No. 129133

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- MICHAEL D. CHATMAN, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 4-21-0716. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 20-CF-156. Honorable Randall Rosenbaum, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

After a jury trial, Michael Chatman was convicted of first degree murder and sentenced to 55 years in prison. This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether the trial court erred in finding Dominique Collins to be an unavailable witness, where the State failed to make good-faith efforts to secure Collins's presence at trial as it failed to subpoena him, secure a warrant for him, or make other reasonable efforts to find him and whether this violation of Michael Chatman's confrontation right was harmless beyond a reasonable doubt.

RULE OF EVIDENCE INVOLVED

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant-

> (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
>
> (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
>
> (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
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> (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
>
> (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness (A) at another hearing of the same or a different proceeding, or in an evidence deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, or (B) in a discovery deposition as provided for in Supreme Court Rule 212(a)(5).

(2) Statement Under Belief of Impending Death. In a prosecution for homicide, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History.

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Forfeiture by Wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

STATEMENT OF FACTS

Shortly after midnight on March 23, 2018, Ricky Green was shot twice and killed in the Shadowwood Trailer Park neighborhood in Champaign. (C. 39-42) Shortly before his death, Green was in a car with Michael[1] Chatman, co-defendant Michael Simmons, and Kotia Fairman. (R. 1560-62) After the police followed their car in the neighborhood, Green, Chatman, and Simmons ran from their car. (R. 1563-66) Items tied to Chatman and Simmons were later found in the car. (R. 1087-1100) One of those items was a .357 magnum firearm, but it was not used to shoot Green. (SE #40-43)

From this incident, Chatman was initially charged with unlawful possession of a firearm by a felon and obstruction of justice; in August 2018, Chatman pleaded guilty and received probation. (Sup CI. 22-23; R. 1061-66, 1073-74) The State did not charge Chatman with Green's murder until 2020. (C. 39-42) This occurred after the State on December 30, 2019, secured a videotaped statement from Dominique "Dee" Collins, wherein Collins related to Detective Jeremiah Christian that Chatman had confessed to Collins shortly after the shooting. (R. 1454-58, 1501-07; SE #153)

A. Forfeiture by wrongdoing hearings

On October 15, 2020, the State filed a motion *in limine* asking to introduce statements made by Chatman to Collins, who the State allegedly could no longer locate. (C. 104-13) The motion alleged that on December 30, 2019, Collins was arrested on a warrant. Talking to the police, he said he had been with Chatman a few hours after Green's death when Chatman inculpated himself to Collins and Devonte McCormick (Collins's brother). Chatman said he

[1] Chatman's first name is actually spelled "Micheal" during portions of the trial proceedings, which is the correct spelling. (R. 1542) For consistency with the trial record caption, appellate counsel will use "Michael" throughout the brief when referencing his first name but will use "Chatman" otherwise.

and Simmons planned to rob Green of his gun and after they did, Chatman shot Green when he attempted to get it back. (C. 104-06)

As part of the motion, the State detailed jail phone calls from 2020 in which Chatman allegedly spoke about making sure Collins did not testify. (C. 105-10) On March 12, 2020, Collins met with a detective in Iowa and stated he had been receiving threatening text and social media messages from people associated with Chatman and Simmons. (C. 108) Collins purportedly moved to another state due to these threats. (C. 108) Chatman made more calls about having potential witnesses, including Collins, not come to court. (C. 109-10) On October 9, 2020, Detective Jeremiah Christian texted Collins at his phone number; the recipient responded that Christian had the wrong phone number. (C. 109) In later calls from jail, Chatman said he tried to get Collins to submit a recantation affidavit. (C. 110)

At the February 9, 2021 hearing on the State's motion, the State introduced Chatman's phone calls pertaining to Collins as well as Collins's video-recorded, December 30, 2019 statement. (SME #1-2; R. 90) The trial court found the State met its Rule of Evidence 804(b)(5) burden to prove that Chatman's actions were directed toward preventing Collins from testifying at trial. (R. 104-12) The court held in abeyance the second portion of the motion (whether the State had made good-faith efforts to secure Collins's presence) for closer in time to trial. (R. 111)

Believing the trial was going to be the next week, the parties held a May 6, 2021 hearing on the State's alleged good-faith efforts. (R. 140-54) Christian testified he made no attempt to get a subpoena or warrant for Collins. (R. 148) He tried locating Collins in Illinois through an internal police program ("I-board"). (R. 142-43) He described that posting as "an intel-based software program that we utilize. It disseminates information through various agencies locally and to all officers." (R. 142) The postings were only viewed by local agencies. (R. 149) Christian's intel analyst reposted the headline on April 28 and May 5, 2021. (R. 142-43) As of the hearing

date, the Collins-related headline had been viewed 119 times. (R. 143) Christian was unaware of any specific national or statewide listserv for locating potential witnesses but admitted those existed. Nor was Collins listed as a missing person in LEADS or any FBI list. (R. 150-51)

As of May 2021, Christian had recently talked to officers in Davenport, Iowa, "to gather some intelligence of where Mr. Collins may be, and I asked them about any contacts they may have had. And, in fact, our contact [in late 2020] was more recent than anything they had in their system, which was dated since 2016." (R. 144, 151) Christian served a subpoena on Chatman's mother, Demetria, who was also related to Collins, and said she had no contact with Collins. (R. 145) In listening to jail calls between Chatman and his mother, Christian learned the defense had not been able to locate Collins either. (R. 146-47) Finally, there was information that Collins was possibly in Indianapolis, but the tip did not pan out. (R. 147) The court ruled the State had, at that point, made a good-faith efforts to locate Collins:

> So the real question here is whether or not the State has made good faith efforts to present Mr. Collins as a witness at trial here. Is there something somebody could always do more? I suppose there is. I suppose the deputy -- the officer could have gone back to Davenport recently, but he went there once. There is no such thing as a national database. He's really not a missing person. I think he could best be described as Officer Christian indicated, he's somebody who didn't want to be found.
>
> I'm not sure how effective putting it on this board was when it was really just local, but he did contact law enforcement in the Davenport, Iowa, area, and they hadn't had any contact with him in a number of years. I don't know who he spoke to, but the witness did indicate that everybody he had spoken to, nobody knew the whereabouts. And although it doesn't -- at first blush, it sounded like attorney-client information, Ms. Alferink clarified that it appeared that Mr. Chatman made some statements to other individuals indicating that he believes that Mr. Collins is -- cannot be found even by the defense. I don't know if that's true or not. But the real question is whether or not the State has used good faith efforts and used reasonable means and effort. And based on the totality of the circumstances here, the Court is going to make that finding. And, therefore, the Court is going to show that the State has tried to get Mr. Collins' attendance by process or other reasonable means. They've used good faith effort. They've been unable to do so. And, therefore, the statements will be admissible. (R. 152-53)

On September 15, 2021, and with a new trial date impending, the trial court held a second hearing on the State's alleged good-faith efforts since the first hearing. (R. 479-504) Christian testified to his purported new efforts. First, the internal local police department I-board was updated 250 times but he was unsure if the 250 were unique visitors or just total views. (R. 482, 492-93) ("It is basically all intelligence-based information. It is mostly [be on the lookouts] or maybe officer safety things along those lines. So it's mostly just all intelligence, BOLOs I would agree, and other information that they feel is very pertinent worth sharing") Second, Christian and another officer went to prior addresses for Collins with no contact. (R. 480-87) One of those addresses was Devonte McCormick's house, where Christian had visited for another case in the past year. (R. 485, 497-98) No members of the Chatman family reached out with Collins's contact information. (R. 488)

Christian admitted that no information regarding Collins was put into a nationwide or the statewide LEADS system. (R. 494-95) Christian explained why nothing was put into LEADS: "LEADS are very specific about the requirements in order to post information such as alerts. And a subpoena service would not require - - it would not meet the requirements for a LEADS entry." (R. 495) He admitted a warrant would meet that requirement. (R. 495) Christian conceded subpoenas and warrants had been issued for two of the State's other witnesses, Feriana and Alexandrinique Anderson. (R. 495); *see also* (R. 297-98) Christian claimed that the last time he called Collins's phone number, a person answered but Christian did not recognize the voice to be Dee Collins, and the speaker "told me I had the wrong number." (R. 496) Christian could not provide a date as to when that occurred as "[i]t's been some time." (R. 496)

The court again found the State acted in good faith in trying to locate Collins:

> The issue now is whether or not the State has made reasonable efforts to show that Mr. Collins is unavailable. I did find that back in May. And now I've heard more testimony about what efforts have been made since this time. And Mr. Nolan argues that it was a half-hearted attempt that they knocked on a door

> and heard some noise and left, and that's true. But most of the other arguments that Mr. Nolan makes really are not persuasive.
>
> In terms of putting someone into LEADS for statewide. I heard the testimony that you would need a warrant, and there's no warrant, and so it would not be allowed into LEADS. He's an unaware of the database for the FBI and how that has to be done. And, in fact, Ms. Alferink just indicated here that although she did get a warrant for several other witnesses, that's because they had been served with a subpoena and Mr. Collins had not.
>
> What I did hear is that there has been continued effort to put this person on the iBoard, which of course is more locally centralized. But if you have detectives in our area working on other cases, they may hear nuggets about Mr. Collins, so it is a useful tool, although it is somewhat local. But he did go to a number of addresses. He called some numbers. He went out of state.
>
> He has made in my opinion reasonable efforts. Not perfect efforts. Not all the efforts that could possibly be made, but reasonable efforts. And the State simply has to show this that the witness is unavailable by preponderance of the evidence, which I certainly do find at this time.
>
> Therefore, the Court is going to find reasonable efforts to locate Mr. Collins have failed. He is unavailable. The statements will come in pursuant to Court's previous order. (R. 502-04)

Chatman preserved his objection to this testimony. (C. 424-25; R. 1429, 1803)

B. Trial proceedings

1. Calvin Wilson

Wilson testified he lived in the Shadowwood Trailer Park in Champaign. (R. 807) He dated Demetria Chatman, Michael's mother. (R. 808) On the night of March 22, 2018, Wilson was home with Demetria. (R. 809-10, 819) Chatman came by around 7:30 to 8:00 p.m. (R. 810-11, 819-20) Around 10:00 p.m., Chatman left in a gray four-door sedan with Michael Simmons, who Wilson knew as "Scrilla." (R. 811-13, 819-20, 824-29, 839-40); (SE #3-4)

Around 11:00 to 11:30 p.m., Wilson and Demetria got into a fight. (R. 814, 829) Demetria left, and Wilson walked down to police officers who were responding to another call in the neighborhood. (R. 829, 835, 837) Around 2:00 a.m. on March 23, Wilson heard Chatman

knocking on his door stating, "I need your help." (R. 816-17) Wilson did not open the door. (R. 816)

2. Kotia Fairman

On March 22, 2018, Fairman was picked up by Chatman, who she knew as "Guac," and three to four other males. On the night of the incident, she told an officer that "there were two guys, one in the back" who she did not know and two in the front. (R. 851-52, 856-57) Fairman drove the car to the park to drop the males off. (R. 852-54) She denied seeing a gun in the car or that anyone in the car tried to rob anyone. (R. 859-60)

3. Teresa Parada

Parada lived at 32 Juniper Drive in Champaign in a neighboring part of the park Wilson lived in. (R. 862) Around midnight on March 23, 2018, she heard two voices outside her trailer "speaking loud. . .I think they were upset." (R. 864-65) A few seconds later, she heard two gunshots, and one person running. (R. 866-67) Parada looked out a window and saw just "the legs of that person" running away. (R. 869, 872); (SE #11-12)

4. Alexandrinique Anderson

Testifying under threat of contempt of court (R. 911), Alexandrinique lived in Champaign where Chatman had been her neighbor. (R. 914-15) On the early morning of March 23, 2018, Chatman, wearing only jeans with no shoes, knocked on her door. (R. 916-17, 921) Chatman told her "he had him some type of altercation with some Mexicans or something and that they -- I guess they like were trying to attack him or something and he was just trying to defend himself. And I guess he shot back at them. He didn't know if he hit anywhere in there or anything and he just needed to call someone." (R. 918-19) Chatman used her phone and left with a pair of her slippers. (R. 917)

5. Feriana Anderson

Testifying under threat of contempt of court (R. 911), Feriana was Chatman's friend and former neighbor. (R. 927-29) On an unknown date, Chatman called her from jail. (R. 929-30) Chatman told her "[t]o tell them if some people come talk to me that he was at my residence. . .[a]round the time the murder occurred." (R. 931) She hung up when he said this. (R. 931)

6. Officer testimony

Officer **Isidro Garcia** went to the trailer park on March 22, 2018, for a call. (R. 878-79) While there with Officers Epling and Atteberry, Wilson approached them about his dispute with Demetria. (R. 879-80) As the officers left the area, Wilson talked to them again and provided a description of a vehicle related to his dispute with Demetria. (R. 882)

Garcia's squad car's camera captured the following events. (R. 883-88); (SE #5-6) Near the park's exit, Garcia saw a car matching the description Wilson gave. (R. 887-88, 900, 905) She slowed her car, shined a light into the gray car, and saw several dark-complected people in the back seat and a woman in the front passenger seat. (R. 887-88, 899-902, 905) Garcia pulled behind the gray car, which then drove off. (R. 889-90, 902) Garcia tried to head off the gray car but lost sight of it. (R. 889-891) Shortly thereafter, she saw the gray car again, which was stopped in the middle of the road with its doors open and Fairman walking around the rear to the driver's side. (R. 893-94); (SE #6) Garcia got out and heard "two to three gunshots somewhere to the east" along with "screaming and yelling." (R. 895-96, 898, 903-04, 906-07)

Officer **Timothy Atteberry** helped Garcia and Epling follow the gray car. (R. 939-41) Atteberry looked inside and saw, *inter alia*, "a large frame revolver with wooden grips on the rear passenger floorboard." (R. 943-44); (SE #8-9) In searching the gray car, he found a photo ID in the driver's door. (R. 946-47); (SE #4) He then received a call from 32 Juniper Drive, about 100 yards north from the car. (R. 947-48); (SE #7) Garcia and Epling responded while Atteberry secured the scene at the Malibu. (R. 949-50) The car was towed. (R. 950-51)

Officer **Nathaniel Epling** initially saw two Black males in the rear seat of the gray car. (R. 999-1000) While Garcia talked to Fairman, Epling investigated the area between the trailers of 28 and 30 Apricot. (R. 1003-04) The State played a power substation surveillance video, which had a time stamp of 12:01:09 a.m and according to Epling showed the area at the time he was there. (R. 993-94; 1007-19); (SE #17-17A) Epling heard what he thought "was yelling or some kind of loud noise coming from the area that was between 28 and 30 Apricot to the north and east. . . And then I heard the noise coming from. . . somewhere to the north and east." (R. 1009-10) His body-worn camera ("BWC") captured noises consistent with a person's voice. (R. 1010-14); (SE #18-19)

Epling later walked the area for evidence; in the yard of 28 Apricot, he found a right black boot, size 9.5, made by Lugz. (R. 1015-16, 1059); (SE #20) At 32 Juniper, where Green was lying on the ground as others aided him, Epling found: (1) two spent .40 caliber S&W casings; (2) an unfired round and another partial, fired round of semiautomatic ammunition; (3) a left black boot underneath a van near Green; and (4) a brown, left-foot Timberland boot, size 9, right next to Green. (R. 1026-29, 1031-41, 1043-53, 1058); (SE #11, 24, 26-35)

Around 12:11 a.m. on March 23, 2018, Sergeant **Justin Prosser** went to a call of shots fired at 32 Juniper Drive in the park. (R. 954) Prosser saw Green had been shot in the groin. (R. 955)

The morning after the shooting, Officer **James Kerner** found a tan Timberland boot, right foot, size 9M, under another car a few houses down from 32 Apricot. (R. 1079, 1085-87); (SE #37-39)

Detective **Stephen Vogel** searched the Malibu and found an unloaded .357 revolver on the floor where somebody's feet would be if sitting in the rear passenger seat. (R. 1088-93, 1098-99; SE #4, 40-43) No barriers blocked the floor from the front seat to the rear seat. (R. 1099)

Detective **Cully Schweska** assisted in a traffic stop on the evening of March 23, 2018; Officers found co-defendant Simmons in the car with a book bag and cell phone. (R. 988-92); (SE #45, 79-80) Photos of Simmons were on the phone. Sergeant **Dennis Baltzell** recovered Simmons's backpack and phone. (R. 1219-22); (SE #45) Baltzell also interviewed Demetria Chatman, who consented to her phone being examined. (R. 1223-24) On March 25, 2018, Baltzell photographed Chatman and took his DNA. (R. 1226-27, 1233-36); (SE #46-56) The photos showed cuts and scrapes on Chatman's feet, right palm, and knees. (R. 1233-36)

Prior to retiring, Detective **David Allen** had been the lead detective on this case. (R. 1297-98) On March 23, 2018, he interviewed Fairman, and it was recorded. (R. 1298-99); (SE #158) Fairman confirmed the police put their emergency lights on behind her and that she knew Chatman as "Guac" on Facebook. (SE #158)

On March 25, 2018, Allen and Baltzell interviewed Chatman; it was recorded and played for the jury. (R. 1224-25, 1230-32, 1301-03; E. 98-140); (SE #93, 94-94a) Chatman acknowledged Fairman drove him, Simmons, and Green to the trailer park due to his mom's call. Officers put their emergency lights behind them, Fairman drove off, and the three men ran out of the car in different directions. (E. 100-05) Chatman denied shooting or knowing who shot Green. He ran to his cousin's house and later went to Devonte McCormick's house. (R. 1232; E. 100, 114-18, 120-40) Chatman left his phone in the car and admitted there were pictures of him with the .357 revolver found in the car. (E. 107-08, 130-31) Chatman denied wearing boots that night. (E. 110-14, 120, 124-25, 139-40)

Baltzell thereafter received a phone that had pictures of Chatman on its lock screen. (R. 1075-77, 1084, 1304-05); (SE #3, 36) Baltzell found three Facebook accounts belonging to Chatman: (1) Guac Chatman; (2) Sufi Mane Pack; and (3) Mike Will Makitt. (R. 1306-07, 1310, 1313 1336-38); (SE #96-97, 98, 116-17, 124-25) Photos depicting Chatman from the Guac Chatman account were also admitted into evidence. (R. 1310-14); (SE #99-106)

Baltzell testified the Guac Chatman account sent messages to Green on March 22, 2018, starting around 8:52 p.m., about picking him up and buying alcohol. (R. 1318-20); (SE #110-12) On March 24, 2018, that account received a message from "Crazie Bone," asking "Who killed my lil brother." (R. 1314; E. 153); (SE #108-09) Guac responded "Idk the fuck. . .stop texting me." (R. 1315-16; E. 154); (SE #108-09) In that conversation, Guac said the police had his phone and that he and Green split up when running from their car. (R. 1315-18) That account also sent a message to Fairman stating that they split up after exiting the car and "Im finna go get investigated Scrilla locked up." (R. 1319-20); (SE #113-14)

A month after Green's death, Chatman's Sufi Mane Pack account messaged someone and said Chatman had been in "county" and that "[t]hey tried accusing me of murder but didn't have enough evidence so they charged me with unlawful use of a weapon until further notice." (R. 1327-28); (SE #123) The Mike Will Makitt account contained messages about Chatman's firearm case and the investigation of him for murdering Green. (R. 1328-31); (SE #126, 128-30, 132) Chatman's "Realaikimikey" Snapchat account was linked to one of the Facebook accounts and had March 24, 2018 messages denying knowledge of who shot Green and admitting that Chatman had run from the area. (R. 1331-36); (SE #133-34)

About a month before Green's death in the block of 700 of Kenwood in Champaign, Officer **Caleb Billingsley** collected two .40 caliber S&W casings from a Comcast employee. (R. 1103-05); (SE #144-45) The parties stipulated that on February 26, 2018, Omari Foster was with Green in that location and Green fired a gun three or four times in the air. (R. 1101-02)

7. Forensic evidence

Doctor **Shiping Bao** performed an autopsy of Green. (R. 1114-21) Green had three gunshot wounds: one to his groin and two on his front and back left shoulder. (R. 1122-24, 1168); (SE #137, 156) In Green's groin, Bao found two fragments from a bullet. (R. 1124-28, 1163-66); (SE #139-40) This was an entrance wound with no evidence of close range firing.

(R. 1128-29, 1139-43) Bao opined the two shoulder wounds were caused by one bullet, and there was no evidence of close range firing. (R. 1131-34) Green had alcohol and cannabis in his system. (R. 1136-37)

Illinois State Police ("ISP") forensic scientist **Hali Carls-Miller** examined the two fired casings found by Green. (R. 1238-50) Carls-Miller opined the casings had been fired from the same gun and could not have been fired by a .357 magnum. (R. 1243-47); (SE #24, 33) She also examined two casings that had been found by a Comcast worker and opined that they had been fired from the same firearm as the casings found by Green. (R. 1247-49); (SE #144-45) Finally, she examined the fired .40 caliber bullet found at the incident scene and excluded it from being fired by a .357 magnum. (R. 1250-51); (SE #35)

ISP forensic scientist **Kelly Maciejewski** compared Chatman's DNA standard to swabs taken from the brown Timberland boots found by Green. (R. 1264-68); (SE #31-39) For one of the boots, she determined Chatman was a possible contributor to that major DNA profile and opined the random match probability to be approximately one in 460 trillion individuals. (R. 1252-53, 1267-68); (SE #31, 46); (R. 1252-53)

Sergeant **Patrick Simons** extracted data from Chatman's cell phone. (R. 1341-62); (SE #65-71) Chatman's email address on the phone was "clooneyloot@icloud.com," and was linked to the Guac Chatman and RealaikiMikey accounts. (R. 1345-47); (SE #67-71) He extracted data from Demetria's cell phone; the Guac Chatman account was on this phone. (R. 1347-49); (SE #72-74) Finally, he extracted data from Simmons's phone and testified to the various accounts associated with it. (R. 1349-52); (SE #75-81)

Detective **David Monahan** testified, as an expert in the forensic exam of cell phones, about messages sent between Chatman's and Simmons's phones. (R. 1367-1401); (SE #83, 85-92) Simmons's phone had numerous deleted text messages but the data had not been overwritten. (R. 1374); (SE #83) Two of those messages were on Chatman's phone in a similar

state. (R. 1380) These messages from Simmons to Chatman read, "Clooney," and "Yo" and were sent about 60 to 90 minutes after Green was shot. (R. 1380-82); (SE #87)

Monahan looked at the underlying data for those texts as well as the deleted texts found only on Simmons's phone; that data matched indicating "all of these apparently deleted messages were either sent or received between Michael Simmons' iCloud account, his phone, and a phone or another Apple device that used the Apple ID Clooneyloot@icloud.com." (R. 1383-1400); (SE #83, 88-92) The following conversation occurred on March 22 into March 23 between Simmons's phone and the Clooneyloot@icloud.com (with the last two messages unread by the receiver (R. 1415)):

Clooney:	You got the 357? - 1:37:15 p.m. (converted from UTC)
Simmons:	Smh been telling u this - 1:41:44 p.m.
Clooney:	All we need is a car and I'm hoping out - 1:43:25 p.m.
Clooney:	Fuck Ricky bro that's petty stains we need bucks - 1:46:15 p.m.
Simmons:	Bro that pipe is a key factor that can lead to bands period nigga we need pipes period u can die with that cash on you but ain't no dying wit that glizzy period - 1:47:20 p.m.
Simmons:	Say less shorty - 2:36:38 p.m.
Simmons:	[unknown emoji] - 3:11:05 p.m.
Clooney:	If u not gone be around she dropping me off in Danville - 3:11:10 p.m.
Simmons:	I am - 3:11:25 p.m.
Clooney:	Bet - 3:12:01 p.m.
Clooney:	[unknown emoji] - 3:19:27 p.m.
Clooney:	Hell yeah told u it's hop out time - 5:29:10 p.m.
Clooney:	[unknown emoji] - 5:29:14 p.m.
Simmons:	He ready - 8:51:17 p.m.

Simmons: I'm on my way - 8:57:02 p.m.

Clooney: Cool - 8:58:02 p.m.

Simmons: Dude - 10:03:02 p.m.

Simmons: I am - 10:21:15 p.m.

Simmons: Ima say my bm ain't here yet - 10:21:24 p.m.

Simmons: I got the 7 on me - 10:32:43 p.m.

Clooney: Be smooth I got this - 10:47:26 p.m.

Clooney: That's why I'm not texting u - 10:47:33 p.m.

Clooney: His shit so nice stop texting me though he can see my phone - 10:50:28 p.m.

Clooney: Bump that music roll up so he can not wanna go home ofn on Zach I got this 11:14:03 p.m.

Simmons: Clooney - 12:56:30 am

Simmons: Yo - 1:26:23 am (SE #83)

8. Dennis Griham

Fifty-one-year-old Griham testified while in prison for a felony DUI conviction and had numerous prior felony convictions as well. (R. 1174, 1187-88) While serving a term of probation on one of those prior convictions, Griham was arrested on January 29, 2020, for the DUI. (R. 1174-75, 1186-87) About a week later, Chatman was arrested on this case and put in the same jail pod as Griham. (R. 1175-76) Two days later, Griham and Chatman talked and ate together. (R. 1187-89, 1190) Griham claimed on the day they met, Chatman asked if he had ever been to prison before, and Griham said yes. The next day, Chatman approached him and opened up to him about his case. (R. 1189) Chatman said he had been arrested on the murder case two years earlier but was released. (R. 1194)

According to Griham, Chatman admitted his and Simmons's involvement in Green's death. These conversations occurred in their cells and the common area. (R. 1191-92) Chatman

"said that [Michael] Simmons had called him and told him he had a lick which mean something had come up. He said. . . Mr. Simmons and Mr. Chatman went and picked up Ricky Green from Lincoln Square Mall and they rolled around for a little while, went and got a bottle of Hennessy and went to the gas station, took pictures, picked – [objection overruled]. . . He picked [Green] up. They went to the gas station -- after getting some Hennessy they went to the gas station, got some pops and took some pictures and left and rolled around for awhile." (R. 1177-78) Chatman "said that they -- I guess his mama was at a friend's that stayed out there and he went out there and it was dark in that area and that's when the incident took place." (R. 1179, 1195) A woman Chatman did not identify to Griham was also present. (R. 1179)

After they got out of the car, Chatman "said he went to tussling with Mr. Green for the firearm which he said was a Glock, but he never said what size -- said he went to tussling for the firearm and the firearm went off and he accidentally -- he said he accidentally shot Mr. Green in the chest twice." (R. 1179) Chatman and Green "got into an altercation because I guess Mr. Chatman tried to take his firearm from him. And Mr. Chatman ended up with the firearm. As they was tussling, he said he mistakenly shot him twice." (R. 1195) Simmons ran off. (R. 1179) When Green fell, Chatman lost one of his boots when Green pulled it off, he lost the second one "in the process of running," and hid under a trailer because the police had already responded. (R. 1179-80)

Chatman told Griham he left the park in the morning and went to a friend's house in the Garden Hills neighborhood. (R. 1181) Lacking shoes, Chatman used his shirt to wrap around his feet. (R. 1181) Chatman told Griham the Glock had been dissembled. (R. 1182) He asked Griham to get it for him once Griham was released; however, Chatman did not disclose the Glock's location. (R. 1182, 1203)

Griham testified he did not force Chatman to talk about his case. (R. 1191, 1202) After talking to Chatman about his case, Griham called and met with Detective Christian. (R. 1182-84)

At trial, Griham denied seeing news reports about the Green murder before meeting with Christian. (R. 1194, 1202) Soon into Griham and Christian's February 10, 2020 conversation, Christian turned on his BWC. (R. 1192-93) After their initial meeting, Christian asked Griham to wear a wire but this did not happen. (R. 1196-97) Griham had to leave the cell block where he and Chatman were housed when others inmates suspected Griham was an informant. (R. 1197-98, 1206-07) Having been an informant before, Griham knew he had to provide pertinent information and only the prosecutor could help him out on his pending cases. (R. 1192-94) And while the State did not object to Griham receiving probation on his DUI, he ultimately was not allowed into that program and got three years in prison on that case with his theft probation terminated unsatisfactorily. (R. 1183-85, 1187, 1205)

9. Michael Goebel

Goebel, the managing editor at the News-Gazette, testified that he turned over to the State all the paper's articles relating to Green's death. (R. 1278-80); (SE #146) Goebel acknowledged several TV stations also provided news coverage in the area. (R. 1283)

10. Jeremiah Christian

Christian took over the lead detective role on this case when Detective Allen retired. (R. 1435-36) During the investigation, Christian shared information with officers, witnesses, and potential suspects. (R. 1489-91) On June 26, 2019, he interviewed Alexandrinique Anderson; it was about two miles between her house and the trailer park. (R. 1446-47) On October 30, 2019, Christian and Detective Sumption interviewed Chatman in Kendall County jail; Christian's BWC recorded the interview. (R. 1447-49); (SE #152) The 44-minute video was played for the jury. In that interview, Chatman denied shooting Green.

On December 30, 2019, Christian interviewed Collins when he was arrested on a warrant. (R. 1450-52, 1501-02) Collins offered to wear a wire against Chatman; sometime thereafter Collins's cooperation changed. Jail calls between Chatman and his relatives discussed Collins

being an informant. (R. 1451-52) The court overruled a defense objection to Christian characterizing Chatman's jail calls about Collins. (R. 1453) Christian said he was aware of "other threats" to Collins. (R. 1453) The State played the video of Christian's December 30th interview of Collins. (R. 1454-59, 1502-03); (SE #153) Collins said Chatman admitted he killed Green with Green's gun after Chatman and Simmons took Green's gun from him; Chatman and Collins's conversation occurred at Devonte McCormick's house the same morning of the shooting. Chatman had no shoes on, and his feet looked like he had been in a cornfield. (SE #153)

Christian detailed his February 10, 2020 interview with Griham. (R. 1492-1500) Christian reviewed the News-Gazette's articles; numerous details related by Griham were not included in any articles. (R. 1461-64) Griham chose not to remain an anonymous informant and that was when Christian turned on his BWC to record the interview. (R. 1511) Griham told Christian "he'd seen a news clip of Michael Chatman and his arrest and that he had [a] conversation with [him] about his involvement in Ricky Green's death." (R. 1497) Christian spoke to Griham on February 13 about wearing a wire and on February 17 after inmates discovered that Griham was an informant. (R. 1497-99) Christian also reviewed hundreds of Chatman's jail calls. (R. 1465-66, 1468) The State played 15 of Chatman's custodial calls. (R. 1473-88); (SE #154-55)

11. Demetria Chatman

On March 22, 2018, around 11:00 p.m., Demetria was at Wilson's house. She had an argument with him; she called Chatman on his cell phone, but he did not pick up due to a lack of phone service. She called Simmons's phone and told Chatman to come right now "because I was about to leave." Demetria told Chatman it was an emergency. (R. 1539-40)

12. Michael Chatman

Chatman testified that on March 22, 2018, he, Green, and Simmons planned to take firearms from one of Green's friends and go drinking; Chatman claimed there were text and

SnapChat messages to prove this. (R. 1543, 1605) Around 6:00 p.m. that day, Simmons and Christian Dixon picked up Chatman in a silver Malibu. (R. 1543) Chatman's phone only worked when he had a Wifi connection. (R. 1549-50) They went to the Lincoln Square Mall around 7:15 p.m. to pick up Green; on cross-examination Chatman said they picked up Green at 9:20 p.m. (R. 1544, 1621-26) They bought alcohol and pop and went to the parking lot outside Simmons's house. (R. 1545) Dixon got them into a party in the same neighborhood. (R. 1545) At the party, Simmons and Chatman texted each other. (R. 1550-51) Acknowledging the accuracy of the messages but giving innocuous explanations for them, Chatman asserted the State was "just making up their own story about text messages because we had no plan of robbing nobody, or the conversations we was having wasn't about no robbery." (R. 1550-60); (SE #83)

They left the party after two hours, dropped off Dixon, and then picked up Fairman around 11:00 p.m. (R. 1546-49) Via Simmons's phone, Demetria called Chatman and told him to go to Wilson's house. (R. 1561) Fairman was driving, Simmons was in the front passenger seat, and Chatman and Green were in the rear seats. (R. 1565) In Wilson's neighborhood, Chatman saw the police; with drugs, alcohol, and firearms in the car, the men told Fairman to pull over. (R. 1562) With their emergency lights on, the police pulled behind the Malibu. (R. 1563-64)

The three men "started tucking guns under the seat" and, once they had gotten enough distance from the police, the men exited the car; Chatman "grabbed a gun. That was the plan, we grab a gun and we run because we got guns on us." (R. 1564-65) Chatman knew Simmons and Green had firearms. (R. 1564) Explaining why he grabbed Green's firearm, Chatman testified "it was the closest thing to me. And that's the point in getting out of the car is grab a gun and run. . . I was just going to run with it and just get away from the police." (R. 1566, 1590-91) Chatman denied taking the gun from Green: "I didn't use no type of force in getting this firearm. I didn't commit no robbery. I didn't do none of that stuff." (R. 1590)

As Chatman ran away, Green caught up to him at 32 Juniper. (R. 1567, 1591) Green said he forgot his gun, Chatman told him he had it, and Green asked for it. (R. 1567) Then, according to Chatman, "I'm like, let's get away from the police first. . .then [Green] got in an aggressive manner and stuff like that. . .Nigga, give me my gun, like real aggressive. And he's bigger than me. He's gotten real aggressive." (R. 1567) Chatman was 5'6" and 115 lbs while Green was 5'11" and 165 lbs. (R. 1568) As Chatman walked away, Green grabbed Chatman. (R. 1569-70) Chatman believed that if Green got the firearm, he would kill Chatman. (R. 1569-70) Trying to scare Green, Chatman pulled the firearm's slide back, popping out a live round. (R. 1571) Green "started attacking me even more. . . he started grabbing me even rougher. . . So as I'm running, I discharge - - discharge the firearm like this, one time." (R. 1572) Green was behind Chatman with a hand on his right shoulder. (R. 1572-73) Chatman fired with his right hand toward Green's midsection. (R. 1574, 1626-27)

When Chatman was grabbed by Green, Chatman's boot came off. (R. 1575) Chatman shot a second time at Green's shoulder. (R. 1575, 1627) Five to ten seconds passed between the shots. (R. 1575) Chatman testified he "was in fear. I was afraid. And I was basically protecting myself. . .I was not shooting at any person. I wasn't looking when I was shooting. I was just discharging the firearm as I was running. And I discharged it twice. Once, and I kept running still being attacked. And once again, and I kept running, you know what I'm saying." (R. 1592) Chatman said he was "intoxicated mentally" and was not in the right state of mind that night. (R. 1597) Despite being drunk that night, he testified, "I can remember everything that happened that night." (R. 1626) Chatman expressed remorse for the shooting. (R. 1592)

Green released Chatman, and Chatman hid under a car for about ten minutes, left his other boot under the car, and went to Wilson's house but no one answered. (R. 1576-77) He then went to the Andersons' house; Alexandrinique answered and allowed him to use her phone. (R. 1578) He told her, "I just got shot at by some Mexicans and stuff like that." (R. 1578) She

gave him some "house shoes" to wear. (R. 1579) He went to his mom's house, but she was already with the police; he then stayed at his grandmother's house. (R. 1579-81, 1601)

Chatman denied going to Devonte McCormick's house or telling Collins about the shooting. (R. 1579, 1602) When confronted with his March 25, 2018 statement admitting going to McCormick's house, Chatman said he was scared, distrusted the police, and always lied to them. (R. 1581-82) He claimed the information Collins gave Christian was known by everyone. (R. 1603)

Chatman was convicted of possessing the.357 magnum, but he denied holding that firearm on the night of the incident. (R. 1583) The court sentenced him to probation on that offense, and Chatman moved to Aurora. (R. 1583) Addressing why he did not tell Christian the-above details during the October 30, 2019 interview, Chatman stated, "I don't want to tell these people stuff and they make they own little story and make it seem like I did something that I didn't do." (R. 1584) Clarifying his call to Feriana Anderson, Chatman said she misunderstood what he was saying when he told her about being in her house the morning of the incident. (R. 1584-85) Chatman admitted lying to the police in his prior statements because he was scared. (R. 1593, 1599, 1601, 1606-07, 1617) He was also scared testifying but said, "I'm telling the truth right now." (R. 1609) He told the detectives he could beat this case. (R. 1609)

The police arrested Chatman on February 4, 2020, for Green's death. (R. 1585-86) In jail, he interacted with Griham. (R. 1586) Chatman admitted talking to Griham about Green's death but testified that Griham added details on his own when talking to Christian. (R. 1586-87, 1611) After admitting he disassembled Green's gun, the prosecutor asked Chatman where the gun was located; Chatman said, "I plead the Fifth. I don't want to incriminate myself." (R. 1615-16) He then said he did not know where the gun was. (R. 1616) Chatman acknowledged that breaking down the gun corroborated Griham. (R. 1616)

Chatman denied wanting to submit an affidavit for Simmons's case (denying that Simmons was there) to discredit Griham. (R. 1619-20) Chatman acknowledged saying, during a jail phone call, that Griham was credible. (R. 1614-15) Other inmates told Chatman to stop talking to Griham because "[h]e owes the police stuff." (R. 1587, 1612-13) Chatman knew he was being recorded while making phone calls from jail and that he "said a lot of things that I felt uncomfortable with." (R. 1588-89) As for his calls where he asked the listener to Google "murder" and "murder when you're intoxicated" and provide him that information (R. 1617-18; E. 233, 253), Chatman explained he was "trying to learn some things to help me out." (R. 1618)

13. Jury instructions, closing argument, and deliberations

The court instructed the jury on first degree murder (intentional/knowing/strong probability), second degree murder, involuntary manslaughter, and justified use of force; the court also instructed the jury on felony murder predicated on armed robbery. (R. 1634-38) The parties gave their closing arguments. (R. 1682-1748) During argument, the prosecutor claimed Collins had "been told that he better not come to court." (R. 1695) The court overruled a defense objection to that. (R. 1695) The jury began deliberating at 2:37 p.m. (R. 1753) After the jury sent out three notes and the court responded (CS. 6-7; R. 1760-61, 1774-83), the jury reached a verdict at 7:35 p.m., finding Chatman guilty of felony murder and personally discharging a firearm causing great bodily harm/death. (CS. 4-5; R. 1785-87) The jury did not sign any forms as it related to non-felony murder. (Sup CS. 45-49) In a written order, the court concluded the jury had acquitted Chatman on the non-felony murder counts. (C. 453-55)

C. <u>Post-trial proceedings and direct appeal</u>

Trial counsel filed a motion for new trial alleging, *inter alia*, that the trial court erred in finding the State had made a good-faith efforts to locate Collins before trial. (C. 424-31; R. 1796-1810) The court addressed the alleged errors and denied the motion for new trial. (R. 1802-10) After a sentencing hearing, the trial court sentenced Chatman to 60 years in prison.

(C. 488-90; R. 1844-56) Chatman filed a motion to reconsider sentence, which the court granted and reduced the sentence to 55 years. (C. 493-95, 500; R. 1859-62)

On appeal, Chatman argued, *inter alia*, that the trial court erred in finding that the State made reasonable efforts to locate Collins. *People v. Chatman*, 2022 IL App (4th) 210716, ¶44. The Appellate Court, Fourth District, agreed with Chatman's interpretation of Rule of Evidence 804 as establishing the State's burden to demonstrate Collins's unavailability under section (a) of that Rule. *Id*. at ¶¶45-54. In doing so, the Fourth District disagreed with the Second District's holding in *People v. Golden*, 2021 IL App (2d) 200207, that the proponent of the evidence need not make a showing of unavailability under Rule 804(a) if the evidence is being admitted via Rule 804(b)(5), Illinois's codification of the forfeiture by wrongdoing doctrine. *Chatman*, 2022 IL App (4th) 210716 at ¶¶49-54. The appellate court then rejected Chatman's argument that the State had not made reasonable efforts, through service of process or other means, to secure Collins's presence at trial. *Id*. at ¶¶55-64. This Court granted leave to appeal on January 25, 2023.

ARGUMENT

The trial court erred in finding Dominique Collins to be an unavailable witness, where the State failed to make good-faith efforts to secure Collins's presence at trial as it failed to subpoena him, secure a warrant for him, or make other reasonable efforts to find him. This denial of Michael Chatman's right to confrontation was not harmless beyond a reasonable doubt. A new trial should occur.

Two days after Ricky Green was shot twice and killed, Champaign police officers interviewed Michael Chatman. (R. 1301-03; E. 98-140); (SE #93, 94-94a) The State did not charge Chatman in Green's death. Nineteen months later, officers again interviewed Chatman regarding Green's death. (R. 1447-49); (SE #152) The State still did not charge Chatman.

On December 30, 2019, Dominique "Dee" Collins was arrested on a warrant; facing time in jail, Collins claimed to Detective Jeremiah Christian that Chatman had made inculpatory statements to him on the morning of Green's death. (R. 1450-59, 1502-03); (SE #153) As a result of that statement, the State charged Chatman with Green's murder at the end of January 2020. (C. 39-42) Collins thus was a critical witness in the State's case.

Pre-trial, the State filed a motion *in limine* to admit Collins's video-recorded statement via the forfeiture by wrongdoing doctrine as he allegedly could not be located as trial approached. (C. 104-13); *see* Ill. R. Evid. 804(b)(5) (eff. Jan. 1, 2011). In order to admit such evidence via the doctrine, the plain language of Rule 804 requires that the proponent demonstrate the declarant's "unavailability" as a witness. *People v. Chatman*, 2022 IL App (4th) 210716, ¶51. Illinois's Rule of Evidence 804(a)(5), much like its federal counterpart, defines "unavailability" in five ways, only one of which applies to Chatman's case: "the declarant. . . is absent from the hearing and the proponent has been unable to procure the declarant's attendance. . . by process or other reasonable means." Ill. R. Evid. 804(a)(5) (eff. Jan. 1, 2011).

Here, the trial court held two hearings on whether the State had demonstrated Collins's "unavailability" via good-faith efforts to secure Collins's attendance at trial. (R. 111, 140-54, 479-504) And while the trial court concluded the State made such efforts, the record belies

that conclusion. Case law and the facts here demonstrate that the court's ruling was against the manifest weight of evidence where the State and its agents failed to serve a subpoena (whether in person or via certified or registered mail) on Collins, requesting that a warrant be issued for him, or further investigating his known phone number. *See, e.g.*, *People v. Payne*, 30 Ill.App.3d 624, 629-31 (1st Dist. 1975). Where this preserved error violated Chatman's constitutional right of confrontation (*see Ohio v. Roberts*, 448 U.S. 56, 74 (1984), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36 (2004)), the State cannot demonstrate the error was harmless. To remedy this flawed conviction and the virtual life sentence that resulted, a new trial must occur.

A. Standard of review

The State's burden of proof at a forfeiture by wrongdoing hearing is by a preponderance of the evidence. *People v. Peterson*, 2017 IL 120331, ¶37. At such a hearing, the State must establish that the defendant, more likely than not, "engaged or acquiesced in wrongdoing" and that such wrongdoing was "intended to, and did, procure the unavailability of the declarant as a witness." Ill. R. Evid. 804(b)(5) (eff. Jan. 1, 2011); *accord Peterson*, 2017 IL 120331 at ¶37. While a defendant's Sixth Amendment right to confront a witness is a question of law subject to *de novo* review (*People v. Kent*, 2020 IL App (2d) 180887, ¶98; *see also People v. Torres*, 2012 IL 111302, ¶47 ("constitutional considerations are inextricably intertwined with the question of admissibility")), a trial court's ruling at such a hearing is reviewed under the manifest weight of the evidence standard. *Id*. at ¶39. The trial court's finding here that the State made good-faith efforts to locate Collins was against the manifest weight of the evidence.

B. This Court should adopt the Fourth District's holding that the State must demonstrate its good-faith efforts to procure a witness's attendance where the witness is allegedly unavailable due to the opposing party's wrongdoing.

Forfeiture by wrongdoing is a common law doctrine that serves both as a hearsay exception and an exception to the Confrontation Clause of the Sixth Amendment. *People v. Nixon*, 2016

IL App (2d) 130514, ¶48; *see also People v. Hanson*, 238 Ill.2d 74, 96-97 (2010). The doctrine is codified in Illinois Rule of Evidence 804(b)(5) (eff. Jan. 1, 2011) and Federal Rule of Evidence 804(b)(6). *See Peterson*, 2017 IL 120331 at ¶19. The forfeiture by wrongdoing exception provides that "[a] statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness" is not excluded by the hearsay rule. Ill. R. Evid. 804(b)(5). By the plain language of that rule, the witness must be "unavailable." *See Chatman*, 2022 IL App (4th) 210716 at ¶48 ("As a predicate for application of Rule 804(b)(5), the witness must actually be unavailable.").

Illinois Rule of Evidence 804(a), in turn, defines "unavailability," and provides five scenarios in which a witness may be found to be unavailable. Ill. R. Evid. 804(a) (eff. Jan. 1, 2011). In Chatman's case, only one of those section (a) situations defining unavailability is implicated: the witness "is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance. . . by process or other reasonable means." Ill. R. Evid. 804(a)(5). "Unavailability" is a crucial finding in any Sixth Amendment-Confrontation Clause analysis: "[A] witness is not 'unavailable' for purposes of the . . . exception to the confrontation requirements unless the prosecutorial authorities have made a *good-faith effort* to obtain his presence at trial." *Roberts*, 448 U.S. at 74, quoting *Barber v. Page*, 390 U.S. 719, 724-25 (1968) (emphasis in *Roberts*); *accord Torres*, 2012 IL 111302, at ¶54; *see, e.g.*, *Kent*, 2020 IL App (2d) 180887 at ¶97 ("The State is obliged to make a 'good-faith' effort to obtain the witness's presence at trial."); *Payne*, 30 Ill.App.3d at 628 ("The dispositive question, then, is whether the record discloses reasonable diligence and good[-]faith efforts to locate and secure the presence of the witness in court."). "Good faith and reasonable diligence depend on the facts of each case." *Payne*, 30 Ill.App.3d at 628.

In the instant case, the Appellate Court, Fourth District, followed the plain language of Rule 804 and held that Rule 804(a)(5) "does by its very terms apply to the doctrine of forfeiture

by wrongdoing" and thus the State was required to demonstrate its good[-]faith efforts in trying to secure Collins's presence at trial. *Chatman*, 2022 IL App (4th) 210716 at ¶51. The appellate court then held the State had made such efforts. *Id*. at ¶¶55-64; *see infra*, section C. In concluding that section (a) "unavailability" applies to the forfeiture by wrongdoing doctrine found in subsection (b)(5), the appellate court properly rejected the reasoning and holding of *People v. Golden*, 2021 IL App (2d) 200207, ¶¶70-76.

In *Golden*, the Appellate Court, Second District, held that the State need not demonstrate an inability to procure the declarant's attendance by process or other reasonable means if the hearsay is being admitted via forfeiture by wrongdoing doctrine and Rule 804(b)(5). 2021 IL App (2d) 200207 at ¶¶70-76. The *Golden* Court expressed two bases for its holding. The first was allegedly based upon the plain language of Rule 804(a)(5), and the second was based on the elements of forfeiture by wrongdoing as expressed by this Court in *Peterson*, 2017 IL 120331 at ¶32, and the Appellate Court, Fourth District, in *People v. Zimmerman*, 2018 IL App (4th) 170695, ¶98. That holding is misguided.

First, the plain language includes a showing of unavailability. *Golden* found that the unavailability requirement is subsumed within (b)(5), which defines forfeiture by wrongdoing and focuses on a defendant's conduct in attempting to or making a witness unavailable, not on the State's efforts to locate the witness. As the appellate court recognized, *Golden*'s reasoning "appears to be based on a misreading of [Rule 804's] language." *Chatman*, 2022 IL App (4th) 210716 at ¶51. Specifically, *Golden* ignores section (a), which defines unavailability and must be read in tandem with the rest of the same rule. *See People v. Perry*, 224 Ill.2d 312, 323 (2007) (In determining the plain meaning of statutory language, the court looks to the statute as a whole, the subject it addresses, and the apparent intent of the legislature); *see also Robidoux v. Oliphant*, 201 Ill.2d 324, 332 (2002) (reviewing supreme court rules the same way as interpreting statutes by looking to the plain language of the rule). "It is well established that

when a statute defines the very terms it uses, 'those terms must be construed according to the definitions contained in the act.'" *Garza v. Navistar Intern. Transp. Corp.*, 172 Ill.2d 373, 379 (1996), quoting *People ex rel. Scott v. Schwulst Building Center, Inc.*, 89 Ill.2d 365, 371 (1982). Forfeiture by wrongdoing is defined with regard to the "unavailability" of the witness, and in determining unavailability, one must look to section (a), which provides five express scenarios for unavailability, one of which applies to Chatman's case: unable to procure attendance by process or other reasonable means in (a)(5).

Section (a)'s definition of unavailability does not exclude forfeiture by wrongdoing or subsection (b)(5) and should not be read as such. To do so would virtually eliminate a showing of true unavailability from forfeiture by wrongdoing situations. But as *Golden* itself acknowledged, a forfeiture by wrongdoing showing includes demonstrating that the witness was actually unavailable. *Golden*, 2021 IL App (2d) 200207 at ¶72; *see also Peterson*, 2017 IL 120331 at ¶32. Further, Rule 804 merely codifies the common law understanding of forfeiture by wrongdoing, which includes an "unavailability" element. *See Peterson*, 2017 IL 120331 at ¶¶19, 32; *see also In re N.F.*, 2020 IL App (1st) 182427, ¶37 ("the Committee incorporated into the Illinois Rules of Evidence the current law of evidence in Illinois whenever the Illinois Supreme Court or the Illinois Appellate Court had clearly spoken on a principle of evidentiary law within the last 50 or so year").

The *Golden* Court's second basis for its ruling, based on the holdings in *Peterson* and *Zimmerman*, also fails. *Golden*, 2021 IL App (2d) 200207 at ¶72. The appellate court here put it aptly: "Neither *Peterson* nor *Zimmerman* addressed the interaction between subdivisions (a)(5) and (b)(5) of Rule 804." *Chatman*, 2022 IL App (4th) 210716 at ¶52. That is unsurprising given that the witnesses in *Peterson* and *Zimmerman* had been killed and thus no amount of good-faith efforts under (a)(5) could "procure the declarant's attendance." This Court should

reject the *Golden* Court's reasoning based on the statements in *Peterson* and *Zimmerman* stripped from their context.

Golden, whose reasoning has not been adopted by any other appellate panel in Illinois, goes too far in entirely relieving the State of its duty to make efforts to secure the appearance of its witness. Indeed, what Chatman is asking this Court to conclude does not place too much of a burden on the proponent of such evidence. Case law does not require Herculean efforts–only good faith and reasonable ones. *See Chatman*, 2022 IL App (4th) 210716 at ¶54 ("[B]ecause a witness must be unavailable as a prerequisite to forfeiture by wrongdoing, it falls on the proponent of the statement to demonstrate unavailability by a preponderance of the evidence in some manner under Rule 804(a)").

Among the reasonable steps the State could have taken to satisfy its burden here include, but are not limited to, obtaining a subpoena for Collins, asking the court to issue a warrant for him, or further investigating his known phone number. *Infra*, Section C. Where *Golden*'s reasoning defies the plain language of Rule 804, relies on a misreading of this Court's precedent in *Peterson*, and leaves the question of unavailability to the bare assertion of the proponent, this Court should adopt the Fourth District's approach to the forfeiture by wrongdoing doctrine and require a showing by the proponent of such evidence as to "unavailability" as defined in Rule 804(a).

C. The State failed to make a showing of good-faith efforts in securing Dominique Collins's presence at trial where it failed to subpoena him, secure a warrant for him, or make other reasonable efforts to find him.

At issue here is the second part of the forfeiture by wrongdoing test: the unavailability of Dominique "Dee" Collins. A defendant has a due process right to confront the evidence against him. U.S. Const. amends. VI, XIV; Ill. Const., art. I, § 8; *Crawford*, 541 U.S. at 59. To protect this right, hearsay, or an out-of-court statement offered to prove the truth of the matter asserted, is generally inadmissible unless it falls within an exception to the hearsay

rule. *People v. Lawler*, 142 Ill.2d 548, 557 (1991); Ill. R. Evid. 801, 802. Furthermore, the Confrontation Clause prohibits the admission of an out-of-court statement that is testimonial hearsay unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. *Crawford*, 541 U.S. at 59. As discussed *supra*, Illinois Rule of Evidence 804(b)(5) allows for the admission of hearsay via the forfeiture by wrongdoing doctrine and as part of that doctrine the proponent must establish the "unavailability" of the declarant; in Chatman's case, the trial court held that subsection (a)(5) unavailability had been met by the State. *Chatman*, 2022 IL App (4th) 210716 at ¶48.

Unavailability is "'a narrow concept, subject to a rigorous standard.'" *Torres*, 2012 IL 111302 at ¶54 (quoting *People v. Johnson*, 118 Ill.2d 501, 509 (1987)). To meet this standard, the State must "'have made a good-faith effort to obtain [the witness's] presence at trial.'" *Torres*, 2012 IL 11302, at ¶54 (quoting *Roberts*, 448 U.S. at 74). The *Roberts* Court explained how rigorous of a standard this is:

> The law does not require the doing of a futile act. Thus, if no possibility of procuring the witness exists (as, for example, the witness' intervening death), "good faith" demands nothing of the prosecution. **But if there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation**. The lengths to which the prosecution must go to produce a witness is a question of reasonableness. The ultimate question is whether the witness is unavailable despite good-faith efforts undertaken prior to trial to locate and present that witness. *Roberts*, 448 U.S. at 74 (internal citations omitted) (emphasis added).

The proponent of the evidence bears the burden of proving the necessary elements for admissibility, *i.e.*, "the steps it took to secure the presence of a missing witness at trial." *People v. Smith*, 275 Ill.App.3d 207, 215 (1st Dist. 1995). To this end, a claim of unavailability must be "supported by affidavit or testimony." *Dukes v. Pneumo Abex Corporation*, 386 Ill.App.3d 425, 442 (4th Dist. 2008). "Whether good-faith and reasonable diligence has been exercised in these efforts is determined on a case by case basis after a careful review of the facts and circumstances of each case." *People v. Brown*, 47 Ill.App.3d 616, 621 (1st Dist. 1977). But

it is not enough to act with a pure heart and an empty head. *United States v. Yida*, 498 F.3d 945, 952 (9th Cir. 2007). For example in *Brown*, the reviewing court described what would qualify as a good-faith effort on remand:

> Lest it be said that this method does not enable the State to predict in advance what will constitute a "good-faith, reasonably diligent effort,". . . (1) mindful of the United States Supreme Court's decision in *Mancusi v. Stubbs* [citation omitted], we would not require the State to make an effort to contact a witness that has moved to a foreign country if the State is powerless to compel his attendance at trial; (2) we would require the State to make an effort to contact a witness located within the United States, its territories and possessions, and to request his attendance at trial if the effort is successful, when it learns of his new location in sufficient time before trial to reasonably permit such an effort; and, (3) what will constitute a sufficient effort to contact out-of-state witnesses must be determined on a case by case basis just as what has constituted a sufficient effort to contact missing witnesses not discovered to be out-of-state has been determined in the past. *Brown*, 47 Ill.App.3d at 622.

Turning to Chatman's case, the State's efforts to secure Collins's presence in May and September 2021 fail the-above requirements and thus the trial court erred in concluding the State had established Collins's unavailability. On October 15, 2020, the State filed a motion *in limine* asking to introduce statements made by Chatman to Collins, who the State allegedly could no longer locate. (C. 104-13) As part of the motion, the State detailed jail phone calls from 2020 between Chatman and others allegedly talking about ensuring that Collins did not testify. (C. 105-10) And at the February 9, 2021 hearing on the State's motion, the court held the State had demonstrated by a preponderance that Chatman's actions intended to cause Collins not to testify. (R. 104-12) The court held in abeyance the second portion of the motion (whether the State had made good-faith efforts to secure Collins's presence) for closer in time to trial. (R. 111)

Believing the trial was going to be the next week, the parties held a May 6, 2021 hearing on the State's alleged good-faith efforts. (R. 140-54) Detective Jeremiah Christian testified he made no attempt to get a subpoena or warrant for Collins. (R. 148) He tried locating Collins in central Illinois through an internal police program ("I-board"). (R. 142-43) He described

the posting as "an intel-based software program that we utilize. It disseminates information through various agencies locally and to all officers." (R. 142) The postings were only viewed by local agencies around Champaign-Urbana and possibly Bloomington. (R. 149) Christian's intel analyst re-posted the headline on April 28, 2021. (R. 142-43) At that point, the Collins-related headline had been viewed 119 times. (R. 143) Christian was unaware of any specific national or statewide listserv for locating potential witnesses, but he admitted those existed and that Collins was not listed as a missing person in LEADS or to his knowledge any FBI list. (R. 149-51)

As of the May 2021 hearing, Christian had recently talked to officers in Davenport, Iowa "to gather some intelligence of where Mr. Collins may be, and I asked them about any contacts they may have had. And, in fact, our contact [in late 2020] was more recent than anything they had in their system, which was dated since 2016." (R. 144, 151)[2] When serving a subpoena on Demetria Chatman–Michael's mother and a relative of Collins–Demetria said she had no contact with Collins. (R. 145) In listening to jail calls between Chatman and Demetria, Christian learned the defense had not been able to locate Collins either. (R. 146-47) Finally, there was information that Collins was possibly in Indianapolis, but the tip did not pan out. (R. 147)

The court ruled the State had, at that point, made a good faith effort to locate Collins. (R. 152-53) The court however acknowledged there was more the State could have done, that he was not "sure how effective putting it on this board was when it was really just local," and that there was no information on who Christian spoke to in Iowa. (R. 152-53); *compare Roberts*, 448 U.S. at 74 ("[I]f there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation.").

[2] According to the State's forfeiture by wrongdoing motion, Christian had visited Collins in Iowa on March 12, 2020. (C. 108)

Due to other pre-trial proceedings, Chatman's trial did not occur for another six months. On the date of jury selection, the trial court held a second hearing on the State's alleged good-faith efforts since the first hearing. (R. 479-504) Christian testified to his purported new efforts. First, he checked the internal local police department I-board ("It is basically all intelligence-based information. It is mostly [be on the lookouts] or maybe officer safety things along those lines. So it's mostly just all intelligence, BOLOs I would agree, and other information that they feel is very pertinent worth sharing.") (R. 492) The I-board was updated and viewed 250 times, but he was unsure if the 250 were unique visitors or simply the number of views. (R. 482, 493) Second, Christian and another officer on August 24 and 25, 2021, went to prior addresses for Collins with no contact. (R. 480-87) One of those addresses was the residence of Collins's cousin, Devonte McCormick; Christian had been to that address for another case in the past year. (R. 485, 497-98) No members of the Chatman family reached out with Collins's contact information. (R. 488)

Christian again admitted no information regarding Collins was put into a nationwide or the statewide LEADS system. (R. 494-95) Christian explained why nothing was put into LEADS: "LEADS are very specific about the requirements in order to post information such as alerts. And a subpoena service would not require - - it would not meet the requirements for a LEADS entry." (R. 495) He admitted, however, a warrant would have met that requirement. (R. 495) Christian conceded subpoenas and warrants had been issued for two of the State's other witnesses, Feriana and Alexandrinique Anderson. (R. 495); *see also* (R. 297-98) Christian claimed that the last time he called Collins's phone number, a person whose voice Christian did not recognize as Collins answered and said Christian had the wrong number. (R. 496)[3]

[3] According to the State's forfeiture by wrongdoing motion, the October 2020 contact between Christian and Collins's phone number was made via text message and the recipient responded that Christian had the wrong phone number. (C. 109) ("Collins did not initially respond, but finally did and indicated that Detective Christian had the wrong number.")

Christian could not provide a date as to when that occurred as "[i]t's been some time." (R. 496)

At the conclusion of the September 2021 hearing, the trial court again found the State acted in good faith in attempting to locate Collins. (R. 502-04) In asserting that the State's efforts were "reasonable," the court agreed with trial counsel's argument that Christian's knocking on a few doors of Collins's alleged former addresses were "half-hearted attempt[s]" to locate Collins and that "[n]ot all the efforts that could possibly be made" were made. (R. 502-04) But the court concluded Collins was "unavailable" and allowed the State to admit his recorded statement into evidence. (R. 504)

People v. Payne, 30 Ill.App.3d 624 (1st Dist. 1975), is helpful in demonstrating why Detective Jeremiah Christian's meandering and amorphous claims of trying to locate Collins at a few old addresses and a hyper-local police website did not meet the State's burden of showing Collins was unavailable. In *Payne*, the defendant was charged with robbing Oscar Fallin, and the first trial resulted in a hung jury. *Id*. at 625. Fallin testified at that trial but could not be located for the second trial. *Id*. Two days before the second trial, the court held a hearing on whether the State had met its burden to demonstrate that Fallin was unavailable; at that hearing, Officer Brennan and a prosecutor testified. *Id*.

Brennan testified he had not seen Fallin since the first trial but made "approximately 20 to 25 attempts to locate Fallin, the last time three days before the [second] trial began when he went to Fallin's former residence" and inquired with several friends and former employers of Fallin. *Id*. The first of these attempts happened 10 to 11 months before the second trial started. *Id*. at 626. That attempt showed Fallin's common-law wife, who Fallin lived with, no longer resided at that address. *Id*. Brennan continued going to that address for future attempts on unknown dates; the officer could not remember who he talked to on each occasion. *Id*.

As to Fallin's former employers, Brennan followed up on a tip, from an unknown source, that Fallin had taken his tools somewhere a month before his first trial; Brennan went to that gas station on several unknown dates and spoke to a person named "Johnny," the last time being two months before Payne's second trial. *Id*. "Johnny" did not know Fallin's whereabouts. *Id*. Another former employer, who was also an officer, told Brennan three days before trial he did not know Fallin's location. *Id*. Brennan made no notes or reports of his purported attempts. *Id*. Brennan's attempts to locate Fallin through the Chicago Housing Authority and Fallin's girlfriend's employers also failed. *Id*. at 627. Other random efforts were unsuccessful. *Id*.

The prosecutor testified he made several phone calls three days before the hearing concerning regarding Fallin. *Id*. He called the police department's records department and the most recent information they had on Fallin was an October 1970 arrest. *Id*. at 627-28. No death certificate had been issued for Fallin. *Id*. at 628. Fallin was not listed as an inmate in the local jail or a prison. *Id*. The prosecutor however "did not have a subpoena issued for Fallin for the second trial." *Id*.

The Appellate Court, First District, held that the-above efforts were not good faith ones. *Id*. at 628-31. To start, the appellate court noted that "[t]he responsibility for the conduct of the People's case rests with the State's Attorney, and not the police. It is his duty to supervise and coordinate the efforts to locate the witness known to be missing." *Id*. at 628. The State failed to provide such supervision and coordination. The appellate court explained, "The State was aware that Fallin had been a difficult witness to locate for the first trial but took no steps to insure his appearance later even though it knew that his testimony was essential to a conviction and that the case would be tried again." *Id*. at 628-29. The court recounted several facts from Payne's first trial that were not recounted to Officer Brennan. *Id*. at 629. Had the State properly supervised Brennan, it would have "learned what he had not done, and [the State] could have directed him to do certain things or they could have done them themselves." *Id*. This would

have included checking his Social Security number, driver's license, birth date, and voter registration information. *Id*. at 629-30.

The appellate court then turned its attention to Brennan's attempts at locating Fallin. *Id*. at 630. While recognizing that Brennan made "20 to 25 attempts" to locate Fallin, the panel found that the attempts were "numerically impressive but qualitatively weak." *Id*. Brennan had no records, failed to remember some dates and names of individuals he spoke to about Fallin, and did not disclose how he learned certain details about Fallin. *Id*. And when he did look for Fallin, he recultivated the same "fallow ground." *Id*. The court file also showed that several subpoenas issued for Fallin went to the wrong address. *Id*.

In conclusion, the appellate court stated, "In our view, approval of introduction of the former testimony under these facts would encourage laxity rather than diligence and desultory searches rather than systematic and coordinated efforts by the prosecution and whatever investigative arm it employs." *Id*. Like *Payne*, other courts in Illinois have found that cursory investigative steps taken by the State's agents did not amount to good-faith efforts by the State to secure the presence of a witness. *See*, *e.g.*, *Brown*, 47 Ill.App.3d at 621-22 (no good-faith efforts shown where State sent investigator three times to locate witness, learned he moved out of state, and then for two months did nothing to locate him in that state); *Burton v. Drake's Mayors Row Restaurant, Inc.*, 53 Ill.App.3d 348, 350-52 (1st Dist. 1977) (investigator spending two days and approximately 7 hours trying to find witness at last known address, mailing certified letter to that address, and inquiring with credit bureau held to be not good-faith efforts); *Kent*, 2020 IL App (2d) 180887 at ¶¶103-06 (trying to serve witness at least twice insufficient); *see also Torres*, 2012 IL 111302 at ¶35 (had defendant not conceded unavailability in the lower court, mere fact that witness had been deported would not have met the State's burden to show good-faith efforts to secure that witness's presence for trial); *People v. McLaurin*, 2012 IL App (1st)102943, ¶¶39-53 (remand for evidentiary hearing to determine whether trial counsel

was ineffective for failing to use Witness Attendance Act to secure material witness's appearance); *compare Smith*, 275 Ill.App.3d at 215 (trying to serve subpoena three times at two separate addresses paired with other efforts found to be good-faith efforts); *People v. Clark*, 79 Ill.App.3d 640, 648-49 (1st Dist. 1979) (coordinated efforts between prosecutor's investigators and the police found to be good-faith efforts).

In reviewing claims related to Federal Rule of Evidence 804 (which is coextensive to our Rule 804, *see Chatman*, 2022 IL App (4th) 210716 at ¶¶47-48, 51), federal courts have held similarly when analyzing purported good-faith efforts. For example in *U.S. v. Lynch*, 499 F.2d 1011, 1023-24 (D.C. Cir. 1974), the Court of Appeals, District of Columbia, explained what the proponent of hearsay evidence must do to show good faith: "In the ordinary case, this will require a search equally as vigorous as that which the government would undertake to find a critical witness if it has no [prior statement] to rely upon in the event of 'unavailability'. . . .We are not prepared to equate 'unavailability' with 'evasiveness.'" In *Lynch*, the government did not make good-faith efforts even where: (1) the witness was "personally served with a subpoena"; (2) the prosecutor instructed the witness to return the next day; and (3) when she did not, the police staked out her last known whereabouts. The court explained, "[I]t is difficult to believe that if the preliminary hearing testimony of this critical witness were not available, the prosecution would have abandoned its efforts at this point to locate [the witness] and concluded its case. We believe the prosecution would have asked the court for additional time within which to find her."

Lynch, like our state's *Payne* decision, is illustrative of the standard federal courts use in determining what good-faith efforts are necessary to secure a witness's presence. *See*, *e.g.*, *U.S. v. Mann*, 590 F.2d 361, 367-68 (1st Cir. 1978) (prosecution's subpoena out-of-country witness and State Department's communication with foreign country's embassy were insufficient "other reasonable means" where "the government had such means at its disposal but did not

choose to use them. The defendant should not suffer the injury from the government's choice."); *Government of Virgin Islands v. Aquino*, 378 F.2d 540, 550 (3d Cir. 1967) (proponent's failure to use the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings considered in unavailability analysis); *Perricone v. Kansas City Souther Ry. Co.*, 630 F.2d 317, 321 (5th Cir. 1980) (proponent failed to establish unavailability where no subpoena issued for witness and opponent found witness after jury's verdict); *U.S. v. Puckett*, 692 F.2d 663, 670 (10th Cir. 1982) (proponent did not establish witnesses' unavailability where counsel only tried to subpoena them mid-trial); *Williams v. United Dairy Farmers*, 188 F.R.D. 266, 272-73 (S.D. Ohio 1999) ("Under Rule 804(a)(5), the proponent must establish unavailability at the time of the hearing when the hearsay statement is offered. [citations omitted]. The Court is not willing to adopt a 'once unavailable, always unavailable' approach under Rule 804(a)(5)."); *U.S. v. Wrenn*, 170 F.Supp.2d 604, 607-08 (E.D. Va. 2001) (State did not make good-faith efforts where special agent failed to obtain "names and addresses of the [non-citizen] declarants so that they could be served with trial subpoenas."); *compare Hardy v. Cross*, 565 U.S. 65, 70-71 (2011) (under AEDPA deference, Court found Illinois state court's determination of good faith not unreasonable as "the deferential standard of review set out in [AEDPA] does not permit a federal court to overturn a state court's decision on the question of unavailability merely because the federal court identifies additional steps that might have been taken."); *Christie v. Hollins*, 409 F.3d 120, 125 (2d Cir. 2005) (noting state court did not require subpoena "as essential to diligent efforts to secure the presence of a cooperative witness"); *U.S. v. Solomon*, 24 Fed.Appx. 148, 150-51 (4th Cir. 2001) (government made good-faith efforts by subpoenaing witness and securing warrant when she failed to appear and further advising her to appear after she was arrested on that warrant); *U.S. v. Thomas*, 705 F.2d 709, 711 (4th Cir. 1983) (witnesses were unavailable where prosecution was in direct contact with witness and other witness's lawyer and when witnesses "vanished" the government "attempted in vain to locate

them by service of process."); *U.S. v. Smith*, 928 F.3d 1215, 1230-31 (11th Cir. 2019) (good-faith efforts found where witness "had no phone or address," left the jurisdiction, "was in hiding," and yet the government still served process on the witness via a boyfriend and former attorney).

Our sister state courts have likewise expected the proponent of hearsay evidence to do more than what occurred in *Payne* and in Chatman's case. *See*, *e.g.*, *Fresneda v. State*, 483 P.2d 1011, 1017 (Alaska 1971) (Good faith has been interpreted to mean "untiring efforts in good earnest. There must be evidence of a substantial character to support the conclusion of due diligence. [What is required is] a thorough, painstaking and systematic attempt to locate the witnesses."); *Gallagher v. State*, 466 N.E.2d 1382, 1386-87 (Ind. Ct. App. 1984) (State established witness's unavailability where it subpoenaed witness, had a bench warrant issued for witness's arrest, looked in national database, and engage police to contact witness's bondsman, ex-wife, and mother); *State v. Rivera*, 754 P.2d 701, 703-04 (Wash. Ct. App. 1988) (State's issuance of a subpoena and witness's failure to appear insufficient demonstration of good faith); *State v. Sweeney*, 723 P.2d 551, 554 (Wash. Ct. App. 1986) ("While the State need not resort to the Uniform Act when the witness appears to be cooperative, it must use the procedures of the Uniform Act when it becomes apparent that the witness is no longer cooperating.").

Much like the officer in *Payne*, Detective Christian's attempts to locate Collins might have been "numerically impressive but [were] qualitatively weak." 30 Ill.App.3d at 630. To start, the hundreds of views the I-board posting for Collins received from February through September 2021 are the epitome of this principle as the police website was hyper-local being limited to Champaign-Urbana and possibly to Bloomington. Moreover, Collins could not say whether the number of views was unique visitors to the website or the total number of views (and thus one person could have viewed the post 369 times). (R. 143-44, 482, 489, 493) Christian noted that state and nationwide systems exist for missing witnesses; yet, he made no attempt

to determine what those systems were or how to include Collins's information on them. (R. 148-50, 494-95)

In fact, Christian recoiled at including Collins's information in LEADS while acknowledging that if a warrant were issued for Collins appearance it would go into that system. (R. 495) LEADS is a "statewide computerized telecommunications system designed to provide services, information, and capabilities to law enforcement and criminal justice community in the State Illinois." 20 Ill. Adm. Code 1240.10(a) (West 2023). While not elicited during the hearing testimony, Christian's belief that Collins could not be entered into LEADS was incorrect.

Per the Illinois State Police manual for LEADS, Collins satisfied the criteria to be input into LEADS as a missing person. *LEADS 3.0 Manual*, "Missing Persons Chapter," https://isp.illinois.gov/LawEnforcement/LEADS3Manual (last accessed March 22, 2023).[4] Per section 1.1(F) of that manual, Collins qualified as an "[o]ther" missing person: "A Person not meeting the criteria for entry in any other criteria who is missing and 1) for whom there is a reasonable concern for his/her safety. . .". Given the State's assertion in the forfeiture by wrongdoing motion and hearing on the motion that "Collins had moved to another state because he was in fear for his life," (C. 108; R. 95), it possessed sufficient information to have Collins's information put into LEADS.

Christian's August 24 and 25, 2021 visits to Collins's prior addresses around Champaign-Urbana as well as in Kendall County fare no better. (R. 483-88) Christian meekly claimed that the last time he called Collins's known phone number, someone who allegedly was not Collins answered and said Christian had the wrong number; Christian made no attempts thereafter to determine whether Collins still owned that number, who currently possessed Collins's phone

[4] This Court may take judicial notice of this manual. *See*, *e.g.*, *People v. Contursi*, 2019 IL App (1st) 162894, ¶34 (taking judicial notice of Illinois State Police document).

number if he did not, and where those phone calls occurred from in either instance. (R. 496) Notably, Christian's September 2021 hearing testimony does not mesh with the State's representation in its motion that Christian's October 2020 attempt to contact Collins at that phone number was via a text message and not a phone call. (C. 109)

And perhaps most important of all, neither Christian nor the prosecutors in this case sought a subpoena or a warrant for Collins's appearance. (R. 148) They failed to do so, despite securing Feriana and Alexandrinique Anderson's appearances at trial by doing just that (and having them testify under the threat of contempt of court). (R. 495, 911) And much like the prosecutor in *Payne*, the prosecutor here knew that Christian had not been able to locate Collins and yet did nothing to secure Collins's presence. *See Payne*, 30 Ill.App.3d at 628 ("The responsibility for the conduct of the People's case rests with the State's Attorney, and not the police. It is his duty to supervise and coordinate the efforts to locate the witness known to be missing.").

In affirming the trial court's finding of good-faith efforts by the State, the appellate court here distinguished this case from *Payne* and other cases. *Chatman*, 2022 IL App (4th) 210716 at ¶¶59-62. In doing so, the appellate court erred in finding a warrant could not have been issued for Collins if proper mail service had been effectuated. *Chatman*, 2022 IL App (4th) 210716 at ¶63. In reaching that conclusion, the appellate court relied upon *People v. Allen*, 268 Ill.App.3d 279, 287 (1st Dist. 1994), a case where that court found no abuse of discretion by the trial court in prohibiting the defendant from calling a witness as "the defense was dilatory for failing to duly subpoena the only witness it had to present for its case." In *Allen*, the defense attorney merely left a subpoena in a mailbox for the witness and did not comply with any of the rules for certified or registered mail service. *Id*. at 283, 286-87. Thus, *Allen* does not support the court below's conclusion that a warrant could not have been issued

for Collins; *Allen* merely holds that a party cannot call a witness if the party fails to comply with the pertinent service of process rules.

The appellate court here also overlooked that Supreme Court rules allow for service via, *inter alia*, mail. *See*, *e.g.*, Ill.S.Ct. R. 237(a) (West 2021) ("Service of a subpoena by mail may be proved *prima facie* by a return receipt showing delivery to the witness or his or her authorized agent by certified or registered mail. . ."); Ill.S.Ct. R. 105(b) (West 2021) (service may be made in person, via mail, or by publication); *see also Chicago & A.R. Co. v. Dunning*, 18 Ill. 494, 495 (1857) ("Properly, a subpoena should be directed to the witness and not to the sheriff, as is generally the case with process issued out of a court, and the witness is bound to obey it whenever it comes to his hands; no matter by what means. It may be served upon him by the sheriff, or the party, or any private person, or may be even sent by mail, and as the command is to the witness, he is bound to obey it, whenever he receives that command."); 735 ILCS 5/2-206 (West 2021) ("Service by publication; affidavit; mailing; certificate"); 725 ILCS 5/115-17(a) (West 2021) (only requirement for punishing non-appearance in criminal proceedings is that witness be "duly subpoenaed"). The form subpoenas for Champaign County used by the State here identify the use of U.S. mail as an option, and no local rule for the Sixth Judicial Circuit prohibits the use of mail for service of process. (C. 193-206, 248-52); IL R 6 CIR Rule 1.1(g) (West 2021) ("Each Rule shall apply to any civil or criminal proceedings, unless contained in a part or section which limits its application, or the context clearly limits its application.").

Further, if it were accurate per Christian's testimony, and the State's assertions in its motion, that Collins may have been in Iowa or Indiana, statutory provisions exist for compelling the attendance of such out-of-state and material witnesses. *See* 725 ILCS 220/3 (West 2021) ("Witness Attendance Act"); *see also McLaurin*, 2012 IL App (1st) 102943 at ¶¶39-53 (remand for evidentiary hearing regarding trial counsel's non-use of the Act and determining whether

his actions were made in good faith). And once a witness has been duly subpoenaed, contempt proceedings may be instituted against that witness if he fails to appear; just like they were commenced against the Anderson sisters. (R. 495); *see* 725 ILCS 5/115-17 (West 2021) ("Clerk; issuance of subpoenas"); *see also* 725 ILCS 5/109-3(d) (West 2021) ("[T]he judge may require any material witness for the State or defendant to enter into a written undertaking to appear at the trial. Any witness who refuses to execute a recognizance may be committed by the judge to the custody of the sheriff until trial or further order of the court having jurisdiction of the cause. Any witness who executes a recognizance and fails to comply with its terms commits a Class C misdemeanor.").

Thus, assuming the State had a subpoena issued for Collins's presence to testify, said subpoena could have been sent via mail to any or all of the Illinois addresses Christian claimed he visited in order to locate Collins. (R. 140-54, 479-500) And given that Christian testified Collins might be living in another state, other statutory provisions would have allowed for the service of process to Collins. *See* 725 ILCS 220/3 ("Witness from another state summoned to testify in this State").

Finally, the appellate court relied upon Collins's addresses, and Christian's visits to them (*Chatman*, 2022 IL App (4th) 210716 at ¶¶58, 61, 63) as reflecting that good-faith efforts were made here, but that begs the question: if visits to these old addresses of Collins were good enough to demonstrate good faith, how was the State operating in good faith by not serving a subpoena by mail at these addresses after Christian failed to serve Collins in person? *See Payne*, 30 Ill.App.3d at 630 (considering the quality not quantity of the efforts made). Where this did not occur, the State's efforts here were not ones made in good faith. Given our state's authority as well as the persuasive out-of-jurisdiction case law, the trial court erred in finding that the State made good-faith efforts to locate Collins and thus that he was unavailable as

defined via Rule 804(a)(5). Collins's videotaped statement should not have been admitted into evidence, and the trial court erred in allowing this to occur.

D. The trial court's error violated Chatman's constitutional right to confront a witness against him, and this preserved error was not harmless beyond a reasonable doubt.

Because the issue was litigated pre-trial and raised in the post-trial motion, this issue was preserved for appeal. (C. 424; R. 1802-04); *People v. Denson*, 2014 IL 116231, ¶18. As the error affecting Chatman's constitutional right to confrontation was preserved, it is the State's burden on appeal to demonstrate the error was harmless beyond a reasonable doubt. *People v. Thurow*, 203 Ill.2d 352, 363 (2003). The State cannot carry that heavy burden here. This Court has listed three approaches for measuring error under this harmless-constitutional-error test: "(1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determining whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *People v. Patterson*, 217 Ill.2d 407, 428 (2005), *quoting People v. Wilkerson*, 87 Ill.2d 151, 157 (1981); *compare In re E.H*, 224 Ill.2d 172, 180-81 (2006) (harmless error analysis depends on whether error is constitutional in nature versus merely an evidentiary one not impacting one's constitutional rights).

While some evidence in the record implicates Chatman, the issue here is not whether a rational trier of fact could have found him guilty. Rather, the salient point is that some considerable amount of doubt existed, warranting reversal in light of the trial court's error that violated Chatman's confrontation right. *See*, *e.g.*, *People v. Smith*, 402 Ill.App.3d 538, 544-45 (1st Dist. 2010) (reversing in light of improper prosecutorial comments, even though the State "produced sufficient evidence to support the convictions"). The evidence against Chatman was not overwhelming.

Starting with Collins's videotaped statement (the evidence that would have been excluded had the trial court not violated Chatman's rights), this evidence included an alleged confession by Chatman to Collins regarding the robbery and shooting. (SE #153) If believed by a jury, a confession is some of the most, if not the most, damaging evidence possible against a defendant. *See People v. R.C.*, 108 Ill.2d 349, 356 (1985) ("a confession is the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable"). Collins's videotaped statement was not brief either. The State played the entirety of the nearly 16-minute video. (R. 1456, 1459; SE #153) Without Chatman being able to cross-examine Collins, the videotaped statement could only have tended to over-persuade the jury. *See People v. Simpson*, 2015 IL 116512, ¶¶37-39 (improperly-admitted videotaped statement containing confession by defendant to a third party was highly prejudicial and thus warranted a new trial).

Unlike jailhouse informant Dennis Griham, whose credibility was severely undercut by his trial testimony and biases (*see People v. Belknap*, 2014 IL 117904, ¶57 (The testimony of jailhouse informants "must be viewed with caution given that such informants often expect to and do receive consideration on their own charges and sentencing in return for their testimony")), Chatman could not delve into areas ripe for cross-examination such as Collins's pending charge and his possible connection to the Chatman family. And even before trial, Collins's statement was crucial in the State's charging of Chatman. As mentioned *supra*, p. 24, Chatman was only charged in January 2020 with the March 2018 shooting of Green; Collins had given his statement to Christian just a few weeks earlier on December 30, 2019. (C. 39-42; R. 1454)

Finally in closing argument, the prosecutor heavily relied upon Collins's taped statement and played it for the jury. (R. 1690-93) Yet, the jury hearing this alleged confession was not the limit of the prejudice toward Chatman. Latching onto Collins's statement containing Chatman's alleged admissions, the prosecutor improperly argued to the jury in closing: "You

have Dee Collins who tells the police it's a robbery. And then he's threatened to the point where Detective Christian can't even find him, can't even find him anymore. So he gives this statement. [Chatman] gets it in discovery, threatens Dee Collins. And then where is Dee Collins? Who knows. Who knows. He's been told that he better not come to court." (R. 1694-95) This was improper as there was no evidence presented during the trial that Collins had been told "not to come to court." (R. 1452-53); *see*, *e.g.*, *People v. Johnson*, 208 Ill.2d 53, 115 (2003) (party may not argue facts not based on evidence in the record).

Even with the jury being subjected to the erroneously-admitted Collins evidence as well as the improper closing argument by the State, the jury acquitted Chatman of all forms of first degree murder besides felony murder. (C. 453-55); *see People v. Delgado*, 376 Ill.App.3d 307, 312 (1st Dist. 2007) (jury finding defendant not guilty on some counts indicative that evidence was closely balanced). Chatman testified in his own defense and asserted his shooting of Green was justified and also denied making any confession to Collins. (R. 1567-80) Considerable debate by the jurors occurred, as evinced by the note they sent out, as to whether Chatman committed (or attempted to commit) a robbery of Green, calling into question whether Green's death occurred during said crime. (CS. 6; R. 1779-83); *see People v. Walker*, 211 Ill.2d 317, 342 (2004) (jury notes indicative that evidence was not overwhelming); *People v. Gonzalez*, 2011 IL App (2d) 100380, ¶26 (same).

Given all of this, the State cannot demonstrate that the evidence here was overwhelming to render the constitutional error harmless. Where the trial court's finding of good-faith efforts by the State (and thus finding Dominique Collins to be unavailable) was against the manifest weight of the evidence, where this error violated Chatman's right to confrontation, and where said error was not harmless, this Court should reverse Michael Chatman's conviction and remand the case for a new trial.

CONCLUSION

For the foregoing reasons, Michael Chatman, Defendant-Appellant, respectfully requests that this Court reverse his conviction and remand the matter for a new trial.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in 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, the certificate of service, and those matters to be appended to the brief under Rule 342, is 47 pages.

/s/Christofer R. Bendik
CHRISTOFER R. BENDIK
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Michael D. Chatman No. 129133

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner,	)	APPELLATE CASE: 4-21-0716
— vs —	)	CIRCUIT CASE: 20-CF-156
	)	TRIAL JUDGE: ROSENBAUM
Michael D. Chatman, Respondent.	)	

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FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner,
— vs —
Michael D. Chatman, Respondent.

APPELLATE CASE: 4-21-0716
CIRCUIT CASE: 20-CF-156
TRIAL JUDGE: ROSENBAUM

C3

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
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THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner,	)	
— vs —	)	APPELLATE CASE: 4-21-0716
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C4

APPEAL TO THE APPELLATE COURT OF ILLINOIS
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FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner,) APPELLATE CASE: 4-21-0716
— vs —) CIRCUIT CASE: 20-CF-156
) TRIAL JUDGE: ROSENBAUM
Michael D. Chatman,)
Respondent.)

C5

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner,) APPELLATE CASE: 4-21-0716
— vs —) CIRCUIT CASE: 20-CF-156
) TRIAL JUDGE: ROSENBAUM
Michael D. Chatman,)
Respondent.)

C6

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner,	)	APPELLATE CASE: 4-21-0716
— vs —	)	CIRCUIT CASE: 20-CF-156
	)	TRIAL JUDGE: ROSENBAUM
Michael D. Chatman,	)	
Respondent.	)	

INDEX TO THE RECORD

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Vs) Case Number 2020-CF-000156
Michael D Chatman)

AMENDED JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above named defendant, whose date of birth is November 12, 1999, has been adjudged guilty of the offenses below, IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the year and months specified for each offense

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
04	Murder/Other Forcible Felony	March 23, 2018	720 5/9-1(a)(3)	M	55 years	3 years

To run (concurrent with) (consecutively to) counts _____ and

To run (concurrent with) (consecutively to) counts _____ and

To run (concurrent with) (consecutively to) counts _____ and served

This Court finds that the defendant is

_____ Convicted a class M offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4 5-95(b)

x _____ The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 666 days as of the date of this order) from (specify dates) _____

_____ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim (730 ILCS 5/3-6-(a)(2)(iii))

_____ The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program (730 ILCS 5/5-4-1(a))

_____ The Court further finds that offense was committed as a result of the use of, abuse of alcohol, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program

_____ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of Champaign County

x _____ It is FURTHER ORDERED that the defendant is to serve 30 years for the offense of murder and 25 years for the firearm enhancement The Court notes the defendant will be eligible for parole after 20 years of incarceration

The Clerk of the Court shall deliver a certified copy of this order to the sheriff The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law

This order is (effective 12/2/20201)

DATE December 09, 2021 Entered R W B

Randall B Rosenbaum
Sixth Judicial Circuit Judge, Champaign County, Illinois

Approved by Conference of Chief Judges 6/20/14

C500

No. 4-21-0716

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	the Sixth Judicial Circuit,
Plaintiff-Appellee,	)	Champaign County, Illinois
	)	
-vs-	)	No. 20-CF-156
	)	
MICHAEL D. CHATMAN,	)	
	)	Honorable
Defendant-Appellant.	)	Randall Rosenbaum,
	)	Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Michael D. Chatman
Appellant's Address:	Champaign County Jail 502 S. Lierman Ave. Urbana, IL 61802
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Murder
Date of Judgment or Order:	December 9, 2021
Sentence:	55 years in prison
Nature of Order Appealed:	Conviction, Sentence and Motion to Reconsider

/s/ Catherine K. Hart
CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

C508

No. 4-21-0716

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	the Sixth Judicial Circuit,
Plaintiff-Appellee,	)	Champaign County, Illinois
	)	
-vs-	)	No. 20-CF-156
	)	
MICHAEL D. CHATMAN,	)	
	)	Honorable
Defendant-Appellant.	)	Randall Rosenbaum,
	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Susan M. McGrath, Champaign County Clerk of the Circuit Court, Champaign County Courthouse, 101 E. Main Street, Urbana, IL 61801

Mr. David J. Robinson, Deputy Director, State's Attorney Appellate Prosecutor, 725 South Second Street, Springfield, IL 62704, 4thdistrict@ilsaap.org

Mr. Michael D. Chatman, Champaign County Jail, 502 S. Lierman Ave., Urbana, IL 61802

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 December 16, 2021, the Amended Notice of Appeal was filed with the Champaign County Circuit Clerk's Office 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 appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid.

/s/ Lindsey Dutcher
Legal Secretary
Office of the State Appellate Defender
Fourth Judicial District
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C509

2022 IL App (4th) 210716

NO. 4-21-0716

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 17, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHEAL D. CHATMAN, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Champaign County No. 20CF156 Honorable Randall B. Rosenbaum, Judge Presiding.

JUSTICE BRIDGES delivered the judgment of the court with opinion.
Presiding Justice Knecht and Justice Turner concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Micheal Chatman appeals his conviction for felony murder (720 ILCS 5/9-1(a)(3) (West 2018)) in the shooting death of Ricky Green. On appeal defendant challenges the trial court's determination that Dominque ("Dee") Collins was an unavailable witness for the purpose of the forfeiture by wrongdoing exception to hearsay and the confrontation clause of the sixth amendment (U.S. Const., amend. VI). Particularly, defendant challenges whether the State made a good-faith reasonable effort to obtain Collins's presence at trial. The defendant also challenges the trial court's decisions not to exclude lead detective Jeremiah Christian from the courtroom during the State's case in chief and to permit him to sit at the prosecutor's table with counsel. For the following reasons, we affirm the judgment of the circuit court of Champaign County.

¶ 2 I. BACKGROUND

¶ 3 Green died in the early morning hours of March 23, 2018, as the result of two gunshot wounds: one to his pelvis, which perforated his right femoral artery, and one to his left shoulder, which perforated his subclavian artery and vein. On January 31, 2020, defendant was charged with four counts of first degree murder (720 ILCS 5/9-1(a)(1)-(3) (West 2018)). Count I alleged intent to do great bodily harm, count II alleged intent to kill, count III alleged knowing such acts created a strong probability of death or great bodily harm, and count IV alleged felony murder based on robbery.

¶ 4 A. Motion to Admit Collins's Statement

¶ 5 During the course of the investigation into Green's death, Christian made contact with Collins, who he believed might have information about the shooting. Collins was related to the Chatman family through marriage, and defendant referred to him as his cousin. On December 30, 2019, Christian interviewed Collins, and that interview was recorded on Christian's body camera and by a camera in a police interview room. Collins cooperated and told Christian that between around 7 a.m. and 9 a.m. on the morning after Green was shot, defendant was at his brother Devonte McCormick's apartment on Elm Street in Urbana. He was barefoot and looked like he had been running, and his feet looked like he had been in a cornfield. Collins asked what had happened, and defendant told him that he, Green, and Scrilla (Michael Simmons) were in the back seat of a car together in the trailer park near Market Street. Defendant and Simmons planned on taking Green's gun. Something happened that caused them to run from the car. Defendant snatched Green's gun and tried to run away. Green chased the defendant, who was afraid Green was going to "beat his a***." Defendant turned and fired twice at Green while he was running.

Collins stated that he had talked about the shooting with defendant on other occasions, and his story remained the same.

¶ 6 On October 15, 2020, the State filed a motion ***in limine*** to admit Collins's statements due to forfeiture by wrongdoing. Included with the motion were recordings of phone calls defendant made while he was in jail. The recordings showed defendant repeatedly attempting to determine who was working with the police. Defendant and his family narrowed in on Collins as providing a videotaped statement to the police. Although during defendant's numerous inmate conversations, often in times with incomprehensible argot, he is not heard giving specific orders to prevent Collins from testifying. Yet, after engaging in conversations with his father and McCormick, they both indicated that they would ensure Collins would not cooperate further with the police and not attend his court proceedings. Needless to say, those intimidating threats of violence made their way to Collins, causing him to leave the State.

¶ 7 Defendant's father told defendant he just needed to

> "get the word to the motherf*** street, is this motherf*** did this, and then motherf*** be able to take care of s*** on our end." He went on to say, "Just let me handle this s*** on this end. All I gotta find out, really for real is, who the main motherf*** they depending on to get on that motherf*** stand."

¶ 8 On February 16, 2020, Collins sent an officer a text message that read, "Everybody think I told on Mikey idk [(I don't know)] how they getting this information I've been getting threats from a lot of people." Collins then fled to Iowa. Christian and another detective went to Iowa to speak with Collins on March 12, 2020, and recorded their conversation. Collins told the detectives he had been receiving messages threatening his life and the lives of those close to him. He received these threats on his phone and through social media. There were Facebook posts from

defendant's aunt "Cookie" saying that Collins had given a recorded statement to police. There was also a post from an account named "Gtb Kilo," which Collins believed belonged to Simmons, in which Collins's picture was posted with the question, "Him?" to which Cookie responded, "Yep." Collins also received a phone call from his brother asking if he had been snitching and telling him that he had received word from defendant's father that he had been. Collins also knew defendant's father had gang affiliations and as an older member likely had the power to send people after him. As a result of these threats Collins fled to Iowa.

¶ 9 On October 9, 2020, Christian sent a text message to Collins's phone. He initially received no response, but then eventually was told he had the wrong number.

¶ 10 A hearing was held on the State's motion ***in limine*** on February 9, 2021. The court preliminarily found that defendant had caused Collins to be unavailable under the forfeiture by wrongdoing exception to the hearsay rule but reserved the issue of whether the State had made reasonable efforts to secure Collins's presence for the final pretrial hearing. Defendant's trial was initially to be held on May 10, 2021. A final pretrial hearing was held on May 6, 2021, in which Christian testified as to the efforts the State had made to procure Collins's presence, with the court ultimately finding that the State had made reasonable efforts to secure his presence. The trial was delayed until September 15, 2021. Another hearing was held on that date in which Christian again testified to the State's efforts to procure Collins's presence, and again the trial court found those efforts to be reasonable.

¶ 11 Christian testified on May 6, 2021, that, in an effort to locate Collins, a post was made on February 16, 2021, seeking assistance in locating Collins to I-Board, an intel-based software program which disseminates information to local agencies and officers. The posting was resubmitted on April 28 and May 5, 2021, to ensure the listing would remain visible. As of May

6, the posting had been viewed 119 times. Prior to the February 9, 2021, hearing, Christian and another detective traveled to Davenport, Iowa, to visit Collins. In attempting to relocate Collins he spoke with detectives in Davenport, asking if they had any contacts with Collins, and they indicated their most recent contact was from 2016. Within the last 30 days he had served defendant's mother with a subpoena and asked her if she had any contact with Collins, and she advised that she had not. Christian also listened to recent phone calls made by defendant from jail, in which he described how he and his attorney had been attempting to contact Collins using a text application called TextNow but were unsuccessful. The only other information Christian received was that Collins may have been in Indianapolis to attend a show but had no further details on which he could follow up.

¶ 12 On September 15, 2021, Christian testified that the I-Board posting had been viewed 250 times, but no authorities had located Collins. On August 21, 2021, he searched various databases to try and locate an address for Collins. He discovered an address at 101 East Green Street, Unit 32, in Champaign, which Collins had recently listed as his address. He went to the unit on August 24. No one answered the door, and no noise came from inside. That building was generally inhabited by university students and seemed to be undergoing maintenance. He also attempted to locate Collins at an address on Springfield Avenue which he had used from August 4, 2018, to November 30, 2018, but when he went there the house appeared to be vacant. He also tried to locate Collins at a home on Dale Drive where he had previously made contact with Collins's brother. When he went to that home, there were vehicles in the driveway, and he suspected people were home, but no one answered the door. On August 25, 2021, he once again traveled to Davenport to attempt to locate Collins. He went to the home where he had last spoken with Collins, but there were no vehicles and no one at home, and Christian had no reason to believe

Collins still lived there. He also tried to locate Collins at two addresses in Kendall County but received no answer at the door. On cross-examination, defense counsel asked if Christian had put out a notice on any multistate boards or the Illinois Law Enforcement Agencies Data System (LEADS). Christian testified that he was unaware of any multistate system for issuing a BOLO (be on the lookout) notice for subpoena service and that LEADS could only be used for people who had warrants and missing persons.

¶ 13 B. Motion to Permit Witness to Remain in Courtroom

¶ 14 On January 25, 2021, the State filed a motion ***in limine*** to permit Christian to remain in the courtroom during the trial. A hearing was held on the State's motion on February 9, 2021. The court granted the State's motion, noting that although it had no recollection of anyone asking for such an accommodation in the last 20 years, the caselaw supported allowing Christian to remain. The court further noted that defendant had not shown any particularized prejudice in allowing him to remain in the courtroom. On February 10, 2021, the State designated Christian as its representative under Illinois Rule of Evidence 615(2) (eff. Jan. 1, 2011).

¶ 15 C. Jury Trial

¶ 16 The matter proceeded to jury trial on September 15, 2021. We summarize the evidence adduced at trial.

¶ 17 On March 22, 2018, Calvin Wilson was dating defendant's mother, Demetria Chatman. That night defendant and his mother had been over to Wilson's home in the Shadowwood trailer park in Champaign. Defendant left in a gray Chevy Malibu with Simmons and Christian Dixon. Wilson and Demetria later got into an argument, and he asked her to leave. She initially refused, but Wilson went outside to flag down police officers who were responding to another call in the area. By the time the police finished the other call, Demetria had left. Wilson

gave a description of the vehicle defendant had left in, believing it might be helpful in their investigation of his domestic dispute with Demetria.

¶ 18 Defendant, Dixon, and Simmons met up with Green, and the four proceeded to ride around drinking and smoking. Eventually Dixon left the group, and the rest went to pick up Kotia Fairman from her job at a nearby hospital. Defendant had received a text message from Demetria asking him to come and pick her up. Defendant, Simmons, Green, and Fairman returned to Shadowwood trailer park shortly before midnight. When they arrived, they saw that there were police in the area, so they proceeded to park on Lemon Tree Drive near the entrance to the park. The park had two subdivisions which bordered each other, one to the north and one to the south. Lemon Tree Drive was in the southern subdivision.

¶ 19 Shortly after midnight, a police vehicle with Officers Isidro Garcia and Nathaniel Epling passed the Malibu, heading southwest on Lemon Tree Drive. Garcia, having received a description of the vehicle from Wilson, slowed as they passed the vehicle and shone his spotlight through the windows. He made a U-turn and got behind the Malibu. As he and Epling got out of the squad car, the brake lights went on as if the car was being put into gear. Epling turned on the squad lights and the Malibu drove off northeast on Lemon Tree Drive.

¶ 20 The officers did not pursue the Malibu, but instead maneuvered to try and head the vehicle off if it tried to leave the park. The officers reencountered the vehicle in the northeast section of the southern subdivision where Lemon Tree Drive becomes Apricot Drive. The Malibu was parked in the middle of the street with its front doors open. Fairman was captured in the squad car's camera shutting the front passenger door and walking around the back of the Malibu toward the driver door. Defendant, Green, and Simmons had fled the scene. As the officers exited their

squad car, Garcia heard two gunshots along with voices screaming or yelling coming from the northeast.

¶ 21 Teresa Parada Viante lived at 32 Juniper Drive, which is in the southwestern portion of Shadowwood's northern subdivision. Viante testified that shortly after midnight she heard enraged male voices coming from outside, followed by two gunshots. She then saw a man run past her window heading west on Juniper Drive. She could not see the man's face, only his legs. At approximately 12:11 a.m., Officer Justin Prosser was responding to a call of shots fired in the area near 32 Juniper Drive. When Prosser arrived at the area, he discovered Green lying on the south side of the street near 32 Juniper Drive. Officers rendered first aid until paramedics arrived. Green died at the hospital.

¶ 22 Police collected several items of evidence from the crime scene. On the floor of the Malibu's passenger side rear seat, police recovered an unloaded Dan Wesson .357 Magnum revolver. Near Green's body police found two spent .40 Smith & Wesson shell casings and a .40 Smith & Wesson live round in the area of Green's body. A deformed projectile was also located in the area under Green's body. These items were sent to the Illinois State Police Crime Laboratory for testing. The shell casings were compared against shell casings discovered at the scene of a previous incident that involved Green firing a gun into the air hitting some power lines. The shell casings were all determined to have been fired by the same weapon. The deformed projectile was found to have been a .40 Smith & Wesson bullet, which was fired from either a Glock, Bersa, Heckler, or Koch firearm. As there was no firearm to compare against, it could not be determined whether the projectile had been fired by the same gun as the shell casings. Neither the shell casings nor the projectile could have been fired by the .357 revolver. Two bullet fragments were recovered from Green's pelvis but were not tested.

¶ 23 A size 9½ black Lugz right boot was found in the yard between 28 and 30 Apricot Drive. The corresponding left boot was found near a van parked on the North side of Juniper Drive near Green's body. A size 9 brown Timberland left boot was found near where Green was shot at the end of the driveway of 32 Juniper Drive. The corresponding right boot was found under a car parked in front of 39 Sycamore Drive. The Timberland boots were sent for DNA testing, and a DNA profile consistent with defendant's profile was discovered on the left boot. The Lugz boots were later determined to belong to Green.

¶ 24 Officers recovered an ID belonging to Simmons in the driver's door of the Malibu. Defendant's iPhone was also discovered in the vehicle.

¶ 25 On March 23, 2018, around 6 p.m., police arrested Simmons. His cellphone was taken into evidence. Simmons's phone was examined, and police were able to recover a series of deleted text messages between defendant and Simmons's phones. Those messages were as follows:

"DEFENDANT [March 22, 2018, 1:37:15 p.m. CST]: You got the 357?

SIMMONS [1:41:44 p.m.]: Smh been telling u this

DEFENDANT [1:43:25 p.m.]: All we need is a car and I'm hoping out

DEFENDANT [1:46:15 p.m.]: F*** Ricky bro that's petty stains [(slang for theft)] we need bucks

SIMMONS [1:47:20 p.m.]: Bro that pipe is a key factor that can lead to bands period n*** we need pipes period u can die with that cash on you but ain't no dying wit that glizzy period

SIMMONS [2:36:38 p.m.]: Say less shorty

SIMMONS [3:11:05 p.m.]: [unknown emoji]

DEFENDANT [3:11:10 p.m.]: If u not gone be around she dropping me off in Danville

SIMMONS [3:11:25 p.m.]: I am

DEFENDANT [3:12:01 p.m.]: Bet

DEFENDANT [3:19:27 p.m.]: [unknown emoji]

DEFENDANT [5:29:10 p.m.]: H*** yeah told u it's hop out time

DEFENDANT [5:29:14 p.m.]: [unknown emoji]

SIMMONS [8:51:17 p.m.]: He ready

SIMMONS, [8:57:02 p.m.]: I'm on my way

DEFENDANT [8:58:02 p.m.]: Cool

SIMMONS [10:03:02 p.m.]: Dude

SIMMONS [10:21:15 p.m.]: I am

SIMMONS [10:21:24 p.m.]: Ima say my bm [(baby mama)] ain't here yet

SIMMONS [10:32:43 p.m.]: I got the 7 on me

DEFENDANT [10:47:26 p.m.]: Be smooth I got this

DEFENDANT [10:47:33 p.m.]: That's why I'm not texting u

DEFENDANT [10:50:28 p.m.]: His s*** so nice stop texting me though he can see my phone

DEFENDANT [11:14:03 p.m.]: Bump that music roll up so he can not wanna go home ofn on Zach I got this

SIMMONS [March 23, 2018, 12:56:30 a.m.]: Clooney

SIMMONS [1:26:23 a.m.]: Yo."

Christian testified that the word "stains" is a street name for a robbery and that "pipes" and "glizzy" are street names for guns. He also testified that "bm" was likely short for baby mama. With the exception of the last two messages, each message was marked as read. The final two messages, "Clooney" and "Yo," were also discovered on defendant's phone, but the rest of the conversation was not.

¶ 26 Police discovered several Facebook accounts belonging to defendant including a "Guac Chatman" account. Subpoenaed records from this account included a conversation between Chatman and Green. That conversation showed defendant inviting Green to go out at around 8:52 p.m. on March 22, 2018. It also showed that defendant picked Green up at around 9:55 p.m.

¶ 27 Wilson testified that around 2 a.m. he heard a knock at his door, and a voice on the other side saying it was the defendant and he needed help. Wilson did not open the door or let him in.

¶ 28 Sometime in the early morning hours before 5 a.m., defendant knocked on the door of Alexandrinique Anderson (Alexandrinique) who lived at 1203 West Bradley Avenue in Champaign. Alexandrinique testified that he had no shoes or shirt on and his jeans were dirty. Defendant told Alexandrinique that he had come from Shadowwood, that he had gotten into an altercation with some Mexicans who tried to attack him, and that he was trying to defend himself and shot back at them but did not know if he had hit anyone. He asked to use her phone, and she let him. He then left.

¶ 29 Ferianan Anderson (Alexandrinique's sister) testified that she received a call from the defendant asking her to tell the police that she was with him during the night of Green's death. She refused.

¶ 30 Defendant was arrested in Kendall County on February 4, 2020.[1] While in jail, he met a man named Dennis Griham, who testified as follows. Griham had been arrested on January 29, 2020, in relation to driving under the influence (DUI) and was incarcerated in the Champaign County jail. During the first week of February, defendant was brought into his cellblock. Defendant had initially been placed on a different block but was transferred due to a fight. For the first couple of days, the two made casual conversation. Then around February 6 or 7, defendant opened up to him about why he was in jail.

¶ 31 Defendant told Griham that Simmons had called him to tell him that he had a "lick," which meant something had come up. Defendant and Simmons picked up Green from Lincoln Square Mall and drove around for a little while. They went and got a bottle of Hennessey, went to the gas station, took some pictures, got some soda, and drove around for a while more. This was corroborated by the Facebook messages sent between defendant and Green. They ended up in Shadowwood, where defendant's mom was staying with her friend. There was a female in the vehicle, but defendant did not tell Griham her name. By that point it was dark, and that was when the incident occurred. Defendant and Green began "tussling" over a Glock firearm, and defendant accidentally shot Green twice. At that point, Simmons took off running. Defendant had lost one of his boots in the struggle and took off running. He lost the other boot while running and hid from police under a trailer. Defendant told him the boots were Timberlands. Defendant had to take his shirt off to wrap his feet because they were getting cold. He left the trailer park the following morning and made his way to a friend's house in Garden Hills on either Williamsburg Drive or Holly Hill Drive. Defendant said that he had dismantled the gun and hid it but would not tell

[1] Prior to being charged and arrested in this matter he was in custody here for the possession of the .357 revolver and was released.

Griham where. Defendant said that if Griham got out, he would tell him where the gun was so he could get it for him.

¶ 32 Griham called Christian to tell him what he had learned in hopes that he might receive favorable treatment in his DUI case. Christian asked him if he would be willing to wear a wire, and he agreed, but that was called off. He was ultimately removed from the cell block after five other prisoners accused him of working with the police and threatened to fight him.

¶ 33 Christian was the last to testify in the State's case in chief. His testimony consisted of explaining some of the slang present in the text messages sent between Simmons and defendant. He explained that the neighborhood Alexandrinique lived in was commonly known as Garden Hills. He laid the foundation for a recording of an interview he had with defendant, which was then played.

¶ 34 Christian also testified about how, as part of his investigation, he spoke with Collins. He had gotten Collins's name from someone else and approached him. Collins was initially cooperative with the investigation, going so far as to wear a wire, though nothing came of it. Then Collins's level of cooperation changed. Christian testified about jail calls made by the defendant regarding Collins (the actual calls themselves were not played for the jury).

> "Q. In those jail calls, what, if anything, did you hear the defendant say related to Dee Collins?
>
> A. *** During several phone calls there was conversation between Micheal Chatman and his dad, Darren (phonetic) Green or Darion (phonetic) Green—I'm not sure of the pronunciation, I've never dealt with him specifically—and Devonte McCormick. Devonte McCormick is in fact Dominique Collins' brother, and there's conversation about Dee being a snitch.

Q. Can you describe the general tone of those conversations as it relates to the defendant's statements?

* * *

A. Yes. They were trying to determine his willingness to continued participation in the prosecution, if in fact it led to that. There was [***sic***] attempts to try and figure out where he was at. There was mention from his father that he just needs to figure out who the prosecution needs to come to court, he would take care of it. And ultimately it led to me not being able to find Dominique Collins.

Q. And you do not have to get into the substance of these, but were you aware of other threats that were made to Mr. Collins?

A. Yes."

¶ 35 After which the December 30, 2019, interview with Collins was then played for the jury.

¶ 36 Christian then laid the foundation for several other jail calls made by defendant that were played for the jury. These calls did not relate to the threats made to Collins but instead showed defendant brainstorming and rejecting several contradictory defenses from March 29, 2018, through March 19, 2021.

¶ 37 Christian also testified about how Griham approached him with information regarding the defendant. He testified about how several of the details Griham included were not publicized.

¶ 38 Defendant testified that the text messages between him and Simmons were not about robbing Green. He asked Simmons if he had the .357 revolver because defendant always got shot at when he was in Champaign. When he said, "F*** Ricky bro that's petty stains we need

bucks[,]" he was talking about a robbery of one of Green's friends that Green had proposed, explaining that the messages with Green were missing. Defendant explained that they had all gone to a party held by people they did not know well, and when Simmons messaged about having the "7" on him, he was nervous about the situation and let defendant know he had the .357 revolver on him. When defendant texted Simmons, "His s*** so nice stop texting me though he can see my phone[,]" he was talking about a man at the party who had nice jewelry. Finally, the message about playing music to make sure "he" would not want to go home was referencing Dixon, who had been driving them.

¶ 39 Defendant went on to testify that when they returned to Shadowwood there were a lot of police around. They pulled over because they had been drinking and had guns and drugs. When the police car pulled behind them, they told Fairman to drive off. Simmons and Green had initially placed their guns under the seats to try and hide them, but they all decided instead it would be a better plan to grab the guns and run. As they were leaving the car, he grabbed Green's gun, which was by his foot, and they all ran. He stopped when he got near Juniper Drive, and Green came up behind him. Green said he forgot his gun, and defendant told him he had grabbed it. Green demanded the gun, but defendant told him to wait until they had gotten away from the police. Green then became aggressive and grabbed his shoulder, demanding the gun. Green was bigger than him, and at that point, defendant feared that if he gave him the gun, Green would shoot him. He then cocked the gun back to try and scare Green, which did not work, and in the process ejected a live round. Defendant then fired the gun in an attempt to scare Green, but Green was still grabbing him. Defendant did not know Green had been hit, and after 5 or 10 seconds, he fired a second shot, at which point Green stopped grabbing him. In the struggle one of defendant's boots came off. He then ran over to a red car, hid underneath it, and removed his other boot. After 10 minutes, he

heard someone scream for help. He then left his hiding spot and went to Wilson's house, but Wilson did not let him in. About an hour later, he left Shadowwood and made his way to Alexandrinique's house. He slept there until sunrise and then left to go to his mom's house. He denied going to McCormick's apartment or speaking with Collins.

¶ 40 The jury returned a verdict of guilty on count IV, the felony murder charge. The remaining verdict forms were left blank, and neither the State nor defendant objected at the time. The court would later enter judgment in favor of defendant on those counts.

¶ 41 On November 1, 2021, defendant filed a motion for a new trial, which was denied. The trial court initially sentenced defendant to 60 years' imprisonment, but after considering defendant's motion to reconsider sentence, it sentenced defendant to 55 years' imprisonment.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 Defendant raises two issues on appeal: whether the trial court erred in finding that the State made reasonable efforts to locate Collins and whether the trial court abused its discretion in allowing Christian to remain in the courtroom throughout the State's case in chief and allowing him to sit at the prosecutor's table.

¶ 45 A. Forfeiture by Wrongdoing

¶ 46 Defendant argues that the trial court erred in finding that the State had made good-faith reasonable efforts to procure Collins's attendance at trial, resulting in a violation of his confrontation rights under the sixth amendment (U.S. Const., amend. VI). Defendant is not otherwise challenging the trial court's finding that defendant engaged or acquiesced in the wrongdoing that caused Collins's unavailability.

¶ 47 Forfeiture by wrongdoing is a common law doctrine that serves both as a hearsay exception and an exception to the confrontation clause of the sixth amendment. ***People v. Nixon***, 2016 IL App (2d) 130514, ¶ 48. The doctrine is codified in Illinois Rule of Evidence 804(b)(5) (eff. Jan. 1, 2011) and Federal Rule of Evidence 804(b)(6). The forfeiture by wrongdoing hearsay exception provides that "[a] statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness" is not excluded by the hearsay rule. Ill. R. Evid. 804(b)(5) (eff. Jan. 1, 2011). "[T]he State's burden of proof in a hearing on forfeiture by wrongdoing is a preponderance of the evidence." ***People v. Stechly***, 225 Ill. 2d 246, 278 (2007). Where the trial court makes a finding by a preponderance of the evidence, we will reverse only if that finding is against the manifest weight of the evidence. ***People v. Peterson***, 2017 IL 120331, ¶ 39. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. ***Id.***

¶ 48 As a predicate for application of Rule 804(b)(5), the witness must actually be unavailable. Illinois Rule of Evidence 804(a) (eff. Jan. 1, 2011) lists five situations in which a witness may be considered unavailable. In discussing the analogous Federal Rule of Evidence 804(a), our supreme court has made it clear that while that list is not exhaustive, unavailability is a narrow concept subject to a rigorous standard. ***People v. Caffey***, 205 Ill. 2d 52, 101 (2001). In the instant case the trial court found that Collins was an unavailable witness under Illinois Rule of Evidence Rule 804(a)(5) (eff. Jan. 1, 2011) in that he was absent from the hearing and the State was unable to procure his attendance by process or other reasonable means. Because Illinois Rule of Evidence 804 is modeled off of Federal Rule of Evidence 804, we may look to federal law for guidance. ***People v. Thompson***, 2016 IL 118667, ¶¶ 40, 49. For the purposes of an exception to

the confrontation clause, a declarant will not be deemed unavailable unless a good-faith effort has been made to procure their presence at trial. ***Ohio v. Roberts***, 448 U.S. 56, 74 (1980).

¶ 49 In ***People v. Golden***, 2021 IL App (2d) 200207, the Second District held that in instances where a witness is unavailable due to the opposing party's wrongdoing, the proponent of the hearsay statement need not demonstrate an inability to procure the declarant's attendance by process or other reasonable means. Defendant urges us to reject the Second District's holding in ***Golden***, whereas the State maintains ***Golden*** was correctly decided. Though we are one appellate court, "the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels." ***O'Casek v. Children's Home & Aid Society of Illinois***, 229 Ill. 2d 421, 440 (2008). The ***Golden*** court expressed two bases for its holding. The first was based upon the plain language of Rule 804(a)(5), and the second was based on the elements of forfeiture by wrongdoing as expressed by our supreme court in ***Peterson***, 2017 IL 120331, ¶ 32, and this court in ***People v. Zimmerman***, 2018 IL App (4th) 170695, ¶ 98.

¶ 50 The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. ***Ryan v. Board of Trustees of the General Assembly Retirement System***, 236 Ill. 2d 315, 319 (2010). The best indication of the legislature's intent is the plain language of the statute itself. ***Id.*** In determining the plain meaning of statutory language, the court looks to the statute as a whole, the subject it addresses, and the apparent intent of the legislature. ***People v. Perry***, 224 Ill. 2d 312, 323 (2007). We interpret supreme court rules in the same manner as statutes. ***Atlantic Coast Airlines Holdings v. Bloomington-Normal Airport Authority***, 357 Ill. App. 3d 929, 933 (2005).

¶ 51 We must respectfully reject the ***Golden*** court's reasoning as it relates to the plain language of Rule 804(a)(5). The ***Golden*** court's reasoning was as follows:

> "Rule 804 governs exceptions to the rule against hearsay where the declarant is unavailable. Ill. R. Evid. 804 (eff. Jan. 1, 2011). Rule 804(a)(5) expressly encompasses situations in which the declarant 'is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.' Ill. R. Evid. 804(a)(5) (eff. Jan. 1, 2011). By its very terms, then, Rule 804(a)(5) does not apply to the doctrine of forfeiture by wrongdoing as codified in Rule 804(b)(5)." ***Golden***, 2021 IL App (2d) 200207, ¶ 71.

The reasoning of the court appears to be that because Rule 804(a)(5) discusses hearsay exceptions under subdivisions (b)(2), (3), and (4), the section must not apply to subdivision (b)(5), which pertains to forfeiture by wrongdoing. This reasoning appears to be based on a misreading of the rule's language. From the plain language it is clear that Rule 804(a)(5) applies to instances where "the proponent of a statement has been unable to procure the declarant's ***attendance***" and in the case of subdivisions (b)(2), (3), or (4) to instances where the proponent is unable to secure "the declarant's ***attendance or testimony***." (Emphases added.) Ill. R. Evid. 804(a)(5) (eff. Jan. 1, 2011). Put another way, subdivision (a)(5) applies to subdivisions (b)(1) and (5) when the declarant's attendance cannot be procured and to subdivisions (b)(2), (3), and (4) when either the declarant's attendance or testimony cannot be procured.[2] Our reading is consistent with Federal Rule 804(a)(5), which reads,

---

[2]Advisory committee notes to the 1974 enactment of the Federal Rule 804 indicate that the purpose of this distinction is to require a proponent of a hearsay statement to not only make reasonable efforts to procure attendance but also testimony (such as by deposition of interrogatories) before a declarant will be deemed unavailable in the case of dying declarations, statements against interest, and statements of personal or family history. Fed. R. Evid. 804, 1974 Enactment Note to Subdivision (a)(5).

"(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

* * *

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6)[3]; or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4)." Fed. R. Evid. 804(a)(5).

As such Rule 804(a)(5) ***does*** by its very terms apply to the doctrine of forfeiture by wrongdoing.

¶ 52 We likewise reject the ***Golden*** court's reasoning based on the holdings in ***Peterson*** and ***Zimmerman***. Neither ***Peterson*** nor ***Zimmerman*** addressed the interaction between subdivisions (a)(5) and (b)(5) of Rule 804. ***Peterson*** addressed whether additional ***indicia*** of reliability were required to introduce a hearsay statement where the defendant procured the declarant's unavailability by killing them and ***Zimmerman*** addressed what types of statements were admissible under Rule 804(b)(5). ***Peterson***, 2017 IL 120331, ¶ 33; ***Zimmerman***, 2018 IL App (4th) 170695, ¶ 110.

¶ 53 In ***Peterson***, our supreme court held that "Rule 804(b)(5) identifies only two criteria or factors that must be satisfied for the admission of hearsay statements under the rule: (1) that the party against whom the statement is offered 'has engaged or acquiesced in wrongdoing' and (2) that such wrongdoing 'was intended to, and did, procure the unavailability of the declarant as a witness.' " ***Peterson***, 2017 IL 120331, ¶ 32 (quoting Ill. R. Evid. 804(b)(5) (eff. Jan. 1, 2011)).

[3]Federal Rule 804(b)(6) contains the federal forfeiture by wrongdoing hearsay exception.

Based on this, the ***Golden*** court reasoned that "the interpretation given Rule 804(b)(5) by Illinois courts does not require the State to demonstrate in any particular manner that the witness was unavailable despite its best efforts to procure the witness's attendance." We agree only to the extent that there is no requirement under the doctrine of forfeiture by wrongdoing that the proponent of the statement demonstrate unavailability in any particular manner. However, because a witness must be unavailable as a prerequisite to forfeiture by wrongdoing, it falls on the proponent of the statement to demonstrate unavailability by a preponderance of the evidence in some manner under Rule 804(a).

¶ 54 Any of the five methods enumerated by Rule 804(a) would be satisfactory. In the instant case and in ***Golden***, the factual basis for the witnesses' unavailability was that the witnesses could not be located and thus could not be served or otherwise compelled to come to court. The State provided no alternative basis for unavailability. Therefore, it falls within the purview of Rule 804(a)(5) and requires the State to show that good-faith reasonable efforts were made to procure the witnesses' attendance by a preponderance of the evidence.

¶ 55 We now consider whether the State's efforts to locate Collins were reasonable. For the purposes of an exception to the confrontation clause, a declarant will not be deemed unavailable unless a good-faith effort has been made to procure their presence at trial. ***Roberts***, 448 U.S. at 74. The State must show not only that it acted in good faith, but that reasonable and competent efforts were made. ***People v. Payne***, 30 Ill. App. 3d 624, 628 (1975). It is not enough to act with a pure heart and an empty head. ***United States v. Yida***, 498 F.3d 945, 952 (9th Cir. 2007).

¶ 56 What constitutes good-faith reasonable efforts will depend on the facts of each case. ***Payne***, 30 Ill. App. 3d at 628. In some instances, such as the death of the declarant, good faith may demand nothing of the prosecution. ***Roberts***, 448 U.S. at 74. "But if there is a possibility, albeit

remote, that affirmative measures might produce the declarant, the obligation of good faith ***may*** demand their effectuation." (Emphasis in original.) ***Id.*** "[W]hen a witness disappears before trial, it is always possible to think of additional steps that the prosecution might have taken to secure the witness' presence, [citation], but the Sixth Amendment does not require the prosecution to exhaust every avenue of inquiry, no matter how unpromising." ***Hardy v. Cross***, 565 U.S. 65, 71-72 (2011) (***per curiam***). "A good-faith effort, is not an ends-of-the-earth effort ***." ***United States v. Chun Ya Cheung***, 350 Fed. App'x 19, 23 (6th Cir. 2009).

¶ 57 ***People v. Brown***, 47 Ill. App. 3d 616, 622 (1977), provides some guidance on what efforts are reasonable in instances where a witness has fled the State:

> "(1)*** [W]e would not require the State to make an effort to contact a witness that has moved to a foreign country if the State is powerless to compel his attendance at trial; (2) we would require the State to make an effort to contact a witness located within the United States, its territories and possessions, and to request his attendance at trial if the effort is successful, when it learns of his new location in sufficient time before trial to reasonably permit such an effort; and, (3) what will constitute a sufficient effort to contact out-of-state witnesses must be determined on a case by case basis ***."

¶ 58 In the course of Christian's efforts to locate Collins, he placed a notice on the local I-Board system. He attempted to contact Collins on his phone but either received no answer or someone replying that he had the wrong number. He attempted to locate Collins at several potential addresses, including several addresses in Champaign, an address in Iowa, and two addresses in Kendall County. He attempted to find Collins's location from known family members, including

defendant's mother, who could not provide any information, and Collins's brother, who he could not locate and was avoiding police due to a shooting incident he was involved in.

¶ 59 Defendant compares the facts in the instant case to those in ***Payne***, 30 Ill. App. 3d at 624. In ***Payne*** the defendant was tried for robbery, a mistrial was declared when the jury failed to reach a verdict, and the defendant was convicted at his second trial. ***Id.*** at 625. The robbery victim testified at the first trial but could not be located to testify at the second. ***Id.*** Prior to the second trial, the trial court held a hearing to determine whether the victim was an unavailable witness. ***Id.*** A police officer testified about the efforts that had been made to locate the victim. He made 20 to 25 attempts to locate the victim, with the latest attempt being made three days before trial. ***Id.*** His attempts were focused primarily on visiting the victim's last known address, gas stations where the victim had previously worked, and questioning people who happened to be hanging around the gas stations. ***Id.*** at 625-26. The reviewing court found that these efforts were numerically impressive but qualitatively weak; the officer kept no records of his efforts, he could not remember dates or the name of the victim's common law wife, and when he received subpoenas to be served to the victim, he continued to look for the victim at the same places he had before. ***Id.*** at 630. The court also emphasized the failure of the prosecutor to coordinate with the police officer regarding his efforts, highlighting several pieces of information that could have potentially led to the victim, including that he had been the manager of a Standard service station, that he had married his wife at city hall in 1962 or 1963, and that he was with a man name Anderson on the night of the robbery. ***Id.*** at 629. In light of these considerations, the court found that the State failed to maintain its burden of showing due diligence in procuring the witness's presence. ***Id.*** at 631.

¶ 60 Defendant maintains that, like the officer's efforts in ***Payne***, Christian's efforts were numerically impressive but qualitatively weak. We disagree and find that the facts of the instant case are distinguishable. There is no indication that the witness in ***Payne*** was attempting to hide from police. The officer in ***Payne*** took no notes and could provide little detail as to his efforts to locate the witness. There was little coordination between the prosecution and the officer, and the prosecution had leads which could have reasonably been pursued and which might have led to locating the witness.

¶ 61 Under the circumstances, Christian and the State were limited in what they could do to locate Collins. When Christian last spoke to Collins, he had moved to Davenport in order to hide from the various people who were threatening him. Before Collins disappeared, he gave no indication to law enforcement that he no longer intended to cooperate with them or planned on leaving his current location. When Christian spoke with Collins in Iowa, he indicated that he had deactivated his social media accounts as a result of the threats he was receiving and had also gotten a new phone. So, efforts to contact him were difficult. People who were likely to have information on his location were unlikely to cooperate with law enforcement, either because of their allegiance to defendant and Simmons or because they wanted to protect Collins. There is no indication that Christian or the State failed to follow up on any leads about Collins's location.

¶ 62 Defendant cites to a number of cases which are likewise inapposite to the facts of the instant case. In ***Brown***, 47 Ill. App. 3d at 621-22, the State was found not to have exercised good-faith reasonable efforts in locating a witness when it learned two months prior to trial that a witness had moved to Ripley, Tennessee, and made no efforts to locate or contact him there. In ***People v. Kent***, 2020 IL App (2d) 180887, ¶¶ 103-06, the State failed to establish the unavailability of the witness, where the only evidence of such efforts was that the State had attempted to serve

the witness at his father's residence on two occasions and where the witness had an unrelated misdemeanor charge for which he had been appearing in court and could have been served then. In ***People v. Torres***, 2012 IL 111302, our supreme court indicated that simply establishing that a witness had been deported may not be sufficient to establish a witness's unavailability. ***Torres*** is inapplicable as this case does not involve deportation, whereas ***Payne***, ***Brown***, and ***Kent*** are distinguishable in that they all involved instances where promising leads were available and ignored.

¶ 63 Defendant suggests that a warrant should have been issued against Collins, but as he was never served, and thus never failed to appear, no basis existed for issuing a warrant. Defendant also suggests that Collins's information should have been placed on the statewide LEADS or an unspecified "FBI list." Because Collins was only going to be served with a subpoena, Christian testified that he could not place a notice on the statewide LEADS. As for the unspecified Federal Bureau of Investigation (FBI) list, Christian testified that he was unaware of any FBI list for subpoena service. In his reply brief, defendant suggests that the State should have issued a subpoena to Collins via mail and then, when he failed to appear, issue a warrant for his arrest. However, there is no indication that Collins was actually living at any of the addresses Christian visited. As such, even if a subpoena had mailed, there would be no way of showing that the defendant had actually received the subpoena and therefore no basis for the issuance of a warrant. See ***People v. Allen***, 268 Ill. App. 3d 279, 287 (1994) (stating that a subpoena left in a witness's mailbox was insufficient to establish service for the purposes of trial court's contempt powers).

¶ 64 As there was evidence that Christian and the State made continuing efforts to locate Collins, and no evidence of any leads which Christian and the State failed to follow up on, we cannot say that the trial court's finding that the State had made good-faith reasonable efforts to

locate Collins was against the manifest weight of the evidence. See ***People v. Smith***, 275 Ill. App. 3d 207, 215 (1995) (finding there was a good-faith effort to locate the witness where the State had no leads to follow in locating witness and no investigative leads that investigators failed to check).

¶ 65 B. Lead Investigator at Counsel's Table

¶ 66 Defendant maintains that the trial court abused its discretion in allowing Christian to sit at counsel's table and to remain in the courtroom throughout the jury trial.

¶ 67 Illinois Rule of Evidence 615 (eff. Jan. 1, 2011) provides, "At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." While some jurisdictions, including the federal courts, consider the exclusion of witnesses to be a matter of right, in Illinois exclusion of witnesses is a matter within the sound judicial discretion of the trial court. ***People v. Mack***, 25 Ill. 2d 416, 422 (1962).

¶ 68 "[A]n abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." ***People v. McDonald***, 2016 IL 118882, ¶ 32. Further, our supreme court has made it clear that motions to exclude witness should normally be allowed, and in order to uphold a trial court's denial of a motion to exclude, the record should disclose a sound basis for the denial. ***People v. Dixon***, 23 Ill. 2d 136, 140 (1961). So long as a trial judge is exercising sound judicial discretion, it is not reversible error for a trial judge to exempt a witness from an order excluding all witnesses in the absence of a showing of prejudice to the defendant. ***People v. Miller***, 26 Ill. 2d 305, 307 (1962).

¶ 69 It is well settled under Illinois law that a testifying police officer may be present at trial during other witnesses' testimony and sit at the prosecutor's table with counsel. See ***People v. Leemon***, 66 Ill. 2d 170, 174 (1977); ***Miller***, 26 Ill. 2d at 307; ***People v. Chennault***, 24 Ill. 2d

185, 188 (1962); ***Dixon***, 23 Ill. 2d at 138; ***People v. Strader***, 23 Ill. 2d 13, 23 (1961); ***People v. Townsend***, 11 Ill. 2d 30, 47 (1957).

¶ 70 Additionally, as lead detective in the case, Christian was designated as the State's representative. Ill. R. Evid. 615 (eff. Jan. 1, 2011) ("This rule does not authorize exclusion of*** (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney ***."); see Fed. R. Evid. 615, Advisory Committee Notes to the 1974 Enactment (stating that investigative agents are within the group specified under the second exception under analogous federal rule).

¶ 71 Furthermore, defendant has failed to establish that he was prejudiced by Christian's presence. "Exclusion of witnesses from the courtroom during trial is a time-honored practice designed to preclude one witness from shaping his testimony to conform to that of those who preceded him on the stand." ***People v. Johnson***, 47 Ill. App. 3d 362, 369 (1977). The sole issue raised by the defense regarding Christian's presence was that he testified to unmemorialized threats made to Collins. Even assuming ***arguendo*** that this testimony was prejudicial, defendant does nothing to link that testimony to the fact that Christian was present for the presentation of other testimony and evidence. None of the State's other witnesses testified about Collins. Further, those threats ***were*** memorialized in the recorded interview between Collins and Christian after Collins had fled to Iowa. Therefore, defendant has failed to show that he was prejudiced by Christian's presence or that the trial court abused its discretion in permitting Christian to remain in the courtroom.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we affirm the judgment of the Champaign County circuit court.

¶ 74 Affirmed.

People v. Chatman, 2022 IL App (4th) 210716

Decision Under Review:	Appeal from the Circuit Court of Champaign County, No. 20-CF-156; the Hon. Randall B. Rosenbaum, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Christofer R. Bendik, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Julia Rietz, State's Attorney, of Urbana (Patrick Delfino, David J. Robinson, John M. Zimmerman, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

No. 129133

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- MICHAEL D. CHATMAN, Defendant-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 4-21-0716. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 20-CF-156. Honorable Randall Rosenbaum, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 23, 2023, the Brief and Argument 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 Brief and Argument to the Clerk of the above Court.

/s/Alicia Corona
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