

ARGUMENT

I. There Is No Dispute that the Legislature's Amendment of the Sexually Dangerous Persons Act Obviated *Masterson*.

The People's opening brief demonstrated that this Court should hold that *People v. Masterson*, 207 Ill. 2d 305 (2003), no longer controls because it was obviated by the legislature's 2013 amendment of the Sexually Dangerous Persons Act (SDP Act). *Masterson* held that, in SDP bench trials, the judge must make an express finding that the respondent is substantially probable to reoffend; the sole basis for this Court's holding was that the legislature had inadvertently omitted the "substantially probable to reoffend" element from the language of the SDP Act. *Id.* at 328-30. As discussed in the People's opening brief, the legislature responded to *Masterson* by amending the SDP Act to include the "substantially probable" element. Peo. Br. 8-12; *see also* 725 ILCS 205/4.05 (2013).¹ Therefore, the omission addressed in *Masterson* has been cured by the legislature, and the *Masterson* rule no longer serves a purpose but rather only results in unnecessary remands.

Respondent does not dispute this analysis. Instead, he agrees that the People are "most likely correct" and that it is "reasonable to conclude" that the legislative amendment obviated *Masterson*. Resp. Br. 1-2. Therefore, this Court should hold that *Masterson* has been obviated by legislative amendment and reverse the appellate court's judgment.

¹ The People's opening brief and respondent-appellee's brief are cited as "Peo. Br. _" and "Resp. Br. _."

II. Respondent's Remaining Arguments are Irrelevant and Incorrect.

The remainder of respondent's brief makes several arguments that he concedes are relevant only "if *Masterson* still applies." Resp. Br. 3-5. But because there is no dispute that the legislature obviated *Masterson*, those arguments are irrelevant. Moreover, respondent's arguments are incorrect.

A. Respondent Forfeited His *Masterson* Claim.

The People's opening brief demonstrated that respondent forfeited his *Masterson* claim because, in the trial court, he failed to object to the verdict on the ground that the court did not expressly state that he is substantially probable to reoffend. Peo. Br. 13-14. Respondent does not dispute that he failed to preserve his claim, but he argues that this Court should hold that *Masterson* claims cannot be forfeited because sufficiency-of-the-evidence claims cannot be forfeited. Resp. Br. 3-4. However, *Masterson* and sufficiency claims are distinct: *Masterson* claims concern the procedural question of how a judge announces a bench verdict, while a sufficiency claim concerns the substantive question of whether the People presented enough evidence on each of the statutory elements to establish that the respondent is sexually dangerous. That is to say, respondents may raise sufficiency claims even if a trial court complies with *Masterson*. Therefore, *Masterson* claims are not analogous to sufficiency claims, but rather are akin to claims of ordinary trial error, such as a faulty jury instruction, and it is settled that such claims are subject to forfeiture. *E.g.*, *People v. Patrick*, 233 Ill. 2d 62, 76

(2009) (defendant forfeited claim that jury instructions were flawed by failing to object in trial court).

B. Any Error Was Harmless.

The People's opening brief also demonstrated that even if *Masterson* remains viable, the trial court's failure to state that respondent is substantially probable to reoffend was harmless given that the court plainly was aware of that statutory requirement because (1) the People's expert testified without rebuttal that substantial probability to reoffend is a requirement of the SDP Act, and strong evidence showed that respondent is substantially probable to reoffend, and (2) the parties' closing arguments focused on the substantial probability element. Peo. Br. 14-15.

Respondent concedes that "it is reasonable to presume" that the trial court's judgment included an implicit finding that respondent is substantially probable to reoffend, which concession supports the conclusion that any error here was harmless. Resp. Br. 2. Yet respondent nevertheless suggests that it is settled that *Masterson* errors cannot be harmless. Resp. Br. 4 (citing *People v. Bailey*, 2015 IL App (3d) 140497, ¶ 21). Respondent, and the appellate case he cites, are incorrect given that this Court's last word on the subject made clear that it is an open question whether a *Masterson* claim can be harmless. See *People v. Bingham*, 2014 IL 115964, ¶ 35 (declining to consider whether *Masterson* errors can be harmless because other issues required reversal).

For the reasons discussed in the People’s opening brief, if *Masterson* remains viable, then this Court should hold that such claims are subject to harmless error analysis and that any error here was harmless because there is no dispute that the trial court was aware of the substantial probability element. Peo. Br. 14-15; *see also People v. Jordan*, 218 Ill. 2d 255, 268-69 (2006) (no reason to believe trial judge ignored statutory provision despite not mentioning it); *People v. Davis*, 233 Ill. 2d 244, 273 (2009) (noting that “most constitutional errors are subject to harmless error analysis,” including jury instructions that omit a “material element” of the charged crime).

C. The Appellate Court Applied the Wrong Remedy.

Lastly, the People’s opening brief demonstrated that if *Masterson* remains viable, this Court should hold that the appropriate remedy is to allow the trial court to clarify whether its judgment encompassed the substantially probable element, rather than automatically remanding for a new trial. Peo. Br. 15. Respondent’s argument that the appropriate remedy is an automatic remand for a new trial, and his reliance on *Bailey*, 2015 IL App (3d) 140497, ¶ 25 (cited in Resp. Br. 5), for that assertion, is at odds with his admission that that “it is reasonable to presume” that the trial court’s judgment included an implicit finding that respondent is substantially probable to reoffend, *see* Resp. Br. 2. For that reason, respondent’s suggested remedy of an automatic remand for a new trial is unnecessary and would waste judicial resources.

Given the amendment of the SDP Act and the presumption that trial courts know and follow the law, even if *Masterson* were still controlling, the appropriate remedy would be to allow the trial court to clarify whether it determined that the respondent was substantially probable to reoffend. *E.g.*, *In re Samantha V.*, 234 Ill. 2d 359, 380 (2009) (remanding for trial court to clarify its order).

CONCLUSION

This Court should reverse the appellate court's judgment, hold that the legislature obviated *Masterson*, and remand for consideration of respondent's remaining claim that he is no longer an SDP.

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Respectfully submitted,

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RULE 341(c) CERTIFICATE

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(c) certificate of compliance, and the certificate of service is five pages.

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PROOF 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 May 27, 2021, the foregoing Reply Brief of Petitioner-Appellant People of the State of Illinois was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my email address to the email address below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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