No. 125642

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) Appeal from the Appellate Court of Illinois, Fourth District, |
| Plaintiff-Appellee, | ) No. 4-17-0399 |
| v. | ) There on Appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois |
| | ) No. 16 CM 1074 |
| CHALEAH BURGE, | ) The Honorable John R. Kennedy, |
| Defendant-Appellant. | ) Judge Presiding |

**BRIEF OF PLAINTIFF-APPELLEE**
**PEOPLE OF THE STATE OF ILLINOIS**

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ORAL ARGUMENT REQUESTED

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## POINTS AND AUTHORITIES

## NATURE OF THE ACTION

Defendant pleaded guilty to theft in the Circuit Court of Champaign County and the court sentenced her to serve a 12-month period of conditional discharge. R19-21; C21.[1]

Defendant appealed, and the Illinois Appellate Court, Fourth District, affirmed. *People v. Burge*, 2019 IL App (4th) 170399, ¶ 48. Defendant now appeals that judgment. Defendant raises no question on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether the admonishment requirement of 725 ILCS 5/113-4(c) applies to guilty pleas other than those entered at arraignment.

2. Whether, if 725 ILCS 5/113-4(c) applies to defendant's guilty plea, the legislative mandate that a circuit court may not accept a defendant's intelligent, knowing, and voluntary guilty plea unless the court has explained the potential collateral consequences of such plea violates the separation of powers doctrine.

3. Whether the circuit court acted within its discretion when it denied defendant's motion to withdraw her guilty plea.

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[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," and to defendant's brief as "Def. Br. __."

## JURISDICTION

On March 25, 2020, this Court allowed defendant's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

## STATUTE AND COURT RULE INVOLVED

Section 113-4 of the Code of Criminal Procedure provides:

> (a) When called upon to plead at arraignment the defendant shall be furnished with a copy of the charge and shall plead guilty, guilty but mentally ill, or not guilty.
>
> (b) If the defendant stands mute a plea of not guilty shall be entered for him and the trial shall proceed on such plea.
>
> (c) If the defendant pleads guilty such plea shall not be accepted until the court shall have fully explained to the defendant the following:
>
> > (1) the maximum and minimum penalty provided by law for the offense which may be imposed by the court;
> >
> > (2) as a consequence of a conviction or a plea of guilty, the sentence for any future conviction may be increased or there may be a higher possibility of the imposition of consecutive sentences;
> >
> > (3) as a consequence of a conviction or a plea of guilty, there may be registration requirements that restrict where the defendant may work, live, or be present; and
> >
> > (4) as a consequence of a conviction or a plea of guilty, there may be an impact upon the defendant's ability to, among others:
> >
> > > (A) retain or obtain housing in the public or private market;
> > >
> > > (B) retain or obtain employment; and

> (C) retain or obtain a firearm, an occupational license, or a driver's license.
>
> After such explanation if the defendant understandingly persists in his plea it shall be accepted by the court and recorded.
>
> (d) If the defendant pleads guilty but mentally ill, the court shall not accept such a plea until the defendant has undergone examination by a clinical psychologist or psychiatrist and the judge has examined the psychiatric or psychological report or reports, held a hearing on the issue of the defendant's mental condition and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense to which the plea is entered.
>
> (e) If a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence.

725 ILCS 5/113-4.

> Illinois Supreme Court Rule 402 provides in relevant part:
>
> In hearings on pleas of guilty, . . . there must be substantial compliance with the following:
>
> **(a) Admonitions to Defendant.** The court shall not accept a plea of guilty . . . without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following:
>
> > (1) the nature of the charge;
> >
> > (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

> (3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and
>
> (4) that if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her[.]

Ill. S. Ct. Rule 402(a).

## STATEMENT OF FACTS

On December 7, 2016, the circuit court arraigned defendant, R2-8, a home healthcare worker who was charged with theft for stealing $280 from her client's purse, R19-20; C7. At the arraignment, the court found that defendant qualified for appointed counsel, appointed the public defender, R7, accepted defendant's plea of not guilty, R8, and released her on her own recognizance, *id.*; C12.

Over three months later, on March 20, 2017, defendant entered a negotiated plea of guilty. R18. Under the terms of the plea agreement, defendant agreed to plead guilty to theft in exchange for the prosecution's recommendation that the court sentence her to serve a 12-month period of conditional discharge, pay a $100 fine and $280 in restitution to the victim, and complete an online shoplifting education course. *See* R19. The circuit court admonished defendant as required by Supreme Court Rule 402, explaining the nature of the charge against her, the maximum and minimum sentence prescribed by law for that charge, her right to plead guilty or not

guilty, and the rights she would waive by pleading guilty. R16-18. Defendant stated that she understood, *id.*, and persisted in pleading guilty, R18. After the court determined that defendant's plea was voluntary, R18-19, and that the plea had a factual basis, R19-20, it accepted the plea and imposed the sentence to which the parties had agreed, R21; C21-22.

Ten days later, defendant moved to withdraw her guilty plea. C27. Defendant alleged that her guilty plea was not voluntary because (1) she entered it out of fear that she would lose her job if she continued missing work to attend court proceedings; (2) she did not know she would lose her job if she pleaded guilty; (3) counsel did not inform her that, as a collateral consequences of her conviction, she would be unable to work in home healthcare; and (4) the court did not inform her that her conviction could potentially impact her ability to obtain and retain employment. C27. She did not seek to withdraw her guilty plea on the ground that there was doubt as to whether she was guilty. *See id.*

At the hearing on her motion, defendant testified that when she pleaded guilty, she was no longer working for Help at Home, the home healthcare company that had employed her when the People charged her with theft. R36. Rather, she had been working for a different home healthcare company, Aging in Place, for three months. R33, R36. Approximately a week after she pleaded guilty, Aging in Place learned of her

theft conviction and fired her.[2] R33-34. Defendant testified that she had not known that she "would lose [her] job" if she pleaded guilty and that she would not have pleaded guilty had she known. R35.

The circuit court denied defendant's motion to withdraw her plea. R50. The court found that defendant's plea was voluntary because she was properly admonished under Rule 402, R46-47, and held that withdrawal was not required by the absence of the additional admonishments in subsection 113-4(c), *see* 725 ILCS 5/113-4(c), regarding various collateral consequences of pleading guilty because the legislature lacked authority to mandate additional admonishments beyond those required by this Court in its rule governing admonishments, R46-49. Finally, the court found no manifest injustice warranting withdrawal because there was no evidence that defendant misapprehended the facts or the law or that there was doubt as to her guilt. R49-50.

Defendant appealed, C31, and the appellate court affirmed. *People v. Burg*e, 2019 IL App (4th) 170399, ¶ 48. A majority of the appellate court held that subsection 113-4(c) applies only to guilty pleas entered at arraignment, *id.* ¶ 27, and that the circuit court did not abuse its discretion by denying

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[2] *See* 225 ILCS 46/25(a) (providing that "[a] health care employer or long-term care facility may hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of clients, patients, or residents who has been convicted of committing" theft only if it obtains a waiver from the Department of Public Health).

defendant's motion to withdraw her guilty plea because no manifest injustice occurred, *id.* ¶ 46. In dicta, the majority noted that had it found subsection 113-4(c)'s admonishment requirement applicable to defendant's plea, it would have held that the requirement was directory because defendant conceded that the statute provided no consequence for noncompliance, and a directory reading would not generally harm defendants' right to intelligently waive trial and plead guilty. *Id.* ¶¶ 29, 33, 38. The majority further noted that, "as it applies in this case, when a defendant is convicted of or pleads guilty to pilfering money from a client in the course of employment, common sense dictates that particular job as well as future employment in a similar field could be negatively impacted." *Id.* ¶ 39.

The special concurrence disagreed that subsection 113-4(c) applies only to guilty pleas entered at arraignment, *id.* ¶ 51 (Harris, J., specially concurring), but agreed that the admonishment requirement is directory, albeit for a different reason than the majority, *id.* ¶ 58, and that defendant suffered no manifest injustice, *id.* ¶ 63. The special concurrence found that subsection 113-4(c) must be construed as directory because a mandatory reading would violate the Separation of Powers Clause of the Illinois Constitution. *Id.*

## ARGUMENT

### I. Standards of Review

This Court reviews de novo questions of statutory interpretation such as whether 725 ILCS 5/113-4(c) is limited to guilty pleas at arraignment, *People v. Smith*, 2016 IL 119659, ¶ 15, and whether it is mandatory or directory, *People v. Delvillar*, 235 Ill. 2d 507, 517 (2009) (citing *People v. Robinson*, 217 Ill. 2d. 43, 54 (2005)). The Court also reviews de novo the purely legal question of whether subsection 113-4(c) violates the separation of powers doctrine. *People v. Peterson*, 2017 IL 120331, ¶ 28. The Court reviews the circuit court's denial of defendant's motion to withdraw her guilty plea for an abuse of discretion. *Delvillar*, 235 Ill. 2d at 519.

### II. Subsection 113-4(c) Applies Only to Guilty Pleas at Arraignment.

The Court's "primary objective in construing a statutory scheme is to ascertain and give effect to the intent of the legislature," with "[t]he most reliable indicator of legislative intent [being] the language of the statute, given its plain and ordinary meaning." *People v. Boyce*, 2015 IL 117108, ¶ 15. "Courts are not at liberty to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Ill. State Treasurer v. Ill. Worker's Comp. Comm'n*, 2015 IL 117418, ¶ 21 (citing *Solich v. George & Anna Portes Cancer Prevention Ctr. of Chi., Inc.*, 158 Ill. 2d 76, 83 (1994)). In addition, "all the

provisions of a statute must be viewed as a whole," *People v. McCarty*, 223 Ill. 2d 109, 133 (2006) (citing *Land v. Bd. of Educ. of the City of Chi.*, 202 Ill. 2d 414, 422 (2002)), and "[s]tatutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible," *Knolls Condo. Ass'n*, 202 Ill. 2d 450, 459 (2002) (citing *Heinrich v. Libertyville High Sch.*, 186 Ill. 2d 381, 392 (1998)); *McCarty*, 223 Ill. 2d at 133.

The parties agree that the general purpose of subsection 113-4(c)'s requirement that courts admonish defendants about the collateral consequences of pleading guilty is to ensure that defendants are aware of those consequences before they plead guilty. *See* Def. Br. 10-11. Therefore, defendant argues, construing subsection 113-4(c) as limited to cases where defendants plead guilty at arraignment is contrary to the General Assembly's intent because it limits the circumstances in which subsection 113-4(c) fulfills that purpose. *See id.* But this argument frames the question of legislative intent at too high a level of generality. Knowing that the purpose of subsection 113-4(c) is to inform defendants about collateral consequences of pleading guilty does not answer the question of *when* the General Assembly intended subsection 113-4(c) to apply, just as knowing that the purpose of a statutory speed limit is to keep drivers below a particular speed does not answer the question of when and where the speed limit applies. Rather, the answer to the question of when the General Assembly intended subsection

113-4(c)'s admonishment requirement to apply is answered by section 113-4's plain language, structure, and relationship to other statutes governing the acceptance of guilty pleas, all of which show that subsection 113-4(c) applies only when defendants plead guilty at arraignment.

Section 113-4 "governs when a defendant is called upon to plead at arraignment." *People v. Phillips*, 242 Ill. 2d 189, 195 (2011). In other words, it governs when the circuit court "call[s] the defendant into open court, inform[s] him of the offense with which he is charged, and ask[s] him whether he is guilty or not guilty." 725 ILCS 5/102-4. The General Assembly's intent that section 113-4 apply specifically to pleas entered at arraignment is demonstrated by its plain language — it begins by explicitly addressing "[w]hen [a defendant is] called upon to plead at arraignment," 725 ILCS 5/113-4(a) — as well as by its structure, which provides an arraigning court with comprehensive procedural guidance, *see* 725 ILCS 5/113-4. After identifying the possible responses a defendant might give at arraignment, 725 ILCS 5/113-4(a), section 113-4 devotes a subsection to the proper procedure for each response, from no response at all, 725 ILCS 5/113-4(b), to pleas of guilty, 725 ILCS 5/113-4(c), guilty but mentally ill, 725 ILCS 5/113-4(d), and not guilty, 725 ILCS 5/113-4(e). *See Phillips*, 242 Ill. 2d at 195-96.

Examination of each of the subsequent subsections confirms the General Assembly's intent that section 113-4 apply only at arraignment unless otherwise specified. For example, subsection 113-4(b) — which

provides that "[i]f the defendant stands mute a plea of not guilty shall be entered for him and the trial shall proceed on such plea," 725 ILCS 5/113-4(b) — could apply only at arraignment because that is the only time the question can arise of how to proceed when a defendant refuses to enter a plea. Although defendant relies on subsection 113-4(b)'s direction about proceeding to trial as though the silent defendant pleaded not guilty to argue that subsection 113-4(b) is not specifically directed at arraignment because it refers to "something that would occur at a later date," Def. Br. 17, subsection 113-4(b) cannot be fairly construed as a statute governing trial. Rather, its direction that trial should proceed on the basis of the plea of not guilty entered on behalf of the silent defendant is entirely consistent with a statute focused on arraignment, for arraignment is when "the necessity of trial is determined." *People v. Garner*, 147 Ill. 2d 467, 481 (1992).

Similarly, the plain language of subsection 113-4(e) demonstrates that the General Assembly intended section 113-4 to apply only at arraignment unless otherwise specified. Subsection 113-4(e) "serves as the procedural mechanism to effect a formal waiver of a defendant's right to be present," *Phillips*, 242 Ill. 2d at 197 (citing *Garner*, 147 Ill. 2d at 483), and provides that a defendant who pleads not guilty must be advised about trial *in absentia* "at that time" — that is, when he pleads not guilty at arraignment — "or at any later date on which he is present," 725 ILCS 5/113-4(e). If, as defendant argues, *see* Def. Br. 17, subsection 113-4(a) is the only subsection of

section 113-4 that is limited to arraignment, then this language specifying that subsection 113-4(e) applies beyond arraignment is entirely superfluous. But the language is not superfluous. *See Stroger v. Reg'l Transp. Auth.*, 201 Ill. 2d 508, 524 (2002) ("The statute should be construed . . . in a manner such that no term is rendered meaningless or superfluous."). Rather, the General Assembly specified that subsection 113-4(e) applies after arraignment because without that specification, subsection 113-4(e), like the rest of section 113-4, would be limited to arraignment and so would not ensure that defendants who cannot receive the subsection 113-4(e) admonishment at their arraignments nonetheless receive the necessary admonishment before trial. *See Garner*, 147 Ill. 2d at 482 ("We do not read section 113-4(e) as providing the court with an option for when the admonition should be given as much as we read it as not precluding an opportunity for later admonishment."). Without the language extending subsection 113-4(e)'s application beyond arraignment, subsection 113-4(e) would only require that a defendant be advised at his arraignment of the consequences of not appearing; it would not require that a defendant who was *absent* from his arraignment be advised of the consequences of a *further* failure to appear. *See* 725 ILCS 5/115-4.1(a) (providing that defendant may be arraigned in his absence); *People v. Eppinger*, 2013 IL 114121, ¶ 23 (noting that sections 113-4(e) and 115-4.1(a) make up statutory scheme governing trials *in absentia*). Thus, subsection 113-4(e) demonstrates that the General Assembly knew how

to express its intent that a particular subsection of section 113-4 not be limited to arraignment. That the General Assembly did not do so in subsection 113-4(c) shows that it intended subsection 113-4(c) to apply only to pleas at arraignment. *See People v. Edwards*, 2012 IL 111711, ¶ 27 ("Where language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion.").

Although subsections 113-4(c) and 113-4(d), which address pleas of guilty and guilty but mentally ill, respectively, could conceivably govern not only pleas at arraignment but also pleas before and during trial, they do not, as demonstrated by the existence of section 115-2, which governs the acceptance of pleas of guilty and guilty but mentally ill "[b]efore or during trial." 725 ILCS 5/115-2. Indeed, construing subsection 113-4(c) as prohibiting the circuit court from accepting a guilty plea before or during trial, rather than only at arraignment, unless it first admonishes the defendant about the collateral consequences of pleading guilty creates a conflict with subsection 115-2(a), which expressly allows a court to accept a defendant's guilty plea before or during trial without first admonishing him about any collateral consequence of pleading guilty. 725 ILCS 5/115-2(a) ("Before or during trial a plea of guilty may be accepted when . . . [t]he court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of

such plea.").[3] If the General Assembly intended that the admonishments required before accepting a guilty plea at arraignment also be required before accepting a guilty plea before or during trial, it would have included those admonishments in subsection 115-2(a). It did not.

Contrary to defendant's assertion, *see* Def. Br. 16, construing subsection 113-4(c) as limited to cases where defendants plead guilty at arraignment does not lead to absurd results.[4] Defendant reasons that it would be absurd to require a court to admonish defendants about the collateral consequences of pleading guilty only at arraignment because those

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[3] Defendant effectively concedes that subsection 115-2(a) does not require admonishments about collateral consequences of pleading guilty because she admits that the previous version of subsection 113-4(c) did not require such admonishments, Def. Br. 12 (arguing that amendment of subsection 113-4(c) did not "clarify" existing admonishments but "add[ed] to the existing list of admonishments required at a guilty plea"), and the language of the two statutes is materially indistinguishable, *compare* 725 ILCS 5/113-4(c) (eff. Sept. 17, 1981, to Dec. 31, 2016) (allowing acceptance of guilty plea after admonishment of "the consequences of such plea and the maximum penalty provide by law for the offense which may be imposed by the court" before accepting guilty plea) *with* 725 ILCS 5/115-2(a) (allowing acceptance of guilty plea after admonishment of "the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea").

[4] To the extent that defendant's argument turns on her view that "it is most appropriate to admonish a defendant who is entering a guilty plea of the potential consequences of making that plea at the time the plea is presented, whenever that may occur," Def. Br. 15, that argument is properly directed to the General Assembly, for it addresses a question of policy, not law. *See People v. Howard*, 228 Ill. 2d 428, 438 (2008) ("The question as to whether or not a better law might have been enacted is for the legislature and not for the courts, and criticisms against the wisdom, policy or practicability of a law are subjects for legislative consideration and not for the courts.") (internal quotations omitted).

consequences "apply equally to defendants pleading guilty years after arraignment." *Id.* But there is no need for the court to admonish defendants about collateral consequences of pleading guilty other than that at arraignment because once counsel has been retained or appointed, it is counsel's duty to advise the defendant about those consequences. *See People v. Correa*, 108 Ill. 2d 541, 550 (1985) ("It is counsel's responsibility, not the court's, to advise an accused of a collateral consequence of a plea of guilty[.]"); *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010) ("It is quintessentially the duty of counsel to provide her client with available advice about an issue like deportation[.]"); *see*, *e.g.*, ABA Standards for Criminal Justice, Standard 14-3.2(f) (3d ed. 1999) ("To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea."); ABA Standards for Criminal Justice, Standard 4-1.3(h) (4th ed. 2017), *available at* https://tinyurl.com/y7tflzgh (last visited Nov. 10, 2020) (defense counsel has "a duty to consider the collateral consequences of decisions and actions, including but not limited to the collateral consequences of conviction"); *id.*, Standard 4-5.4(a) ("Defense counsel should identify, and advise the client of, collateral consequences that may arise from charge, plea or conviction."); *id.*, Standard 4-6.2(c) ("Defense counsel should ensure that the client understands any proposed disposition agreement, including its direct and possible collateral consequences."); *id.*, Standard 4-6.3(e) ("Defense

counsel should investigate and be knowledgeable about . . . collateral consequences and likely outcomes, . . . and advise the client on these topics before allowing the client to enter a negotiated disposition."); Nat'l Legal Aid & Defender Assoc., Performance Guidelines for Criminal Representation, Guideline 6.2 (1995) ("counsel should be fully aware of, and make sure the client is fully aware of . . . other consequences of conviction such as deportation, and civil disabilities"). Indeed, this Court has noted the availability of new tools to "ease the burden of defense counsel in this task, including the ABA National Inventory of the Collateral Consequences of Conviction," an online database of collateral consequences searchable by jurisdiction, keyword, consequence type, and triggering offense category. *People v. Hughes*, 2012 IL 112817, ¶ 58; *see* ABA Nat'l Inventory of Collateral Consequences of Conviction, *available at* https://niccc.csgjusticecenter.org (last visited Nov. 10, 2020). Accordingly, it is only in the rare circumstance, when a defendant pleads guilty at arraignment, that the General Assembly deputized arraigning courts to give the explanation of collateral consequences that would otherwise come from counsel.

Nor does construing subsection 113-4(c) as applying only to pleas at arraignment require that every statute contained in Article 113 be limited to arraignment. For example, defendant appears to argue that if subsection 113-4(c) is limited to pleas at arraignment, then defendants' statutory right to counsel under section 113-3 must also be limited to arraignment because

section 113-3 is also contained in Article 113. *See* Def. Br. 18. But subsection 113-4(c) is not limited to pleas at arraignment merely because it is contained in Article 113, but because section 113-4's plain language, internal structure, and relationship to other statutes governing acceptance of pleas show that the General Assembly intended that subsection 113-4(c) apply only to pleas at arraignment. Whether other statutes contained in Article 113 apply only at arraignment depends on the legislative intent expressed in the plain language of *those* statutes.

For that reason, defendant's reliance on *People v. Delvillar*, 235 Ill. 2d 507 (2009), a case addressing section 113-8, is misplaced; the scope of subsection 113-4(c) turns on the language of section 113-4, not section 113-8. Moreover, defendant misreads *Delvillar*'s holding, which did not address the applicability of section 113-8 at different stages of prosecution. Defendant asserts that *Delvillar* "concluded that a circuit court is obligated to admonish *all* defendants consistent with section 113-8 — not just defendants pleading guilty at arraignment." Def. Br. 19 (citing *Delvillar*, 235 Ill. 2d at 519) (emphasis in original). But *Delvillar* reviewed only the appellate court's holding that a circuit court's failure to admonish a defendant under section 113-8 about the immigration consequences of pleading guilty requires reversal "regardless of [the] defendant's immigration status." 235 Ill. 2d at 513-14. *Delvillar* "conclude[d] that section 113-8 is mandatory in that it imposes an obligation on the circuit court to admonish all defendants of the

potential immigration consequences of a guilty plea" — that is, that section 113-8 imposes an obligation to admonish all defendants regardless of their immigration status — but that because section 113-8's admonishment requirement was directory, "failing to issue the admonishment does not automatically require the court to allow a motion to withdraw a guilty plea." *Id.* at 519. *Delvillar* did not address whether section 113-8 applies beyond arraignment because that question was not raised. Similarly, it is irrelevant that the three appellate court cases that have addressed subsection 113-4(c) after it was amended to include admonishments on collateral matters "do[] not suggest that subsection 113-4(c) applies only to guilty pleas made at arraignment." Def. Br. 10. Those cases addressed whether subsection 113-4(c) applies retroactively, *see People v. Stefanski*, 2019 IL App (3d) 160140, ¶ 9; *People v. Williams*, 2019 IL App (3d) 160412, ¶ 39; *People v. Young*, 2019 IL App (3d) 160528, ¶ 14, and their silence regarding an issue that was not raised cannot be construed as an implicit holding on that issue. *See People v. Boeckmann*, 238 Ill. 2d 1, 13 (2010) (explaining that "it is not appropriate" to address issue "where the parties have not raised or argued it").

In sum, based on the plain language and structure of section 113-4, as well as the plain language of section 115-2, the statute governing guilty pleas before and during trial, it is clear that the General Assembly intended subsection 113-4(c) to apply only to guilty pleas at arraignment, and not guilty pleas before and during trial.

Because the usual tools of statutory construction establish this intent, the rule of lenity does not apply. Defendant argues that "[u]nder the rule of lenity any ambiguity in the statute should be interpreted" in her favor, Def. Br. 21, but this Court has rejected the argument "that, once the court identifies an ambiguity in a criminal statute, it must be construed in the defendant's favor," *People v. Gutman*, 2011 IL 110338, ¶¶ 43-44. Rather, "'[t]he rule of lenity applies only if, after seizing everything from which aid can be derived, [the Court] can make no more than a guess as to what [the legislature] intended.'" *Id.* ¶ 43 (quoting *United States v. Wells*, 519 U.S. 482, 499 (1997)) (internal citations omitted). Here, there is no need to guess about the General Assembly's intent with respect to the applicability of subsection 113-4(c) outside of arraignment. Accordingly, the circuit court did not err by admonishing defendant only as required by Supreme Court Rule 402(a) and subsection 115-2(a).

## III. If Applicable to Defendant's Plea, Subsection 113-4(c) Should Be Construed as Permissive Because a Mandatory Construction Would Violate the Separation of Powers Doctrine.

The People agree that, by its plain language, subsection 113-4(c)'s provision that a defendant's guilty plea "shall not be accepted until the court shall have fully explained" various possible collateral consequences of pleading guilty is mandatory rather than directory. *See People v. Youngbey*, 82 Ill. 2d 556, 562 (1980) (holding that statutory provision that "[a] defendant shall not be sentenced . . . before a written presentence report of investigation

is presented to and considered by the court" was mandatory due to "negative limitations of [']shall not be sentenced[']"); *Delvillar*, 235 Ill. 2d at 517 (explaining that statutory provision is mandatory rather than directory "when there is negative language prohibiting further action in the case of noncompliance"). But if the Court finds that subsection 113-4(c) applies to defendant's plea, then it should construe the admonishment requirement as permissive because a legislative mandate that courts admonish defendants on collateral consequences of pleading guilty would violate the separation of powers doctrine. *See People v. Flores*, 104 Ill. 2d 40, 47 (1984) (construing statute as permissive because "to hold that the term 'shall' denominates a mandatory requirement imposed upon the judiciary . . . would be to find the statute to be constitutionally invalid" under separation of powers doctrine). If mandatory, subsection 113-4(c)'s admonishment requirement would not only conflict with Rule 402, which the parties agree "provides the procedure to be followed by trial courts when guilty pleas are presented," Def. Br. 35, but would improperly burden courts with the duties of counsel, which fall outside the judicial role as defined by this Court.

The Separation of Powers Clause of the Illinois Constitution provides that the "legislative, executive and judicial branches are separate" and that "[n]o branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1. Article VI vests this Court with "general administrative and supervisory authority over all courts," which includes the power "'to

promulgate procedural rules to facilitate the judiciary in the discharge of its constitutional duties.'" *Peterson*, 2017 IL 120331, ¶ 29 (quoting *O'Connell v. St. Francis Hosp.*, 112 Ill. 2d 273, 281 (1986)); *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 438 (1997). Although the General Assembly "has 'the concurrent constitutional authority to enact complementary statutes,'" *Peterson*, 2017 IL 120331, ¶ 30 (quoting *People v. Walker*, 119 Ill. 2d 465, 475 (1988)), it "has the power to enact laws governing judicial practice only where they do not unduly infringe upon the inherent powers of the judiciary," *People v. Davis*, 93 Ill. 2d 155, 161 (1982), for "the Illinois Constitution is not a grant, but a limitation on legislative power," *Best*, 179 Ill. 2d at 377. Thus, "[n]otwithstanding this overlap between the judicial and legislative branches, this [C]ourt retains primary constitutional authority over court procedure." *Peterson*, 2017 IL 120331, ¶ 31 (citing *People v. Kunkel*, 179 Ill. 2d 519, 528 (1997)). "[W]here an irreconcilable conflict exists between a legislative enactment and a rule of this [C]ourt on a matter within this [C]ourt's authority, the rule will prevail," *id.*, for "it is the undisputed duty of the [C]ourt to protect its judicial powers from encroachment by legislative enactments, and thus preserve an independent judicial department," *Davis*, 93 Ill. 2d at 161.

Defendant argues that subsection 113-4(c) does not conflict with Rule 402, but merely "requires additional admonishments consistent with protecting a defendant's right to intelligently enter a guilty plea, which is the

core purpose of Rule 402." Def. Br. 36. But subsection 113-4(c) conflicts with Rule 402 precisely *because* it requires additional admonishments. The four admonishments required under Rule 402(a) represent this Court's considered judgment as to precisely what admonishments "must be given to the defendant to insure that his guilty plea is intelligently and understandingly made." Ill. S. Ct. Rule 402(a), Adv. Comm. Comments; *see Hughes*, 2012 IL 112817, ¶ 36 ("[A] defendant need not be advised by the trial court of the collateral consequences of a guilty plea.") (citing *People v. Williams*, 188 Ill. 2d 365, 371 (1999)); *Williams*, 188 Ill. 2d at 371 ("A defendant must be advised of the direct consequences of a guilty plea," but "the defendant's knowledge of the collateral consequences of a guilty plea is not a prerequisite to the entry of a knowing and intelligent guilty plea."). Once made, that judgment precludes the legislature from mandating that courts follow its own, different standard. *People v. Joseph*, 113 Ill. 2d 36, 45 (1986) ("[T]he legislature is without authority to interfere with 'a product of this court's supervisory and administrative responsibility.'") (quoting *People v. Jackson*, 69 Ill. 2d 252, 259 (1977)); *see People v. Manoharan*, 394 Ill. App. 3d 762, 769 (4th Dist. 2009) (holding that this Court "has already set forth with specificity the admonitions that trial courts are required to give defendants prior to accepting a plea of guilty in Supreme Court Rule 402," such that "a legislative mandate to further admonish a defendant . . . would violate the separation-of-powers clause of the Illinois Constitution by treading upon an

area of courtroom procedures that [this Court], through its longstanding, detailed rules governing guilty pleas, has entirely preempted"); *see also Joseph*, 113 Ill. 2d at 46 (holding that statute prohibiting postconviction petition from being heard by judge involved in original criminal proceeding conflicted with Rule 21(b), which provided that chief judges of circuit court "may enter general orders . . . providing for assignment of judges" without requiring that such general orders be consistent with statutory requirements); *People v. Cox*, 82 Ill. 2d 268, 275 (1980) (holding that statute authorizing reviewing court to increase sentence on appeal conflicted with Rule 615(b)(4), which provided no such authority); *Dunaway v. Ashland Oil, Inc.*, 189 Ill. App. 3d 106, 117 (5th Dist. 1989) (holding that construing statute as authorizing appellate court to impose sanctions for frivolous appeals would conflict with Rule 375 because statute "condemn[ed] a wider spectrum of conduct than does Rule 375," as well as with Rule 137, "which preempts all matters sought to be covered" by statute); *People v. Heim*, 182 Ill. App. 3d 1075, 1081 (2d Dist. 1989) (holding that statute authorizing state appeals from orders not listed in Rule 604(a)(1) conflicted with that rule). Where this Court has determined that acceptance of a guilty plea is proper if done in substantial compliance with Rule 402, the legislature cannot declare such acceptance improper for failure to comply with additional, statutory requirements. *See Delvillar*, 235 Ill. 2d at 521 ("[A]lthough the legislature intended to further protect a defendant's right to voluntarily enter a guilty

plea, the legislature cannot by statute alone add to what is constitutionally required of the circuit court.").

This Court recognized a similar conflict in *People v. Peterson*, when it considered the relationship between Rule 804(b)(5), which "identifie[d] only two criteria or factors that must be satisfied for the admission of hearsay statements under the rule," and a statute that "impose[d] additional criteria that must be satisfied for admission of the declarant's statements at trial." 2017 IL 120331, ¶¶ 32-33. *Peterson* held that the statutory imposition of an additional requirement beyond the rule's requirements "create[d] an irreconcilable conflict with a rule of this court on a matter within the court's authority," and that "[u]nder such circumstances, separation of powers principles dictate that the rule will prevail." *Id.* ¶ 34.

Subsection 113-4(c) would violate the separation of powers doctrine even if the legislature had authority to supplement the Court's required admonishments with admonishments of its own because Rule 402 not only reflects this Court's judgment that admonishments on collateral consequences are unnecessary to ensure that a defendant's guilty plea is knowing and intelligent, *see Hughes*, 2012 IL 112817, ¶ 36; *Williams*, 188 Ill. 2d at 371, but also the Court's precedent regarding the proper role of the judiciary in admonishing a defendant. As this Court has held, the circuit court "is not in a position" to advise defendants on the potential collateral consequences of pleading guilty and requiring the court to do so "would place

an unnecessary burden on it." *Hughes*, 2012 IL 112817, ¶ 36 (citing *Williams*, 188 Ill. 2d at 371-72). Rather, "[i]t is counsel's responsibility, not the court's, to advise an accused of a collateral consequence of a plea of guilty." *Correa*, 108 Ill. 2d at 550. Thus, subsection 113-4(c)'s mandate that courts "fully explain[]" various possible collateral consequences as a prerequisite to accepting guilty pleas also violates the separation of powers doctrine by dragooning courts into performing a function beyond their proper judicial role. *Cf. Murneigh v. Gainor*, 177 Ill. 2d 287, 307 (1997) (statute violated separation of powers doctrine because it "conscript[ed] the courts of Illinois into the service of an essentially administrative program").

Thus, if the Court finds that subsection 113-4(c) applies to defendant's plea, subsection 113-4(c) must be construed as permissive to preserve its constitutionality, such that defendant is not entitled to withdraw her guilty plea based solely on the circuit court's noncompliance with that subsection.

## IV. The Circuit Court Acted Within Its Discretion When It Denied Defendant's Motion to Withdraw Her Guilty Plea.

A circuit court's "failure to properly admonish a defendant, standing alone, does not automatically establish grounds for reversing the judgment or vacating the plea." *Delvillar*, 235 Ill. 2d at 520. Rather, defendant "must show a manifest injustice under the facts involved." *Id.* A defendant can do this in two ways. First, a defendant can show that an inadequate admonishment prejudiced her, *People v. Fuller*, 205 Ill. 2d 308, 323 (2002),

either by resulting in a guilty plea that was not knowing and voluntary as required by due process, *Hughes*, 2012 IL 112817, ¶¶ 32-33, or by inducing her to plead guilty when she otherwise would have proceeded to trial, *Delvillar*, 235 Ill. 2d at 522; *People v. Davis*, 145 Ill. 2d 240, 250 (1991). Second, a defendant can show a manifest injustice by showing that "there is doubt as to the guilt of the accused and justice would be better served through trial." *Hughes*, 2012 IL 112817, ¶ 32.

Defendant moved to withdraw her guilty plea on the ground that in the absence of the subsection 113-4(c) admonishment regarding possible employment consequences, her plea was not voluntary. C27. But the circuit court properly exercised its discretion in denying defendant's motion to withdraw because the absence of the admonishment neither rendered her plea involuntary, nor otherwise prejudiced her. Although defendant now argues that the circuit court should have allowed her to withdraw the plea because there was a doubt as to her guilt, she forfeited that argument because she never raised it in the circuit court, *see id.* Moreover, the argument is meritless.

### A. Defendant failed to show that she was prejudiced by the absence of the subsection 113-4(c) admonishment.

The circuit court properly denied defendant's motion to withdraw her guilty plea because she failed to show prejudice from not receiving the subsection 113-4(c) admonishment, either because its absence rendered her

plea constitutionally invalid or because she would not have pleaded guilty had she received it.

With respect to defendant's claim that her plea was involuntary, although she asserts that "her plea was not voluntarily, knowingly, and intelligently made" because the circuit court did not admonish her "that pleading guilty could have adverse consequences on her employment before accepting her plea," she correctly acknowledges that any "failure to admonish a defendant of potential employment consequences does not amount to a constitutional violation." Def. Br. 42. "Generally, due process requires that in order for a defendant to knowingly and voluntarily plead guilty, a defendant must be advised of the direct consequences of a guilty plea," which are "those consequences that affect the defendant's sentence and other punishment that the circuit court may impose." *Hughes*, 2012 IL 112817, ¶ 35. "In contrast, a defendant need not be advised by the trial court of the collateral consequences of a guilty plea," *id.* ¶ 36 (citing *Williams*, 188 Ill. 2d at 371), which are consequences that "the circuit court has no authority to impose, and 'result[] from an action that may or may not be taken by an agency that the trial court does not control,'" *Hughes*, 2012 IL 112817, ¶ 36 (quoting *Delvillar*, 235 Ill. 2d at 520). Because loss of employment is a collateral consequence, *id.*, any failure to admonish defendant about it "does not affect the voluntariness of the plea," *Delvillar*, 235 Ill. 2d at 521. This is so even if subsection 113-4(c) applies to defendant's plea, for even if "the

legislature intended to further protect a defendant's right to voluntarily enter a guilty plea, the legislature cannot by statute alone add to what is constitutionally required of the circuit court." *Id.* The circuit court complied with Rule 402, *see* R16-20, which is all that due process requires. *People v. Fuller*, 205 Ill. 2d 308, 323 (2002) ("Substantial compliance with Rule 402 is sufficient to establish due process."); *People v. Jamison*, 197 Ill. 2d 135, 164 (2001) (finding court did not abuse discretion by denying motion to withdraw guilty plea where "defendant was fully admonished by the trial court in accord with Supreme Court Rule 402(a)"). Accordingly, defendant failed to show that any failure to admonish her that pleading guilty could result in a loss of employment rendered her plea unknowing or involuntary.

Nor did defendant show that she would not have pleaded guilty had she known there was a chance she could lose her job. Defendant argues that she would not have pleaded guilty had she not been "under the misapprehension that she would not automatically lose her employment as a direct result of pleading guilty." Def. Br. 42; *see* R35 (defendant's testimony that she would not have pleaded guilty "[i]f [she] had known that [she] would lose [her] job"). But admonishment under subsection 113-4(c) would not have corrected this misapprehension; subsection 113-4(c) requires only that a defendant be admonished that "there may be an impact upon the defendant's ability to . . . retain or obtain employment" as a consequence of pleading

guilty, not that a defendant will automatically lose her employment if she pleads guilty. 725 ILCS 5/113-4(c).

Although defendant suggests that she also labored under the related misapprehension that there was no possibility she could lose her job as a consequence of pleading guilty, *see* Def. Br. 45-46, that suggestion is unsupported by the record. In response to the appellate court's observation that "when a defendant is convicted of or pleads guilty to pilfering money from a client in the course of employment, common sense dictates that particular job as well as future employment in a similar field could be negatively impacted," *Burge*, 2019 IL App (4th) 170399, ¶ 39, defendant claims that it was reasonable for her to believe that there was no chance pleading guilty to theft could affect her employment because she "continued to work at her position for at least three months following the allegation that she had taken money from a client while at work," Def. Br. 46. But regardless of whether she could have reasonably believed that a client's *allegations* of theft were irrelevant to her employment, defendant could not have reasonably believed when she pleaded guilty that a theft *conviction* would be similarly irrelevant. After all, defendant was working at Help At Home when she was charged with theft, C7, C14; *see* R20, but she testified that by the time she was sentenced — that is, about three months after she was arraigned, *see* R2 (December 7, 2016 arraignment hearing); C21 (March 21, 2017 sentencing order) — she had been working at a different healthcare

company, Aging In Place, for three months. R33, R36. In other words, defendant's timeline establishes that her employment at Help At Home ended when the People charged her with theft for stealing on the job. Under these circumstances, it is not plausible that defendant believed there was not even a possibility that being convicted of theft on the job at a home healthcare company could affect her employment at another home healthcare company. Accordingly, defendant fails to show that but for the absence of an admonishment that she could lose her job if she pleaded guilty, she would not have pleaded guilty. *Cf. Hughes*, 2012 IL 112817, ¶ 66 (holding that defendant had "not met his burden" of showing prejudice under *Strickland* — a reasonable probability that he would have proceeded to trial but for counsel's failure to advise him about collateral consequences of pleading guilty — because he "ha[d] not articulated any prejudice beyond stating that had he known of the possibility of civil commitment he would not have pled guilty").

### B. Any argument that there is doubt as to defendant's guilt is forfeited and meritless.

To the extent that defendant argues that there was doubt as to her guilt, such that justice would be better served through trial, she concedes that this was not the basis of her motion to withdraw her guilty plea. Def. Br. 46-47; *see* C27-28 (motion to withdraw containing no argument that there was doubt as to defendant's guilt); R38-44 (argument at hearing on motion to

withdraw guilty plea, containing no reference to doubt as to guilt). Accordingly, defendant forfeited any argument that she should have been allowed to withdraw her guilty plea on this ground. *People v. Stevenson*, 2020 IL App (4th) 180143, ¶ 11 (holding that that particular argument to grant motion to withdraw guilty plea was forfeited because it was omitted from that motion); Ill. S. Ct. Rule 604(d) ("Upon appeal any issue not raised by the defendant in the motion . . . to withdraw the plea of guilty and vacate the judgment shall be deemed waived.").

In any event, defendant cannot bear her burden of showing doubt as to her guilt. Because defendant did not raise this argument in the circuit court — and affirmatively conceded that the prosecution could present sufficient evidence that she took money from her client's purse, R20 — she denied the prosecution an opportunity to respond by offering a fuller explanation of the evidence against her. As a result, the parties are now reduced to dueling speculation as to what that evidence would have been. *See* Def. Br. 47 (arguing that factual basis "does not conclusively rebut a claim that [defendant] did not actually take the money" based on speculation that victim "dropped the cash, or that it fell out of her purse"). Accordingly, defendant fails to bear her burden of showing that the circuit court abused its discretion in finding no manifest injustice.

## CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

November 10, 2020

Respectfully submitted,

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**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 32 pages.

/s/ Joshua M. Schneider
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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 November 10, 2020, the foregoing **Brief of Plaintiff-Appellee 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 e-mail address to the e-mail address of the person named below:

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

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