didn't see the defendant drop it at that location how is he able to tell his fellow officers exactly where it was dropped?"

The State's theory of the case focused on Hernandez's statements in the body camera video as essential corroboration to his testimony that he saw Collins drop the gun in the lot during the chase.

¶ 46 The State enforces its heavy reliance on the video in its brief, emphasizing that "Officer Hernandez's in-court testimony was bolstered by video footage which showed his return to *** the specific area where moments before, he had personally observed defendant discard a weapon." The State unintentionally raises the harm in admitting Hernandez's statements captured on video—they "bolstered" Hernandez's in-court testimony, making it more likely the jury would find him credible.

¶ 47 The State considers the evidence overwhelming, relying solely on Hernandez's testimony about seeing Collins toss the gun. As we already explained, Hernandez's testimony may have been "minimally sufficient" to support a conviction, but that is all it is. An evidence technician recovered the gun and found "no latent prints on the firearm, firearm magazine, nor the rounds of

ammunition." Nothing else corroborated Hernandez's testimony. We acknowledge, as the State points out, that Collins introduced Sergeant Lopez's body camera video during his case-in-chief. But as we read the record, counsel used Lopez's body camera video to rebut the State's introduction of Hernandez's body camera video. The record suggests that Collins would not have introduced Lopez's body camera video had the statements in Hernandez's video been properly excluded. Indeed, during the hearing on Collins's motion for a new trial, counsel explicitly argued that she would not have introduced Lopez's body camera video had Hernandez's been excluded.

¶ 48 At the end of the day, the State relies on the uncorroborated testimony of a single witness to argue harmless error in admitting the hearsay statements in Hernandez's body camera video. We find these facts insufficient to meet the State's burden to show harmlessness beyond a reasonable doubt. By admitting the hearsay statements in Hernandez's body camera video, the trial court committed reversible error.

¶ 49 Remaining Arguments

¶ 50 Collins makes two more arguments. He says the prosecutor made improper statements during closing and rebuttal arguments by holding against Collins his invocating of two constitutional rights: (i) the prosecutor implied that Collins was "running away" from responsibility by exercising his right to a trial and (ii) the prosecutor commented on Collins's post-arrest silence. Collins also argues that trial counsel was ineffective for failing to seek a jury instruction allowing jurors to draw a negative inference from Hernandez's failure to immediately turn on his body camera.

¶ 51 We have found error in admitting the hearsay statements in Hernandez's body camera video and need address his remaining arguments only if we find them likely to recur on remand.

See *People v. Fuller*, 205 Ill. 2d 308, 346 (2002) (addressing "only those additional contentions *** likely to be a factor on remand").

¶ 52 Without deciding the propriety of the specific arguments Collins challenges, we reiterate the impropriety of disparaging a defendant's exercise of his or her constitutional rights during closing argument. See *People v. Herrero*, 324 Ill. App. 3d 876, 887 (2001) (describing prosecutor's comment on defendant's exercise of his right to trial as "outrageous"); *People v. Herrett*, 137 Ill. 2d 195, 212-13 (1990) (describing prosecutor's comment on post-arrest silence as "exceed[ing] the bounds of fair comment").

¶ 53 We also decline to address Collins's ineffectiveness claim directed at counsel's alleged failure to request a negative inference instruction based on Hernandez's delay in turning on his body camera. Because we have found the hearsay statements in the body camera video inadmissible, it is unclear whether, and to what extent, the State will use the video on remand and whether counsel's strategic decisions will depend entirely on the use (or not) of the video.

¶ 54 Finally, as we said, Hernandez's testimony without the hearsay statements in the video appears at least "minimally sufficient" to support a conviction if believed by the factfinder, so there is no double jeopardy impediment to Collins's retrial. See *People v. Taylor*, 76 Ill. 2d 289, 309-10 (1979).

¶ 55 Reversed and remanded.

¶ 56 JUSTICE COGHLAN, dissenting:

¶ 57 I respectfully dissent from the majority's modified opinion upon denial of rehearing because, as the trial judge correctly held, body camera evidence is not hearsay. Rather, such evidence is admissible in "judicial *** proceeding[s]" under the unambiguous language of the Act.

50 ILCS 706/10-30 (West 2016). The evidence is also admissible as a properly authenticated "taped conversation or recording." (Internal quotation marks omitted.) *People v. Hughes*, 2013 IL App (1st) 110237, ¶ 65.

¶ 58 "The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *People v. McLure*, 218 Ill. 2d 375, 381 (2006). The "best evidence of legislative intent is the language of the statute." *Id.* at 382. When possible, the court should interpret a statute according to its plain and ordinary meaning. *People v. Donoho*, 204 Ill. 2d 159, 171 (2003). We do not look beyond the plain language of a statute to ascertain legislative intent unless the statute is ambiguous, meaning that it can "reasonably be interpreted in two different ways." *People v. Holloway*, 177 Ill. 2d 1, 8 (1997). "We will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent of the legislature." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 56.

¶ 59 The majority looks beyond the plain, unambiguous language of the Act and creates a limitation that conflicts with the intent of the legislature. On its face, the Act unambiguously allows officer body camera recordings, including both audio and visual footage, to be admitted in a judicial proceeding without any express limitation. The Act provides that "recordings" from officer-worn body cameras "may be used as evidence in any administrative, judicial, legislative, or disciplinary proceeding." 50 ILCS 706/10-30 (West 2016). The Act contemplates the admission of both audio and visual recordings, as it defines "officer-worn body camera" as "an electronic camera system for creating *** and processing *audiovisual* recordings that may be worn about the person of a law enforcement officer." (Emphasis added.) 50 ILCS 706/10-10 (West 2016).

Additionally, a "recording" is defined as the process of capturing data stored on a "recording medium," which includes the "playback of recorded *audio and video*." (Emphasis added.) *Id.*

¶ 60 Moreover, the majority's interpretation of the Act conflicts with its explicit purpose. The Act clearly provides that its purpose is to promote "trust and mutual respect between law enforcement agencies and the communities they protect" by "provid[ing] state-of-the-art evidence collection" as well as "impartial evidence and documentation to settle disputes and allegations of officer misconduct." 50 ILCS 706/10-5 (West 2016). Additionally, it seeks to "help collect evidence while improving transparency and accountability, and strengthening public trust." *Id.* It would therefore vitiate the clear purpose of the Act if we parsed through this "impartial evidence and documentation" and excluded any statements made therein if they meet the definition of hearsay (especially where the Act does not provide for such a limitation under its plain language). To do so would impermissibly rewrite the statute by reading into it a limitation that "conflicts with the expressed intent of the legislature" of "improving transparency and accountability." See *Gaffney*, 2012 IL 110012, ¶ 56.

¶ 61 It is well established that "[t]he legislature has the power to prescribe new rules of evidence and alter existing ones." See, *e.g.*, 725 ILCS 5/115-10 (West 2016) (creating a hearsay exception in a prosecution for a physical or sexual act perpetrated against a child under the age of 13 and those with intellectual, cognitive, or developmental disabilities); 750 ILCS 60/213.1 (West 2016) (establishing a hearsay exception in an action for an order of protection for a high-risk adult with disabilities under certain circumstances). "A statutory rule of evidence is effective unless in conflict with a rule or a decision of the Illinois Supreme Court." Ill. R. Evid. 101 (eff. Jan. 1, 2011)."[W]here an irreconcilable conflict exists between a legislative enactment and a rule of this

court on a matter within the court's authority, the rule will prevail." *People v. Peterson*, 2017 IL 120331, ¶ 31.

¶ 62 Our original opinion assumed that the Act allows for the admission of body camera recordings, subject to the hearsay rule; in effect, it implied that there is a conflict with an Illinois Supreme Court rule or decision where there is none. Our supreme court has not held that statements made in officer-worn body camera recordings are inadmissible hearsay or subject to a hearsay analysis under the Act. *Contra Peterson*, 2017 IL 120331, ¶¶ 31-34 (finding that a statute providing for a hearsay exception for intentional murder of a witness was in direct conflict with Illinois Supreme Court Rule 804(b)(5) (eff. Jan. 1, 2011) and therefore "the statute must give way to the rule"). Nor is there a Supreme Court rule that irreconcilably conflicts with the Act. See, *e.g.*, *People v. Solis*, 221 Ill. App. 3d 750, 751-53 (1991) (holding that a statute that deemed written results of blood alcohol tests admissible as evidence under the business record exception did not conflict with Illinois Supreme Court rule prohibiting the admission of such records); *In re Estate of Crawford*, 2019 IL App (1st) 182703, ¶ 36 (statutory rule of evidence under the Dead Man's Act (735 ILCS 5/8-201 (West 2016)) prohibiting admission of claimant's affidavit and handwritten log of alleged loans governed and was not subject to hearsay exceptions). Absent an Illinois Supreme Court rule or decision in direct conflict with the Act, we must, under the well-established rules of statutory construction, apply its unambiguous language. Under the clear terms of the Act, audiovisual recordings from police body cameras are admissible "as evidence in any administrative, judicial, legislative or disciplinary proceeding." 50 ILCS 706/10-30 (West 2016).

¶ 63 Even assuming *arguendo* that audio recordings are not admissible under the Act, the trial court correctly observed that this evidence is also admissible as "just a regular video of a crime

scene that was occurring at that point in time." As the author of the majority opinion in this case recognized in *Hughes*, 2013 IL App (1st) 110237, ¶ 65, "[w]hen introduced by the State, a video and transcript are not considered hearsay (Ill. R. Evid. 802(d) (eff. Jan. 1, 2011)), and likened to in-court testimony."[1] The majority distinguishes *People v. Theis*, 2011 IL App (2d) 091080, and *People v. Griffin*, 375 Ill. App. 3d 564 (2007), because "the relevant statements in each were admissible under an exception to the hearsay rule." *Supra* ¶ 40. However, in both cases, this court directly relied on the rule that "a taped conversation or recording, which is otherwise competent, material and relevant is admissible so long as it is authenticated and shown to be reliable through proper foundation" in holding that the relevant statements were not hearsay. See *Griffin*, 375 Ill. App. 3d at 570-71; see also *Theis*, 2011 IL App (2d) 091080, ¶ 32. Similarly, here, the body camera evidence was properly admitted because it is not hearsay.

¶ 64 For the foregoing reasons, the properly admitted evidence introduced at trial supports the defendant's convictions beyond a reasonable doubt. I would affirm the defendant's convictions for unlawful possession of a weapon by a felon and armed habitual criminal.

[1]Quoting, with approval, *People v. Theis*, 2011 IL App (2d) 091080, ¶ 32, the *Hughes* majority also recognized that, " 'It is well established that a taped conversation or recording, which is otherwise competent, material and relevant, is admissible so long as it is authenticated and shown to be reliable through proper foundation. [Citation.] A taped conversation is not hearsay; rather, it is a "mechanical eavesdropper with an identity of its own, separate and apart from the voices recorded." ' [Citation.]." Hughes, 2013 IL App (1st) 110237, ¶ 65.

No. 1-18-1746

Cite as:	*People v. Collins*, 2020 IL App (1st) 181746
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 18-CR-825; the Hon. Charles P. Burns, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Patricia Mysza, and Samuel B. Steinberg, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg, Annette Collins, Joseph Alexander, and Mikah Soliunas, Assistant State's Attorneys, of counsel), for the People.

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
V)
JODON COLLINS)
Defendant

CASE NUMBER 18CR0082501
DATE OF BIRTH 03/16/92
DATE OF ARREST 12/16/17
IR NUMBER 1969474 SID NUMBER 010327531

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows

Count	Statutory Citation	Offense	Sentence	Class
001	720-5/24-1 7(A)	ARMED HABITUAL CRIMINAL	YRS 007 MOS 06	X
	and said sentence shall run concurrent with count(s) ___ ___ ___ ___			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on			

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8)

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0202 days as of the date of this order
Defendant is ordered to serve 0003 years Mandatory Supervised Release

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____ _____ _____ _____
AND consecutive to the sentence imposed under case number(s)
_____ _____ _____ _____ _____

IT IS FURTHER ORDERED THAT CT 4 MERGES INTO CT 1
M/S NOLLE CTS 2-3, 10-11
MITT TO ISSUE

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled

JUDGE CHARLES P BURNS
JUL 05 2018
DOROTHY BROWN CIRCUIT COURT CLERK OF COOK COUNTY IL
PUT A SEAL

DATED JULY 05, 2018 ENTER 07/05/18
CERTIFIED BY K MCCLAIN
DEPUTY CLERK
VERIFIED BY _____

JUDGE BURNS CHARLES P 1780

CCG N305

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
vs)
)
JODON COLLINS)

No 18 CR 825
Judge C BURNS

NOTICE OF APPEAL

An Appeal is taken from the Order of judgment described below

Appellant s Name	JODON COLLINS
Appellant's Address	6033 South Michigan, Chicago IL 60637
Appellant s Attorney	State Appellate Defender
	203 North LaSalle Street 24th Flr
	Chicago Illinois 60601

Offense ARMED HABITUAL CRIMINAL, UNLAWFUL USE OF A WEAPON BY A FELON
Judgment Finding of Guilt
Date of Judgment or Sentence May 16, 2018 Judgement, July 5, 2018 Sentenced, Mot to Reconsider Sentence Denied

Jodon Collins
Appellant (or Attorney)

VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT DEFENDANT

Under Supreme Court Rules 605 608 Appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings file the original with the Clerk, and deliver a copy to the Appellant, order the Clerk to prepare the Record of Appeal, and to appoint counsel on appeal

Appellant, being duly sworn says that at the time of his conviction, he was and is unable to pay for the Record to retain counsel for appeal

Jodon Collins
Appellant

SUBSCRIBED and SWORN TO THIS _____ day of _____ 2014

_____
Notary Public

ORDER

IT IS ORDERED THAT THE STATE APPELLATE DEFENDER is appointed as counsel on appeal and that the Common Law Record and Report of Proceedings be furnished to Appellant, without cost, ~~within 45~~ days of receipt of this Order. Dates to be transcribed 5/15/18, 5/16/18, 7/5/18

ENTER _____
Judge

ORDER DATE _____

TABLE OF CONTENTS OF RECORD ON APPEAL

People v. Collins, No. 18 CR 82501 (Cook County)

Common Law Record

Supplement to the Record

Secured Record

Reports of Proceedings: Hearings

Reports of Proceedings: Witnesses

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 18, 2022, the foregoing **Brief and Appendix of Plaintiff-Appellant 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 automatically served notice on counsel at the email address below:

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Samuel B. Steinberg
Assistant Appellate Defender
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First Judicial District
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/s/ Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General