No. 126645

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DONALD LEIB, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0837. There on appeal from the Circuit Court of Cook County, Illinois , No. 15 CR 17207. Honorable Kerry M. Kennedy, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

I. Under the plain language of subsection 5/11-9.3(a), the parking lot where Donald Leib attended Queen of Martyrs Fest did not constitute real properly comprising any school.

A. Under the plain language of subsection 5/11-9.3(a), the parking lot was not "real property comprising any school."

The parking lot where Donald Leib attended Queen of Martyrs Fest did not constitute "real property comprising any school" under 720 ILCS 5/11-9.3(a), as there was no school building on that parking lot. (St. Br. 12; Def. Br. 13) In Leib's opening brief, he provided: (1) the specific definition of the word "school" given by the legislature in 720 ILCS 5/11-9.3; (2) both the legal and common definition of "real property," which is not defined in the statute; and (3) both the legal and common definition of "comprise," which is also not defined in the statute. (Def. Br. 14-15) Notably, the State never addresses the definition of "school" within section 5/11-9.3. Moreover, though the parties generally agree on the definition of the phrase "real property" (St. Br. 12, Def. Br. 15), the State also never addresses the legal or more common dictionary definitions of the word "comprise," instead offering a *less common* dictionary definition of that word. (St. Br. 12-13) Ultimately, none of the State's arguments demonstrate that the plain language of subsection 5/11-9.3(a) covers parking lots like that at issue here.

First, citing the online version of the Merriam-Webster Dictionary, the State advances that "'comprise' has several definitions," one of which is "'to include especially within a particular scope.'" (St. Br. 13) The State submits that, under that definition, parking lots where school students are dropped off and picked off "plainly fall[] within the scope of the school," even if the lot is separated by any intervening tract of land from the school. (St. Br. 13)

However, the definition cited by the State is not the commonly accepted meaning of the word "comprise." First, Black's Law Dictionary defines the word "comprise" as "[t]o comprehend; include; contain; embrace; cover." *See* BLACKS LAW DICTIONARY 198 (Abridged

6th Edition 1991). Likewise, the first and second definition of the word "comprise" listed in the State's source, the Merriam-Webster Dictionary's website, similarly define "comprise" as "to be made up of" or to "compose, constitute" (*see Comprise*, Merriam-Webster, https://www.merriam-webster.com/dictionary/comprise (last visited November 29, 2021)), as do the definitions of "comprise" in *other* dictionaries. *See Comprise*, www.dictionary.com/browse/comprise (providing the following definitions: (1) "to include or contain"; (2) "to consist of; be composed of; and (3) "to form or constitute") (last visited November 29, 2021); *Comprise*, https://www.lexico.com/definition/comprise (powered by Oxford) (defining "comprise" as to "Consist of; be made up of;" or to "Make up or constitute (a whole)") (last visited November 29, 2021). Finally, the definition of the word "comprise" relied upon presently by the State did not appear at all in the edition of the Merriam-Webster Dictionary in publication when subsection 5/11-9.3(a) was enacted. Subsection 5/11-9.3(a) was added by P.A. 90-234, §5, which took effect on January 1, 1998. The Fifth Edition of the Merriam-Webster Dictionary, published in 1997, defined "comprise" as: (1) "include; contain"; (2) "to be made up of"; or (3) "compose; constitute". THE MERRIAM-WEBSTER DICTIONARY 167 (5th Paperback Edition 1997). It did *not* list the definition of "comprise" now offered by the State.

Moreover, even the definition of the word "comprise" relied upon by the State, *i.e.*, "to include especially within a particular scope," is not as distinct from the more common definitions of the word as the State contends. It is expressly defined as "to include," and thus supports a construction of "real property comprising a school" as real property that includes a school. Moreover, the school's "particular scope" would also more commonly refer to the area immediately surrounding the school, not non-contiguous parking lots across the street from the school, separated from the school by an intervening tract of land. Since the task before

this Court is to interpret the *plain language* set forth by the legislature in subsection 5/11-9.3(a), this Court should not resort to such an obscure definition of the word "comprise" as the State posits.

Moreover, in contrast to the manner in which the State seeks to define "real property comprising a school," courts addressing this language have consistently determined that it means real property *containing* a school. *See Stamps v. State*, 620 So. 2d 1033, 1033 (Fla. Ct. App. 1993) ("real property comprising ... a school" did not include an overflow parking lot used by a school, but separated from that school by an intervening tract of land); *Commonwealth v. Paige*, 768 N.E.2d 572, 573-74 (App. Ct. Mass. 2002) (since "[a]ccepted definitions of 'comprise' are: 'to include' and 'contain,'" a plot of land containing18 *contiguous* acres constituted "real property comprising a school," as there was a school building located on that property) (emphasis added); *State v. Peterson*, 490 N.W.2d 53, 53 (Iowa 1992) ("the words 'real property comprising a school' are commonly understood to include not only the school building but also the contiguous land surrounding the buildings").

Though the State agrees that "comprise" is a synonym of "contain," it argues a difference between "contain" and "contiguous." It notes, for example, that even though the United States of America contains 50 states, only 48 of those states are contiguous. (St. Br. 13-15) Thus, according to the State, "a school's real property can contain, or be comprised of, land with which it is not contiguous." (St. Br. 15) However, subsection 5/11-9.3(a) does not restrict child sex offenders from the "school's real property." Whereas a "school's real property" connotes property *belonging* to the school, *real property* is the subject of the phrase "real property comprising any school," while "comprising any school" modifies the type of property at issue. So, using the State's example, though the *United States* comprises 50 states including Hawaii and Alaska neither Hawaii nor Alaska comprise the United States.

The State incorrectly argues that Leib's construction of subsection 5/11-9.3(a) which tracks the holdings of *Stamps*, *Paige*, and *Peterson*, requires this Court "to read an exception into the statute its language does not support," since the word "contiguous" does not appear anywhere in the statute. (St. Br. 19) To the contrary, Leib's reading of the plain language of the statute is quite simple: "real property comprising any school" is real property containing any school. It is the State who seeks to *expand* the statute by holding Leib to a violation of that statute when he was *not* on real property that contained a school.

The State also seeks to distinguish *Stamps*, *Paige*, and *Peterson*. According to the State, *Stamps* merely addressed "an overflow parking lot," whereas the parking lot at issue here was "regularly" used for school purposes. (St. Br. 19-20) However, again, subsection 5/11-9.3(a) does not restrict child sex offenders from "real property *used* by any school." Thus, this distinction alters the plain language of the statute. *See Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 408 (2010) ("A court may not add provisions that are not found in a statute, nor may it depart from a statute's plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express") (*aff'd* in *People v. Burge*, 2021 IL 125642, ¶30). In any event, *Stamps* was not concerned about the *use* of the parking lot in question. In fact, the evidence in *Stamps* confirmed the parking lot *was* "used" by the school, *i.e.*, as an overflow parking lot. *Stamps*, 620 So. 2d at 1033. Rather than considering the use or ownership of the lot, the court addressed whether the lot *comprised* a school. *See id* ("...it is not sufficient that the school 'own' the property. Rather, the property must 'comprise' the school. The two terms are not synonymous."). To that end, the court held that it "would affirm" the defendant's conviction, had the State established his presence within 1,000 feet "of the school area consisting of contiguous tracts owned by the school, none of which were separated from one another by any intervening tract of land having a different owner." Yet the State's failure to offer that

evidence required that the defendant's conviction be reversed. *Id*. at 1033-34.

The State's attempts to render *Paige* and *Peterson* irrelevant also fail. According to the State, these cases held only that property that *was* contiguous to a school constituted "real property comprising any school," without addressing whether property that neither contained nor was contiguous to any school could also qualify. (St. Br. 19) However, in *Paige*, the court held, "... when, as here, a boundary line circumscribes a public elementary school building together with adjacent school land areas *which are contiguous, and not separated by intervening land under different jurisdiction*, we conclude that [the statute] is violated when the proscribed activity occurs within one thousand feet of such boundary line... ." 768 N.E.2d at 844 (emphasis added). The court noted further that the defendant had *not* argued that the property at issue was "not contiguous, not included within, or not contained within the boundaries of the school property." *Id*. at 843. Thus, by defining real property comprising a school as lands "which *are* contiguous and *not* separated by intervening land" from a school, the court necessarily excluded property that *is* separated by intervening land as "real property comprising any school."

Likewise, in *Peterson*, the specific issue before the Court was whether an Iowa criminal statute was void for vagueness due to its restrictions regarding "real property comprising a ... school." 490 N.W.2d at 54-55. The Court rejected that argument, finding "that the words 'real property comprising a school' are commonly understood to include not only the school building but also the contiguous land surrounding the buildings." *Id*. Thus, the Court's conclusion that the statute was not unconstitutionally vague *specifically because* real property comprising a school clearly meant land "contiguous" to a school necessarily meant that land that neither contained nor was contiguous to a school does *not* constitute real property comprising a school. Ultimately, despite the State's attempts to limit *Stamps*, *Paige*, and *Peterson*, the State has not cited a *single* case to support a different construction of "real property comprising any

school" than how all three of these independent tribunals defined that phrase.

Next, the State shifts attention *away* from the phrase "real property comprising any school," and argues this language is irrelevant, since subsection 5/11-9.3(a) "also uses the term 'grounds' to describe the same area... ." (St. Br. 13) The State contends the legislature thus meant for "real property comprising any school" to be the "grounds" of a school, *i.e.*, the area belonging to a school. (St. Br. 14) However, the full text of subsection 5/11-9.3(a) (minus the exceptions that follow) appears below:

> (a) It is unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present in the building, on the grounds or in the conveyance ...

Thus, when examined in full, it is clear that, by using the words "building," "grounds," and "conveyance" in the second clause, the legislature was merely shortening the descriptions of the locations that it had already detailed in the first clause: (1) "building" refers to the "school building" discussed earlier; (2) "grounds" refers to the "real property comprising any school" discussed earlier; and (3) "conveyance" refers to the "conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity" discussed earlier. The legislature was *not* seeking to give the phrase "real property comprising any school" the same meaning as "school grounds" or "the grounds of a school." Indeed, neither of those phrases appear anywhere in the subsection at all. 720 ILCS 5/11-9.3(a). Moreover, as will be explained in the next section, *infra*, the definition of "school grounds" used by the legislature in other statutes would not cover property like the parking lot at issue in this case.

Furthermore, if the State's interpretation of the statute were correct, there would have been no need for the legislature to define "school" within 720 ILCS 5/11-9.3, a definition which the State *never* addresses in its brief. Specifically, as explained in the opening brief (Def. Br.

23-24), a *general* definition for "school" already exists in Article 2 of the Criminal Code, which includes "the grounds of a school." 720 ILCS 5/2-19.5. However, the legislature chose for a *different* definition of the word "school" to apply to section 5/11-9.3. For purposes of section 5/11-9.3, "'School' means a public or private preschool or elementary or secondary school." 720 ILCS 5/11-9.3(d)(15). Thus, the definition given to "school" within section 5/11-9.3 *excludes* "the grounds of a school" from the reach of the statute. *See Hernon v. E.W. Corrigan Const. Co*., 149 Ill. 2d 190, 195-96 (1992) (collecting cases) (when there are two statutory provisions, one general and one more particular and relating to only one subject, the more specific provision prevails). Accordingly, the State's argument that the legislature *did* intend for the grounds of the school to be included in subsection 5/11-9.3(a) renders the specific definition of the word "school" that the legislature said applied to section 5/11-9.3 meaningless. *See Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990) ("in ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered," and the statute must be construed "so that no word or phrase is rendered superfluous or meaningless").

In short, the plain meaning of "real property comprising any school" is real property containing an actual public or private preschool or elementary or secondary school. The State's attempt to show otherwise fails.

B. Additional tools of statutory construction confirm that "real property comprising any school" is any tract of land containing a school, *not* non-contiguous property owned or used by a school.

The parties agree that, if this Court finds subsection 5/11-9.3(a) ambiguous, then it may look to extrinsic aids of statutory construction. (St. Br. 15; Def. Br. 18-19) To that end, the State argues that both case law and legislative history show that the purpose of subsection 5/11-9.3(a) is to protect schoolchildren from child sex offenders and to make it harder for sex offenders to get access to children. (St. Br. 15-16) The State argues that "real property comprising

any school" must be interpreted "in a way that best fulfills" that goal, such as including the parking lot at issue here as "real property comprising any school." (St. Br. 16, 18)

However, as Leib explained in his opening brief, this concern that the legislative purpose will go unmet is unfounded. (Def. Br. 25) Under 720 ILCS 5/11-9.3(a-5), it is already unlawful for child sex offenders to knowingly be present within 100 feet of "a site posted as a pick-up or discharge site for a conveyance owned, leased, or contracted by a school to transport to or from school or a school related activity," when children are present. Thus, the legislature already protects children from child sex offenders while they are on non-contiguous parking lots used for pickup and discharge by the school. In order to keep child sex offenders away from a non-contiguous parking lot used by a school, the school need only post a sign somewhere on the lot indicating its use. Had Queen of Martyrs posted such a sign in this case, Leib would have been given notice that he could not be present, and thus been in violation of a *different* subsection of section 5/11-9.3 if he knowingly entered that lot despite that sign. However, the fact that Queen of Martyrs parking lot did not contain that signage should not be the reason why a *different* statutory subsection gets expanded beyond its plain language. After all, the undeniably compelling interest in protecting school children from child sex offenders can only be fulfilled when the statute provided constitutionally sufficient notice to child sex offenders of where they can and cannot be. *See People v. Stork*, 305 Ill. App. 3d 714, 723-24 (2d Dist. 1999) (rejecting a due process challenge to subsection 5/11-9.3(a) specifically because, *inter alia*, it only "restricts child sex offenders *from a readily identifiable area*") (emphasis added).

Notably, the State avoids any reference whatsoever to subsection 5/11-9.3(a-5) in its brief. Instead, it makes a *broader* argument that extends *outside* the facts of this case, asserting that "'real property comprising any school' should be construed to include "locations where children gather for school purposes, regardless of whether the property is contiguous to the

school building." (St. Br. 16) However, if there are additional locations where school children gather, it is up to the legislature to ascertain those properties and restrict them accordingly.[1] Again, the phrase "real property comprising any school" should not be expanded to account for such unknown variables.

Moreover, accepting the State's definition of "real property comprising any school" as "locations where children gather for school purposes" (St. Br. 16), could restrict virtually *every* type of property to child sex offenders. For example, schoolchildren often attend field trips at museums, factories, hospitals, government buildings, and a host of other locations. Older children also often gather after school at locations such as coffee shops and gas stations. However, restricting child sex offenders from all these locations when children were present would be wholly unworkable, giving *no* notice to child sex offenders of where they can and cannot be. Such absurd results could not have been the intent of the legislature.

The State also cites (St. Br. 16) *People v. Mathias*, 936 N.W.2d 222 (Iowa 2019), where the Court held that the "grounds of a school" included an athletic complex owned and operated by a public school district, but did not contain any school. *Id*. at 225. However, the phrase "grounds of a school" was important to the Court. It specifically determined that the "grounds of a school" are *broader* than "real property comprising a public or private elementary or secondary school," which the Iowa legislature had used in other provisions. *Id*. at 230. Thus, the Court concluded that the "grounds of a school" included "more than just the classroom building and that building's surrounding land," but could also include "other school district-owned facilities not part of the land contiguous to the school building." *Id*. at 233.

Unlike the statute at issue in *Mathias*, subsection 5/11-9.3(a) does *not* use the "broader" phrase grounds of a school. Instead, it utilizes the more narrow phrase, real property "comprising"

[1] Notably, the State does not identify any such unprotected property in this appeal.

a school. 720 ILCS 5/11-9.3(a). Moreover, like the Iowa legislature, the Illinois legislature knows how to describe "school grounds,"when that is what the legislature intends. *See* 705 ILCS 405/5-407(b); 105 ILCS 10/27.1(A); 720 ILCS 5/11-30(c) (each defining "school grounds" as "the real property comprising any school, any conveyance owned, leased, or contracted by school to transport students to or from school or a school-related activity, or any public way within 1,000 feet of the real property comprising any school").[2]

The State acknowledges these statutes and the definition given to "school grounds" therein, but argues they are irrelevant, claiming that subsection 5/11-9.3(a) " uses the term 'grounds' interchangeably with the term 'real property comprising any school.'" (St. Br. 18) However, as explained in Section A, *supra*, subsection 5/11-9.3(a) *never* uses the words "school grounds." It only uses the word "grounds," and does so merely to reference the type of "grounds" described earlier in the subsection, *i.e.*, "real property comprising any school." *See* 720 ILCS 5/11-9.3(a). Moreover, "real property comprising any school" and "school grounds" *cannot* be used interchangeably. As the definition of "school grounds" cited in the prior paragraph shows, "real property comprising any school," is just *one type* of school ground.

To the extent that the State is suggesting that the legislature only intended for "school grounds" and "real property comprising any school" to have distinct meanings *outside* the Criminal Code, that is also incorrect. The legislature has *also* used the phrase "school grounds" in the very same article of the Criminal Code as subsection 5/11-9.3(a). Specifically, in subsection 5/11-30(c), the legislature made the offense of public indecency a Class 4 felony when committed by an adult "who is on or within 500 feet of elementary or secondary *school grounds* when

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[2] Notably, even this definition of "school grounds" would not cover the parking lot at issue here, since school grounds are not defined as the real property *of* a school. This further weakens the State's argument that the legislature's use of the word "grounds" in the second clause of subsection 5/11-9.3(a) was intended to encompass property like the parking lot at issue here, which neither comprised a school, nor was a conveyance or a public way.

children are present ... .".720 ILCS 5/11-30(c).[3]

Even more fundamentally, the State *never* addresses the fact the legislature *also* uses a third phrase within the Criminal Code to describe *other* types of property involving schools, *i.e.*, the "real property *of* a school." (Def. Br. 21) For example, under the child abduction statute, 720 ILCS 5/10-5(d)(6) (eff. July 27, 2015), a court must consider as aggravating if the defendant committed an abduction on *either* "the real property *of* a school," or "the real property *comprising* a school." (Emphases added). *See also* 730 ILCS 5/5-5-3.2(a)(16) (2021) (court may consider as aggravating when certain offenses are committed "on the real property *of* a school" or "within 1,000 feet of the real property *comprising* any school." (Emphases added.) Thus, real property *comprising* a school is clearly *distinct* from real property *of* a school. Since the real property *of* a school *would* include non-contiguous property owned and/or used by a school, the legislature's choice under subsection 5/11-9.3(a) to only restrict child sex offenders from real property *comprising* any school must be given effect.

Finally, the State argues that the presence of the term "school zone" in the title of 720 ILCS 5/11-9.3 lends support to its position. (St. Br. 16-17) The State notes that "zone" means "a region or area set off as distinct from surrounding or adjoining parts," thus showing "that the law was intended to apply more generally to the area around a school, rather than strictly apply to contiguous tracts of lands... ." (St. Br. 17) The State's argument *might* be more persuasive, if subsection 5/11-9.3(a) were the *only* subsection within section 5/11-9.3. However, as explained in the opening brief (Def. Br. 26), this statute instead contains 15 different subsections. Moreover,

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[3] In a footnote, the State notes that the legislature provided another definition of "school grounds" in 720 ILCS 5/12-6.4, which criminalizes the recruitment of gangs on school grounds or public property adjacent to school grounds. (St. Br. 18) However, this definition *also* lists "real property comprising a public or private elementary or secondary school" as only *one type* of school ground, further confirming the more narrow definition of "real property comprising any school." *See* 720 ILCS 5/12-6.4(c) (eff. July 1, 2011).

many of those other subsections reference locations that *are* akin to a "school zone." For example: (1) subsection 5/11-9.3(a-5) restricts child sex offenders from being present "within 100 feet" of sites posited as a school conveyance pick-up and discharge locations; (2) subsection (b) restricts child sex offenders from knowingly "loitering within 500 feet of a school building or real property comprising any school"; and (3) subsection (b-5) makes it unlawful for child sex offenders to knowingly reside within 500 feet of a school, absent certain exceptions. 720 ILCS 5/11-9.3(a-5), (b), (b-5) .Thus, the title of the statute which reads, in full: "Presence within school zone by child sex offenders prohibited; approaching, contact, residing with, or communicating with a child within certain places by child sex offenders prohibited" is clearly just a general description of the *entire* statute, and does not define any of the more detailed subsections therein. (*See* Def. Br. 26)

C. The manners in which the courts determined and the prosecutor argued below that the parking lot comprised a school were incorrect.

1. Appellate Court's Reasoning

The State does not dispute that the appellate court relied on the wrong definition of "school" to conclude that the parking lot where Leib attended Queen of Martyrs Fest was real property comprising any school. (Def. Br. 23-24) Moreover, the only other reason cited by the appellate court to reach this conclusion involved the court's belief that its construction was the only way to protect children from child sex offenders while on parking lots like that at issue here. *See Leib*, 2020 IL App (1st) 170837-U, ¶28. As addressed in the prior section, *supra*, that concern is illusory.

2. Trial Court's Reasoning

The trial court offered a different reason to find Leib guilty, determining that even if the parking lot at issue was not *typically* real property comprising any school, it *temporarily* became such property on the night of Queen of Martyrs Fest. (R. K120) Notably, the State

does *not* seek to justify or rationalize the court's reasoning in this regard, which is clearly incorrect. (*See* Def. Br. 27)

Instead, the State mischaracterizes an argument made by Leib under this section. According to the State, Leib "appears to argue that section 11-9.3(a) should not have been applied to him because he was at the festival after school hours." (St. Br. 20) To the contrary, Leib argued that the parking lot where he attended Queen of Martyrs Fest *never* comprised any school, and that it was *wrong* for the *trial court* to determine the status of that lot based on its temporary use. Leib only noted that school was not in session when he attended Queen of Martyrs Fest to *further* highlight the *trial court's* error. Specifically, though the court defined the nature of the lot based on its use at any given point in time, the court failed to consider that, when Leib was on the lot, school was not in session. (Def. Br. 28) Thus, since the State appears to agree that the nature of the parking lot cannot change depending upon its use, the State has only shown further why the trial court acted irrationally. (St. Br. 20-21)

Leib also cited *People v. Haberkorn*, 2018 IL App (3d) 160599, within this section. (Def. Br. 27-28) The State argues that Leib's reliance on this case is "misplaced" because the statute under which Haberkorn was convicted restricted his participation in programming designed "exclusively" for children, whereas subsection 5/11-9.3(a) does not require that real property be used *only* for school purposes. (St. Br. 21) However, Leib never argued that it did. To the contrary, Leib maintains that the use of the property is irrelevant; what matters is whether the property comprises a school. If the property *does* contain a school, then of course a child sex offender could not be present alongside children, no matter how the parking lot was used. Thus, the State's attempt to distinguish *Haberkorn* fails. (Def. Br. 27-28)

3. Prosecution's Argument

As Leib explained, the prosecution also erroneously argued that the school's ownership

and use of the parking lot controlled. (Def. Br. 29-30) In response, the State again asserts that Leib is the one contending that use of the parking lot controls. (St. Br. 21-22) For the reasons set forth above, the State is incorrect.

II. Even if the parking lot did comprise a school, the State failed to prove Donald Leib knew he was on such restricted property.

A. Insufficient evidence was presented from which a rational fact-finder could determine Leib knew a school was located across the street from the parking lot where he attended Queen of Martyrs Fest.

The State argues that it was "readily apparent to anyone attending the Queen of Martyrs Fest that they were on school grounds." (St. Br. 25) To support that argument, the State notes first that the festival contained rides and games geared toward children, and that many children were present. (St. Br. 25) However, the State does not dispute that children are often present at festivals, along with rides geared toward children. (*See* Def. Br. 40-41) However, not all festivals are located on real property comprising a school. Further, this particular festival not only contained children's rides, but also had music, beer, and adults. (R. K32, 36, 101-02) Moreover, no child or adult was there to attend school. Thus, the fact that children were present at the festival did not give notice that the festival was on real property comprising a school.

The State also argues that the Queen of Martyrs Fest flyer referred to children's games being offered in a school classroom. (St. Br. 25) That is incorrect. The flyer said nothing about a school classroom, but only indicated children's games were available "IN ST JOE'S ROOM." (R. K85; Exh. D.E. 1) Given that the festival took place at a parish, no reasonable person could know that "ST JOE'S ROOM" was located in a school.

The State next asserts that the Google Maps internet site from which one of the exhibits introduced at trial Defense Exhibit 3 was apparently taken reveals that the words "Queen of Martyrs Catholic School" appear on a banner hanging from a street light on West 103rd Street. According to the State, these words are "more legible" on the actual Google Maps website

than on the exhibits included on appeal, which the State submits are less clear because of "repeated photocopying." (St. Br. 25-26, Fn. 3) However, at trial, Reverend Edward Mikolajczyk identified Defense Exhibit 3 as depicting the corner of 103rd Street and Central Park, which was a *block away* from where Leib attended Queen of Martyrs Fest at 103rd and St. Louis Avenue. (R. K20-21) Moreover, as Leib explained in the opening brief (Def. Br. 34-35), there was no testimony that Leib was *ever* at or near 103rd and Central Park, to allow him to see this banner. To the contrary, the testimony instead established that Leib and his family walked up *St. Louis Avenue* to attend the festival. (R. K93) Thus, the Google Maps website does not prove Leib's guilt.

Furthermore, the issue before this Court is whether the State proved *at trial* that Leib was knowingly present on real property comprising any school, not whether it can now prove this fact on appeal. *See People v. Heaton*, 266 Ill. App. 3d 469, 476 (5th Dist. 1994) ("reviewing court must determine the issues before it on appeal solely on the basis of the record made in the trial court"). The exhibit presented at trial which appears to have been printed *at the outset* from a computer (not rendered less clear only through repeated photocopying) did *not* show that the words "Queen of Martyrs School" were visible on the banner of the street light now referenced by the State. (Exh. D.E. 3) Nor did the prosecution make that argument at trial. Even more importantly, these words are *also* not clearly legible on the Google Maps link offered by the State, absent repeated use of the zooming feature. *See* https://tinyurl.com/ysj69h2b (last visited December 1, 2021). Moreover, the zoomed-in image from the website is different from the exhibit presented to the trial court. Thus, for multiple reasons, this argument fails.

Next, the State simply *asserts* that "the sizable parochial school and gymnasium were readily visible to Fest attendees." (St. Br. 25) To the contrary, the exhibits presented at trial support that the school was not visible from the parking lot where Leib attended the festival. As the State's witnesses agreed, the Queen of Martyrs Parish *gym* stood between the school

and the parking lot. (R. K10, 15-17, 21-22; Exh. D.E. 2) Moreover, as Defense Exhibit 2 shows, the parish gym was *wider* than the school, which would obstruct the view of the school from the parking lot. (R. K21-22; Exh. D.E. 2)

The State next notes that the parish church was farther away from the parking lot than the school, "belying any suggestion that Fest attendee must have naturally presumed that the parking lot was merely (and exclusively) a church parking lot." (St. Br. 25) However, *neither* the church nor the school were readily visible from the parking lot. All that could be seen was the parish gym. (R. K21-22; Exh. P.E. 2, D.E. 2) Thus, the State did not prove that the attendees in the lot where Leib was present would have known what was behind that gym, or how far back the property went. Moreover, the issue is not whether Leib should have "naturally presumed" that there might be something other than a church behind the gym, but whether he was consciously aware of at least a substantial probability that there was a school at that location.

Finally, the State argues that Leib's agreement with Officer McGreal that he should not have been at the festival implied his knowledge that he was on real property comprising a school. (St. Br. 26) However, McGreal never testified that he and Leib discussed whether Leib was on school property. Instead, McGreal told Leib that people were *uncomfortable* that he was at the festival, and that he should not be there. (R. K69, 94) Thus, all Leib's response to McGreal shows is that Leib agreed he should not be present at a place where he was making people uncomfortable, and that he complied with the officer's request to leave.

B. Even if Leib knew a school was located at the parish, no rational trier of fact could conclude he knew he was on real property comprising a school by remaining present on the parking lot across the street from that school.

Even if there had been sufficient evidence to prove Leib knew a school was located on the Queen of Martyrs campus, no evidence was presented from which a rational trier of fact could conclude Leib knew he was *himself* on real property comprising a school by remaining

present on the parking lot across the street from that school. Specifically: (1) the detective who investigated this case indicated on his police report that the premise type of the incident was "church, synagogue, or slash temple," not a school (R. K104); (2) Irene Ahern Smith, who had been the business manager at the parish for 20 years, testified this parking lot had been considered *church* property for as long as she had worked there (R. K99-103); (3) other witnesses who worked for the parish agreed that the lot was only occasionally used by the school (R. K18-20, 25-27, 32-33, 42, 101-02); and (4) there was an *additional* parking lot directly adjacent to the school, which was likely viewed by the public as the school's parking lot, not the lot across the street from the gym. (R. K18)

The State argues it is "unclear" how either the detective's police report or Smith's beliefs about the parking lot were relevant to Leib's own knowledge, since no testimony established that either of these witnesses ever spoke to Leib. (St. Br. 27-28) However, this testimony is relevant because it rebuts the State's argument that the "evidence showed that it was readily apparent to anyone attending the Fest that they were on school grounds." (St. Br. 25) Along with Leib's brother (R. K96-97), the 20-year business manager of the parish considered the parking lot a church parking lot, and the detective who investigated this incident also instinctively identified the lot as a belonging to a church. Thus, no rational trier of fact could conclude beyond a reasonable doubt that *Leib* had knowledge above and beyond these individuals to know that he was on real property comprising a school. Indeed, as explained in Argument I, *supra*, courts throughout the country have held that "real property comprising a school" is property that *contains* a school, *not* non-contiguous land that is owned or used by a school. *See Stamps v. State*, 620 So. 2d 1033, 1033 (Fla. Ct. App. 1993); *Commonwealth v. Paige*, 768 N.E.2d 572, 573-74 (Mass. App. Ct. 2002); *State v. Peterson*, 490 N.W.2d 53, 53-54 (Sup. Ct. Iowa 1992).

The State notes that the detective's statement is "devoid of any context that explains

his conclusion." (St. Br. 28) However, it was the State's burden to prove Leib's knowledge beyond a reasonable doubt, not Leib's burden to disprove his knowledge. As Justice Mikva noted in her dissent, the State presented "no evidence" that Leib knew he was on real property comprising a school. *Leib*, 2020 IL App (1st) 170837-U, ¶40 (Mikva, J., dissenting). Thus, in this context, the fact that the investigating police officer identified the premise type as a religious institution supports further why it was irrational for the trial court to find Leib's knowledge proven beyond a reasonable doubt.

The State also argues that both Smith and Mikolajczk ultimately testified the parking lot belonged both to the school and the church. (St. Br. 28) However, as noted by the State, there was no evidence presented that either of these individuals ever talked to Leib. (St. Br. 27-28) Moreover, unlike the Queen of Martyrs's pastor and business manager, Leib did not work for the parish. Nor was there any evidence at trial that he was a member of the parish or had visited in the past. Thus, the fact that the pastor and business manager knew the lot served both the church and the school was not evidence of knowledge that could be imputed to Leib.

Finally, the State argues that Leib's longstanding compliance with the sex offender registration laws shows he was aware he should avoid schools. (St. Br. 28) Leib agrees. However, the fact that he had complied with the sex offender laws for so many years supports that he would not have *knowingly* visited property that contained a school.

C. Neither the trial court nor the appellate court acted rationally in finding the State proved Leib's knowledge.

The State disputes that either the trial court or the appellate court majority applied the wrong standard in finding Leib guilty. (St. Br. 29) The State notes first that it must be presumed that the trial court both knew and followed the law properly. (St. Br. 29) However, this presumption may be rebutted when the record affirmatively shows the contrary. *People v. Naylor*,

229 Ill. 2d 584, 603-04 (2008). As Justice Mikva agreed, this record affirmatively shows that the trial court inappropriately assumed Leib's knowledge based on what the judge believed Leib *should* have known, rather than what the State proved he actually did know. *See Leib*, 2020 IL App (1st) 170837-U, ¶¶42-43 (Mikva, J., dissenting). The court stated, "I don't see how any reasonable person, especially a convicted sex offender, would not be able to realize" they were on school property. (R. K120-21) Thus, the court measured Leib's knowledge based on what it believed Leib *should* have realized, not on what the evidence showed Leib actually did know. *See People v. Nash*, 282 Ill. App. 3d 982, 985-87 (3d Dist. 1996) (trial court erred in finding defendants' knowledge proven by considering all the evidence that should have given knowledge, since knowledge requires proof of defendant's conscious awareness of a particular fact).

Next, though the State is correct that the appellate court majority did not make the *same* error (St. Br. 29), the majority instead committed a *different* error, determining that the evidence showed Leib "could" have inferred that the parking lot was real property comprising a school. (Def. Br. 40) *See also Leib*, 2020 IL App (1st) 170837-U, ¶46 (Mikva, J., dissenting) (finding that "both the trial court and the majority ... simply assum[ed]" that Leib knowingly entered school property, which was incorrect). For these reasons, this Court should not defer either to trial court or the appellate court majority.

D. Conclusion

No rational trier of fact could have concluded that Leib was consciously aware of at least a substantial probability that he was on real property comprising a school. Thus, this Court should reverse Leib's conviction.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Donald Leib respectfully requests that this Court reverse his conviction for knowingly being present as a child sex offender on real property comprising any school.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

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IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DONALD LEIB, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0837. There on appeal from the Circuit Court of Cook County, Illinois , No. 15 CR 17207. Honorable Kerry M. Kennedy, 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 December 7, 2021, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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