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

No. 130693

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- CHRISTIAN MIKOLAITIS, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-23-0791. There on appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 23 CF 2213. Honorable Margaret O'Connell, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT IN SUPPORT OF RULE 604(h) APPEAL

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ORAL ARGUMENT REQUESTED

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ARGUMENT

The Pretrial Fairness Act requires the State to prove three elements to detain a defendant awaiting trial: 1) a great presumption of guilt; 2) the defendant poses a safety threat or flight risk; and 3) no conditions of release could mitigate that threat. The State failed to meet its burden of proof to detain Christian Mikolaitis because it presented no evidence and made no argument as to the third element.

The issue before this Court is whether the State at a pretrial detention hearing can fail to make any argument whatsoever that no conditions of release can mitigate any potential safety threat and still meet its burden of proof under the Act. This Court likely recognizes that Argument I in the State's brief – which delves into the merits of the trial court's decision below – is not relevant to the determination of this finite issue of statutory interpretation. (St. Br. 6-12)

Mikolaitis maintains that the plain language of the Act requires that the State "must prove not one, not two, but all three factors by clear and convincing evidence," and "having ignored the third factor, the State has failed to bear its burden as it must." (Op. Br. 7-8) *See*, *People v. White,* 2024 IL App (1st) 232245, ¶¶ 18, 21. To find otherwise would render meaningless the newly added third element, which did not appear under the old bail system, violating a basic principle of statutory construction. *See, People v. Giraud*, 2012 IL 113116, ¶6 (no part of a statute should be rendered meaningless or superfluous).

The State asserts that the Act does not require it to make an argument about conditions at the hearing, because the Act "says nothing about argument." (St.Br.14) Yet it also concedes that the Act "requires the People to prove by clear and convincing evidence that no conditions can mitigate the safety threat." (St.Br.14) It is unclear how the State could "prove" anything, much less clearly and

convincingly," when it stands silent as to why certain conditions of release would not be effective in a given case. The act of "proving" requires more than just reciting facts from a proffer. It requires the State to convince the trial court to view the evidence in a way that supports its position. (Op. Br. 9) This is especially true as to the third element of the Act. This burden requires the State to articulate why conditions could not mitigate any safety threat; the typical proffer does not have anything to say about whether the arrestee would, say, abide by an order to take a drug test. Instead, the legislature set a presumption for release and put the burden on the State to articulate why conditions of release could not mitigate the alleged safety threat.

This reading of the Act squares with the accepted definition of "burden of proof." For decades the law has understood "burden of proof" to mean the "burden of persuasion," as opposed to the burden to produce evidence. *Dept. of Labor v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). The "proper meaning of burden of proof is the duty of the person alleging the case to prove it, rather than the duty of one party or the other to introduce evidence." *Id.* at 275 (cleaned up). Put another way, its not uncommon for a legislature to assign to a party "both" the "burden of proceeding with the introduction of evidence and the burden of proof." *Id.* at 276. And if a legislature assigns a burden of proof, this assignment "only makes sense if the burden of proof means the burden of persuasion. A standard of proof, such as preponderance of the evidence, can apply only to a burden of persuasion, not to a burden of production." *Id.* at 278. In this case, our legislature mandated that the State show that its evidence "clearly and convincingly" proves that no

pretrial release condition could mitigate any safety threat. It is not possible under the Act to meet a burden of proof by ignoring it.

Under the State's interpretation of the statute, as long as evidence exists to support the trial court's finding, the State can stand mute at the hearing. This interpretation runs counter to the purpose of the Act, which was passed to ensure the State proves three separate elements. The State asks this Court to revert Illinois to the old bail system: a barely adversarial hearing that lasted mere minutes because there was no requirement that the State prove the now enacted third element of proof.[1]

The State's position relies on the concurrence's claim that a requirement that the State "present argument with respect to the conditions set forth in §110-10(b) would give unworkable results." (St. Br. 15); *People v. Mikolaitis*, 2024 IL App (3d) 230791,¶18 (Brennan, J., specially concurring). Mikolaitis never contended that the State must argue against each and every possible condition of release. Rather, the State must address relevant and potential conditions based on the individualized facts of each case. *See, People v. Morgan*, 2024 IL App (4th) 240103, ¶ 39, *appeal allowed*, 130626 (Ill. June 11, 2024) (the State need not "raise and argue" against every condition of release, rather, "it is reasonable to anticipate that the State will address conditions insofar as they relate to the charged conduct"

[1] In Cook County for example, the median bail hearing length before the Act was less than five minutes. It is now closer to twenty minutes. Don Stemen and Patrick Griffin, Loyola Center for Criminal Justice, *Some Observations: Pretrial Hearings Before and After the PFA* at https://loyolaccj.org/blog/some-observations-pretrial-hearings-before-and-after-the-pfa.

and relevant considerations about the defendant). Individually tailored arguments to the third element is hardly unworkable.

Mikolaitis has never contended that the State may not use the evidence and argument it presents on the first and second element to help support its burden on the third. (St.Br.12-13) If the State's argument in support of dangerousness, for example, contains facts that are relevant to the imposition of conditions of release argument, the State can use those facts to argue the third element. That does not alleviate the State of its burden of proof on the third element – it must still persuade the court why no conditions of release could mitigate any potential threat to public safety.

The State suggests that because the trial court "considered possible release conditions including home confinement," it was absolved of its statutory requirement to meet a burden of proof. (St. Br. 16, 17) Such an interpretation is contrary to the plain language of the statute. Although it was not Mikolaitis's burden, defense counsel argued that because Mikolaitis had no criminal history, electronic monitoring would be an appropriate condition of release. (R. 10) The court then questioned Mikolaitis and relied on his answers to order pretrial detention. (R. 11) It was Mikolaitis's responses to the court's questions that led to the court's conclusion that he would not "abide by the conditions of pretrial release." (R. 13) The court's decision was not based on anything argued or presented by the State and it was not Mikolaitis's burden to prove why he should not be detained.

For the reasons stated above, and in the opening brief, this Court should hold that the Act's plain language requires the State to present argument and

evidence on the third element in order to satisfy its burden of proof. Here, the State said nothing as to the third element at Mikolaitis's detention hearing. Therefore, this Court should reverse the decision of the appellate court, vacate the trial court's detention order, and remand for a hearing on conditions of release.

CONCLUSION

For the foregoing reasons, Christian Mikolaitis, Defendant-Appellant, respectfully requests that this Court reverse the decision of the appellate court, vacate the trial court's detention order, and remand fora hearing on release conditions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 6 pages.

/s/ Christina M. O'Connor
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No. 130963

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PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- CHRISTIAN MIKOLAITIS, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-23-0791. There on appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 23 CF 2213. Honorable Margaret O'Connell, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 20, 2024, the Reply Brief for Defendant-Appellant in Support of Rule 604(h) Appeal 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 for Defendant-Appellant in Support of Rule 604(h) Appeal to the Clerk of the above Court.

/s/George Freeman
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