No. 127838

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANGELO CLARK, Defendant-Appellant.	))))))))))	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-18-0523 There on Appeal from the the Circuit Court of Cook County, Illinois, No. 13 CR 16035 (02) The Honorable Nicholas Ford, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7123
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

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NATURE OF THE ACTION

In 2013, defendant was arrested for participating in an armed attack that seriously injured two people. The officer who arrested defendant did so based on an investigative alert — a computer notification used to communicate to officers in the field that detectives had found there was probable cause for defendant's arrest. After a 2017 jury trial, defendant was convicted of two counts of aggravated battery with a firearm and initially sentenced to 46 years in prison. The circuit court subsequently granted defendant's motion to reconsider and reduced the aggregate sentence to 32 years. Defendant appeals from the appellate court's judgment affirming his convictions and sentence. No question is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant forfeited his claims that the circuit court erred by denying his motion to quash his arrest and by not considering the factors listed in 730 ILCS 5/5-4.5-105(a) at sentencing.[1]

2. Whether the circuit court did not plainly err by denying defendant's motion to quash his arrest because defendant's otherwise reasonable arrest was not rendered unreasonable by the fact that the arresting officer learned there was probable cause to arrest defendant through an investigative alert.

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[1] The complete text of section 5-4.5-105(a) is provided in the appendix to this brief.

3. Whether the circuit court did not plainly err by not considering the sentencing factors listed in 730 ILCS 5/5-4.5-105(a) because that statute did not apply to defendant and, in any event, defendant fails to overcome the presumption that the court considered the factors listed in the statute, all of which the court was otherwise already required to consider.

4. Whether any sentencing error did not rise to the level of first- or second-prong plain error because the evidence was not closely balanced and the alleged error was not structural.

JURISDICTION

On March 29, 2023, this Court allowed defendant's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

Defendant, Ladon Barker, and Terrence Lynom were charged with multiple counts of attempted murder and aggravated battery with a firearm for their participation in a July 19, 2013 shooting that injured two people. C7-14.[2] Defendant was tried separately from his codefendants in 2017. *See* R305.

[2] Citations to the common law record appear as "C__," to the secured common law record as "SC__," to the report of proceedings as "R__," to the supplemental report of proceedings as "SR__," and to the video admitted as People's Exhibit 99 as "Peo. Exh. 99," with time stamps referring to the progress bar of the video player. Defendant's brief and appendix are cited as "Def. Br. __" and "A__," respectively, and the brief of *amicus curiae* Criminal Justice Advocates is cited as "Am. Br. __."

I. Defendant's Motion to Quash Arrest Is Denied.

Before trial, defendant moved to quash his arrest. C96-99. At the hearing, defendant's mother, Lashan Clark, testified that on the afternoon of July 22, 2013, two police officers came to defendant's grandmother's house looking for defendant, who was staying at his aunt's house. R179-80, 184-85. Clark voluntarily accompanied the officers to the aunt's house, where she and one of the officers — Patrick Kinney — went to the back door. R181-82, 187. She told Kinney to wait outside, then went inside to talk to defendant. R181-82, 187-89. While they were talking, Kinney came in, choked defendant, threw him against the wall, and threatened to Taser him if he refused to go to the station. R183.

Officer Kinney testified that he and his partner went to defendant's grandmother's house after receiving an investigative alert stating that there was probable cause to arrest defendant for the shooting of two victims. R193-94, 199. Clark told the officers that defendant was staying with her sister and that she would accompany them there. R195-96. When they got to the house, Clark stayed in the car while Kinney went to the back door. R196. He knocked, introduced himself to the young man who answered, and explained that he was looking for defendant, whom he had probable cause to arrest. R196-97. The man did not verbally invite Kinney inside, R199-200, but he opened the door, moved aside, and pointed to defendant, who was inside, R197. From the doorstep, Kinney explained to defendant that there was probable cause for his arrest and detectives wanted to speak with him. R198.

Kinney asked defendant to come to the station, and defendant said "okay, let me get some clothes." R198. Kinney stepped inside while defendant got dressed, then the two went outside, where Kinney placed defendant under arrest. R198-99.

The circuit court credited Kinney's testimony, discredited Clark's testimony, and denied the motion to quash. R206-09. The court agreed that an officer cannot enter a home to make an arrest on the strength of probable cause communicated by investigative alert, R205, but found that defendant was not arrested inside the home, R209.

II. Defendant Is Tried and Convicted.

The trial evidence showed that on the evening of July 19, 2013, two men opened fire on 20 to 30 people who were gathered for a memorial barbecue. SR190-91, 196-98, 293-98. The men shot a six-year-old girl (Q.T.) and a 53-year-old woman (Lisa Travis); both suffered permanent injuries. SR154-60, 165-80, 201-04, 300.

Ayanna Moore, Shushana Moore, and Jarvis Thomas testified that they attended the memorial gathering. SR190-91, 248-49, 290-91. Before the shooting, Ayanna and Shushana saw Kevin "Cool" Collins with a group of about 10 men at the end of the block. SR191-93, 250. As Ayanna chatted with Cool, one of the men lifted his red shirt to reveal a gun in his waistband. SR194-95, 250-53.

Later, Shushana left with her aunt to go to the store and, as she turned down the alley on the opposite end of the street, she passed a group of

men. SR255-57. Among them was the man in the red shirt, a man in a black shirt, and a man in a white shirt (whom Shushana later identified as defendant). SR255-58, 267-68. As her aunt called Shushana's mother to warn her about the suspicious group, Shushana heard gunshots from the direction of the alley behind them. SR259-60.

Ayanna and Thomas testified that they saw three men approach from the alley: the man in the red shirt, a man in a black shirt, and a man in a white shirt. SR196-200, 293-95. Ayanna recognized all three from Cool's group. SR196-200, 229-30. The men in the red and black shirts then opened fire, while the man in the white shirt hung back and appeared to act as their "lookout." SR197-99, 217, 295-98, 329-30. Ayanna and Thomas later identified defendant as the lookout. *See* SR210-13, 309-13, 549. When the shooters stopped firing, they ran back down the alley with the man in the white shirt. SR232-33, 298-99. Police later recovered multiple spent 9mm and .40-caliber cartridges from the ground near the alley. SR337-39.

Shortly after the shooting, police pulled over Cragg Hardaway a few blocks from the crime scene after his vehicle was identified as possibly having been involved. SR521-23. He was arrested the next day, SR526-28, and on the following morning — July 21, 2013 — he gave a videorecorded statement, R528-29. At trial, Hardaway denied remembering where he was or whom he was with around the time of the shooting, SR420-31, and his videorecorded statement and portions of his grand jury testimony were presented to the

jury, SR481-96, 535, 640-61. In his statement, he told detectives that shortly after he heard gunshots, he encountered DeAndre Butler, who got in Hardaway's car and told him that some younger men had gone to shoot at someone. Peo. Exh. 99 at 15:41-16:34. Three young men — Lynom, Barker, and defendant — then ran up to Hardaway's car, got in, and told Butler they had committed the shooting and believed Lynom had successfully killed someone. Peo. Exh. 99 at 17:13-21:18, 22:32-23:43; SR533-34. Hardaway later testified to the grand jury that he encountered defendant again about a half hour later, when defendant reported to Butler that he had disposed of the guns. SR493-94.

The detectives issued investigative alerts — entries in the police department's computer system, SR740 — notifying officers that there was probable cause to arrest Lynom, Barker, and defendant, SR542, and Kinney arrested defendant outside his aunt's house the next day, SR542, 740-41, 749-50. In his written statement to police, defendant (who had "Goon Town" tattooed across his hands, SR542-43) said that he was a member of the Goon Town gang, which was currently fighting with the 10-4Ls gang. SR629-30. On the day of the shooting, he and about 10 fellow gang members, including Cool, Butler, Lynom, and Barker, decided they would shoot some 10-4Ls. SR630-31. After they saw a group of 10-4Ls down the street, they circled around to the other end of the block to attack the gathering. SR630. When Butler asked for volunteers, Lynom and Barker volunteered to shoot, and

defendant volunteered to go along with them to make sure they were alright. SR631. Once Barker was armed with a 9mm gun and Lynom with a .40-caliber gun, they walked through the alley and Barker and Lynom opened fire while defendant stayed near the alley's entrance. SR631-32. The three then ran back down the alley and escaped in Hardaway's car. SR632-33.

For the defense, defendant and his mother testified to the account of a violent arrest that his mother had offered before trial. SR645-60, 664-70. Defendant then claimed he made up his police statement, the details of which he took from neighborhood rumor, because detectives threatened to charge him with murder if he did not admit to participating in the shooting. SR672-75. On cross-examination, he testified that he was at his grandmother's house during the shooting, SR684-88 — an alibi that counsel explained was not disclosed because defendant had never told her about it, SR726-27. On cross-examination, defendant refused to answer any of the prosecutor's questions about his statement to police, SR712-19, and at one point "stood up, faced the deputy, and became obstreperous," SR712, 724-25. After a recess, questioning resumed, defendant testified that every detail of the statement was "made up," SR728-33, and the defense rested, SR734, 737.

The jury found defendant guilty of two counts of aggravated battery, SR908, and the court declared a mistrial on the remaining counts of attempted murder and the sentence enhancement for the use of a firearm, on which the jury could not reach a unanimous verdict, SR912.

III. The Circuit Court Sentences Defendant to 46 Years in Prison, Then Reduces That Sentence to 32 Years.

In December 2017, the court conducted the sentencing hearing. *See* R314-36. The court heard the victims' statements about their lasting injuries, R317-25, and defendant's statement in allocution that he was "no longer that reckless 17[-]year[-]old kid" and was "truly sorry" that "the offense [he] was charged with" had "caused two innocent people pain and suffering every night plus [his] family," R329-30. The court received a presentence investigation report (PSI), which confirmed that defendant was 17 at the time of the shooting, SC6, showed that he had been adjudicated delinquent for aggravated assault a month before the shooting, SC8, and provided information about defendant's social, family, and psychological history, SC9-11.

Before sentencing defendant, the court explained that it had considered "[t]he evidence presented at trial," the PSI (which the court had "reviewed in its entirety"), "the evidence offered in aggravation and mitigation," and "the statutory facts in aggravation and mitigation," as well as counsels' arguments, the victim impact statements, and "[d]efendant's allocution" (which "provide[d] [the court] with some degree of optimism"). R331-32. After noting the "extreme gravity" of the conduct for which defendant had been found accountable, R332, the court sentenced him to 46 years in prison, R333. The court denied defendant's immediate motion to reconsider based on his youth, explaining that it was "mindful of [his] youth,"

but that other factors, including the "extremely aggravating" facts that the offenses resulted from a "concerted effort" by defendant and his fellow gang members, supported the sentence. R335-36.

In January 2018, defendant filed an amended motion to reconsider, arguing that 46 years was excessive because he had just turned 17 at the time of the offenses and had not been one of the shooters. R366-68; C173. The circuit court granted that motion. R371. The court reiterated that it was "mindful of the fact that he is a young person," and, after "tak[ing] that into further account," reduced defendant's sentence to 32 years (roughly 27 years when served at 85%). R370-71.

After the court reduced defendant's sentence, defendant "absented himself from the courtroom" and "pushed the officer aside as he attempted to exit." R371-72. The court found that defendant "was obstreperous, even in his final moments before the [c]ourt," which was "noteworthy" because defendant had "acted violently and in a disruptive way on many occasions in this courtroom." R372.

IV. The Appellate Court Affirms.

On appeal, defendant argued, as relevant here, that the circuit court (1) erred by not quashing his arrest because it was prompted by an investigative alert and (2) plainly erred by not considering the sentencing factors listed in 730 ILCS 5/5-4.5-105(a). A40, ¶ 80; A60-61, ¶¶ 124-25. The appellate court affirmed. Agreeing with the weight of appellate court authority, the court held that defendant's arrest was constitutional. A42,

¶ 84. It further found no plain error at sentencing, holding that subsection 5-4.5-105(a) did not apply because defendant committed his offenses prior to its effective date, A63-64, ¶ 130, and, in any event, the circuit court had considered all the relevant factors listed there, A64-67, ¶¶ 131-36. The dissent would have affirmed defendant's convictions but remanded for resentencing because the circuit court did not expressly discuss the statutory mitigating factors at sentencing. A70, ¶ 150.

STANDARDS OF REVIEW

Defendant failed to preserve his claims, so they are reviewed for plain error. *See People v. Smith*, 2016 IL 119659, ¶¶ 38-42, 76; *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). On defendant's sentencing claim, whether 730 ILCS 5/5-4.5-105(a) applied to defendant presents a question of statutory interpretation that this Court reviews *de novo*. *People v. Hunter*, 2017 IL 121306, ¶ 15.

ARGUMENT

I. Defendant Forfeited His Claims, So They May Be Reviewed Only for Plain Error.

Defendant forfeited his claims that his arrest violated the Fourth Amendment and article I, section 6, because he failed to preserve them in the circuit court. *See People v. Jackson*, 2022 IL 127256, ¶ 15 (claim forfeited unless defendant "object[s] at trial and raise[s] the issue in a written posttrial motion"); *People v. Cosby*, 231 Ill. 2d 262, 271-73 (2008) (challenges to denial of motion to suppress at trial, constitutional or otherwise, are forfeited if not

raised in written posttrial motion). At the hearing on his motion to quash his arrest, he argued only that his arrest was unconstitutional because it was made inside a home entered without a warrant, exigency, or consent. *See* R202-04. Regarding investigative alerts, defendant argued only that an investigative alert supported by probable cause is not a warrant and therefore does not authorize nonconsensual entry into a home. *See id.* Defendant's posttrial motion did not challenge the circuit court's denial of his motion to quash on any ground. *See* SC12-14; C156-59. Accordingly, defendant forfeited any claim that his arrest was unconstitutional. *See Jackson*, 2022 IL 127256, ¶ 15.

Similarly, defendant forfeited his claim that the circuit court erred by not considering the sentencing factors listed in 730 ILCS 5/5-4.5-105(a) because he did not raise the issue at sentencing and in his motion to reconsider sentence. *See Hillier*, 237 Ill. 2d at 544; R327-28, 335, 366-69; SC193; C173. Contrary to defendant's assertion, his motion to reconsider his sentence on the ground that the circuit court "failed to properly consider [his] youth," Def. Br. 47-48, did not preserve his claim that the court violated section 5-4.5-105. The motion argued merely that defendant's "sentence [wa]s excessive" because he "was only 17 years old at the time of this offense" and "never fired a gun," C173; it did not mention section 5-4.5-105 or argue that the circuit court failed to consider any sentencing factors, statutory or otherwise. *See id.*

Because defendant forfeited his claims, they are subject only to plain-error review. *See Jackson*, 2022 IL 127256, ¶ 19. To demonstrate plain error, defendant must prove that the circuit court clearly or obviously erred by denying his motion to quash and by not considering the statutory sentencing factors. *See id.* ¶ 21 (first step of plain-error analysis "is to determine whether a clear or obvious error occurred"). Defendant further must show that (1) "the evidence was so closely balanced the error alone severely threatened to tip the scales of justices" or (2) "the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process." *People v. Moon*, 2022 IL 125959, ¶¶ 23-24 (internal quotation marks omitted).

II. The Circuit Court Did Not Plainly Err by Denying Defendant's Motion to Quash Because Defendant's Arrest Was Not Clearly or Obviously Unconstitutional.

Over a century's worth of federal and Illinois precedent holds that a police officer generally may arrest a person without a warrant if there is probable cause to believe the person has committed a crime. Accordingly, constitutional challenges to warrantless arrests typically allege either that (1) the arrest was unconstitutional because it was made without probable cause, or (2) the arrest was unconstitutional because, although supported by probable cause, it was made somewhere that police could not enter without a warrant. Defendant pursues neither challenge, instead raising the novel claim that his arrest was unconstitutional because the probable cause for his arrest was communicated to the arresting officer in a particular way. This

claim fails under both the Fourth Amendment and article I, section 6, of the Illinois Constitution, which is construed in lockstep with the Fourth Amendment. Therefore, the circuit court did not clearly or obviously err by not quashing defendant's arrest on the ground that the arresting officer learned of the probable cause to arrest defendant via an investigative alert.

A. Defendant's arrest was constitutional under the Fourth Amendment.

Defendant's warrantless arrest was constitutional under the Fourth Amendment because it was supported by probable cause and not made somewhere that police needed a warrant to enter. "The Fourth Amendment prohibits unreasonable searches and seizures and provides that a warrant may not be issued without probable cause, but 'the text of the Fourth Amendment does not specify when a search [or arrest] warrant must be obtained.'" *Fernandez v. California*, 571 U.S. 292, 298 (2014) (quoting *Kentucky v. King*, 563 U.S. 452, 459 (2011)). Rather, whether an officer must obtain a warrant to conduct a particular search or seizure turns on whether that search or seizure would be unreasonable without one, for "the ultimate touchstone of the Fourth amendment is 'reasonableness.'" *Lange v. California*, 141 S. Ct. 2011, 2017 (2021) (internal quotation marks omitted); *see Payton v. New York*, 445 U.S. 573, 585 (1980) ("the warrantless arrest of a person is a species of seizure required by the [Fourth] Amendment to be reasonable").

Under this standard, warrantless arrests made in public are reasonable (and therefore constitutional) when supported by probable cause. *United States v. Watson*, 423 U.S. 411, 417 (1976); *see People v. Edwards*, 144 Ill. 2d 108, 127 (1991) ("Warrantless felony arrests made in a public setting have been held to be constitutionally permissible as long as there is probable cause to support the arrest." (citing generally *Watson*, 423 U.S. 411)). This "reflect[s] the ancient common-law rule that a peace officer was permitted to arrest without a warrant . . . for a felony not committed in his presence if there was reasonable ground for making the arrest." *Watson*, 423 U.S. at 418.

In contrast, warrantless arrests made inside the home "are presumptively unreasonable," *Payton*, 445 U.S. at 586, for "[t]o be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home," which "is simply too substantial an invasion to allow without a warrant," *id.* at 588-89 (internal quotation marks omitted); *see New York v. Harris*, 495 U.S. 14, 18 (1990) ("The arrest warrant was required to 'interpose the magistrate's determination of probable cause' to arrest before the officers could enter a house to effect an arrest.'" (quoting *Payton*, 445 U.S. at 602-03)). Accordingly, an officer may not enter a home to make a warrantless arrest unless that entry is justified by either exigency or consent. *People v. Simpson*, 172 Ill. 2d 117, 143 (1996) ("It has long been established that the fourth amendment generally bars warrantless and

nonconsensual arrests in a person's home absent exigent circumstances." (internal citation omitted)); *Lange*, 141 S. Ct. at 2017 (exigency is exception to warrant requirement); *Fernandez*, 571 U.S. at 298-99 (consent is exception to warrant requirement).

Here, defendant's warrantless arrest was constitutional because it was supported by probable cause and made in public, where no warrant was required. Detectives developed probable cause to believe that defendant was involved in the shooting after Hardaway told them that defendant was "part of the shooters." SR534; *see People v. Gocmen*, 2018 IL 122388, ¶ 19 ("probable cause exists when the facts known to the officer at the time are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime," which is "not proof beyond a reasonable doubt or even that it is more likely than not" that the person committed a crime).[3] The detectives then issued investigative alerts for defendant, Lynom, and Barker, notifying officers in the field that there was probable cause to believe that the three were involved in the shooting. SR541-42; *see* R193-94, 256-57.

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[3] This Court may consider evidence introduced at trial to affirm the circuit court's denial of a motion to quash or suppress because "'[w]hen a reviewing court affirms a trial court's suppression ruling based on evidence that came out at trial, it is akin to a harmless error analysis.'" *People v. Murdock*, 2012 IL 112362, ¶ 36-38 (quoting *People v. Brooks*, 87 Ill. 2d 91, 127-28 (1999)). However, such evidence cannot undermine the circuit court's ruling where, as here, defendant did not move to reconsider that ruling based on later-introduced evidence (such as his own testimony at trial). *Id.*; *Brooks*, 187 Ill. 2d at 128 ("By not asking the court to reconsider its ruling on the motion to suppress when that evidence was introduced at trial, defendant has waived his right to argue it on appeal.").

Officer Kinney received that alert, R193-94, and ultimately went to the home of defendant's aunt, R195-96, where defendant agreed to accompany him to the police station, R198; SR747-48; *see* R207-08 (crediting Kinney's account of events). After defendant finished getting dressed, he followed Kinney outside, where Kinney arrested him. R198-99; SR749-50, 752-53; *see* R209 (circuit court's finding that Kinney did not enter the home "to effect arrest"). Because Kinney had probable cause to arrest defendant and arrested him in public, the warrantless arrest was constitutional. *Watson*, 423 U.S. at 423-24; *see United States v. Santana*, 427 U.S. 38, 42 (1976) (arrest in doorway of home was "public" for Fourth Amendment purposes); *People v. Williams*, 275 Ill. App. 3d 249, 254-55 (1st Dist. 1995) (same, for arrest on front porch).

Indeed, defendant's warrantless arrest would have been constitutional even if Kinney had arrested defendant inside the home because Kinney entered the home with consent.[4] When Kinney knocked on the door and explained to the young man who answered it that he was a police officer looking for defendant, the man responded by opening the door, moving to one side, and pointing to defendant. R197-98. As Kinney recognized, *see* SR748-49, this constituted "a wordless invitation to enter," *People v. Henderson,* 142 Ill.2d 258, 299 (1990) (police had consent to enter where defendant's mother

[4] This argument, though not raised below, is properly before the Court because the People, as appellee, "may raise any argument or basis supported by the record to show the correctness of the judgment below, even though [they] ha[d] not previously advanced such an argument." *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010).

answered the door and, when asked if defendant was there, "stepped back from the open door and pointed toward defendant's bedroom"); *see also United States v. Sabo*, 724 F.3d 891, 894 (7th Cir. 2013) ("[T]his court, on more than one occasion, has found that the act of opening a door and stepping back to allow entry is sufficient to demonstrate consent." (internal quotation marks omitted)); SR748-49 (Kinney's testimony that he entered because the man "ma[de] the gesture" and "mov[ed] to the side"). To be sure, Kinney did not *also* have verbal consent to enter, but "faced with this conduct" — the man who answered the door stepping aside and pointing to defendant in response to Kinney's question — Kinney "need not have asked for permission to enter and received verbal confirmation." *Henderson*, 142 Ill. 2d at 299.

Defendant argues that Kinney lacked probable cause to arrest him because Kinney believed that defendant was one of the shooters, based on the information that detectives received from Hardaway, rather than the lookout, as defendant's post-arrest statement and the witnesses' post-arrest identifications of defendant indicated. Def. Br. 20-21, 29. But this argument is not only forfeited, *see supra* § I, but meritless, for it focuses incorrectly on information learned after defendant's arrest, rather than the information known at the time of arrest.

Whether police had probable cause to arrest defendant turns "upon whether, at the moment the arrest was made, the officers had probable cause to make it," and not on information police later discovered. *Beck v. Ohio*, 379

U.S. 89, 91 (1964); *see People v. Grant*, 2013 IL 112734, ¶ 11 (probable cause based on what police knew "at the time of the arrest"). Therefore, it is irrelevant that police learned from defendant's statement and eyewitness identifications *after* his arrest that defendant was the lookout for the shooters rather than one of the shooters himself. *See People v. Sain*, 122 Ill. App. 3d 646, 650-51 (2d Dist. 1984) (later discovery that information providing probable cause for arrest was inaccurate does not affect validity of arrest). All that matters is that the information known to police at the time of defendant's arrest supplied probable cause to arrest him.

Defendant also argues that his warrantless arrest was unconstitutional notwithstanding that it was supported by probable cause because the Fourth Amendment requires that *all* arrests be made pursuant to warrant, Def. Br. 15, and prohibits communicating probable cause to officers via investigative alert, *id.* at 19-20. Both claims are meritless under well-established precedent.

1. The Fourth Amendment does not require a judicial determination of probable cause before arrest.

Defendant argues that under the Fourth Amendment "police must, whenever possible, obtain an arrest warrant issued by a neutral magistrate upon a finding of probable cause prior to effectuating an arrest." Def. Br. 15.[5]

[5] In support, defendant notes that he was arrested "64-67 hours after the shooting," suggesting that this was an unreasonable delay during which police could have obtained a warrant. Def. Br. 14, 22, 34. But he concedes in a footnote that he was arrested just a day after Hardaway provided the detectives with probable cause to arrest defendant. *See id.* at 14 n.4.

But "while the [United States Supreme] Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975) (internal citations omitted). Indeed, the Supreme Court in *Watson* expressly "decline[d] to transform this judicial preference" that police obtain warrants before making arrests "into a constitutional rule." 423 U.S. at 423-24.

Defendant disregards *Watson* entirely, and instead relies on a collection of isolated quotes taken from Supreme Court cases decided before *Watson* about the general importance of warrants and judicial probable-caused determinations. *See* Def. Br. 16-23. But *Watson* explained that "there is nothing in the Court's prior cases indicating that under the Fourth Amendment a warrant is required to make a valid arrest for a felony." 423 U.S. at 416-17. Rather, *Watson* continued, "the relevant prior decisions are uniformly to the contrary." *Id.* at 417.

Defendant's reliance on *Gerstein* is especially misplaced. Defendant relies on *Gerstein* to argue that a judge must always determine probable cause prior to arrest, *see* Def. Br. 15-16, but *Gerstein* stands for virtually the opposite proposition: that a judicial probable-cause determination is *not* a constitutional prerequisite for a valid arrest. That is, *Gerstein* held that a probable-cause determination "must be made by a judicial officer either before *or promptly after* arrest." 420 U.S. at 125 (emphasis added); *see id.* at

114 ("[W]e hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty *following* arrest." (emphasis added)). Thus, an otherwise reasonable warrantless arrest is not rendered unreasonable merely because a judge determines that there was probable cause for the arrest after the arrest rather than before it.[6]

2. The manner in which probable cause is communicated to an arresting officer is irrelevant under the Fourth Amendment.

"When officers are working in concert, probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." *People v. Buss*, 187 Ill. 2d 144, 204 (1999) (internal quotation marks omitted). Accordingly, an officer may rely on the knowledge of his fellow officers to make an arrest. *People v. Peak*, 29 Ill. 2d 343, 349 (1963). And the medium by which a police department disseminates its collective knowledge to officers in the field is constitutionally irrelevant. *See* 2 W. LaFave, *Search and Seizure* § 3.5(b) ("Clearly, the fellow officer rule is applicable to situations

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[6] Defendant has never alleged that the circuit court did not hold a timely *Gerstein* hearing to evaluate the probable cause for his warrantless arrest. Because the court conducted a hearing on July 24, 2013, less than 48 hours after defendant's arrest, *see* C17, presumably defendant did not raise a *Gerstein* claim because the court reviewed the basis for his arrest at that hearing and determined that there was probable cause. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) ("judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*").

involving all modes of communication, including computer, radio, telephone, teletype, and face-to-face contact."); *see also, e.g.*, *United States v. Henley*, 469 U.S. 221, 231 (1985) (arrest made "in reliance merely on a flyer or bulletin" is constitutional if "the officers who *issued* the flyer possessed probable cause to make the arrest" (emphasis in original)); *People v. Taylor*, 6 Ill. App. 3d 343, 350-51 (1st Dist. 1972) (warrantless arrest based on probable cause communicated over police radio is reasonable).

Therefore, just as the Fourth Amendment permits officers to disseminate their knowledge of probable cause by radio dispatch, flyer, and in-person conversation, it permits them to disseminate that knowledge by investigative alert (that is, by computer). *See*, *e.g.*, *Taylor v. Hughes*, 26 F.4th 419, 436 (7th Cir. 2022) ("the investigative alerts system does not offend the Fourth Amendment" because "one officer's determination of probable cause may be imputed to other officers in the department, who may arrest on the basis of the first officer's finding" (citing *Henley*, 469 U.S. at 232-33)); *People v. Wimberly*, 2023 IL App (1st) 220809, ¶¶ 20-26 (warrantless arrests based on probable cause communicated by investigative alert are constitutional); *People v. Streater*, 2023 IL App (1st) 220640, ¶ 70 (same); *People v. Little*, 2021 IL App (1st) 181984, ¶¶ 63-64 (same); *People v. Bahena*, 2020 IL App (1st) 180197, ¶¶ 61-64 (same); *People v. Simmons*, 2020 IL App (1st) 170650, ¶ 64 (same); *People v. Thornton*, 2020 IL App (1st)

170753, ¶¶ 44-50 (same); *People v. Braswell*, 2019 IL App (1st) 172810, ¶¶ 37-39 (same).[7]

Defendant is incorrect that an investigative alert is an unconstitutional "*de facto* proxy warrant," Def. Br. 19, and that when police use investigative alerts rather than arrest warrants to communicate probable cause to officers in the field, police have "substitut[ed] investigative alerts for arrest warrants," *id.* at 14; *see id.* at 19 (arguing that police have "replaced arrest warrants with investigative alerts"). Defendant's argument mistakes the way that police sometimes use arrest warrants for arrest warrants' constitutional purpose.

An arrest warrant, like an investigative alert, may provide a convenient way for one officer to communicate to other officers that there is probable cause to arrest someone, but that is not its constitutional purpose. The constitutional purpose of an arrest warrant is to authorize police to enter the home. *See Payton*, 445 U.S. at 590 ("[T]he Fourth Amendment has drawn

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[7] Indeed, even *People v. Smith*, 2022 IL App (1st) 190691, which defendant cites for its holding that an arrest is unconstitutional if supported by probable cause communicated by investigative alert, Def. Br. 15, reached that conclusion under the Illinois Constitution, recognizing that such arrests are constitutional under the Fourth Amendment, *see Smith*, 2022 IL App (1st) 190691, ¶ 68 ("[T]he United States Supreme Court has concluded that the fourth amendment does *not* require police to obtain an arrest warrant from a judge." (citing *Watson*, 423 U.S. at 423) (emphasis in original)); *see also People v. Bass*, 2019 IL App (1st) 160640, ¶ 37, *vacated in relevant part by* 2021 IL 125434, ¶ 31 (where "the facts in the investigative alert amounted to probable cause, [defendant's] warrantless arrest did not violate the fourth amendment").

a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."); *State v. Felix*, 811 N.W.2d 775, 797 (Wis. 2012) (Prosser, J., concurring) ("Analytically, an arrest warrant may confirm police power to make an arrest, but it does not create it. With probable cause, the police already have that power. . . . The warrant, then, serves as a judicially-approved ticket to enter the house to arrest or search."). In other words, the reason that an officer must make a sworn showing of probable cause before a neutral magistrate to obtain a warrant is not that, without a warrant, the Fourth Amendment limits an officer's authority to tell other officers of probable cause to arrest. Otherwise, an officer could not communicate probable cause to arrest over the radio or by bulletin without prior approval by a neutral magistrate. Rather, the reason an officer must demonstrate probable cause to a neutral magistrate to obtain a warrant is that, without a warrant, the Fourth Amendment limits an officer's authority to enter the home to make an arrest. Thus, an investigative alert, which does not purport to authorize officers to enter a home to make an arrest but merely communicates that there is probable cause to make the arrest, is not a substitute for a warrant; it is a substitute for a bulletin or radio dispatch. *See* 2 W. LaFave, *Search and Seizure* § 3.5 ("Information about certain criminal conduct or certain offenders is often communicated broadly within a particular police department by way of a

daily bulletin or similar written communication or by broadcast over the police radio.").

For that reason, defendant's argument that investigative alerts violate the separation of powers doctrine also fails. *See* Def. Br. 32-34. It is true that "[w]hether there is probable cause for issuing [a] warrant is a judicial question," *People v. Prall*, 314 Ill. 518, 522 (1924), which must be decided by a neutral magistrate to guard against unjustified "invasion[s] of the sanctity of the home," *Payton*, 445 U.S. at 589 (internal quotation marks omitted), by "interpos[ing] the magistrate's determination of probable cause between the zealous officer and the citizen," *id.* at 602. But an investigative alert communicating that there is probable cause to arrest someone does not authorize an officer to enter a home to arrest that person; it merely disseminates knowledge of probable cause to officers in the field. Put differently, an officer's authority to enter a home to make an arrest based on probable cause turns on the presence of a warrant, exigency, or consent, and not the manner in which the officer learned of the probable cause. Therefore, an officer does not "usurp the role of the judiciary," Def. Br. 34, by communicating his knowledge of probable cause to fellow officers by investigative alert any more than he would by communicating that knowledge over the radio or in person.

Nor does an arrest based on probable cause communicated by investigative alert (or, for that matter, radio dispatch or in-person

conversation) "preclude[] a judge from carefully considering whether probable cause existed" to make an arrest. Def. Br. 21. "[T]he mere use of alerts to disseminate information among officers does not eliminate judicial evaluations of probable cause." *People v. Harris*, 2022 IL App (3d) 200234, ¶ 13. A neutral magistrate still determines whether there was probable cause when an officer arrests someone based on information received through an investigative alert; the magistrate merely makes that determination after the arrest rather than beforehand, just as it does when an officer arrests someone based on his personal knowledge of probable cause or on knowledge communicated to him by radio, telephone, or any other means. *See Gerstein*, 420 U.S. at 114, 124-25.

In sum, if an officer with probable cause arrests someone without a warrant in a place where no warrant is required, that arrest is constitutional, regardless of how the probable cause was communicated to the officer. And if an officer arrests someone without a warrant in a place where a warrant is required, that arrest is unconstitutional, regardless of whether the supporting probable cause was within the officer's personal knowledge, communicated to him by investigative alert, or communicated to him in some other way. It is not the medium by which probable cause is communicated to an arresting officer that makes a warrantless arrest inside a home unconstitutional; it is the fact that the officer entered the home without a warrant, exigency, or consent. Therefore, defendant's claim that his arrest is

unconstitutional under the Fourth Amendment merely because it was based on probable cause communicated by investigative alert is meritless.

B. Defendant's arrest was also constitutional under article I, section 6, of the Illinois Constitution, which this Court construes in lockstep with the Fourth Amendment.

Because defendant's arrest was constitutional under the Fourth Amendment, *see supra* § II.A, it was also constitutional under article I, section 6, of the Illinois Constitution. Like the Fourth Amendment on which it was modelled, article I, section 6, has "two separate clauses": the "reasonableness clause," which governs when a search or seizure is unreasonable unless authorized by warrant; and the "warrant clause," which governs how a warrant is to be obtained. *See People v. McCavitt*, 2021 IL 125550, ¶¶ 55-57; *compare* Ill. Const. 1970, art. I, § 6, *with* U.S. Const., amend. IV. This Court construes both clauses of article I, section 6, in lockstep with those of the Fourth Amendment unless the framers' intent to provide greater protections is evident from either a difference in the constitutional text or a long-standing Illinois tradition of providing such protections. *People v. Caballes*, 221 Ill. 2d 282, 310, 314 (2006); *see McCavitt*, 2021 IL 125550, ¶ 55; *People v. Holmes*, 2017 IL 120407, ¶¶ 24-25; *People v. Gaytan*, 2015 IL 116223, ¶ 50; *People v. Fitzpatrick*, 2013 IL 113449, ¶¶ 15-16. With neither the text of article I, section 6, nor any long-standing tradition justifying a departure from lockstep with respect to warrantless arrests like defendant's, the constitutionality of defendant's arrest under the

Fourth Amendment is dispositive of its constitutionality under article I, section 6.

1. There is no textual basis to depart from lockstep.

There is no textual basis to depart from construing article I, section 6, in lockstep with the Fourth Amendment protections against warrantless searches and seizures because this Court has "done this analysis" and found no such basis. *Fitzpatrick*, 2013 IL 113449, ¶ 15. After analyzing the language of article I, section 6, as well as "the report of the Bill of Rights Committee, the record of proceedings, and the informational materials distributed to voters," *Caballes*, 221 Ill.2d at 296, the Court concluded that "the framers intended for it to have the same scope as the fourth amendment," *Fitzpatrick*, 2013 IL 113449, ¶ 15. Accordingly, "the lockstep question is generally settled for search and seizure purposes," with exceptions possible only when justified by a long-standing Illinois tradition of providing greater protections against unreasonable searches and seizures. *Id.* ¶¶ 15-16; *see Caballes*, 221 Ill. 2d at 314; *infra* § II.B.2 (no long-standing tradition justifies departure from lockstep here).

Notwithstanding this Court's precedent foreclosing textual arguments for departing from lockstep, defendant argues that article I, section 6, provides greater protections against unreasonable seizures than the Fourth Amendment because its warrant clause specifies that warrants must be supported by "affidavit" where the Fourth Amendment specifies that warrants must be supported by "Oath or affirmation." Def. Br. 23-24. But

this Court rejected defendant's argument over a century ago in *North v. People*, 139 Ill. 81 (1891). Construing the 1870 Constitution's warrant clause, which was identical to that of the 1970 Constitution, *compare* Ill. Const. 1970, art. I, § 6, *with* Ill. Const. 1870, art. II, § 6, the Court held that the warrant clause "has application only to warrants" and "does not abridge the right to arrest without a warrant in cases where such arrest could be lawfully made at common law before the adoption of the present constitution." *North*, 139 Ill. at 105.

Defendant's argument that warrantless arrests are governed by the warrant clause rather than the reasonableness clause rests on a misunderstanding of the structure of article I, section 6. The reasonableness clause of article I, section 6, like the reasonableness clause of the Fourth Amendment, governs *when* a warrant must be obtained — that is, when a search or seizure would be unreasonable unless authorized by warrant. *See McCavitt*, 2021 IL 125550, ¶¶ 55-56; *accord King*, 563 U.S. 452, 459 (2011). The warrant clause governs *how* a warrant must be obtained. *See McCavitt*, 2021 IL 125550, ¶¶ 55-56; *accord King*, 563 U.S. at 459. When a seizure is reasonable without a warrant — for example, because it is conducted either in public or in a home entered on the basis of exigency or consent, *see supra* pp. 14-15 — there is no need to obtain a warrant, and the seizure is not subject to the warrant clause. *North*, 139 Ill. at 105; *accord People v. Neal*, 109 Ill. 2d 216, 221 (1985) (under Fourth Amendment, searches or seizures

that are reasonable without warrants are not "subject to the warrant clause").

Accordingly, to the extent there is any difference between the two constitutions' warrant clauses, that difference is irrelevant here.[8] It does not matter how Kinney would have had to swear to his basis for probable cause had he sought a warrant to arrest defendant — by affidavit or by oath or affirmation — because no warrant was required. *See People v. Barbee*, 35 Ill. 2d 407, 410-11 (1966) (arrest made pursuant to defective warrant was not unconstitutional where warrantless arrest was otherwise reasonable); *cf. People v. Stone*, 47 Ill. 2d 188, 190 (1970) ("'defects in a search warrant are immaterial if the search can be otherwise justified'" (quoting *People v. Wright*, 41 Ill. 2d 170, 173 (1968)).

The statements that defendant cites from the constitutional convention of 1970 — those of Delegate Dvorak on behalf of the Bill of Rights Committee, *see* Def. Br. 24 — further confirm that the framers understood the warrant clause to apply only when a warrant is required under the reasonableness clause. Dvorak recounted the warrant clause's prescribed process for obtaining a warrant:

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[8] This Court has already dismissed the semantic difference that defendant identifies as immaterial, recognizing that the phrases "supported by affidavit" and "supported by Oath or affirmation" are "virtually synonymous." *Caballes*, 221 Ill. 2d at 291; *see People v. Clark*, 280 Ill. 160, 434 (1917) ("To comply with section 6 of the Bill of Rights, . . . either the information must be sworn to or there must be a sworn complaint or affidavit charging a violation of the law before a warrant can issue.").

> in order for a governmental officer — police officer — to obtain a search warrant — arrest warrant — they have to go before a judicial officer to determine in fact that there is probable cause for the search or the seizure, support that by affidavit, and describe the place to be searched or the persons or things to be seized.

3 Record of Proceedings, Sixth Illinois Constitutional Convention 1524 (statements of Delegate Dvorak). But Dvorak did not address the separate question of *when* an officer must obtain a warrant under the reasonableness clause, and his statements did not suggest that he, much less the convention as a whole, understood the verbatim adoption of the 1870 Constitution's warrant clause as a rejection of the settled understanding of that clause as inapplicable to reasonable warrantless arrests like defendant's.

To the contrary, Dvorak assured the convention that the "search and seizure section" of the proposed article I, section 6 — unlike the new sections providing protections against unreasonable invasions of privacy and intercepts of communications, *see id.* at 1524-25 — was intended to provide "nothing new" and introduced "no new concepts." *Id.* at 1524. In other words, Dvorak assured the convention that the search and seizure section of the new constitution would continue to provide the same protections as the Fourth Amendment, for the lockstep interpretation of that section "was firmly in place before the adoption of the 1970 constitution" and that fact "would have been known to the drafters of the Bill of Rights of the 1970 constitution, to the constitutional delegates who voted to adopt the present language, and to the voters who approved the new constitution." *Caballes*,

221 Ill. 2d at 292; *see People v. Williams*, 27 Ill. 2d 542, 544 (1963) ("Even before the Supreme Court's decision that the provisions of the fourth amendment apply to the States under the fourteenth amendment, this court had followed the Supreme Court's decisions interpreting the fourth amendment in our interpretation of section 6 of article II of the Illinois Constitution." (internal citations omitted)). Thus, as this Court has already recognized, the constitutional convention of 1970 "'manifested no intent to expand the nature of the protection afforded by the fourth amendment.'" *Caballes*, 221 Ill. 2d at 296 (quoting *People v. Tisler*, 103 Ill. 2d 226, 241-42 (1984)).

Nor did the constitutional convention of 1870 indicate any intent that the identical warrant clause of the 1870 Constitution should govern when, rather than how, a warrant must be obtained. Indeed, the statements of Delegate Vandeventer cited by amicus, *see* Am. Br. 8, demonstrate that he understood warrants to be required only for searches and arrests *inside the home* and proposed substituting "affidavit" for "Oath or affirmation" to ensure that the probable cause justifying such an invasion of "the sanctity and privacy of a man's dwelling house" was adequately documented:

> It seems to me that when a person applies to a justice of the peace for a warrant to invade the sanctity and privacy of a man's dwelling house — to go into his "castle," to use the old legal language, he should make an affidavit for it, and that that affidavit should state the facts and circumstances upon which he predicates his claim to the warrant. To permit a person to go before a justice of the peace, take an oath and then send a constable into any man's private house and ransack private

> apartments, is entirely too loose a mode of protecting the rights of persons.
>
> There can be nothing wrong about requiring a complainant to file an affidavit, stating the facts which constitute the probable cause, and then the justice of the peace will have some record before him to determine whether there is any probable cause, for in many of these cases there is none. If it was put down in writing, the individual claiming this warrant might become responsible at some future time, to the party whose house he might require to be searched. If there be probable cause, it can be written down and sworn to.

2 Record of Proceedings, Third Illinois Constitutional Convention 1568 (statements of Delegate Vandeventer). Accordingly, this Court recognized that the Fourth Amendment "was the prototype for section 6 of article 2" of the 1870 Constitution, perceived "no reason" that "the latter should not receive the same interpretation of the former," *People v. Reynolds*, 350 Ill. 11, 16 (1932), and "repeatedly held that the two constitutions should be construed alike," *Caballes*, 221 Ill. 2d at 291 (collecting cases).

Because the warrant clause of the 1870 Constitution, like the warrant clauses of the 1970 Constitution and the Fourth Amendment, does not apply to warrantless arrests, *see North*, 139 Ill. at 105, defendant's reliance on precedent concerning the validity of warrants under the 1870 Constitution is misplaced. *See* Def. Br. 24-26. Defendant's cited cases concerned warrants that were invalid for various reasons; none concerned warrantless arrests. *See Clark*, 280 Ill. at 165-66 (warrant based on unsworn information was invalid); *People v. Lippman*, 175 Ill. 101, 113-14 (1898) (warrant based on affidavit that stated no probable cause was invalid); *People v. Elias*, 316 Ill.

376, 382-83, 387 (1925) (warrant based on affiant's knowledge of hearsay rather than personal knowledge was invalid).[9]

And *Lippman*, which defendant highlights, Def. Br. 24-25, made clear that the difference between the Illinois and federal warrant clauses relates only to the process of obtaining a warrant, not the scope of the warrant requirement. *See Lippman*, 175 Ill. at 112. In *Lippman*, the Court invalidated a statute that permitted search warrants based on an affiant's sworn belief that contraband would be found at a particular location, regardless of whether the affiant provided any basis for that belief. *Id.* at 113-14. The case did not concern a warrantless arrest, and the Court did not hold that all arrests must be authorized by warrant. Rather, in considering the constitutional validity of the search warrants authorized by the statute, the Court noted that article II, section 6, of the 1870 Constitution "[wa]s identical with the fourth amendment to the constitution of the United States, except that it substitutes the word 'affidavit' for 'oath or affirmation.'" *Id.* at 112. And, the Court explained, this change to the warrant clause affected how warrants were obtained, representing "a step beyond the constitution of the United States, in requiring the evidence of probable cause to be made a permanent record in the form of an affidavit." *Id.* "[O]therwise," the Court held, "it is the same." *Id.*

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[9] The Court later overruled *Elias* to hold that warrants *may* be based on hearsay. *Williams*, 27 Ill. 2d at 544.

Because nothing in the text of article I, section 6, or the convention proceedings concerning that provision in 1970 (or its predecessor in 1870) indicate any intent to limit warrantless arrests beyond the limits imposed under the Fourth Amendment, there is no textual basis to depart from lockstep.

2. No long-standing Illinois tradition provides a basis to depart from lockstep.

Nor, when the Illinois Constitution was adopted in 1970, was there any long-standing Illinois tradition of prohibiting warrantless arrests supported by probable cause. To the contrary, by 1970, there was over a century of common-law and statutory tradition *permitting* such arrests. The principle that police were permitted to make warrantless arrests based on probable cause was well established not only when article I, section 6, of the 1970 Constitution was adopted, but also when its predecessor, article II, section 6, of the 1870 Constitution, was adopted. Accordingly, there is no basis in long-standing Illinois tradition to depart from lockstep to construe article I, section 6, as providing protections against warrantless arrests beyond those of the Fourth Amendment.

For more than a century before the adoption of the 1970 Constitution, this Court consistently recognized that police may lawfully arrest someone without a warrant if they have probable cause to believe that he has committed a crime. *See, e.g.*, *People v. Bambulas*, 42 Ill. 2d 419, 422 (1969) ("the law is well settled" that "a lawful arrest may be made without an arrest

warrant if the officers making the arrest had probable cause to make it"); *People v. Tillman*, 1 Ill. 2d 525, 530 (1953) ("If an officer has reasonable ground for believing a person is implicated in a criminal offense, he has the right to arrest and search without a warrant."); *Cahill v. People*, 106 Ill. 621, 626 (1883) (recognizing "the well-known rule that an officer has the right to make an arrest without warrant . . . where a criminal offense has been committed and he has reasonable ground for believing that the person arrested has committed the offense"); *Dodds v. Board*, 43 Ill. 95, 97 (1867) ("To authorize an officer, without a warrant, to arrest a person on suspicion that he is guilty of a crime, there must be such circumstances of suspicion that the person arrested was guilty, as renders it probable that the accused had committed the crime.").[10]

The legislative tradition of permitting warrantless arrests based on probable cause was similarly long-standing by 1970. *See, e.g.*, Ill. Rev. Stat.

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[10] *See also, e.g.*, *People v. Wright*, 41 Ill. 2d 170, 173-74 (1968) (warrantless arrest is valid if supported by probable cause); *People v. McKee*, 39 Ill. 2d 265, 273 (1968) (same); *People v. Davis*, 34 Ill. 2d 38, 40 (1966) (same); *People v. Freeman*, 34 Ill. 2d 362, 366 (1966) (same); *People v. Durr*, 28 Ill. 2d 308, 311 (1963) (same); *People v. Pitts*, 26 Ill. 2d 395, 397 (1962) (same); *People v. Hightower*, 20 Ill. 2d 361, 366 (1960) (same); *People v. Fiorito*, 19 Ill. 2d 246, 253 (1960) (same); *People v. La Bostrie*, 14 Ill. 2d 617, 621 (1958) (same); *People v. Boozer*, 12 Ill. 2d 184, 187 (1957) (same); *People v. Galloway*, 7 Ill. 2d 527, 534-35 (1956) (same); *People v. Clark*, 7 Ill. 2d 163, 170 (1955) (same); *People v Ford*, 356 Ill. 572, 575 (1934) (same); *People v. Humphreys*, 353 Ill. 340, 347 (1933) (same); *People v. Macklin*, 353 Ill. 64, 67 (1933) (same); *People v. De Luca*, 343 Ill. 269, 271 (1931) (same); *People v. Hord*, 329 Ill. 117, 119 (1928) (same); *People v. Swift*, 319 Ill. 359, 363 (1925) (same); *Lynne v. People*, 170 Ill. 527, 535 (1897) (same); *Kindred v. Stitt*, 51 Ill. 401, 406 (1869) (same); *Marsh v. Smith*, 49 Ill. 396, 399 (1868) (same).

1964, ch. 38, § 102-7 ("A peace officer may arrest a person when . . . [h]e has a warrant commanding that such person be arrested; or . . . [h]e has reasonable grounds to believe that the person is committing or has committed an offense."); Ill. Rev. Stat. 1874, ch. 38, § 342, *available at* http://tinyurl.com/mv32a528 (last visited Apr. 5, 2024) (entitled "Arrests without warrant" and providing that "[a]n arrest may be made . . . by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it"). That legislative tradition continues to this day, as reflected in a variety of statutes. *See, e.g.*, 705 ILCS 405/5-401(1) ("A law enforcement officer may, without a warrant, . . . arrest a minor whom the officer with probable cause believes to be a delinquent minor[.]"); 725 ILCS 5/107-2(1) ("A peace officer may arrest a person when . . . [h]e has a warrant commanding that such person be arrested; or . . . [h]e has reasonable grounds to believe that the person is committing or has committed an offense."); 750 ILCS 60/301 ("Any law enforcement officer may make an arrest without warrant if the officer has probable cause to believe that the person has committed or is committing any crime, . . . even if the crime was not committed in the presence of the officer."). There is no basis to believe that the framers of the 1970 Constitution, when they simply adopted verbatim the warrant clause of the 1870 Constitution, intended *sub silencio* to overturn more than a century of

settled precedent permitting warrantless arrests based on probable cause and invalidate then-current statutes expressly authorizing such arrests.

Against this long-settled precedent and long-standing legislative tradition, defendant cites *People v. McGurn*, 341 Ill. 632 (1930), for the proposition that article I, section 6, prohibits arrests made pursuant to a superior officer's "standing order," which he claims "resembl[ed] what police now label investigative alerts," Def. Br. 25-26. But defendant misreads *McGurn*.

The Court in *McGurn* started with the proposition that "[i]t is the rule in this state where a criminal offense has, in fact, been committed, that an officer has a right to arrest without a warrant where he has reasonable ground for believing that the person to be arrested is implicated in the crime." 341 Ill. at 636. The Court then applied that rule to the facts before it. The defendant had been arrested because the commissioner of detectives had issued a standing order to arrest him, apparently for no lawful reason at all. *Id.* at 634-35. The arresting officer testified that there was no probable cause for the arrest — he neither had a reasonable belief that the defendant had committed any crime nor had the commissioner told him that the commissioner had such belief. *Id.* Accordingly, the Court held that the arrest was unconstitutional because it was unsupported by probable cause. *Id.* at 637-38. The fact that the arrest was made pursuant to a standing order was irrelevant; neither the commissioner nor anyone else had the

constitutional authority to order someone arrested for no reason. *See id.* at 638. Thus, *McGurn* does not reflect any long-standing tradition of prohibiting one officer from making an arrest at the direction of another. Rather, it stands for the familiar proposition that such arrests, like any other arrest, must be supported by probable cause.[11]

Nor does this Court's precedent establish a long-standing tradition of invalidating warrantless arrests supported by probable cause if the arresting

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[11] Indeed, *McGurn* was not cited for the proposition that an arrest is unconstitutional if ordered by another officer until 2019, when a divided appellate court panel in *Bass* relied upon *McGurn* to invalidate an arrest because the supporting probable cause was communicated to the arresting officer by investigative alert, *see Bass*, 2019 IL App (1st) 160640, ¶¶ 55-56, *vacated in relevant part by* 2021 IL 125434, ¶ 31. Prior to *Bass*, Illinois courts consistently recognized *McGurn* as standing for the propositions that a warrantless arrest is unreasonable if not supported by probable cause and that a search incident to such an unreasonable arrest is also unreasonable. *See People v. Gee*, 121 Ill. App. 2d 22, 26-27 (1st Dist. 1970) (explaining that *McGurn* found that arrest based on standing order was invalid where there was "no ground to believe or suspect that the defendant had committed a crime"); *see also, e.g.*, *People v. West*, 15 Ill. 2d 171, 174 (1958); *People v. Kalpak*, 10 Ill. 2d 411, 426 (1957); *Ford*, 356 Ill. at 575-77; *People v. Davies*, 354 Ill. 168, 175-76 (1933); *Macklin*, 353 Ill. at 67-68; *De Luca*, 343 Ill. at 271. And after the People petitioned for rehearing, the appellate court majority in *Bass* conceded that the facts of *McGurn* did not support its holding and shifted to relying on *McGurn* as generally "giv[ing] voice to the attitudes and values that existed nearer the time of the ratification of the 1870 Constitution," which the *Bass* majority characterized as "an attitude of skepticism toward executive branch officials making their own determinations about the sufficiency of their cause to arrest someone." 2019 IL App (1st) 160640, ¶ 101. But *Bass* did not address the dozens of this Court's cases from the 1800s to 1970 that held an officer may arrest someone based on his own determination of probable cause. *See supra* pp. 34-35 & n.10 (collecting cases). Accordingly, *Bass* was wrongly decided and *People v. Smith*, 2022 IL App (1st) 190691, which adopted the same position as *Bass* based on the same authority, *see id.* ¶¶ 55-99, is also wrongly decided and should be overruled.

officer made the arrest at the direction of another officer. The collective-knowledge doctrine, under which one officer may make an arrest based on another officer's knowledge of probable cause, *see supra* § II.A.2, was already well established in Illinois by the time article I, section 6, was adopted. *See People v. Peak*, 29 Ill. 2d 343, 349 (1963). The adoption of the 1970 Constitution did not disturb that rule, which Illinois courts continued to apply. *See, e.g.*, *Buss*, 187 Ill. 2d at 204 ("When officers are working in concert, probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." (internal quotation marks omitted)); *People v. Beard*, 35 Ill. App. 3d 725, 732-33 (2d Dist. 1976) (warrantless arrest reasonable "where an officer not having knowledge sufficient for an arrest, arrested the defendant on orders from another officer who did have the necessary information"); *People v. Walker*, 45 Ill. App. 3d 627, 631-32 (5th Dist. 1977) (warrantless arrest by sheriff's office of one county based on probable cause communicated by sheriff's office of another was reasonable); *People v. Wrona*, 7 Ill. App. 3d 1, 4 (3d Dist. 1972) ("An officer may act on information acquired by another officer who is working with him or on information on the police radio." (internal citations omitted)).

The rule that the reasonableness of a warrantless search or seizure does not turn on the practicability of obtaining a warrant beforehand was similarly well established by 1970. *See People v. Harris*, 34 Ill. 2d 282, 285

(1966) (rejecting argument that "search was unlawful because the officers did not obtain a search warrant, although they had time to do so," as already "rejected by the United States Supreme Court and by this court" (internal citation omitted) (citing generally *United States v. Rabinowitz*, 339 U.S. 56 (1950), and *People v. DiGerlando*, 30 Ill. 2d 544 (1964)); *see also Wright*, 41 Ill. 2d at 173 ("The test of the unconstitutionality of a search is not whether it was reasonable or practicable for the officers to obtain a search warrant, but whether the search was unreasonable.").

Accordingly, defendant fails to show that article I, section 6, although materially indistinguishable in all relevant respects from Fourth Amendment, *see supra* § II.B.1, was intended to codify a long-standing Illinois prohibition against warrantless arrests beyond that of the Fourth Amendment.

3. Policy preferences provide no basis to depart from lockstep.

Amicus relies on various law review articles to argue that this Court should depart from lockstep interpretation of article I, section 6, based on "the principle that state constitutions were created to expand rights as needed within their respective jurisdictions." Am. Br. 10-12. But, as this Court has cautioned, the Court's "jurisprudence of state constitutional law cannot be predicated on trends in legal scholarship" or "a desire to bring about a change in the law." *Caballes*, 221 Ill. 2d at 313. Rather, it "has always been and must continue to be predicated on [the Court's] best

assessment of the intent of the drafters, the delegates, and the voters — this is [the Court's] solemn obligation." *Id.*

As this Court has consistently recognized, the people of Illinois adopted article I, section 6, with the intent that it provide the same protections against unreasonable searches and seizures as the Fourth Amendment. *See Holmes*, 2017 IL 120407, ¶ 24; *Gaytan*, 2015 IL 116223, ¶ 50; *Fitzpatrick*, 2013 IL 113449, ¶ 15; *Caballes*, 221 Ill. 2d at 316; *Tisler*, 103 Ill. 2d at 242. Accordingly, the Court's continued interpretation of article I, section 6, as providing the same protections as the Fourth Amendment "is not a surrender of state sovereignty or an abandonment of the judicial function," *Caballes*, 221 Ill. 2d. at 314, but a recognition that it is the sole and sovereign prerogative of the people of Illinois to provide such further protections as they deem proper, *id.* at 316. Should the people determine that changing societal values, policy preferences, or technology warrants further protections, the people are free to add them "by amending the constitution or by the enactment of statutes by the General Assembly." *Id.* at 316-17. "Such expansion of rights, however, is not the function of this [C]ourt." *Id.* at 317.

* * *

Neither the text of article I, section 6, nor any long-standing Illinois tradition demonstrates that the framers who drafted the provision and the voters who adopted it intended to enact prohibitions against warrantless arrests beyond those of the Fourth Amendment. Therefore, because

defendant's arrest was constitutional under the Fourth Amendment, *see supra* § II.A, it was also constitutional under article I, section 6, of the Illinois Constitution.

III. The Circuit Court Did Not Plainly Err at Sentencing Under 730 ILCS 5/4.5-105(a).

Defendant argues that subsection 5-4.5-105(a) applied to his sentencing hearing and the circuit court violated it in two ways: (1) by not making findings regarding the sentencing factors listed there, Def. Br. 34-35, and (2) by not considering those factors, *id.* at 44-46. But, as explained below, defendant fails to establish that the circuit court plainly erred under subsection (a) because he cannot show that the court clearly or obviously erred, much less that the evidence at sentencing was closely balanced (as necessary to show first-prong plain error) or the alleged error was structural (as necessary to show second-prong plain error).

A. Subsection (a) did not apply to defendant's sentencing.

The Court's "primary objective in construing a statutory scheme is to ascertain and give effect to the intent of the legislature." *People v. Boyce*, 2015 IL 117108, ¶ 15. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Id.*

By its plain language, subsection (a) did not apply to defendant's sentencing hearing. Subsection (a) provides that "[o]n or after the effective date of this amendatory Act" — that is, January 1, 2016 — "when a person commits an offense . . . , the court shall, at the sentencing hearing . . . ,

consider the following additional factors in mitigation[.]" 730 ILCS 5/5-4.5-105(a) (eff. Jan. 1, 2016). As this Court recognized, "the trial court's obligation set forth in subsection (a) to consider additional factors in mitigation at sentencing is controlled by the limiting language in that same subsection." *Hunter*, 2017 IL 121306, ¶ 48. Thus, the circuit court's obligation to consider the sentencing factors under subsection (a) is triggered when, "[o]n or after the effective date" of that provision, "a person commits an offense." 730 ILCS 5/5-4.5-105(a).

Here, defendant did not commit his offense on or after subsection (a)'s January 1, 2016 effective date; he committed it in 2013. Therefore, subsection (a) did not apply to defendant's sentencing hearing. *See* A63, ¶ 130; *People v. Gunn*, 2020 IL App (1st) 170542, ¶ 153 (subsection (a) applies only when defendant committed offense after January 1, 2016); *People v. Wilson*, 2016 IL App (1st) 141500, ¶ 16, *affirmed on other grounds by Hunter*, 2017 IL 121306 (by "its plain language," subsection (a) applies prospectively "when an individual that is under 18 years of age 'commits' the offense on or after January 1, 2016"). Because subsection (a)'s temporal reach is clearly indicated in the statutory text, the Statute on Statutes, which provides a default rule to determine retroactivity in the absence of such expressions of legislative intent, does not apply. *See Hunter*, 2017 IL 121306, ¶ 22.

Contrary to defendant's assertions, Def. Br. 36-38, this Court has not construed subsection (a) as applying to all sentencing hearings conducted

after the provision's effective date, regardless of when the defendants committed their offenses. Indeed, none of the cases cited by defendant — *People v. Buffer*, 2019 IL 122327, *People v. Reyes*, 2016 IL 119271, *People v. Holman*, 2017 IL 120655, and *People v. Hunter*, 2017 IL 121306 — construed subsection (a)'s temporal limit at all.

In *Reyes* and *Buffer*, the Court vacated juvenile offenders' mandatory *de facto* natural life sentences — sentences that, due to mandatory firearm enhancements, carried mandatory minimums of more than 40 years in prison — and remanded for resentencing. *Buffer*, 2019 IL 122327, ¶¶ 42, 49; *Reyes*, 2016 IL 119271, ¶¶ 11-13. In doing so, the Court noted that subsection (a) of section 5-4.5-105 requires consideration of various factors "[b]efore *any* sentence is imposed" — that is, before a juvenile offender is given a sentence of any length — but focused on the fact that subsections (b) and (c) would grant the sentencing court discretion to impose the otherwise mandatory firearms enhancements that had rendered the initial sentences unconstitutional. *Buffer*, 2019 IL 119271, ¶¶ 36, 47 (emphasis in original); *see Reyes*, 2016 IL 119271, ¶¶ 11-12. The Court did not construe (or even quote) the temporal limit of subsection (a), much less hold that subsection (a) applied on remand.

Putting aside that the Court has since overruled *Holman*, *see People v. Wilson*, 2023 IL 127666, ¶ 42, *Holman* also did not hold that subsection (a) applies to sentencing for an offense committed before its effective date. After

explaining that consideration of the so-called "*Miller* factors" — the mitigating characteristics of youth — was consistent with long-standing Illinois tradition, which had always recognized that "age is not just a chronological fact but a multifaceted set of attributes that carry constitutional significance," *Holman*, 2017 IL 120655, ¶ 44, *Holman* noted that consideration of the *Miller* factors was also "consistent with" section 5-4.5-105, "which now requires the trial court to consider factors taken from the [United States] Supreme Court's list," *id.* ¶ 45. This Court did not construe subsection (a)'s temporal limit because the question of its retroactive applicability was not before the Court. *See id.* Indeed, the Court recognized that the effective date of the statute was irrelevant for the purposes of the Court's Eighth Amendment analysis "[b]ecause *Miller* was retroactive," such that "all juveniles, whether they were sentenced after the statutory amendment became effective on January 1, 2016, or before that, should receive the same treatment at sentencing," *id.* ¶ 45 — that is, they should not be sentenced to mandatory natural life sentences without consideration of their youth. *Id.*

The only case where this Court addressed the temporal limit of subsection (a) was *Hunter*, which considered whether the limit also applied to subsection (b), which (at the time) afforded courts discretion to impose

otherwise mandatory firearm enhancements. 2017 IL 121306, ¶¶ 45-56.[12] The Court held that the temporal limit applies only to "the trial court's obligation set forth in subsection (a) to consider additional factors in mitigation." *Id.* ¶ 48. In doing so, the Court did not address how subsection (a) is temporally limited.

Thus, this Court has never construed subsection (a)'s temporal limit contrary to its plain language. And by that plain language, subsection (a) did not apply to defendant's sentencing for his 2013 offense.

B. The circuit court did not clearly or obviously err regardless of whether subsection (a) applied.

The retroactivity of subsection (a) is ultimately irrelevant, for subsection (a) did not purport to require explicit findings regarding its listed factors and sentencing courts were already otherwise required to consider those factors.

1. The circuit court did not clearly or obviously err by not making explicit findings regarding the sentencing factors listed in subsection (a).

Contrary to defendant's argument, *see* Def. Br. 34-35, the circuit court had no obligation to make findings on the record regarding the mitigating factors listed in subsection (a) when it sentenced him or when it later reduced his sentence based on his youth.

[12] As of January 1, 2024, the subsection providing this discretion is subsection (e). *See* 730 ILCS 5/5-4.5-105(e) (eff. Jan. 1, 2024).

A sentencing court "is not required to specify on the record the reasons for the sentence imposed nor is it required to recite and assign value to each factor presented at the sentencing hearing." *People v. Barnes*, 2017 IL App (1st) 143902, ¶ 95 (internal citations omitted); *see People v. LaPointe*, 88 Ill. 2d 482, 493 (1981) (sentencing court need not "detail for the record the process by which [it] concluded that the penalty [it] imposed was appropriate"). And a statutory requirement that a court make findings regarding its consideration of sentencing factors would encroach on the judicial function of imposing sentence in violation of the separation of powers doctrine. *See People v. Davis*, 93 Ill. 2d 155, 157, 162 (1982) (statute providing that "'the trial judge shall specify on the record the particular . . . factors in mitigation and aggravation . . . that led to his sentencing determination'" must be construed as permissive because "a mandatory requirement would clearly render the provision[ ] an unconstitutional invasion of the inherent power of the judiciary" (quoting Ill. Rev. Stat. 1979, ch. 38, § 1005-4-1(c)).

Accordingly, subsection 5-4.5-105(a) did not purport to require that a sentencing court make findings about the listed factors. Instead, it mandated only that the court "consider" those factors "in determining the appropriate

sentence." 730 ILCS 5/5-4.5-105(a).[13] Therefore, the circuit court did not clearly or obviously err by not making findings regarding the factors listed in subsection (a).

2. The circuit court did not clearly or obviously err by not expressly considering the sentencing factors listed in subsection (a).

In determining the appropriate sentence, a sentencing court "must consider all factors, in aggravation as well as mitigation." *People v. Gray*, 171 Ill. App. 3d 860, 864 (1st Dist. 1988); *see People v. Ward*, 113 Ill. 2d 516, 527 (1986) (sentencing court "must consider all matters reflecting upon the defendant's personality, propensities, purpose, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding"). All nine factors listed in subsection (a) were recognized as mitigating, either by statute or under common law, long before subsection (a) was enacted. By the time defendant was sentenced in 2017, Illinois courts recognized the relevance of

[13] Although defendant points to the version of section 5-4.5-105 that went into effect on January 1, 2024, which purports to require that a sentencing court "'specify on the record its consideration of the factors under subsection (a),'" Def. Br. 45-46 (quoting 730 ILCS 5/5-4.5-105(b) (eff. Jan. 1, 2024)), that amendment does not apply retroactively to defendant's 2017 sentencing hearing, *see Hunter*, 2017 IL 121306, ¶ 55 (procedural requirements of section 5-4.5-105 do not apply retroactively to defendants sentenced before their effective date). Therefore, the Court need not address the constitutionality of the 2024 statute. *See People v. Bass*, 2021 IL 125434, ¶ 30 (this Court avoids "reaching constitutional issues unless necessary to decide a case").

(1) a defendant's youth, with all its attendant characteristics, at the time of the offense,[14] as well as any cognitive or developmental disabilities that the defendant had;[15] (2) whether the defendant was subjected to any outside pressures that might have led him to commit the offense;[16] (3) his family, educational, and social background,[17] including whether he suffered parental

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[14] *See Holman*, 2017 IL 120655, ¶ 44 ("We have long held that age is not just a chronological fact but a multifaceted set of attributes that carry constitutional significance."); *People v. Miller*, 202 Ill. 2d 328, 341-42 (2002) (recognizing youth as mitigating because of juvenile defendants' relative immaturity).

[15] *See* 730 ILCS 5/5-5-3.1(a)(13) ("intellectual disability" is mitigating); *see also People v. Peeples*, 205 Ill. 2d 480, 545-46 (2002) (recognizing "cognitive deficits" as mitigating); *People v. Maxwell*, 173 Ill.2d 102, 112 (1996) (recognizing "intellectual and developmental deficits" as mitigating).

[16] *See* 730 ILCS 5/5-5-3.1(a)(5) (listing as mitigating factor that defendant's "criminal conduct was induced or facilitated by someone other than the defendant"); *People v. Adkins*, 41 Ill. 2d 297, 301 (1968) (sentencing court should consider "the stimuli which motivate [the defendant's] conduct"); *see also People v. Jones*, 144 Ill. 2d 242, 275, 278 (1991) (recognizing evidence that defendant was susceptible to peer pressure as mitigating); *People v. Ruiz*, 132 Ill. 2d 1, 24, 26 (1989) (same with evidence that defendant was "more a follower than a leader" and got involved in gangs due to "neighborhood pressure to join").

[17] *See Adkins*, 41 Ill. 2d at 301 (sentencing court should consider defendant's "social environments" and "family"); *People v. Stambor*, 33 Ill. App. 3d 324, 326 (3d Dist. 1975) (sentencing court must consider "the history and character of defendant, including age, prior record, family situation, employment and other related factors").

neglect, physical abuse, or other childhood trauma;[18] (4) his rehabilitative potential;[19] (5) the circumstances of the offense;[20] (6) the nature of his role in the offense;[21] (7) whether the defendant was meaningfully able to participate in his defense at trial (that is, whether he was unfit);[22] (8) the extent of his

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[18] *See People v. Towns*, 182 Ill. 2d 491, 518-19 (1998) (recognizing evidence that defendant had "troubled childhood" and suffered from "parental abuse and neglect" as mitigating); *People v. Wright*, 111 Ill. 2d 128, 166-67 (1985) (same with evidence that defendant had traumatic childhood and suffered physical abuse at home); *see also* 730 ILCS 5/5-3-1 & 5-3-2(a)(1) (sentencing court must consider PSI, which must address defendant's "family situation and background").

[19] *See People v. Wilson*, 143 Ill. 2d 236, 250 (1991) (recognizing defendant's rehabilitative potential as mitigating); *see also* Ill. Const. 1970, art. I, § 11 ("All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.").

[20] *See* 730 ILCS 5/5-5-3.1(b) (sentencing court must consider "the nature and circumstances of the offense"); *People v. Saldivar*, 113 Ill. 2d 256, 268-69 (1986) (same).

[21] *See Miller*, 202 Ill. 2d at 341 (recognizing defendant's less active or less culpable role in offense as mitigating); *Stambor*, 33 Ill. App. 3d at 326 (sentencing court must consider "the role of the defendant in committing the crime (such as who instigated it and what each party did in connection with the crime)").

[22] *See People v. Sandham*, 174 Ill. 2d 379, 388-89 (1996) (if sentencing court develops *bona fide* doubt that defendant was fit to stand trial, it must hold fitness hearing and, if defendant is unfit, not sentence him until he has been restored to fitness); *People v. Johnson*, 183 Ill. 2d 176, 193-94 (1998) (*bona fide* doubt as to defendant's fitness means *bona fide* doubt that defendant was able to "meaningfully participate in his defense").

prior juvenile and criminal history;[23] and (9) any other relevant and reliable evidence.[24] Subsection (a) simply codified these existing common-law and statutory sentencing factors in one place.

Thus, the circuit court was already required to consider the nine factors listed in subsection (a) regardless of whether that provision applied at defendant's sentencing, and the question before the Court is whether the circuit court clearly and obviously erred by not considering them. To answer that question, this Court "presume[s] that the circuit considered any mitigating evidence before it, in the absence of some indication to the contrary, other than the sentence itself." *People v. Burton*, 184 Ill. 2d 1, 34-35 (1998) (rejecting claim that sentencing court failed to consider nonstatutory sentencing factors simply because court did not discuss them).

Defendant fails to overcome this presumption, for the record supports rather than rebuts the conclusion that the circuit court considered all relevant mitigating factors. At sentencing, the circuit court said that it considered the evidence presented at trial, the presentence investigation report (PSI), the statutory factors in aggravation and mitigation, the

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[23] *See* 730 ILCS 5/5-5-3.1(a)(7) (lack of "history of prior delinquency or criminal activity" is mitigating); *see also* 730 ILCS 5/5-3-1 & 5-3-2(a)(1) (sentencing court must consider PSI, which must address defendant's "history of delinquency or criminality").

[24] *See People v. Richardson*, 189 Ill. 2d 401, 417 (2000) ("when balancing aggravating and mitigating factors, a sentencing judge may consider all relevant and reliable testimony").

financial impact of incarceration, the arguments of counsel, the victim impact statements, and defendant's statement in allocution. R331-32. This alone defeats defendant's claim. *See People v. Maxwell*, 148 Ill. 2d 116, 148 (1992) (court's statements that it considered the arguments, evidence, PSI, and sentencing statutes "plainly refute[d] the defendant's claim that the judge refused to consider, or failed to consider," mitigation offered at sentencing).

Moreover, the circuit court's statements refute defendant's assertions that the court failed to consider particular pieces of mitigating evidence. Defendant asserts that the circuit court "failed to consider" that he was 17 years old at the time of the offense and had attempted suicide two years earlier, at age 15. Def. Br. 44. But these facts were presented in the PSI, *see* SC6, 10, and counsel's arguments at sentencing, *see* R327-28, both of which the circuit court said it considered, R331. Indeed, the court expressly stated that it was "mindful" of defendant's youth at the time of the offense, both at the initial sentencing hearing, R335, and when it later reduced his sentence from 46 to 32 years, R370-71.

Defendant's assertions that the court failed to consider that "[t]here was no evidence that [he] was armed" and that he expressed remorse for "his 'reckless' behavior as a 17-year-old" in his statement in allocution, Def. Br. 44, are similarly refuted by the record. The court said that it considered both the evidence presented at trial, with which it was "fully familiar," and defendant's statement in allocution, which "provide[d] [it] with some degree

of optimism." R331-32. Defendant therefore cannot overcome the presumption that the court considered the mitigating evidence that he now faults it for not considering.

The sole proof that defendant offers to rebut the presumption that the circuit court considered the mitigating evidence is the fact that he was sentenced to 32 years in prison, which he argues is "clearly excessive" and therefore proves that the court "did not consider the factors set forth in the statute." Def. Br. 46. But this proof is incompetent as a matter of law; to rebut the presumption that a sentencing court considered mitigating evidence, defendant must offer proof "other than the sentence itself." *Burton*, 184 Ill. 2d at 34.

At bottom, defendant's complaint is not that the circuit court did not consider various mitigating factors, but that it afforded those factors less weight than he believes they warranted. *See* Def. Br. 44 (arguing that various factors "weigh[ed] heavily against" sentencing him to 32 years); *id.* at 45 (faulting circuit court for "focus[ing] almost exclusively on the severity of the offense" when explaining defendant's sentence rather than discussing various mitigating factors). But "it is not [this Court's] duty to reweigh the factors involved in [the circuit court's] sentencing decision." *People v. Alexander*, 239 Ill. 2d 205, 214 (2010). Indeed, it would be "an improper exercise of the powers of a reviewing court" to "substitute[ ] its own judgment

for that of the trial court because it would have weighed the factors differently." *Id.* at 214-15.

Here, the sentencing court considered the mitigating evidence before it, then determined that the seriousness of the offense nonetheless warranted a substantial sentence (albeit ultimately a less substantial sentence than it initially imposed). That the court focused its comments primarily on the seriousness of the offense does not show that the court's deliberative process "preclud[ed] even a balancing of the proper factors in mitigation." Def. Br. 45; *see Alexander*, 239 Ill. 2d at 214 (rejecting arguments that court "did not properly take into account [the defendant's] age at the time of the offense" and other mitigating factors because record showed court considered mitigating evidence and "[a] defendant's rehabilitative potential . . . is not entitled to greater weight than the seriousness of the offense" (quoting and altering *People v. Coleman*, 166 Ill. 2d 247, 261 (1995)); *see also People v. Hilliard*, 2023 IL 128186, ¶ 40 (reaffirming that sentencing court need not give rehabilitative potential greater weight than seriousness of offense when determining proper penalty). Nor is giving mitigating factors less weight than the seriousness of the offense clearly or obviously improper under subsection (a), which does not offer any comment (much less command) regarding the weight to be given to its listed factors, but merely requires that those factors be considered. 730 ILCS 5/5-4.5-105(a). Because defendant

offers no basis to conclude that the circuit court did not consider the factors listed in subsection (a), his claim fails.

C. The evidence at sentencing was not closely balanced and the alleged errors were not structural.

Even if defendant could establish a sentencing error, he cannot establish first- or second-prong plain error because the evidence at sentencing was not closely balanced and the alleged errors are not structural.

First, the evidence at sentencing was not closely balanced. For an error to constitute first-prong plain error, the evidence must have been so closely balanced that any error, no matter how slight, "'[wa]s actually prejudicial.'" *See People v. Sebby*, 2017 IL 119445, ¶ 51 (quoting *People v. Herron*, 215 Ill. 2d 167, 187 (2005)).

Here, as circuit court recognized, R332-33, 335-36, the offense was very serious — an armed gang-related attack on a peaceful public gathering — and resulted in serious injuries to two innocent bystanders. Against this, defendant offered the facts that he was 17, was guilty under an accountability theory, and had tried to kill himself at age 15. R327-31. But the court already reduced defendant's sentence to 32 years (to be served at 85%) on the basis of his youth, R370-71, and defendant admitted that his earlier suicide attempt had no lasting effect, for he had suffered no psychological issues since the attempt and had no current emotional or personal problems, SC10-11. Thus, defendant cannot show first-prong plain error because the evidence in aggravation and mitigation was not closely

balanced. *See People v. Terrell*, 185 Ill. 2d 467, 507 (1998) (evidence at sentencing not closely balanced even when "defendant's evidence in mitigation was not insubstantial").

Nor can defendant show second-prong plain error. An error is second-prong plain error only if it is "structural," meaning that that it "affect[s] the framework within which the trial proceeds, rather than mere errors in the trial process itself." *Moon*, 2022 IL 125959, ¶¶ 28-29. "Structural error 'def[ies] analysis by "harmless error" standards'" such as those that govern even constitutional errors. *Jackson*, 2022 IL 127256, ¶ 49 (quoting and altering *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)).

Defendant's claim that the circuit court gave short shrift to the mitigating factors listed in subsection (a) is not structural because it is indistinguishable from any other claim that a sentencing court abused its discretion. Indeed, even claims that a sentencing court considered *improper* factors are subject to harmless-error review. *See People v. Bourke*, 96 Ill. 2d 327, 332 (1983) (sentencing court's consideration of improper factors is reviewed for harmlessness); *see also People v. Crespo*, 203 Ill. 2d 335, 347 (2001) ("*Apprendi* violations are not structural error, but rather are susceptible to harmless-error analysis."). Accordingly, defendant fails to allege a structural error reviewable under the second prong.

CONCLUSION

This Court should affirm the judgment of the appellate court.

April 5, 2024

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7123
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellee
People of the State of Illinois

APPENDIX

§ 5-4.5-105. Sentencing of individuals under the age of 18 at the time of the commission of an offense.

(a) On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence:

(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;

(2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;

(3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;

(4) the person's potential for rehabilitation or evidence of rehabilitation, or both;

(5) the circumstances of the offense;

(6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;

(7) whether the person was able to meaningfully participate in his or her defense;

(8) the person's prior juvenile or criminal history; and

(9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel, chooses not to make a statement, the court shall not consider a lack of remorse as an aggravating factor.

730 ILCS 5/5-4.5-105(a) (eff. Jan. 1, 2016, to Dec. 31, 2023).

RULE 341(c) 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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,589 words.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 5, 2024, the foregoing **Brief and Appendix of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

Douglas R. Hoff
Deputy Defender
Todd T. McHenry
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellant

Mary B. Richardson-Lowry
Corporation Counsel of the
City of Chicago
Stephen G. Collins
Assistant Corporation Counsel
2 N. LaSalle Street, Ste. 580
Chicago, Illinois 60602
stephen.collins@cityofchicago.org
appeals@cityofchicago.org

Counsel for Amicus Curiae
City of Chicago

Donald R. Zoufal
Illinois Association of Chiefs of Police
426 S. 5th Street
Springfield, Illinois 62701
dzoufal@gmail.com

Counsel for Amicus Curiae
Illinois Association of Chiefs of Police

Richard V. Stewart, Jr.
THE STEWART LAW FIRM, P.C.
1224 Centre West Drive, Suite 400A
Springfield, Illinois 62704
rick@thestewartlawfirmpc.com

Counsel for Amicus Curiae
Illinois Sheriffs' Association

Andrea Lewis Hartung
Jonathan Manes
Phillip Moore
RODERICK AND SOLANGE
MACARTHUR JUSTICE CENTER
160 E. Grand Ave., 6th Floor
Chicago, Illinois 60611
alewishartung@macarthurjustice.org

Counsel for Amicus Curiae
National Association for Criminal
Defense Attorneys, Chicago
Appleseed Center, and Chicago
Counsel of Lawyers

Alexandra Block
Kevin Fee
ROGER BALDWIN FOUNDATION OF
ACLU, INC.
150 N. Michigan Ave, Ste. 600
Chicago, Illinois 60601
ablock@aclu-il.org

Counsel for Amicus Curiae
ACLU of Illinois

Victor P. Filippini, Jr.
Robert T. Pickrell
Alexander M. Planeto
FILIPPINI LAW FIRM, LLP
One Rotary Center
1560 Sherman Ave., Ste. 510
Evanston, Illinois 60201
Victor.Filippini@filippinilawfirm.com
Robert.Pickrell@filippinilawfirm.com
Alexander.Planeto@filippinilawfirm.com

Counsel for Amicus Curiae
Village of Bannockburn, City of Crystal Lake,
Village of Glenview, and Village of Grayslake

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General