No. 120011

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, Cross-Appellee -vs- WILLIS REESE Defendant-Appellee, Cross-Appellant	Appeal from the Appellate Court of Illinois, No. 1-12-0654. There on appeal from the Circuit Court of Cook County, Illinois , No. 07 CR 8683. Honorable Kenneth J. Wadas, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLEE/CROSS-APPELLANT (CROSS-RELIEF ISSUES)

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II. The State failed to prove Willis Reese guilty of vehicular invasion because there was no evidence that he entered the parked shuttle bus by force, an essential element of the offense. (Cross-Relief Requested)

The State concedes that Reese did not use violence to enter through the open bus doors. (St. Reply Br. at 19) Yet the State argues that he still entered by force because, upon entry, he threatened the driver with a shank upon entry (St. Reply Br. at 18–19). The State asserts that because Reese made this threat "virtually contemporaneously" with his entry, he committed vehicular invasion. (St. Reply Br. at 20)

However, a threat of force does not satisfy the element of the use of force. The legislature knows the difference between the use and threat of

force and employs those terms separately or together in various statutes. *Compare* 720 ILCS 5/12-11.1(a) (vehicular invasion requires entry "by force") *with, e.g.*, 720 ILCS 5/18-1(a) (West 2013) (robbery requires taking property "by the use of force or by threatening the imminent use of force"), 720 ILCS 5/18-3(a) (West 2013) (vehicular hijacking requires taking a vehicle "by the use of force or by threatening the imminent use of force"), 720 ILCS 5/12-15(a)(1) (a person commits criminal sexual abuse by committing sexual conduct "by the use of force or threat of force"). When a statute enumerates certain things, "there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words or limitation." *Burke v. Rothschild's Liquor Mart*, 148 Ill. 2d 429, 442 (1992). The State's reliance on the "virtually contemporaneous" threat to the bus driver to satisfy the force element in vehicular invasion therefore fails.

The only remaining evidence the State can identify to satisfy the element of entering "by force" is that Reese fought with Rimmer after Rimmer drove the bus a short distance around the parking lot. This force was not used to make an entry; the entry was complete. Instead, this force was used in response to Rimmer throwing trying to hold him on the bus until police arrived.

After driving around a turn, Rimmer locked the breaks in an attempt to throw Reese off balance. (R. QQQ125) Rimmer then grabbed Reese and fought with him. (R. QQQ125–26) Thus, only after Reese completed his entry and the Rimmer drove the bus, slammed on the breaks, and attempted to

detain Reese, did Reese use any force.

The State compares vehicular invasion to robbery, arguing that because force used during an escape with stolen goods can relate back to the taking of the item, so too can force used inside a vehicle relate back to the entry into that vehicle. (St. Reply Br. at 22–23) Relatedly, the State suggests Reese's comparison to *People v. Bargo*, 64 Ill. App. 3d 1011 (1st Dist. 1978), and *People v. Currie*, 84 Ill. App. 3d 1056 (1st Dist. 1980), are too dissimilar. (St. Reply Br. at 17–18) The State is incorrect for three reasons.

First, the State discounts Reese's cited authority because "neither *Currie* nor *Bargo* involved the vehicular invasion statute." (St. Reply Br. at 18) This distinction applies equally to the robbery cases upon which the State relies.

Second, Reese's comparisons address elements identical to the one in question regarding vehicular invasion: whether an *entry* was made by force. They held that entry by subterfuge (*Bargo*) or through a partially open door (*Currie*) are not entries by force. (Def. Br. at 32) The State asks this Court instead to compare to cases examining whether a *taking* was committed by force. A comparison to an identical element is more apt than a comparison to a different element.

Third, as argued in Reese's original cross-appeal argument, an escape effectuates a successful taking, so force used to escape with stolen property is viewed as part of the taking. In contrast, vehicular invasion requires force to effectuate the entry. An escape obviously is not part of an entry; indeed, a

getaway is the opposite of an entry. In addition, Reese's subsequent use of force here responded to an attempt to detain him within the bus rather than an attempt to thwart his entry. The State offers no response to this distinction.

The robbery cases cited by the State highlight this distinction. While the taking and force need not be simultaneous, "the necessary force or threat of force must be used as a means of taking the property from the victim." *People v. Lewis*, 165 Ill. 2d 305, 339 (1995); *accord People v. Aguilar*, 286 Ill. App. 3d 493, 498 (1st Dist. 1998) ("the defendant must use force or the threat of force as a means of taking the property from the victim"). In *Lewis*, the force that caused death allowed the defendant to then take an item, constituting robbery—a taking by means of force. *Lewis*, 165 Ill. 2d at 316, 338–40. Here, Reese's force was not a means of entry into the bus.

The facts of several of the other cases cited by the State likewise reveal force as a means to obtain or attempt to obtain property. *See, e.g., People v. Robinson*, 206 Ill. App. 3d 1046, 1048 (1st Dist. 1990) (defendant beat and struck the victim demanding money); *People v. Brown*, 76 Ill. App. 3d 362, 369-70 (1st Dist. 1966) (defendant struck the victim when the victim awoke and tried to recover his items; "the force was integral to the taking"); *People v. Merchant*, 361 Ill. App. 3d 69, 73 (1st Dist. 2005) (the force occurred "in the context of a struggle for possession of the victim's property"); *People v. Collins*, 366 Ill. App. 3d 885, 897 (1st Dist. 2006) ("a rational trier of fact could conclude the struggle was over possession of [the victim's] money");

People v. Brooks, 202 Ill. App. 3d 164, 168–70 (1st Dist. 1990) (defendant took a wallet; when the victim demanded its return, the defendant pushed her and escaped with her wallet). (St. Reply Br. at 22–23). Because force subsequent to a taking can effectuate and complete that taking, but force subsequent to an entry cannot change the nature of that entry, comparing forceful takings to forceful entries misses the mark.

Another crime with an element of "entry" modified by another term includes burglary, which requires an unlawful entry with the intent to commit a felony or theft therein. 720 ILCS 5/19-1(a) (West 2016) When a person forms an intent to steal only after completing the entry, this intent does not relate back to the entry and no burglary based on improper entry is committed. *People v. Perruquet*, 173 Ill. App. 3d 1054, 1061–63 (5th Dist. 1988). Here too, the force used after Rimmer drove, stopped, and fought with Reese does not change the nature of the entry.

Notably, the legislature also criminalizes as burglary an alternative method: unlawfully remaining inside a property with the intent to commit a theft or felony. 720 ILCS 5/19-1(a); *People v. Boone*, 217 Ill. App. 3d 532, 533 (3d Dist. 1991) (a "criminal intent formed after a lawful entry will satisfy the offense of burglary by unlawfully remaining"). The legislature has not added a similar method of vehicular invasion based upon remaining within a vehicle by force, from which one can infer that the entry itself must satisfy the force element. *See Burke,* 148 Ill. 2d at 442 ("there is an inference that all omissions should be understood as exclusions, despite the lack of any

negative words or limitation.")

Reese entered the bus in the same manner as any other passenger—through an open door. The legislature defined vehicular invasion as entering by force. What a person does after entering a public conveyance may be the proper basis for various charges, but not vehicular invasion. Because entry by force is an essential element of vehicular invasion, Reese did not commit this offense.

III. As the appellate court found, Willis Reese was deprived of due process where he was shackled during jury selection without the trial court articulating any reasons establishing a manifest need for restraints. This error was not harmless beyond a reasonable doubt. (Cross-Relief Requested)

The State concedes that, as the appellate court found, the trial court erred by shackling Reese without providing any justification. (St. Reply Br. At 33); *People v. Boose*, 66 Ill. 2d 261 (1977). The State only argues that the error did not prejudice Reese. Nowhere does the State argue that the error was harmless beyond a reasonable doubt, as required to affirm Reese's convictions. *Deck v. Missouri*, 544 U.S. 622, 634 (2005); *Chapman v. California* 386 U.S. 18, 24 (1976). The burden is the State's.

A. The trial court erred by failing to exercise its discretion when ruling on Reese's objection to being shackled, instead deferring to correctional officers even when the court agreed that Reese did not need shackles.

Prior to conceding error, the State argues that shackling was appropriate and that it can be inferred that the trial judge thought so. (St. Reply Br. At 25–33) This ignores the judge's own statements agreeing with

Reese, deferring to the sheriffs, and then removing the shackles the following day:

- "I will leave it at their discretion." (R. PPP5)
- "You are preaching to the choir." (R. PPP5)
- "All you have to do is talk to the men in charge. If you can convince those three men that you don't need leg shackles, you don't have to have them on." (R. PPP5)
- "That's up to the Illinois Department of Corrections." (R. PPP10)

The State also asserts that Reese was a flight risk and that the judge, while failing to state so for the record, believed this as well. (St. Reply Br. at 35, 37) The judge, of course, affirmatively believed Reese was not a flight risk: "You are preaching to the choir." (R. PPP5) Additionally, if the judge believed Reese was a flight risk, he would not have left the decision to the deputies. This undermines the State's attempt to distinguish *People v. Bennett*, 281 Ill. App. 3d 814 (1st Dist. 1996), on the ground that there was no reason to shackle the defendant there. (St. Reply Br. at 35)

B. The State cannot show that this due process violation is harmless beyond a reasonable doubt.

The State never addresses prejudice under the proper standard of whether the constitutional error was harmless beyond a reasonable doubt. Shackles are inherently prejudicial and cause negative effects that cannot always be shown from a trial transcript. *Deck*, 544 U.S. at 634. Yet here, the transcript provides further evidence of harm.

While the jury does not need to be aware of the shackles for there to be reversible error, *People v. Allen*, 222 Ill. 2d 340, 348 (2006), here, the jury

could hear the shackles if Reese moved his legs and they were visible to jurors sitting next to Reese's table during jury selection. (R. PPP4, PPP59) Understandably, Reese said, "I'm a human being so [moving my legs] is a big possibility," and that he "cannot work under these conditions."(R. PPP5, PPP11)

The State argues that because Reese appeared at various pre-trial hearings and argued certain pre-trial motions in leg shackles without complaint, the shackles could not have inhibited him during trial. (St. Reply Br. 34) This overlooks the need for Reese to concentrate on not moving his legs for fear that the jury would hear his shackles. This distracting concern was not present in pre-trial hearings.

The State incorrectly suggests that Reese "was not shackled during trial," or during the "actual trial," and therefore could suffer no prejudice. (St. Reply Br. at 33, 38). This is absurd. Jury selection is a critical stage of trial. *People v. Bean*, 137 Ill. 2d 65, 84 (1990); *People v. Lovejoy*, 235 Ill. 2d 97, 151 (2009); (Def. Br. at 41). *Cf. People v. Evans*, 2016 IL App (1st) 142190 (denial of a public trial only during *voir dire* still requires reversal and a new trial). Moreover, the concerns that the State suggests are absent because this was "only" jury selection are those of being prejudiced *in the eyes of the jury*, who, of course, are present during selection. (St. Reply Br. at 33–34)

The State erroneously claims that, aside from Juror McSorely, "no other venirepersons saw defendant's shackles." (St. Reply Br. at 34) This is both unimportant and mistaken. It is unimportant because *Boose* applies

equally to visible and hidden restraints. *Allen*, 222 Ill. 2d at 347. It is mistaken because one of only two jurors questioned about the shackles saw them. (R. PPP57, 59) This 50-percent rate does not mean no other juror saw them, but rather that it was possible for any venire member and eventual juror to see them. Additionally, the judge agreed that jurors could hear the shackles if Reese so much as moved his legs. (R. PPP4)

The State cites *United States. v. Van Chase*, 137 F.3d 579 (8th Cir. 1998), and *United States v. Mejia*, 559 F.3d 1113 (9th Cir. 2009), in support of its argument of a lack of prejudice. *Van Chase*, however, did not involve shackling during trial, but rather a juror inadvertently seeing the defendant in restraints in an elevator while in the custody of officers. This has nothing to do with shackling during trial, and presented an issue where the defendant needed to show prejudice rather than the government showing that the officer's mistake was harmless beyond a reasonable doubt. *Van Chase*, 137 F.3d at 583. Restraints in that context do not suggest that the defendant is a danger to the courtroom, but rather that he could not post bond, *id*., and do not restrict a defendant's ability to assist his defense during trial.

In *Mejia*, the trial court had properly concluded that physical restraints were justified and the defendant failed to raise his concerns at the time of jury selection. *Mejia*, 559 F.3d at 1117. Moreover, the court explained that the federal standard requires the jury to be aware of the restraints, and the trial court found that the jury could not see them. *Id*. Here, the record

shows that the jury could both see and hear the restraints, and Reese objected at the time and in his post-trial motion. (C. 206; R. PPP4–11) Further, Illinois provides greater protection: invisible restraints are as harmful as visible, and the failure to follow *Boose* procedures is itself a constitutional violation subject. *Allen*, 222 Ill. 2d at 346–47, 349.

Lastly, the State argues that Reese suffered no prejudice because the evidence was not close. (St. Reply Br. at 35–37) The State suggests that Reese's necessity defense is irrelevant because the jury rejected it. (St. Reply Br. at 37) Yet the standard is not whether a defense was successful at the infected trial; if it was, there would be no need for appeal. The standard is whether the State can show the error was harmless beyond a reasonable doubt in light of all the evidence.

The State rejects the suggestion that the jury had to weigh the evidence of whether, even under its preferred interpretation of the hijacking statute, Rimmer ever relinquished control of the vehicle where he used the bus itself to throw Reese of balance and try to restrain him, asserting that this was not argued at trial. (St. Reply Br. at 37) Yet it is the State's duty to prove every element of a crime beyond a reasonable doubt, regardless of the defense evidence. If forced control amounts to a "taking," as the State argues, the State bore the burden of proving that Rimmer ceded effective control to Reese.

The State does not respond to Reese's argument regarding the closeness of the vehicular invasion count: that, even under the State's and

appellate court's view that force subsequent to an entry modify that entry, the jury needed to weigh whether there was a sufficient break in time and deed between his entry and the force used after Rimmer drove the bus, locked the breaks, and tried to restrain Reese. (Def. Br. at 46)

The State has not argued that "no fair-minded jury could reasonably have voted to acquit the defendant." *People v. Carlson*, 92 Ill. 2d 440, 449 (1982). Instead, it appears to argue that because Reese was found guilty by this jury, the constitutional error could not have harmed him. Because the trial court violated Reese's right to due process by allowing sheriffs to shackle him during a portion of trial even where the judge thought Reese should be unbound, and because the State cannot show that this was harmless beyond a reasonable doubt, the trial court committed reversible error.

Often where a trial court fails to comply with *Boose* before requiring shackles, reviewing courts will remand for a retrospective *Boose* hearing during which the trial court could consider appropriate factors and make a record of whether shackling was or was not needed. *See People v. Williams*, 2016 Ill. App. 3d 130901, ¶¶ 32–33. Here, no such hearing is necessary or appropriate. The trial court is on record agreeing with Reese that he did not need to be shackled. Reese also conducted the remainder of trial without shackles and without incident, conclusively establishing that shackles were not necessary. (R. QQQ3) This Court should therefore reverse and remand for a new trial on any counts that were sufficiently proven. *Boose*, 66 Ill. 2d at 269.

IV. The State introduced excessive and irrelevant details to the jury regarding Reese's prior conviction—including extra charges of which he was acquitted, that he had several fitness evaluations, and that he lost on appeal, among other prejudicial information—the documentation of which the court provided to the jury during deliberations, and argued additional irrelevant and damaging facts that were not proven during trial, requiring reversal and remand as plain error. (Cross-Relief Requested)

The State's argument ignores precedent cited by Reese, misconstrues his testimony, and presumes a judge's words, recorded in a certified transcript, were simply a misstatement, and that it is the defendant's burden to establish that what the judge ordered actually occurred.

A. Where the trial judge stated that the certified copy of conviction would be provided to the jury during its deliberations, it was the State's burden to impeach the record to show that it was not sent back.

"Right. The Grand Jury Transcript doesn't go back, everything else does." (R. TTT114) The State asks this Court to presume that the judge's order was a misstatement or was not followed because it came in response to the prosecutor's tentative suggestion that, "I believe we were going to send back all our exhibits except for the Grand Jury transcript and the certified copy." (St. Reply Br. at 42–43) The prosecutor's uncertain statement of what the State planned to send to the jury does not alter the court's decisive order. The State overlooks that the trial court, not the prosecutor, has the discretion to provide or withhold documentary evidence from the jury during deliberations. *People v. Williams*, 97 Ill. 2d 252, 291 (1983). A functioning judicial system requires litigants to presume judges say what they mean and that their orders are implemented.

It is the State, not Reese, who seeks to impeach the record and establish that the evidence the judge allowed in the jury room was in fact not provided. The State did not correct the court at the time. *See People v. Kliner*, 185 Ill. 2d 81, 168 (1998) (party's failure to object in trial court may demonstrate accuracy of the record). Thus, the record must be accepted as true, "unless shown to be otherwise and corrected in a manner permitted by this rule." Ill. Sup. Ct. R. 329. The State has taken no steps to show otherwise, yet now attempts to cover its mistake by shifting this burden to Reese. Because the record supports Reese's argument, it is not his burden to have it changed. He does not need to take any extraordinary steps to further verify the accuracy of the record because accuracy is presumed.

B. The certified copy of conviction contained irrelevant and prejudicial surplusage.

Reese never argued that his prior murder conviction was not relevant for motive. (St. Reply Br. at 44). Instead, he argued that the excessive details provided to the jury were both irrelevant and prejudicial regarding both motive and impeachment. (Def. Br. at 53–54) Aside from arguing that the certified copy was not sent to the jury, the State does not defend the facts contained in that document as being relevant for any purpose.

The State does not argue that being charged with 26 counts of murder—without the jury knowing there was a single victim—was relevant or harmless.

The State does not argue that being charged with attempt aggravated kidnaping—a crime for which he was acquitted, but the jury was not told of

this acquittal—was relevant or harmless.

The State does not argue that guilty verdicts on seven counts of murder—again, for a single victim, unknown to the jury—were relevant or harmless.

The State does not argue that behavior, fitness, and psychiatric examinations were relevant or harmless.

The State cannot and does not argue that events after Reese's escape were relevant. Yet the jury learned that he was subsequently sentenced to life in prison, that his conviction was affirmed on appeal, and that he filed a post-conviction petition that the court denied.

The State's silence on these matters simply emphasizes both the error and prejudice. Details of a prior conviction are only admissible if relevant to the sanctioned purpose of the prior offense. *People v. Grayer*, 106 Ill. App. 3d 324, 329 (1st Dist. 1982). The facts above lacked any relevance regarding Reese's motive or credibility.

C. The State improperly insinuated additional facts in the wording of its questions, some of which were inaccurate, and inserted prejudicial facts not in evidence during closing argument.

The only improper fact that the State attempts to defend is that his murder conviction included a finding that he personally discharged a firearm that caused the decedent's death. The State does not argue that the prosecutor's repeated and inaccurate references to multiple other charges, including murders, were proper. Rather, the State speculates that the jury would have figured out that the prosecutor simply mis-spoke several times.

(St. Reply Br. at 45)

Regarding the firearm finding, the State claims that Reese admitted this verdict during his testimony. (St. Reply Br. at 40, 45). As detailed in Reese's opening brief, the prosecutor repeatedly asked him about this finding, but Reese challenged this assertion and denied recalling this verdict each time. (Def. Br. at 56–57); (R. SSS150–52). The State highlights one of Reese's responses as in fact confirming the firearm finding: "Oh yeah. When they did that, when they did that." (St. Reply Br. at 45), quoting (R. SSS150–51). This response is a challenge to the prosecutor, asking for detail about when the jury found that he used a firearm. This is evident from his repeated denials and the prosecutor continuing to attempt to elicit the firearm fact even after this response. (R. SSS151–52)

After assuming that Reese testified about the firearm finding, the State ignores *People v. Emerson*, 97 Ill. 2d 487, 497 (1983), and *People v. Rodriguez*, 134 Ill. App. 3d 582, 590-91 (1st. Dist. 1985), cited by Reese to show that reversible error occurs when a prosecutor argues unproven facts to the jury in closing. (Def. Br. at 58)

The State argues that the firearm verdict was relevant to show his motive to escape. (C. 40, 45) The State does not explain why the *basis* for his potential life sentence was relevant, rather than simply the sentence he faced for murder. See *People v. Villarreal*, 198 Ill. 2d 209, 232–33 (2001) (evidence is probative if it makes any fact of consequence more or less probable); (Def. Br. at 57–58). A motive to escape from a long sentence is no more or less

probable depending on the basis for that long sentence.

The State also suggests that Reese cannot complain about any details of his murder conviction reaching the jury because he occasioned their introduction by presenting a necessity defense, making his motive relevant. (St. Reply Br. at 39-40) However, Reese is not complaining about the fact of his conviction and the long sentence he faced, which the Judge warned him could be introduced, but rather the excessive and irrelevant details that exceeded the scope of the prior conviction's admissibility for motive and impeachment. *See Grayer*, 106 Ill. App. 3d at 329.

D. The erroneous evidence and arguments regarding Reese's prior conviction constitute plain error.

The State suggests that the certified copy of conviction could not have harmed Reese even if it was sent to the jury because it contained "acronymic notations regarding the proceedings" that a jury would not understand. (St. Reply Br. at 44) The certified copy in fact include such full, prejudicial terms as "murder," "kill," "psychiatric exam," "aggravated kidnaping," and "life imprisonment," among others. (People's Ex. 52)

The State tries to distinguish *People v. Davidson*, 235 Ill. App. 3d 605, 613 (1st Dist. 1992), *People v. Dudley*, 217 Ill. App. 3d 230, 232–34 (5th Dist. 1991), and *People v. Johnson*, 208 Ill. 2d 53, 84–85 (2004), simply because those cases involve significant errors in closely balanced cases. (St. Reply Br. at 46) This is no distinction at all: the errors here were significant and the case close. The State does not explain why the errors there were greater or the evidence closer.

The series of errors relating to Reese's prior conviction provided the jury with far too much irrelevant and prejudicial information and was achieved at least in part through prosecutorial overreach. This prejudicial excess deprived Reese of a fair trial. Reese argued both prongs of plain error analysis in his original argument for cross-relief. (Def. Br. at 59–62) This Court should find plain error and reverse and remand for a new trial.

V. Willis Reese's pre-trial waiver of counsel was invalid because the trial court failed to comply with Supreme Court Rule 401(a) by not informing him that any sentence in this case would be consecutive to his sentence for a prior conviction. (Cross-Relief Requested)

The State seems to suggest that a failure to substantially comply with Rule 401(a) does not amount to plain error. (St. Reply Br. at 46–47) This is contrary to established law. *People v. Black*, 2011 IL App (5th) 080089, ¶24 (collecting cases).

The only dispute is whether the court failed to substantially comply by not informing Reese that his sentence in this case would be consecutive to his prior murder sentence. For this, The State offers two arguments. First, such an admonishment is not necessary because 401(a) only requires information about the penalty in this case, not other cases; and second, the omission did not prejudice Reese's because it is impossible to serve a term of years consecutive to life.

First, Rule 401(a) speaks to other offenses. It requires a court to inform a defendant of the "maximum" term, including "the penalty to which the

defendant may be subjected because of prior convictions or consecutive sentences." Ill. Sup. Ct. R. 401(a). That a sentence in the current case would be consecutive to the sentence for a prior conviction touches all three of these elements: it affects the maximum, it involves a prior conviction, and it involves consecutive sentencing.

The State claims that this manner of serving a sentence is not part of the penalty for the current case. (St. Reply Br. at 49) However, the consecutive nature would be entered on the sentencing order in the current case to notify the department of corrections of how to calculate the term. *E.g. People v. Goodwin*, 381 Ill. App. 3d 927, 929–30 (4th Dist. 2008). The State's narrow reading of the rule would allow courts to elide this significant sentencing consideration and encourage courts to accept less-than-knowing waivers of counsel by omitting important factors covered by the rule.

Regarding the State's second argument, whether a sentence is consecutive to life sentence can affect ones understanding of the possible penalties. Reese was in the process of appealing his sentence as excessive at the time of his waiver of counsel in the instant matter. *See People v. Willis Reese*, No. 1-07-1681 (1st Dist. Aug. 7, 2009) (Rule 23 order). Additionally, he was 17-year-old at the time of the murder and may yet have the opportunity to be re-sentenced to a term of years, considering the recent trend in juvenile sentencing matters.

More fundamentally, it is improper to inquire into prejudice where the court failed to substantially comply with Rule 401(a). This Court's precedent

indicates that if a judge fails to substantially comply, no further showing is required and the convictions obtained following the invalid waiver must be reversed. *See People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 173–94 (Ellis, J. dissenting); (Def. Br. at 65–66). Because the court failed to substantially comply with Rule 401(a) by not informing Reese that his sentence would be consecutive to his previously imposed term, this Court should reverse and remand for a new trial. *See People v. Koch*, 232 Ill. App. 3d 923, 926–28 (4th Dist. 1993).

VI (One-Act, One-Crime); VII (Improper Extended Terms).

The State agrees with the defendant regarding these two issues. (St. Br. at 51–53.

CONCLUSION

For the foregoing reasons, Willis Reese, defendant-appellee, respectfully requests that this Court:

1) reverse his conviction for aggravated vehicular hijacking pursuant to Argument I; and

2) reverse his conviction for vehicular invasion pursuant to Argument II; and

3) reverse any counts of conviction proven beyond a reasonable doubt and remand for a new trial on those counts pursuant to Arguments III, IV, and V;

or, alternatively,

4) vacate his conviction for vehicular invasion as a one-act, one-crime violation pursuant to Argument VI, if this Court finds both counts proven beyond a reasonable doubt, and

5) reduce his sentences for any affirmed convictions, except for those among the most serious classification of his felony convictions, to the maximum non-extended terms pursuant to Argument VII.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, David T. Harris, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is 20 pages.

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NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;

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Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Reply Brief in the above-entitled cause was submitted to the Clerk of the above Court for filing on March 13, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel, and mailed one copy to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Reply Brief will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Moses Kim
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