THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. 130946

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. TYRELL COOPER, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, Fourth District, No. 4-24-0589 There on Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 2024 CF 244 The Honorable Frank R. Fuhr, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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TABLE OF CONTENTS

ARGUMENT

Defendant was not entitled to release after the People proved by clear and convincing evidence that he posed a danger to the community at a hearing held, at most, hours after the statutory deadline — where defense counsel failed to object that the hearing would be late.

Defendant argues that the People have forfeited their alternative argument that the circuit court correctly held that the hearing was timely. Def. Br. 9-10. This Court need not address the issue because defendant plainly loses on the issue that the parties briefed in the appellate court and that was the focus of the People's PLA: the statutory timing requirement is directory, not mandatory, so defendant is not entitled to a remedy. *See infra* Section I.

Even if this Court were to disagree and find that the statute is mandatory, it should nevertheless affirm the circuit court's judgment based on the People's alternative argument that the hearing was timely. *See infra* Section II. In the further alternative, this Court should find that defendant's failure to invoke the 48-hour requirement as a shield to ensure a timely hearing prevents his use of it as a sword to demand his release. *See infra* Section III.

Finally, although the case is not yet moot, if it were to become moot before this Court renders its decision, the Court should nevertheless decide

these important questions pursuant to the public interest exception to mootness. *See infra* Section IV.

I. Even if the Detention Hearing Was Late, Defendant Was Not Entitled to Release Because the Timing Requirement Is Directory and Defendant Was Not Prejudiced.

This Court should resolve the dispute among the appellate court justices below about whether the 48-hour requirement set forth in the statute is mandatory or directory, *compare* A5-6, ¶¶ 14-16 (majority opinion), *with* A8-10, ¶¶ 24-30 (Doherty, J., dissenting), hold that the timing requirement is directory, and reverse the court's judgment.

Contrary to defendant's argument, that the statute is directory does not mean that a court must "forgiv[e] all violations however lengthy." Def. Br. 13. Rather, when a statutory requirement is directory, a defendant may obtain relief, but only if he demonstrates that a violation of the statute prejudiced him. *People v. Ziobro*, 242 Ill. 2d 34, 45-46 (2011). Defendant does not (and cannot) argue that he was prejudiced by the brief delay in holding the detention hearing. Therefore, because the statute is directory and because defendant has not alleged, much less demonstrated, prejudice, he was not entitled to a remedy even if the hearing was late.

A. A directory construction would not generally injure the rights protected by the pretrial detention statute.

As explained, the statute's 48-hour requirement is presumed to be directory, and the lack of a specific remedy for a violation confirms the General Assembly's directory intent. Peo. Br. 18 (citing *People v. Delvillar*,

235 Ill. 2d 507, 517 (2009)). Defendant agrees: "section 110-6.1(c)(2) does not explicitly outline negative consequences for its violation." Def. Br. 11. Nevertheless, defendant argues, the time limit should be construed as mandatory because "noncompliance with the statute would generally injure those in custody following an arrest." *Id*. at 13. Not so.

To be sure, a statute may be construed as mandatory "when the right the provision is designed to protect would generally be injured under a directory reading," *Delvillar*, 235 Ill. 2d at 517, but defendant misapplies the standard. Specifically, the Court "must first identify the right that the statute was designed to protect," *id.*, and defendant is incorrect that the only interest to be considered in construing the statute's timing requirement is his own liberty interest, *see* Def. Br. 13. Indeed, defendant's narrow focus on his interest ignores the overarching statutory context — contrary to principles of statutory construction. *E.g.*, *People v. Clark*, 2024 IL 130364, ¶ 15 ("When interpreting a statute, a court must view all provisions of an enactment as a whole, taking care not to isolate words and phrases but reading them in light of other relevant provisions of the statute." (internal quotations omitted)); *People v. Casler*, 2020 IL 125117, ¶ 24 ("A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation."); *Corbett v. Cnty. of Lake*, 2017 IL 121536, ¶ 27 ("the words and phrases in a statute must be construed in light of the

statute as a whole, with each provision construed in connection with every other section" (internal quotations omitted)).

This Court thus considers the purpose (or purposes) behind a statute as a whole in evaluating whether a particular component of the statute is mandatory or directory. *Lakewood Nursing & Rehab. Ctr. LLC v. Dep't of Pub. Health*, 2019 IL 124019, ¶¶ 18-24 (beginning analysis with "statutory overview"; "[w]e begin by considering the nature and purpose of the Act as a general guide to the intent of the legislature in adopting particular language or provisions"). The Act sets forth a detailed scheme that balances the interests of defendants and the community, and the General Assembly stressed *both* interests, stating that the Act's provisions

> shall be liberally construed to effectuate the purpose of relying on pretrial release by nonmonetary means to reasonably ensure an eligible person's appearance in court, the protection of the safety of any other person or the community, that the person will not attempt or obstruct the criminal justice process, and the person's compliance with all conditions of release, while authorizing the court, upon motion of a prosecutor, to order pretrial detention of the person under Section 110-6.1 when it finds clear and convincing evidence that no condition or combination of conditions can reasonably ensure the effectuation of these goals.

725 ILCS 5/110-2(e).

Contrary to defendant's claim, *Lakewood Nursing* does not stand for the proposition that *only* defendant's interest is at stake, such that this Court cannot consider the community's interest in safety when construing the timing provision. *See* Def. Br. 13-14. There, this Court considered whether a

10-day deadline for holding an administrative hearing was directory. 2019 IL 124019, ¶ 52. A nursing home argued that the time limit should be viewed as mandatory because its property rights were injured by having to house a resident in the interim, but this Court found that the home's interests were not relevant when construing the statutory scheme. *Id.*, ¶¶ 42-44. Instead, the Court observed, the timing requirement was "designed to protect a nursing home resident's right to a hearing and decision by the Department before an involuntary transfer or discharge from the facility may be effectuated," not the nursing home's property rights. *Id.*, ¶ 40; *see also In re M.I.*, 2013 IL 113776, ¶ 24 (considering whether 60-day limit for hearing on extended juvenile jurisdiction (EJJ) was mandatory and stating "the right to be protected here is the right of a minor respondent to receive a hearing before being subject to an EJJ proceeding and a stayed adult sentence" (cleaned up)). And, with the right at issue so defined, this Court found that the right would not generally be injured if the 10-day time limit were violated, deeming the time limit directory. *Lakewood Nursing & Rehab. Ctr.*, 2019 IL 124019, ¶¶ 40, 52.

Lakewood Nursing supports the People's construction by making clear that it is the overarching purposes of the statute that guide the mandatory-directory analysis. Here, this Court must frame the rights at issue by considering the dual statutory purposes articulated by the General Assembly. As explained, the Act is designed to ensure that a defendant receives a

prompt and comprehensive hearing on pretrial detention while *also* protecting the safety of the community against those who pose a danger. *See* 725 ILCS 5/110-2(e). It is defendant's preferred reading of the timing requirement as mandatory — requiring his release despite the circuit court's conclusion that such release could not be accomplished safely — rather than a directory reading that upsets the interests advanced by the overall statutory scheme.

Construing the timing requirement as mandatory would undermine the safety of the community and provide an artificial barrier to the circuit court's consideration of a request for pretrial detention on the merits. It would require the circuit court to release a defendant even where, as here, the People proved by clear and convincing evidence that he posed a danger to the community. That result would be absurd and would undermine the stated purposes of the Act, so this Court should reject it. *See Clark*, 2024 IL 130364, ¶ 26 (rejecting interpretation of pretrial detention statute that would lead to "absurd result" and undermine other provisions of Act).

B. That other deadlines in the pretrial detention context are directory confirms the General Assembly's directory intent.

Notably, other deadlines in the pretrial detention context are directory, which further confirms that the 48-hour requirement at issue here is likewise directory. *See* Peo. Br. 19-20.

For example, the Illinois Appellate Court has held that the 72-hour requirement that governs hearings on petitions to revoke pretrial release is directory. *People v. Green*, 2024 IL App (1st) 240211, ¶ 21. Defendant does not dispute that *Green* reached the correct result. Instead, he contends that "[t]he State's analogy to the revocation-of-release statute[ ] . . . is comparing apples to oranges" because the latter provision "contains language of flexibility concerning the deadline." Def. Br. 15. To the contrary, the 72-hour-requirement states that "[t]he defendant shall be transferred to the court before which the previous matter is pending without unnecessary delay, and the revocation hearing shall occur within 72 hours of the filing of the State's petition." 725 ILCS 5/110-6(a). That is, the requirement states that the hearing *shall* occur within 72 hours, and the only "flexibility" provided concerns the timing of a defendant's transfer to the court. As with the 48-hour timing requirement, the failure of a court to comply with the 72-hour deadline is a clear violation of the statute. But the lack of flexibility does not answer the separate question of what consequences ensue from a violation. *See Ziobro*, 242 Ill. 2d at 45-46 ("Once a violation has been established, the court must determine the consequence of such violation.").

Green answers that question. In *Green*, the 72-hour requirement was violated, and the issue was whether that requirement was mandatory. The appellate court's analysis of that question is persuasive, and the same logic dictates that the 48-hour requirement for continued detention hearings is

also directory. Importantly, like the statutory provision at issue here, the revocation-of-release statute specifies no consequence for a violation. *Green*, 2024 IL App (1st) 240211, ¶ 20. And the appellate court rejected a similar argument to defendant's that the timing requirement was mandatory because the right protected would generally be injured by a directory reading. *Id.*, ¶ 21. The *Green* court correctly defined the rights at issue:

> [S]ection 110-6(a) is designed to protect victims and the community from defendants who are alleged to have committed felonies or Class A misdemeanors while on pretrial release and to provide prompt hearings to determine whether revocation is warranted. Although the Code contemplates that such hearings should be held expeditiously, in particular because a defendant may be held in custody pending the revocation hearing (see 725 ILCS 5/110-6(a) (West 2022)), a strict mandatory construction of the 72-hour requirement does not achieve the purpose of the statute to determine whether revocation of previously granted pretrial release is warranted.

Id.

The same result should obtain for the 48-hour timing requirement that governs continued initial pretrial detention hearings. "[S]ections of the same statute should be considered so that each section can be construed with every other part or section of the statute to produce a harmonious whole." *Bd. of Educ. of City of Chi. v. Moore*, 2021 IL 125785, ¶ 40. For at least two reasons, it would make little sense for the General Assembly to single out the 48-hour requirement as mandatory while allowing flexibility for other deadlines in the pretrial detention context. First, these provisions share the same dual purposes. All of the timing requirements are part of the same Act whose

overarching goal is to ensure both that defendants entitled to release be released from custody, and that those who satisfy the substantive criteria for detention continue to be detained. Second, none of the provisions setting deadlines identify a specific consequence for a violation. Accordingly, the 48-hour requirement should be construed as directory, just like the 72-hour requirement addressed in *Green*.

C. A directory construction avoids infringing on courts' authority to set their own schedules.

If there were any lingering doubt as to whether the 48-hour timing requirement is mandatory or directory, then this Court should further consider that a mandatory construction would infringe on courts' authority over matters of scheduling and administration, potentially violating constitutional separation of powers principles. *See* Peo. Br. 22 n.4.

"'Where matters of judicial procedure are at issue,'" the legislature is limited to "'enact[ing] laws that complement the authority of the judiciary or that have only a peripheral effect on court administration.'" *People v. Mayfield*, 2023 IL 128092, ¶ 30 (quoting *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997)). If a statute pertaining to judicial procedure appears to conflict with a rule of the judiciary, this Court will seek to reconcile the legislation with the judicial rule, if reasonably possible. *Id.*

Defendant contends that the People have identified "no actual conflict," Def. Br. 9, calling the separation of powers issue a "chimera," *id.*, but the People's opening brief identified at least three instances in which circuit

courts have attempted to exercise their authority to set their own schedules in ways that would likely conflict with a mandatory reading of the 48-hour requirement. The Champaign County Circuit Court issued an administrative order, providing that weekend days do not count. A50. The Rock Island County Circuit Court implicitly applied a similar rule when it found that defendant's Monday afternoon hearing was timely. A34. And the same circuit court, under review in *People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, delayed a detention hearing because the court was closed for the Christmas holiday, which led the appellate court to invalidate the resulting detention order and require release, revealing that the circuit court's effort to exercise its authority in that case came into direct conflict with the statutory time limit.

These circuit courts have exercised an authority expressly delegated them by the Illinois Constitution: to "provide for . . . appropriate times and places of court." Ill. Const. 1970, art. VI, § 7(c); *Mayfield*, 2023 IL 128092, ¶ 28. The General Assembly cannot override circuit courts on such matters of judicial procedure. But it is reasonably possible to reconcile the statutory requirement that a hearing be conducted within 48 hours with judicial scheduling authority by construing the statutory time limit as directory, rather than mandatory. *See Mayfield*, 2023 IL 128092, ¶ 30 (where, as here, "a statute conflicts with a rule of the judiciary, a court will seek to reconcile the legislation with the judicial rule, if reasonably possible").

II. The Circuit Court Correctly Determined That the Hearing Was Held Within the Requisite 48 Hours.

Even if it were mandatory to hold the hearing within 48 hours, the People's opening brief also established that the circuit court correctly held that it did so. Peo. Br. 9-17. Defendant's arguments that this Court should decline to address this issue, Def. Br. 9-10, and that the hearing was late, *id.* at 5-10, lack merit.

A. This Court should determine whether an error occurred before granting a remedy.

This Court should reject defendant's request that it decline to review the correctness of the circuit court's ruling due to omissions or concessions by the People. Def. Br. 9-10. To be sure, the People did not raise an argument that the hearing was timely in their appellate memorandum or PLA. But neither omission bars this Court's review. *See* Peo. Br. 9-10.

Defendant stresses the general rule that an issue omitted from a PLA is forfeited, Def. Br. 10, but he overlooks the equally well-established principle that "review of an issue not specifically mentioned in a petition for leave to appeal will be appropriate when that issue is 'inextricably intertwined' with other matters properly before the court," *In re Rolandis G.*, 232 Ill. 2d 13, 37-38 (2008) (quoting *Hanson v. Baxter Healthcare Corp.*, 198 Ill. 2d 420, 430 (2002)). This Court has correctly observed that the questions of whether an error occurred and whether that error should be remedied are

inextricably intertwined. *Id.* Thus, this Court should address the issue despite its omission from the PLA.

Nor is the People's argument that no error occurred inconsistent with its argument in the PLA — and Section I of this brief — that a violation of the 48-hour requirement does not entitle defendant to a remedy. *See* Def. Br. 10 (claiming that People "present[ ] a contradictory position to the one used to obtain this Court's review"). While this is a new argument for reversing the appellate court, it is not inconsistent with the People's position in the PLA that if one accepted the premise urged by defendant that the circuit court had violated the 48-hour limit, that would not provide a basis for relief. And the Court would be well served to address the argument because defendant's premise is mistaken, and it would be odd, indeed, to grant relief where no error has occurred.

Indeed, addressing this issue is necessary to maintain a sound body of law. Parties cannot waive or forfeit the correct meaning of a statute because that meaning does not vary from one case to the next. *See JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462 (2010). Even if the People relied on an incorrect interpretation of the Act in the proceedings below, this Court's analysis *must* be guided by the statute as it is written. Accordingly, this Court should address the issue to provide necessary guidance and ensure the Act is applied properly in future cases.

B. No error occurred.

And the hearing was timely. The Statute on Statutes, which governs the calculation of such deadlines, dictates that "[t]he time within which any act provided by law is to be done shall be computed by excluding the first day." 5 ILCS 70/1.11. Thus, Saturday — as "the first day" — should be excluded from the calculation in defendant's case, so the pretrial detention hearing on Monday afternoon was held within 48 hours.[1]

Courts depart from the Statute on Statutes only if application of its rule "would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute." 5 ILCS 70/1. Defendant cannot demonstrate either is the case here. He objects that "[t]his outcome would thwart the legislature's specific purpose in ensuring a quick hearing," Def. Br. 7, but applying the time calculation rule as directed would delay detention hearings by, at most, mere hours. Indeed, this case demonstrates the fallacy of defendant's position, as the circuit court provided defendant with the quick hearing that the legislature envisioned despite holding the hearing at 1:30 p.m. rather than 11:00 a.m.

Defendant observes that "[d]ozens of other statutes across a broad range of subjects set deadlines in terms of hours," and that "[a]ccepting the

[1] The People agree with defendant that if the "first day" is not excluded, then the hearing was not timely under the Statute on Statutes because the deadline would have lapsed on Monday morning. *See* Def. Br. 9 (noting that alternative argument raised in footnote in People's brief, Peo. Br. 13 n.3, appeared to be premised on a "miscalculation").

State's argument would have widespread consequences." *Id.* Perhaps in some cases the Statute on Statutes' timing rule "would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute." 5 ILCS 70/1. But the sole issue before this Court is whether applying the ordinary rule would violate the intent expressed in *this* statute, and it would not.

Defendant cites no authority for the proposition that time periods expressed in hours are not subject to the Statute on Statutes. Nor should this Court adopt such a rule. Notably, holding that *any* short time period *must* be calculated without reference to the Statute on Statutes, as defendant requests, Def. Br. 7-8, would have adverse consequences. For example, defendant cites a provision of the elections code with a 48-hour requirement, 10 ILCS 5/1-9.2, but the Board of Elections has enacted an administrative rule governing the computation of time:

> Computation of any period of time expressed in days and prescribed by this Part shall begin with the first day following the day on which the act or event initiating the period of time occurs, and shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday or State legal holiday. Computations of any period of time expressed in hours and prescribed by this Part shall begin 60 minutes after the act or event initiating the period of time occurs, and shall run until the end of the last 60-minute period; provided, however, that all 60-minute periods falling within a Saturday, Sunday or State legal holiday shall be excluded in computing the period of time.

26 Ill. Admin. Code. § 125.50. Other agencies have provided similar rules for computing time, largely modelled on the Statute on Statutes. *See* 35 Ill.

Admin. Code § 101.300 (providing, in context of environmental protection, that "[c]omputation of any period . . . will begin with the first calendar day following the day on which the act, event, or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday, or national or State legal holiday"); 56 Ill. Admin. Code § 5300.20 (providing, in interpreting Illinois Human Rights Act, that "[w]hen the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal State holidays shall be excluded from the computation"). If defendant were correct that a time limit expressed in hours must be calculated without regard to weekends or holidays, it would call into question the many agency interpretations that have allowed for greater flexibility.

The Statute on Statutes, by its terms, applies unless there is a clear conflict, and there is none. Not only has defendant failed to identify a conflict, but the Act's structure also suggests it intended to rely on the Statute on Statutes for such procedural details. For example, the Act does not specify whether weekends and holidays are to be excluded from the time calculation, a topic addressed by the Statute on Statutes. Accordingly, applying the Statute on Statutes does not conflict with the General Assembly's clear intent.

III. Defendant Forfeited any Claim That He Is Entitled to Release Based on the Timing of the Hearing Because He Failed to Make a Contemporaneous Objection.

Finally, defendant forfeited any error in the timing of the hearing by failing to object that a hearing on Monday afternoon would fall outside of the 48 hours required by the statute. Peo. Br. 22-24.

Defendant fails to address the People's analogy to the Speedy Trial Act. *See* Def. Br. 17 (dismissing People's forfeiture argument as "without basis" while addressing none of the People's cited cases). Like the Speedy Trial Act, the 48-hour time limit is intended to function as a shield to protect a defendant's right to a timely hearing, not a sword to strike down an otherwise valid pre-trial detention order. *See* Peo. Br. 23. In the Speedy Trial Act context, a "defendant [is] obligated to object" when the trial court proposes to schedule a trial on a date that falls outside of the speedy trial period. *People v. Cordell*, 223 Ill. 2d 380, 390 (2006). As this Court has held — and contrary to defendant's argument that he preserved his objection by requesting an immediate hearing, Def. Br. 17 — a *general* demand for immediate trial does not preserve an objection that a specific trial date falls outside of the speedy-trial window. *Cordell*, 223 Ill. 2d at 391. Instead, a defendant must specifically object that a proposed trial date would run afoul of the Speedy Trial Act. *Id.*

Accordingly, here, defendant was obligated to object when the circuit court discussed scheduling the detention hearing at 1:30 p.m. — just outside

the 48-hourt window, according to defendant — and thereby use the 48-hour period as a "shield" to ensure a prompt hearing, *id*. at 390. Instead, he failed to alert the circuit court to its alleged timing error when it could have easily been rectified, and now attempts to use the purported violation as a "sword" to obtain release. *Id.* And defendant does not claim that his forfeiture should be excused, so this Court should enforce the forfeiture. *See People v. Hillier*, 237 Ill. 2d 539, 545 (2010) (declining to consider whether error amounted to plain error where defendant failed to raise the issue).

Therefore, even if this Court were to conclude both that the 48-hour requirement was violated in this case and that the requirement is mandatory, it should nevertheless deny relief to defendant and reverse the appellate court's judgment.

IV. If This Case Becomes Moot, This Court Should Review the Issues Presented Under the Public Interest Exception.

After the People's PLA was allowed, defendant pleaded guilty and is now awaiting sentencing. Def. Br. 4 n.2. When sentencing occurs, defendant will no longer be subject to pretrial detention, and this case will become moot. *See In re Shelby R.*, 2013 IL 114994, ¶ 15 ("An appeal is moot if no controversy exists or if events have occurred which foreclose the reviewing court from granting effectual relief to the complaining party.").

If the case becomes moot, this Court should review the issues presented under the public interest exception to mootness, which "permits review of an otherwise moot question where the 'magnitude or immediacy of

the interests involved warrant[s] action by the court.'" *Id.* ¶ 16 (quoting *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007)). Three criteria must be met to apply the exception: "(1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *Id.* Here, the questions of what steps are necessary to preserve an objection to a purportedly late detention hearing, how the 48-hour period is to be calculated, and whether a remedy is warranted for a violation of the 48-hour requirement are all important and recurring issues of a public nature, and on which obtaining an authoritative determination from this Court would be desirable.

CONCLUSION

This Court should reverse the appellate court's judgment and affirm the circuit court's judgment denying pretrial release.

February 3, 2025

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 19 pages.

/s/ Erin M. O'Connell
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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 February 3, 2025, the foregoing **Reply Brief 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 following e-mail address:

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