

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

No. 132703

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 5-25-0741.
	)	
Plaintiff-Appellee,	)	There on appeal from the Circuit
	)	Court of the Second Judicial
-vs-	)	Circuit, Jefferson County, Illinois,
	)	No. 25 CF 199.
	)	
JOHN W. FINNEY,	)	Honorable
	)	Jerry E. Crisel,
Defendant-Appellant.	)	Judge Presiding.

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

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E-FILED
7/21/2026 8:18 AM
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ARGUMENT

Given *Morgan*'s holding, the impropriety of new motion-for-relief evidence, and the irrelevance of such evidence, review should be *de novo*.

The State never denies the standard-of-review split Finney highlights: whether live testimony – testimony that was never presented at the detention hearing, but offered at a later hearing – can affect a detention order's standard of review. (De. br. 9-10; St. br. 19-20) Neither does it dispute that this split needs resolution. (De. br. 9-10). Nor does it dispute that the Fifth District's side of this split is, generally, wrong. (De. br. 10-17; St. br. 22). Nor does it dispute that Pretrial Fairness Act-related cases moot out quickly, making this split hard to resolve absent a mootness exception. (De. br. 19). In fact, the State acknowledges that “where a party has not invited the error by asking the circuit court to consider new evidence at the motion for relief hearing, defendant is correct that ‘considering preliminary hearing testimony at the motion-for-relief hearing [is] improper.’” (St. br. 24, *quoting* De. br. 12).

Yet the State seeks to forestall a decision healing this split. Repeatedly, it argues that Finney invited any error, with arguments that misread the record. (St. br. 12, 13, 18, 19, 22, 24-25, 27-29). Its invited-error arguments also miss the point: invited error is a doctrine designed to avoid individual injustice, but Finney is seeking broad public-interest review. The State also misunderstands what the pretrial-detention “decision” is under *People v. Morgan*, 2025 IL 130626. (St. br. 21). And, contrary to the State's mootness argument, Finney has, in this litigation, raised an actual controversy, one

echoing the Appellate Court split that this Court should resolve. (St. br. 16-18). This Court should therefore clarify that only the actual evidence presented at the initial detention hearing controls what the standard of review should be on appeal.

A. Applicable law and legal background.

Finney's brief states the applicable law. (De. br. 8-10).

B. Absent live detention-hearing testimony, the proper standard of review is *de novo*.

1. Subsequent live testimony should not alter the standard of review because this testimony is not properly considered.

It is uncontested that, in general, live testimony, offered subsequent to a detention order, is improper. (De. br. 10-15; St. br. 22-24). For this reason, live post-detention testimony, in general, should not alter the standard of review. (De. br. 10-15; St. br. 22-24). The State argues, however, that, in this case, Finney invited the judge to consider live post-detention testimony. (St. br. 24-25). Therefore, it reasons, Finney's argument is unfair play, and this Court should abstain from reviewing the error here. (St. br. 27-28).

First, the State's argument fails because counsel below invited nothing; rather, he merely addressed evidence the State had already introduced. As the Appellate Court recognized, the trial court jointly heard the preliminary hearing (featuring live testimony) with the motion-for-relief hearing. *People v. Finney*, 2025 IL App (5th) 250741-U, ¶ 11. The Appellate Court, however, characterized this combination as "by agreement." *Id.* But the record shows it was anything but agreed:

THE COURT: This matter comes on today on the defense Motion for Relief and also Preliminary Hearing.

Are we taking up the Preliminary Hearing at the same time, Gentlemen?

[DEFENSE COUNSEL]: (Shaking head in the negative.)

[ASA]: That would be my proposal, Judge.

THE COURT: Okay. And I think that's what we talked about earlier. Is that correct, Mr. Heflin?

[DEFENSE COUNSEL]: That's correct, Your Honor.

(R. 25) (capitalizations in original). The record therefore shows that the State, in an off-the-record conversation, had proposed the joint hearing; counsel “agreed” only to this otherwise-undescribed conversation. Counsel, therefore, “invited” nothing. Rather, when, in subsequent argument, he mentioned testimony from the State’s live preliminary-hearing witness, he merely sought to blunt the impact from the State’s witness.

Finney, therefore, no more invited anything than did the defendant in *People v. Brown*, 172 Ill. 2d 1 (1996). In *Brown*, the defendant moved, *in limine*, to suppress, in sentencing, gang evidence. *Id.*, 172 Ill. 2d at 48. The judge denied the motion. *Id.* In the wake of that denial, the defendant offered, in mitigation, testimony suggesting that the defendant was uninvolved with gangs. *Id.* The State argued that this mitigation evidence opened the door to aggravating gang evidence. *Id.* This Court disagreed. *Id.* His gang-mitigation testimony “was in response to the trial court’s adverse disposition of the defense motion *in limine*, and defense counsel apparently sought to blunt the impact of the State’s planned introduction of this information.” *Id.*

Finney, likewise, no more invited anything than did the defendant in *People v. Wright*, 2012 IL App (1st) 073106. In *Wright*, a sexual-assault case,

the defendant moved, *in limine*, to, among other things, obtain DNA database search data. *Id.*, ¶¶ 10-12, 69. He sought this search to discredit the State's DNA evidence. *Id.* The judge denied the motion. *Id.*, ¶¶ 43, 118. In the wake of that denial, counsel switched to a consent defense. *Id.*, ¶ 19. On appeal, the State sought to bar the defendant from attacking this denial, arguing that, by raising the consent defense, he made a judicial admission of identity. ¶ 91.

Wright disagreed, for several reasons. 2012 IL App (1st) 073106, ¶¶ 91-97. Among them, *Wright* found that the defendant had raised consent only after the judge denied him a strong basis to cross-examine the State DNA expert. *Id.*, ¶ 97. Under these circumstances, *Wright* found, "it would be absurd" to bar his appellate argument, "like knocking out one leg and criticizing him for hopping on one foot." *Id.*

So too here. The State, not counsel, introduced Detective Kinzer's testimony. (R. 29-30). And the State, not counsel, proposed to combine the preliminary hearing with the motion-for-relief hearing. (R. 25). Kinzer's testimony was mostly inculpatory, describing Finney's admissions. (R. 30-39). Like the *Brown* and *Wright* defendants, counsel merely sought to blunt his impact. He invited nothing.

Second, the State's invited-error argument misses the point. The invited-error rule exists is to avoid injustice to individual parties. *People v. Collins*, 2026 IL 131300, ¶ 55. But that is now water under the bridge. As the State acknowledges, Finney's detention order is moot. (St. br. 12-20). That is why Finney seeks public-interest review. (De. br. 17-20). Specifically, he challenges Fifth District cases, none of which, including the decision below, apply the invited-error doctrine; rather, they apply deferential review only because the trial court heard, concurrently, both the live-testimony

preliminary hearing and a proffered motion-for-review hearing. *Finney*, 2025 IL App (5th) 250741-U, ¶ 20; *see also People v. Ganaway*, 2025 IL App (5th) 250706-U, ¶ 42; *People v. Davis*, 2025 IL App (5th) 250715-U, ¶ 20; *People v. Nabors*, 2025 IL App (5th) 250720-U, ¶ 21.

As argued above, nothing was invited. But even if it was, any invited error would, at worst, undermine the State's individual-litigant rights. *See People v. Smith*, 406 Ill. App. 3d 879, 886-87 (1st Dist. 2010) (finding that invited-error doctrine exists to prevent unfair second bite at the apple). But individual rights are now beside the point. Your Honors could address, in substance, the State's invited-error argument only if this Court applied the public-interest exception and reviewed the case. Any invited error strays from the standard-of-review split and should not prevent this Court from healing this split through public-interest review.

2. Subsequent live testimony should not alter the standard of review where, as in this appeal, the subsequent testimony is not under review.

The State fails to rebut that where an appeal challenges a detention order, testimony subsequent to the detention order, invited or otherwise, is irrelevant to the standard of review. (De. br. 15-17). It again argues that because trial counsel invited subsequent testimony, this testimony was, for standard-of-review purposes, before the appellate court. (St. br. 25-27, 28-29).

This argument fails because whatever counsel might have invited in a motion-for-relief hearing, he invited nothing in the detention hearing, the hearing under review. As the State correctly notes, "In the pretrial detention context, the standard of review turns on the nature of the evidence that was before the circuit court when it rendered its decision." (St. br. 21, *citing*

Morgan, 2025 IL 130626, ¶ 21). But what, in *Morgan*, was the “decision” under review?

The State proposes that *Morgan*’s “decision” includes both the initial detention order and the subsequent motion-for-relief order. (St. br. 25). It then argues that, in this case, when the judge “denied defendant’s motion for relief, it did so after considering the new live testimony that defendant urged it to consider as relevant to that detention decision.” (St. br. 25). The State further argues that the testimonial evidence it presented at the motion for relief hearing was relevant to “deciding the unmitigable dangerousness issue.” (St. br. 28).

But, by its terms, *Morgan*’s “decision” actually means the initial detention order. “[W]e hold that, when live witness testimony is presented *at a pretrial detention hearing*,” a circuit court’s ultimate detention decision” will “not be disturbed” unless “contrary to the manifest weight of the evidence.” *Morgan*, 2025 IL 130626, ¶ 38 (emphasis added). In contrast, review is *de novo* “when parties to *a pretrial detention hearing* proceed solely by proffer.” *Id.*, ¶ 51 (emphasis added); *see also, id.*, ¶ 54 (again linking the “ultimate detention decision” to the “pretrial detention hearing”).

Finney does not challenge any new errors that may have occurred for the first time at the hearing on his motion for relief. *See* Ill. S. Ct. Rule 604(h)(2) (“Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.”).

People v. Burries, 2025 IL App (5th) 241033, ¶ 30, invoked by the State, supports Finney’s position; *Burries* shows that the motion for relief, and its hearing, serve only to crystalize issues arising from the original detention

hearing. (St. br. 28) In *Burries*, the motion for relief raised no errors from the court's original detention hearing (the ruling he was asking to be reviewed on appeal). *Id.*, ¶ 6, 22-23. Neither, in his appeal, did he identify new errors that occurred at the purported 604(h)(2) motion hearing. Therefore, *Burries* held, his pleading "was synonymous with filing no motion at all." *Id.*, ¶ 30. *Burries* shows that 604(h)(2) motions, and their hearings, serve only to perfect an appeal under the Act and to let the circuit court correct any errors in the original detention hearing. Only if new errors occurred at the 604(h)(2) hearing would any evidence presented at that hearing possibly impact appellate review. *Burries*, 2025 IL App (5th) 241033, ¶ 30; Ill. S. Ct. Rule 604(h)(2).

Arguing otherwise, the State notes that issues not raised in a motion for relief are deemed waived since "issues raised in the motion for relief are the only issues considered on appeal." (St. br. 26) (emphasis in original). But this argument misses the point: the motion for relief is written and filed before the hearing, so it cannot be expected to address errors that happen during the hearing. As argued above, what is appealed here is the detention decision itself. When challenging a detention order, it is errors in the detention decision that are at issue. That is why the detention order is the order under review.

The State also fails to distinguish *People v. Kleutgen*, 359 Ill. App. 3d 275 (2d Dist. 2005). (De. br. 16-17; St. br. 27-28). Finney argued that here, as in *Kleutgen*, the State's effort to seek deferential review relied on irrelevant new evidence. (De. br. 16-17). The State again resorts to invoking invited error: "Having successfully urged the circuit court to rely on this new evidence," it contends, Finney "cannot now argue that it is irrelevant to the same issue on

appeal.” (St. br. 28-29). But, as argued above, it was the State, not counsel, who successfully introduced live testimony. And it was the State who successfully proposed combining the preliminary hearing and the motion-for-relief hearing. (R. 25, 29). Again, counsel invited nothing.

C. This Court should review this issue despite potential mootness.

The State fails to rebut that this Court should apply the public-interest mootness exception. It denies neither the standard-of-review district split Finney highlights, nor does it defend, in general, the Fifth District side of this split. (De. br. 9-17; St. br. 24). Yet it urges this Court to forego public-interest review. (St. br. 11-20). This Court should decline for the following reasons.

First, the State conflates mootness with its public-interest exception. It argues, repeatedly, that this Court should decline public-interest review because Finney seeks an advisory opinion and presents an abstract issue. (St. br. 11-16).

But that is, of course, why Finney seeks public-interest-exception review. This Court can and does apply this exception to “advisory” and “abstract” issues. In *In re Mary Ann P.*, this Court acknowledged that it will normally not “consider moot or abstract questions or render advisory decisions.” 202 Ill. 2d 393, 401 (2002). But it will, where necessary, apply the public-interest exception, even when “any decision we render is essentially an advisory one.” *Id.* at 401-03.

Arguing otherwise, the State, citing two cases, claims that this Court cannot apply the public-interest exception because Finney “has never presented an actual controversy before this Court.” (St. br. 16-18). But

neither case address mootness first arising in “this Court.” Rather, both cases declined such review because the case never presented the controversy addressed by the appellate court at its inception – not merely where the case has since become moot while pending in this Court.

For example, in *People ex rel. Partee v. Murphy*, the trial judge proposed, on conflict-of-interest grounds, to appoint a special State’s Attorney. 133 Ill. 2d 402, 405-06 (1990). The State’s Attorney demurred. *Id.* at 406. Later, the judge said that, after the trial, he would refer the matter to the ARDC. *Id.* On appeal, the State’s Attorney asked this Court to: 1) hold that the trial court misunderstood the law and 2) to “vacate” the ARDC referral. *Id.* at 407. This Court declined to apply the public-interest exception, as “this is not a case in which a question *that was involved in the litigation* has become moot.” *Id.* at 410 (emphasis added).

As another example, in *People v. Randall M.*, the trial judge ordered the defendant, age 17, to be jailed, pending trial, with adults. 231 Ill.2d 122, 124-25 (2008). The issue then became moot, as the defendant had been sentenced. *Id.* at 126. The Appellate Court, however, addressed the jailing’s legality on public-interest grounds. *Id.* On review, this Court declined to do the same, for two reasons. 231 Ill. 2d 122, 133 (2008). First, the parties’s arguments addressed a statute that did not actually apply to the circumstances presented by the case. *Id.* Second, “[N]o issues are raised, either by the *parties or by the courts below*, under the statute that does apply to this case.” *Id.* (emphasis added).

Here, unlike in *Murphy*, Finney raises an issue that was “involved in the litigation.” 133 Ill. 2d at 410. Specifically, his petition for leave to appeal (PLA) argued that, in this case and others, the Fifth District has improperly

reviewed detention decisions for manifest weight. (De. br. 10-17). Although, as the State notes (St. br. 13-14), his PLA sought only leave to appeal, that is what PLAs normally seek: it is a petition *for leave to appeal*. It is not, say, a petition seeking mandamus, from which this Court might directly order specific relief. And, unlike in *Randall M.*, Finney addresses the proper statute. (De. br. 8, *citing* 725 ILCS 5/110-6.1). Therefore, no matter how the State parses Finney’s opening brief, “a question that was involved in the litigation has become moot.” *Partee*, 133 Ill. 2d at 410. Accordingly, this Court can apply public-interest review. *Id.*

Elsewhere in its brief, the State gets the law right. It correctly describes a moot case as one that “*no longer* presents an actual controversy.” (St. br. 16, *citing* *People v. Harvey*, 2018 IL 122325, ¶ 19 (emphasis in State’s brief). “In such circumstances,” it correctly notes, this Court “may exercise its discretion to decide the moot issue under the public interest exception to provide guidance to public officials.” (St. br. 16). This case has “[s]uch circumstances.” In the Circuit Court, Finney opposed detention. (R. 12-14). In the Appellate Court, he opposed the detention order. (De. memo. 5-10). Then, when the Appellate Court, *sua sponte*, decided to oppose manifest-weight review, he, in his first opportunity before this Court, challenged this decision. *Finney*, 2025 IL App (5th) 250741-U, ¶ 19; *People v. Finney*, No. 132703, *Petition for Leave to Appeal* (March 26, 2026). He thereby raised an “actual controversy” addressing a “concrete dispute.” *Davis v. Yenchko*, 2024 IL 129751, ¶ 18. Nothing bars public-interest review.

Further, the State should not be heard to leverage its position switch to avoid public-interest review. In the Appellate Court, Finney sought *de novo* review; the State agreed. (De. memo 5; St. memo 4). Only after the Appellate

Court issued its decision did the standard of review become an issue. *People v. Finney*, 2025 IL App (5th) 250741-U, ¶¶ 19-20. Only now, in this Court, does the State argue that, on these facts, review should be for manifest weight. (St. br. 21-21). This Court should not let the State somehow now claim a lack of actual controversy. *See People v. Artis*, 232 Ill. 2d 156, 177-78 (2009) (refusing to address the State’s one-act, one-crime argument, where State conceded the issue in Appellate Court).

The State also denies that the issue raised will likely recur. (St. br. 18-20). But again, that is only because it redefines the issue to its own purposes, arguing invited error. (St. br. 18-20). In this case, as in other cases, the Fifth District reviewed for manifest weight – for reasons having nothing to do with invited error. *Finney*, 2025 IL App (5th) 250741-U; *Ganaway*, 2025 IL App (5th) 250706-U, ¶ 42; *Davis*, 2025 IL App (5th) 250715-U, ¶ 20; *Nabors*, 2025 IL App (5th) 250720-U, ¶ 21. This issue will likely recur. (De. br. 19).

D. Summary.

The State never denies the standard-of-review split raised here. It never claims that, in general, the Fifth District’s position is anything but wrong. Its one big idea – invited error – misreads the record and misses the point. And the State misunderstands the detention “decision” under *Morgan*. Finally, the State’s mootness argument lacks merit. This Court should therefore clarify that only the actual evidence presented at the initial detention hearing controls what the standard of review should be on appeal.

CONCLUSION

For the foregoing reasons, John W. Finney, Defendant-Appellant, respectfully requests that this Court clarify that only the actual evidence presented at the initial detention hearing controls what the standard of review should be on appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 12 pages.

/s/Michael H. Orenstein
MICHAEL H. ORENSTEIN
Assistant Appellate Defender

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NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 21, 2026, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Christopher Moy-Lopez

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