No. 127907

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- LATRON Y. CROSS, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0114. There on appeal from the Circuit Court of the Fifth Judicial Circuit, Vermilion County, Illinois, No. 17-CF-476. Honorable Nancy S. Fahey, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

This Court should reverse the appellate court majority and find that Latron Cross's speedy trial rights were violated as the trial court abused its discretion when it attributed 34 days of delay to Latron even though a trial date had been scheduled and Latron's supplemental discovery disclosure, made more than a month before the original trial date, did not cause any actual delay in the trial.

A. The appellate court majority misinterpreted this Court's longstanding precedents when it held that the trial court did not abuse its discretion by attributing 34 days of delay to Latron for filing a supplemental discovery disclosure that did not postpone the previously scheduled trial date. [Reply to State's Sections II.A.1.-3.]

The opening brief demonstrated how the appellate court majority misinterpreted this Court's precedents when it attributed 34 days of delay to Latron for an action taken *after* he had demanded a speedy trial and that did not cause an actual delay in trial. (Opening Br. 14-22).

As an initial matter, the State's cited authority does not support its assertion that because Latron's supplemental discovery disclosure a month before trial "created more work for prosecutors" the trial court could attribute 34 days of delay to Latron. (St. Br. 10-11, Section II.A.1.). Each of the cases cited by the State recognized that a "delay" must actually take place, such as the undisputed and long established principles that a defense pre-trial motion or agreement to a continuance is a delay attributable to a defendant. (St. Br. 10-11); (Opening Br. 15-16); *People v. Cordell*, 223 Ill. 2d 380, 390-92 (2006) (finding defense counsel had agreed to continuances); *People v. Mayo*, 198 Ill. 2d 530, 537-39 (2002) (defense counsel requested a delay); *People v. Hall*, 194 Ill. 2d 305, 328 (2000) (defense motion is a delay attributable to a defendant); *People v. Donalson*, 64 Ill. 2d 536, 541-42 (1976) (defense motion to suppress evidence is a delay to attributable to defendant because a hearing had to be set). The opening brief previously explained why the State's and appellate

court majority's reliance on *People v. Murphy*, 47 Ill. App. 3d 278 (2d Dist. 1977) is misplaced. (Opening Br. 25); *People v. Cross*, 2021 IL App (4th) 190114, ¶100.

Next, the State appears to misunderstand Latron's argument as it makes several incorrect assertions to this Court about his argument and then proceeds to respond to those. (St. Br. 12-18, Section II.A.2.). Contrary to the State's two assertions, Latron does not argue that a trial court has no discretion to attribute delay to a defendant regardless of his conduct nor does he ignore the plain language of the Speedy Trial Act ("the Act"). (St. Br. 12-15). As Latron argued in his opening brief, this Court has long recognized the plain text of the Act requires that there be "delay occasioned by the defendant" in order to attribute a delay to the defendant. 725 ILCS 5/103-5(a) (2018); (Opening Br. 15-16). Latron has argued that in *this case*, *where defense counsel demanded a speedy trial*, a trial date was set, and it is undisputed his supplemental discovery disclosure more than a month before trial did not cause the trial to be delayed, the trial court abused its discretion by attributing 34 days of delay to him as a discovery sanction. (Opening Br. 15-22).

The opening brief expressly acknowledged that actions by a defendant that cause a delay or prevent a trial date being set, such as filing a pre-trial motion or agreeing to a continuance, would constitute a delay by the defendant. (Opening Br. 16). Nothing in Latron's argument asks this Court to overturn that precedent or hold that the trial court's setting of a trial date means no delay can ever be attributed to the defendant as long as the trial date remains unchanged. (Opening Br. 15-22); (St. Br. 12-14). The State incorrectly asserts that *Cordell* rejected Latron's argument as it involved defense counsel who had not expressly demanded a speedy trial, a situation in which delay is undisputedly attributed to the defendant, and

Latron does not argue otherwise. 223 Ill. 2d at 391-92; (St. Br. 13-14); (Opening Br. 15-22).

Accordingly, this Court should place no reliance on the State's Section II.A.3., which discusses a hypothetical that incorrectly describes Latron's argument. (St. Br. 18-20). Latron's position will not open a procedural loophole that obstructs justice as he simply asks this Court to affirm its long standing position that a dely attributable to the defendant must be an actual delay, whether that is evidenced by the movement of the trial date or by any other well established cause of delay, such as the defense filing a pre-trial motion. (St. Br. 18-20); (Opening Br. 15-22).

This Court should also reject the State's claim that Latron is asking this Court to attribute his delay to the State. (St. Br. 20). Delay was initially attributed to the State because defense counsel answered ready for trial and demanded a speedy trial on July 16, 2018, and the State was not ready. (R. 54-55). The 34 days of delay at issue in this case were originally attributed to the State because it was not ready, which only changed when the trial court abused its discretion and attributed those 34 days to Latron as a discovery sanction. (R. 54-55, 61-62).

This Court should also reject out of hand the State's speculative assertion its "good faith effort to be ready for trial" is being used to punish the State. (St. Br. 21). Nothing in the record suggests Latron's supplemental discovery disclosure played any role in the State answering not ready for trial on September 24, 2018. (R. 65-67). If the State was having difficulty preparing for trial because of the supplemental discovery disclosure, it could have availed itself of the statutory mechanism for such an occurrence and requested a continuance under 725 ILCS 5/103-5(c). (Opening Br. 20-21). The fallacy of the State's position is that if defense

counsel had made no supplemental discovery disclosure, the State still would not have answered ready for trial, but in such a case there would be no doubt the 34 days would have been attributed to the State.

Nor will Latron's position "sow confusion in the lower courts" because trial courts have been setting trial dates and moving them for decades without being confused. (St. Br. 22). While the specific circumstances of Latron's case are rather unique, the State ignores that this case ultimately comes down to that: (1) Latron demanded a speedy trial on July 16, 2018, (2) he continued his demand for a speedy trial until the trial took place, and (3) he took no action that caused the State to be incapable of going to trial on September 24th. (Opening Br. 15-22). That the trial court described the September 24th trial date, which had been requested by the State, as a "backup" date is irrelevant, as Latron had demanded a speedy trial and no action of his prevented the trial from starting on September 24th. (R. 54-55, 65-67). Ruling in Latron's favor in this situation, which is an everyday occurrence in Illinois courtrooms, will not confuse the lower courts.

The State relies on *Mayo* and *Hall* and adopts the erroneous reasoning of the appellate court majority when it asserts that reference to moving a trial date is not required to attribute delay to a defendant. (St. Br. 14-15); (Opening Br. 21, citing *People v. Cross*, 2021 IL App (4th) 190114, ¶¶ 85-86, 99, 108). Both *Mayo* and *Hall*, however, dealt with situations in which defense counsel agreed to a continuance, so that there was no doubt the delay was attributable to the defense. *Mayo*, 198 Ill. 2d at 236-38; *Hall*, 194 Ill. 2d at 327-28. Likewise, the State's assertion Latron relied only upon *dicta* in *People v. Kliner*, 185 Ill. 2d 81 (1998) and his other authorities ignores the issue in this case, which is that a delay has to actually

be "occasioned by the defendant," in whatever form that might take, in order to attribute delay to that defendant. (St. Br. 15); (Opening Br. 15-17). Nothing in *Mayo* and *Hall* contradicts Latron's argument and authorities, which mirrors the reasoning of the appellate court dissent, that none of the decisions of this Court support the conclusion that a delay can be attributed to Latron for filing a supplemental discovery disclosure *after* a trial date had been scheduled when the disclosure did not cause the State to be unprepared for the scheduled trial date of September 24th. (Opening Br. 16-17, 21, citing *Cross*, 2021 IL App (4th) 1901145, ¶¶ 153-55 (J. Cavanagh, dissenting)).

The State also adopts the appellate court majority's erroneous reasoning that *People v. Boyd*, 363 Ill. App. 3d 1027 (2d Dist. 2006) was wrongly decided because it contradicts *Cordell*. (St. Br. 17-18); *Cross*, 2021 IL App (4th) 190114, ¶¶ 104-09. The opening brief explains how the *Boyd* court properly interpreted this Court's precedents, especially when a defendant has demanded a speedy trial, a trial date has been set, and no action by the defendant caused the trial date to be moved. (Opening Br. 18-21).

This Court should find unpersuasive the State's attempt to distinguish Latron's authority of *People v. Ladd*, 185 Ill. 2d 602 (1999) and *People v. Lendabarker*, 215 Ill. App. 3d 540 (2d Dist. 1991). (St. Br. 16-17). The State asserts *Ladd* did not discuss moving the trial date, but only focused on the conduct of the parties. (St. Br. 16). This is the very issue in this case, however, as the conduct of defense counsel in filing the supplemental discovery disclosure in this case did not cause the State to be unable to go to trial on the scheduled date so there was no delay to attribute to Latron. (Opening Br. 19-21). The State asserts that in

Lendabarker the delay did not create more work for the State or change the substance of the trial. (St. Br. 16-17). But "create more work for the State" is not the standard by which a "delay occasioned by the defendant" is measured. (Opening Br. 15-16); *see Ladd*, 185 Ill. 2d at 608 ("Whether delay should be attributed to the defense depends on whether the defendant's actions *in fact* caused or contributed to a delay.") (emphasis added).

This Court has long recognized that because the Act enforces the constitutional right to a speedy trial its protections are to be liberally construed in favor of the defendant. *Ladd*, 185 Ill. 2d at 607 (citing *People v. Beyah*, 67 Ill. 2d 423, 427 (1977)). Given this Court's clear precedent that delay is attributable to the defendant only if there is an actual delay in the scheduled trial date or a delay in the ability to schedule a trial date, and there was no such delay in this case, this Court should reverse the appellate court majority's decision that the trial court did not abuse its discretion

B. This Court's rules governing discovery do not support the trial court's decision to attribute 34 days of delay to Latron for filing his supplemental discovery disclosure when the State never sought to delay the trial and never explained how it was prejudiced by the supplemental disclosure. [Reply to State's Section III.]

The opening brief detailed how the appellate court majority was incorrect that the "final catchall phrase" of Illinois Supreme Court Rule 415(g)(i) offered any support for its decision and that the trial court had no basis to rely upon the rule when attributing 34 days of delay to Latron. (Opening Br. 22-26); *People v. Cross*, 2021 IL App (4th) 190114, ¶ 100. The State is incorrect when it asserts the trial court "did not rely upon discovery rules when attributing the 34-day delay to [Latron]." (St. Br. 27). It is undisputed that while the State did not cite any

legal authority when asking for the 34-day delay it argued delay should be attributable to Latron because of "his late disclosure." (SUP4 C. 4-5). Likewise, it is undisputed the trial court attributed 34 days of delay because of the late disclosure, stating that "it's something that appears to the Court could have been known, or should have been disclosed, or should have been told to [defense counsel] a long time before August of this year." (R. 62). Given that the trial court attributed delay to Latron solely because it believed his supplemental discovery disclosure was late, it is clear the trial court relied upon the discovery rules.

Next, the State incorrectly asserts that "[Latron] primarily contends that he cannot be sanctioned under Rule 415 . . . because he did not violate Rule 413(d)(iii)." (St. Br. 28). Latron's primary argument is that assuming, *arguendo*, there was a discovery violation, attributing a 34-day delay to Latron was an inappropriate sanction under Rule 415(g) given the long established law that sanctions for discovery violations are to further the purpose of the discovery rules and not to punish. (Opening Br. 23-25). The State does not directly respond to Latron's arguments or authority that the State's failure to request a change in the trial date, or in any way explain how the discovery disclosure on August 21st made it incapable of going to trial on September 24th, demonstrated the sanction was punishment and not in furtherance of the discovery rules or ensuring a fair trial. (Opening Br. 23-25); (St. Br. 30-32).

Thus, the State is incorrect that counsel misstated the record when he demonstrated the State never claimed it was disadvantaged by the defense's supplemental discovery disclosure as it only generically asserted that "[i]t will be necessary for the State to investigate all information provided by the defense."

(Opening Br. 24, citing SUP4 C. 4, ¶ 5; R. 59-62, 65-67); (St. Br. 30). The State's insistence the disclosure "created more work for prosecutors" is irrelevant as the purpose of a sanction is to cure an actual disadvantage suffered by a party. (St. Br. 11-12, 17, 30); *People v. Tally*, 2014 IL App (5th) 120349, ¶ 30; *see also People v. Turner*, 367 Ill. App. 3d 490, 501 (2d Dist. 2006) ("When a violation is a failure to disclose information in a timely fashion, a recess or a continuance is the preferred sanction, as it protects the injured party from the consequences of surprise or prejudice."). Nor is it relevant defense counsel told the State more witnesses and statements would be forthcoming as no additional alibi information was disclosed, and the disclosed alibi witness declined to speak with a detective on September 7th. (St. Br. 11-12, 30); (SUP4 C. 4; R. 281-82, 443). On August 21st, the day of the supplemental discovery disclosure, more than a month before the September 24th trial date, the State possessed a report of the alibi witness's interview with a defense investigator, which was all the information Latron planned to use at trial. (C. 97; R. 281-83).

This meant the "more work" created was to prepare a cross-examination of Latron's alibi witness as the defense supplemental discovery disclosure did not change the State's case in chief as it still needed to present evidence Latron was responsible for the shooting. *See People v. Houser*, 305 Ill. App. 3d 384, 392-93 (4th Dist. 1999) (explaining that the late disclosure of a necessity affirmative defense did not alter the State's case as the testimony of the State's witnesses did not depend upon that defense when deciding to reverse the trial court's exclusion of the necessity defense as a discovery sanction). As in *Houser*, none of the State's witnesses testifying in its case in chief depended upon Latron's alibi defense. (R. 218-23,

224-36, 236-41, 242-48, 248-54, 256-67, 267-71, 287-301, 303-09, 309-32, 333-56, 360-79, 382-83, 390-400).

The State is also incorrect when it relies on *Tally* to assert that the 34 days of delay attributed to Latron was the same as a continuance. (St. Br. 31). The State's position is that a discovery violation *requires* a sanction, as it claims Latron should be happy 34 days of delay were attributed to him instead of the more serious sanction of excluding the alibi evidence. (St. Br. 31-32). Counsel could not find any Illinois decision that upheld the exclusion of a defendant's affirmative defense for disclosing that defense more than a month before trial. More to the point, the State's position ignores the long established principle that discovery sanctions must have a purpose, not just be used to punish a defendant for the sake of punishment. (Opening Br. 23-25).

In *Tally*, defense counsel disclosed a new affirmative defense and witnesses on the morning of trial and requested a continuance of trial; the trial court instead excluded the affirmative defense as a discovery sanction when the State insisted it could not go to trial that day if the defense was allowed. 2014 IL App (5th) 120349, ¶¶ 4-9, 38. The appellate court reversed, explaining the exclusion of the defense was unnecessary when the defense suggested a continuance and there was no evidence to suggest deliberate misrepresentations by defense counsel. *Id.* at ¶¶ 38-39. *Tally* demonstrates that a continuance is preferred to cure a harm by a late disclosure, but in that case the State articulated it could not go to trial that day because it had no time to prepare for the new information and witnesses. *Id.* at ¶5. The State made no such claim in this case, making only a general assertion it would need to investigate the newly disclosed information, and did not request

to change the September 24th trial date or suggest it would not be ready for trial in one month. (SUP4 C. 4, ¶ 5; R. 59-62, 65-67).

As for whether a discovery violation even occurred, the State first asserts that Latron violated a trial court order so he could be sanctioned at any time because defense counsel did not disclose the alibi witness within 30 days of the State filing its pre-trial discovery motion on July 26, 2017. (St. Br. 28-29); (C. 34-35; R. 17-18). This ignores that the trial court expressly invoked the parties' continuing duty to disclose when it issued the discovery order. (R. 17-18). It also ignores that defense counsel timely disclosed the alibi defense and witness once he learned of and investigated it, which was consistent with his ongoing duty to disclose under Rule 413(d) and the trial court's order. (C. 97-98; R. 17-18, 54, 61); (Opening Br. 22-23). The State's assertion Latron sought to "game the system" because he did not speak with defense counsel earlier about the alibi witness has no support in the record. (St. Br. 29); (Opening Br. 22-23). Moreover, the State's position would require defense counsel to have fully interviewed Latron, fully investigate the case, and commit to his trial strategy, including affirmative defenses, within 30 days of the preliminary hearing, which was *before* the State submitted 16 of its supplemental discovery disclosures, or face a discovery sanction at a later time for violating the trial court's order if additional information happened to come to light that would assist Latron's defense. (St. Br. 28); (C. 56, 62, 65, 68, 72, 77-78, 80, 84-85, 88, 91, 100, 103, 106, 110, 112). This is inconsistent with established Illinois law. (Opening Br. 23-25).

Accordingly, Rule 415(g)(i) does not support the trial court's sanction, because the State never sought a delay in trial or explained how Latron's supplemental

discovery disclosure prevented it from being prepared for trial. Moreover, no authority supports the appellate court majority's suggestion that Rule 415(g)(i) may provide support for its decision as attributing 34 days of delay to Latron did not further the purpose of the discovery rules

C. Defense counsel's failure to include this issue in his motion for new trial does not preclude review by this Court as Latron's right to a speedy trial is a fundamental right and defense counsel provided ineffective assistance of counsel by failing to preserve Latron's right to a speedy trial. [Reply to State's Sections I., II.B., and IV.]

The opening brief explained that there is no bar to this Court's review of this issue as it should review for plain error or, in the alternative, review the issue as ineffective assistance of counsel. (Opening Br. 26-30). In its Section I., the State relies on this Court's decision in *People v. Cordell*, 223 Ill. 2d 380 (2006) to assert Latron is barred from arguing his speedy trial rights were violated because defense counsel agreed to a trial date of November 6, 2018, which was past the October 26, 2018 deadline for him to receive a speedy trial. (St. Br. 7-9).

The State has forfeited this argument as it acknowledges it did not raise the argument in the appellate court. (St. Br. 9, fn. 4). "The rules of forfeiture in criminal proceedings are applicable to the State as well as to the defendant." *People v. Artis*, 232 Ill. 2d 156, 177-78 (2009). By failing to raise this argument in the appellate court, the State has forfeited the argument by not properly preserving it for review. *See People v. Lucas*, 231 Ill. 2d 169, 175 (2008); *see also People v. Ringland*, 2017 IL 119484, ¶¶ 2, 36-37 (declining to consider the State's alternative argument against the suppression of evidence because the State did not make any such argument in the trial and appellate courts). Its reliance on *Artis* is misplaced as this Court actually stated, "[i]t is well settled that where the appellate

court *reverses* the judgment of the trial court, and *the appellee in that court brings the case to this court as appellant*, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if the issues were not raised before the appellate court." 232 Ill. 2d at 164 (citing *Gallagher v. Lenart*, 226 Ill.2d 208, 232 (2007)) (emphasis added). As the State acknowledges, it was the appellee in the appellate court and is again before this Court, which is not the "well settled" situation referenced in *Artis*. (St. Br. 9, fn. 4).

Even if this Court entertains the State's argument, *Cordell* found that the defendant never objected at all to the delays in trial because counsel made a general request for trial, not a speedy trial, *before* the trial court proposed a date that was outside of the 120-day statutory deadline. 223 Ill. 2d at 382-84, 391-92. No such acquiescence by defense counsel occurred in this case as counsel expressly demanded a speedy trial on July 16, 2018, and objected to the trial court attributing 34 days of delay to Latron from August 21st to September 24th. (R. 54, 60-62). On September 24th, counsel acknowledged the trial court's previous ruling and again demanded speedy trial. (R. 65). When rescheduling the trial date for November 6th, the trial court noted the defense objected to the continuance of trial. (R. 65-66). Moreover, unlike in *Cordell*, where the only issue was whether defense counsel had objected to a delay of trial, here the issue is whether *the trial court* erred when it attributed 34 days of delay to Latron once he filed a supplemental discovery disclosure. 223 Ill. 2d at 382-84, 391. Defense counsel agreed to the November 6th trial date only because of the trial court's previous decision to attribute those 34 days of delay to Latron. (R. 65). Nothing in *Cordell* suggests that once defense counsel requested a speedy trial he was required to object to the trial court's decision

to attribute 34 days of delay to Latron each time the parties returned to court – September 24th, November 2nd, and November 6th – in order for this Court to properly consider this issue. *Id.* at 390-92.

Even if there were such a requirement, defense counsel's failure to repeat his objection further supports Latron's argument that this Court should review the issue for ineffective assistance of counsel. (Opening Br. 27-29). The State does not directly respond to Latron's authority, including this Court's decision in *People v. Staten*, 159 Ill. 2d 419 (1994), which establish that defense counsel's failure to protect Latron's speedy trial rights was ineffective assistance of counsel. (St. Br. 32-33; Opening Br. 27-29).

Instead, it asserts counsel was not ineffective because he agreed to the November 6th trial date and Latron's speedy trial claim is meritless. (St. Br. 32). As discussed in the opening brief and in this section of the reply brief, defense counsel's agreement to the November 6th trial date does not prevent this Court from granting Latron relief on his meritorious claim. (Opening. Br. 14-18). For the first time in the litigation of this case, the State argues, without citation to any authority, that Latron was not prejudiced because had defense counsel objected to the November 6th trial date, the parties merely would have rescheduled the trial to an earlier date. (St. Br. 32-33); *see* (St. App. Ct. Br. at 2-7); (Def. App. Ct. Br. at 22-25) (certified copies of appellate court briefs have been filed with this Court pursuant to Rule 318(c)). This speculative assertion assumes, however, that the trial court could have accommodated an earlier trial date *and* that the State would have been ready for trial on an earlier date. Moreover, the State could not cite authority for its speculative assertion as counsel's failure to protect Latron's

right to a speedy trial and have the charges dismissed on those grounds is inherently prejudicial. *People v. Mooney*, 2019 IL App (3d) 150607, ¶ 27 (finding that counsel's deficient performance of agreeing to toll the speedy trial clock prejudiced the defendant); *see also Staten*, 159 Ill. 2d at 426-27 ("Defendants who rely on the statutory right are not required to show prejudice resulting from the delay in trial or other factors that are part of the burden of establishing a violation of the constitutional right to a speedy trial.").

In regards to plain error, appellate counsel did not argue first-prong plain error because the focus of such review is the closeness of the evidence related to the alleged error; that is, "the closeness of sufficient evidence." *People v. Sebby*, 2017 IL 119445, ¶ 60 (citing *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007). Because the trial court's error in this case was not evidentiary, but involved Latron's speedy trial rights, only second-prong plain error review is applicable because his fundamental right to a speedy trial was violated. (St. Br. 23; Opening Br. 26).

This Court should reject the State's invitation to find statutory speedy trial claims are not subject to second-prong error review, which would have the effect of overruling the First, Third, Fourth, and Fifth Districts of the Appellate Court that have all found a forfeited error involving a defendant's statutory speedy trial rights is subject to second-prong plain error review because a speedy trial is a substantial fundamental right. (St. Br. 23-27); *People v. Mosley*, 2016 IL App (5th) 130223, ¶ 9; *People Smith*, 2016 IL App (3d) 140235, ¶ 10; *People v. McKinney*, 2011 IL App (1st) 100317, ¶ 29; *People v. Gay*, 376 Ill. App. 3d 796, 799 (4th Dist. 2007); *cf. People v. Staake*, 2017 IL 121755, ¶ 33. While this Court is not bound by the decisions of the Appellate Court, those cases were properly decided because

the Speedy Trial Act ("the Act") protects defendants from being stripped of their liberty for an endless period while awaiting trial, or from being denied due process of the law. *See People v. Cane*, 195 Ill. 2d 42, 46 (2001). "Under the second prong of plain-error review, prejudice to the defendant is presumed because of the significance of the right involved." *People v. Lewis*, 234 Ill. 2d 32, 47 (2009).

The State has also forfeited its argument that a statutory speedy trial violation is not subject to second-prong plain error review because it did not raise this argument in its brief before the Appellate Court even though Latron asserted the issue was subject to that review. *See* (St. App. Ct. Br. at 2-7); (Def. App. Ct. Br. at 22-23); *Lucas*, 231 Ill. 2d at 175. Nevertheless, the argument is without merit.

The State incorrectly asserts that reviewing Latron's claim for plain error would "eviscerate" this Court's holding in *Cordell*. (St. Br. 24-25).In *Cordell*, however, this Court expressly reviewed the alleged error in the context of a claim of ineffective assistance of counsel and found that no error had occurred because defense counsel had agreed to continuances. 223 Ill. 2d at 391-93. Nothing in *Cordell* suggests that reviewing the clear and obvious error in this case that included defense counsel consistently demanding a speedy trial would create a contradiction in this Court's jurisprudence. *Id.*; (Opening Br. 15-22).

While the State cites to *People v. Hunter*, 2013 IL 114100 and *People v. Gooden*, 189 Ill. 2d 209 (2000) for the undisputed proposition that the constitutional right and Illinois statutory right to a speedy trial are not coextensive, those decisions merely noted that distinction when articulating the precise issue they were deciding. (St. Br. 24); *Hunter*, 2013 IL 1134100, ¶ 9; *Gooden*, 189 Ill. 2d at 216. The State

gives no explanation for why not being coextensive means the statutory right to a speedy trial is not fundamental, especially as this Court has noted the statutory right addressed similar concerns to the constitutional right, *Hunter*, 2013 IL 114100, ¶ 9, and the statutory right is meant to implement the constitutional right to a speedy trial, *Gooden*, 189 Ill. 2d at 216-17. *See also People v. Sandoval*, 236 Ill. 2d 57, 67 (2010) ("We note, too, though they are not coextensive, Illinois' speedy-trial statutes implement a defendant's constitutional right to speedy trial.") (citing *Gooden*, 189 Ill. 2d at 216-17).

Finally, the State argues that because the Act was created by and can be modified by the Legislature, and a defendant must file a pretrial motion to dismiss to invoke his statutory right to a speedy trial, this error should not be subject to review for second-prong plain error. (St. Br. at 25-27). The State's reliance on *Staten* and *Sandoval* is misplaced as the defendants in those cases never made a speedy trial demand under the required statute. *Staten*, 159 Ill. 2d at 429-30; *Sandoval*, 236 Ill. 2d at 68-69. Those decisions say nothing to support the State's argument, especially since the Legislature itself enacted the 120-day limit and mandated dismissal of charges if that requirement was not met. 725 ILCS 5/103-5(d) (2018); 725 ILCS 5/114-1(a)(1) (2018); *People v. Woodrum*, 223 Ill. 2d 286, 299 (2006).

Filing a pretrial motion is merely the first step in preserving a speedy trial error for review. *See* 725 ILCS 5/114-1(a)(1);725 ILCS 5/103-5(a) (2018). The purpose of second-prong plain error review is to address issues which have not been preserved, but affect a fundamental right. *See Smith*, 2016 IL App (3d) 140235, ¶¶ 11, 21.

By the State's logic, the second prong of plain error would be obliterated any time trial counsel failed to take the first step of raising an issue in the trial court. (St. Br. 25-26). But if defense counsel failed to file a motion for a fitness hearing, for instance, errors related to a *bona fide* doubt as to the defendant's fitness are still reviewable under second-prong plain error. *People v. Sandham*, 174 Ill. 2d 379, 382-83 (1996). Moreover, the "requirement for a written post-trial motion is statutory, and the statute requires that a written motion for a new trial shall be filed by the defendant and that the motion for a new trial shall specify the grounds therefor." *People v. Enoch*, 122 Ill. 2d 176, 187 (1988); *see* 725 ILCS 5/116-1, 116-2 (2018). However, if counsel fails "to specify grounds for a new trial in writing in a motion for a new trial," then those errors may still be reviewable for plain error. *Enoch*, 122 Ill. 2d at 187. Ultimately, the State does not explain why a right which is required by statute to be asserted by a motion is not appropriate for plain error review. (St. Br. 25-27).

The holdings of the First, Third, Fourth, and Fifth Districts of the Appellate Court that speedy trial violations are subject to second-prong plain error review are correct because a fundamental right is at issue. *See Mosley*, 2016 IL App (5th) 130223, ¶ 9; *Smith*, 2016 IL App (3d) 140235, ¶ 10; *McKinney*, 2011 IL App (1st) 100317, ¶ 29; *Gay*, 376 Ill. App. 3d at 799. Therefore, Latron requests this Court find the violation of his right to a speedy trial reviewable under the second-prong of plain error. *See Smith*, 2016 IL App (3d) 140235, ¶¶ 10, 21; (Opening Br.26).

Ultimately, this case comes down to that Latron's trial began on November 6, 2018, which was past the 120-day speedy trial period. Defense counsel consistently demanded speedy trial for the 113 days from July 16, 2018, to the start of trial,

and 18 days had elapsed between Latron's arrest and his preliminary hearing, so that a total of 131 days attributable to the State had passed. (R. 14-15, 319-21). Accordingly, this Court should review the merits of this issue, reverse the appellate court, and order that Latron's conviction be reversed because he was not tried within the 120-day statutory period.

CONCLUSION

For the foregoing reasons, Latron Y. Cross, defendant-appellant, respectfully requests that this Court reverse the appellate court and order that his conviction be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 18 pages.

/s/Christopher G. Evers
CHRISTOPHER G. EVERS
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No. 127907

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- LATRON Y. CROSS, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0114. There on appeal from the Circuit Court of the Fifth Judicial Circuit, Vermilion County, Illinois, No. 17-CF-476. Honorable Nancy S. Fahey, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 5, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Carol M. Chatman
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