No. 124965

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 3-16-0667.
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Thirteenth Judicial
-vs-	)	Circuit, LaSalle County, Illinois,
	)	No. 16 CM 530.
PATRICK A. LEGOO	)	Honorable
	)	H. Chris Ryan, Jr.
Defendant-Appellant	)	Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

THOMAS A. KARALIS
Deputy Defender

JAY WIEGMAN
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

E-FILED
2/14/2020 3:28 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

REPLY BRIEF FOR DEFENDANT-APPELLANT

PATRICK LEGOO, WHO WAS CHARGED WITH VIOLATING 720 ILCS 5/11-9.4-1(b), WHICH PROHIBITS THOSE CONVICTED OF CERTAIN CHILD SEX OFFENSES FROM ENTERING PUBLIC PARKS UNDER ANY CIRCUMSTANCES, WAS EXEMPT FROM BEING PROSECUTED OR CONVICTED OF THAT CHARGE BECAUSE SECTION 11-9.3(a-10) OF THAT SAME ARTICLE EXCLUDES FROM PROSECUTION A PARENT WHO IS PRESENT IN A PUBLIC PARK WHEN THAT OFFENDER'S MINOR CHILD IS ALSO IN THE PARK, AS IN THE INSTANT CASE.

In his opening brief, the defendant – who was charged with, and convicted of, violating section 9.4-1(b) of Article 11 of the Criminal Code of 2012, which states that it "is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park" – argued that he was authorized to be in the park by another section of Article 11, which states:

> "[i]t is unlawful for a child sex offender to knowingly be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, *unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds"* (emphasis added).

720 ILCS 5/11-9.3(a-10); 5/11-9.4-1(b) (2016). Defendant argued that these two provisions of subdivision 10 of Article 11 of the Criminal Code, titled "Vulnerable Victims Offenses," must be read together both so that the Legislature's aims can

be met, and because to interpret the statutes otherwise leads to absurd results and renders the latter section unconstitutional as applied to the defendant, because it interferes with his fundamental right to protect and raise his child (Def. Br. 9).

In its brief, the State asserted that this Court should not depart from the plain language of section 11-9.4-1(b), and that the declaration contained within section 11-9.3(a-10) – that a sex offender does not act unlawfully if, as here, the offender is a parent or a guardian of a person under 18 years of age present on the grounds (St. Br. 6, 14) – does not need to be read into section 11-9.4-1(b) in order to render it constitutional as applied to the defendant. In this responsive brief, the defendant renews his argument that because he possessed a fundamental right to be present with his child, a right protected in, and recognized throughout sections 11-9.3 and 11-9.4 but especially including section 11-9.3(a-10), failure to read sections 11-9.3(a-10) and 11-9-4.1(b) together renders section 11-9.4-1(b) unconstitutional as applied to him. As a result, this Court should reverse Patrick Legoo's conviction of unlawful presence of a child sex offender in a public park because the statutory scheme established to protect children in vulnerable places states that an offender does not act unlawfully when he is present in a park at the same time as his minor child, in recognition of a parent's fundamental right to the society and care of his child.

The State first asserts that the "plain language, and defendant's own recitation of the legislative history, shows that § 9.4-1 was intended to impose a flat ban on the presence of child sex offenders and sexual predators in public parks" (St. Br. 5). The defendant respectfully submits that the State's analysis

fails for two reasons: first, the State focuses strictly on the plain language of section 11-9.4-1, which is but one part of a comprehensive scheme concerned with vulnerable victim offenses, and fails to adequately consider the plain language of section 9.3(a-10), a provision that has been in place since the outset of this subdivision, and which parallels the provision governing sex offenders' presence in or near schools. Second, the State concentrates on one goal of these statutes – the protection of children – while disregarding that these statutes have additionally always served to protect the family unit. If the goals and the plain language of both of these sections are considered, it is clear that sex offenders are allowed on park property, provided their minor children are also present.

The defendant concedes that, if read in isolation, and without considering legislative intent or the history and evolution of each of these sections, the plain language of section 11-9.4-1 absolutely bans convicted child sex offenders and sexual predators from public parks. (The defendant also notes that the converse is true; were section 11-9.3(a-10) read in a vacuum, a child sex offender would reasonably believe that he could go into a public park to retrieve his child). However, it is a cardinal rule of statutory construction that sections in *pari materia* should be considered with reference to one another so that both sections may be given harmonious effect. *People v. Scheib*, 76 Ill.2d 244, 250 (1979). When all of the sections of the Code related to sex offenders are considered, it is clear that the legislature did not intend to prevent convicted child sex offenders from going to parks with their minor children.

When construing a statute, the court must consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective

in enacting it. See *People v. Davis*, 199 Ill.2d 130, 135-136 (2002) (Court examined the Criminal Code, the Firearm Owners Identification Card Act and the Air Rifle Act to determine if a BB gun was meant to be considered a "firearm"). Keeping in mind the subject matter Article 11 addresses and the legislature's objectives in enacting it, it is clear that all of the sections related to protecting vulnerable victims contained within Article 11 serve to protect children in schools, parks, and other places where children might be present, while still permitting their parents to be present with them, even if those parents were convicted child sex offenders. Section 11-9.3, which completely subsumed now-repealed section 11-9.4 in 2010, prohibits child sex offenders from a host of places and activities when minors are present, but creates exceptions when those minors are the children of the sex offender. Subsection (a) of section 11-9.3, for example, allows a child sex offender to be present in public schools under certain conditions when it is necessary for the sex offender to be present with his child, while subsection (a-10) allows a parent to be present in a public park when his minor child is also present. 720 ILCS 5/11-9.3(a, a-10)(2018). And while subsection (c-2) makes it unlawful for child sex offenders to give candy to children on Halloween or dress up as either Santa or the Easter bunny, subsection (c-2) "does not apply to a child sex offender who is a parent or guardian of children under 18 years of age that are present in the home and other non-familial minors are not present." 720 ILCS 5/11-9.3(c-2)(2018). Nor may a child sex offender communicate with a minor by email, unless the minor is the child sex offender's own child. 720 ILCS 5/11-9.3 (b-20). This statutory framework demonstrates that the legislature not only provided safe zones for children, but also preserved what has long been recognized as among

the most fundamental of rights: a parent's liberty interest in raising and caring for his or her children. See, *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) ("the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme Court].")

With the aims and history of section 11-9.3 and section 11-9.4-1 in mind, this Court should hold that section 11-9.3 permits a child sex offender whose child under the age of 18 is present in a public park to be present in the park as well, and even to approach or communicate with another child. As a result, the defendant's conviction of unlawful presence by a child sex offender in a public park should be reversed.

The State further asserts that the legislature's exemption of Romeo and Juliet offenders from section 11-9.4-1(b) demonstrates that sex offenders whose children are present were not meant to be exempted, because "the enumeration of exceptions in a statute is construed as an exclusion of all exceptions," quoting *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 286 (2003). (St. Br. 8-9). In *Cryns*, this Court concluded that the legislature "intended to exclude from the coverage of the [Nursing and Advanced Practice Nursing] Act only those instances specifically enumerated," and the term midwife had not been included in the definition of nurses. *Cryns*, 203 Ill.2d at 285-86. In making this claim, the State ignores both that section 11-9.3(a-10) specifically exempts child sex offenders whose children are present and that this Court in *Cryns* recognized that "[a]ll provisions of a statutory enactment are viewed as a whole." *Cryns*, 203 Ill.2d at 279. Therefore, "words and phrases must be interpreted in light of other relevant provisions of

the statute and must not be construed in isolation." *Cryns*, 203 Ill.2d at 280. As set forth in *Cryns*, "'[l]egislative intent can be ascertained from a consideration of the entire Act, its nature, its object and the consequences that would result from construing it one way or the other.'" *Cryns*, 203 Ill.2d at 280, quoting *Fumarolo v. Chicago Board of Education*, 142 Ill.2d 54, 96 (1990). In the instant case, consideration of Article 11 in its entirety leads to the ineluctable conclusion that the legislature intended to exempt from prosecution sex offenders whose children were present in the park, as well as those who had been convicted of Romeo and Juliet offenses, while at the same time excluding other sex offenders and sexual predators whether or not people were present in the park.

The State claims that the inclusion of particular language in one section and its omission from another necessarily means that the legislature intended different meanings and results (St. Br. 9). The cases cited by the State in support of this proposition are readily distinguishable from the instant case. In *People v. Clark*, 2019 IL 122891, which involved different forms of escape (depending on whether the defendant was in custody or not), this Court refused to "engraft the custody element of the escape from custody provision onto the failure to report provision." *Clark*, 2019 IL 122891, ¶ 24. The provisions of the escape statute, however, involved different acts (escape from custody versus failure to report), and thus required different language. And, most importantly, neither section of the escape statute vitiated the other. Conversely, Sections 11-9.3(a-10) and 11-9.4-1(b), both purport to govern the same act: being present in a park. And, unless section 9.3(a-10), which states that a sex offender does not act unlawfully if he is in a public park and his minor child is also there, is read into section 9.4-1(b),

section 11-9.3(a-10) is rendered meaningless. For the same reasons, this Court should reject the State's reliance upon *People v. Hunter*, 2017 IL 121306, in which this Court considered the temporal reach of sentencing provisions where some differed from the others, noting that, had the legislature intended for all of the sections to have the same temporal reach, it could have done so, just as it did in another amendment adopted as part of the same Act. *Hunter*, 2017 IL 121306, ¶ 49. (St. Br. 9). *Hunter*, like *Clark*, is inapposite because the different sections in those cases, unlike in the instant case, did not countermand the other sections.

The State next quotes *People v. Goossens*, 2015 IL 118347 (2015), in which this Court, in rejecting the defendant's argument that "there is an inherent relatedness requirement" in the Unified Code of Corrections that allows any of the 16 permitted conditions of probation to be imposed only if they relate to the defendant's conviction, stated: "[i]t is well settled that when the legislature uses certain language in one instance of a statute and different language in another part, we assume different meanings were intended. *Goossens*, 2015 IL 118347, ¶¶ 1, 10, 12 (St. Br. 9). In *Goossens*, This Court noted that there were several conditions of probation that could not possibly be related to any offense. *Goossens*, 2015 IL 118347, ¶ 11. Thus, the specific relatedness requirement included in some subsections did not serve to exclude it in others. *Goossens*, 2015 IL 118347, ¶ 11. Notably, this Court in *Goossens* observed that, in determining the plain and ordinary meaning of the statute, it may consider the statute in its entirety, the subject it address and the apparent intent of the legislature in enacting it, as well as the resulting consequences from construing the statute one way or the other. *Goossens*, 2015 IL 118347, ¶ 9. In this way, *Goossens* actually supports Legoo's claim that

the exemption contained in section 11-9.3(a-10) must be read into section 11-9.4-1(b), because if it is not, the exemption contained in section 11-9.3(a-10) is utterly without effect; section 11-9.4-1(b), which purports to be a flat ban on sex offenders in public parks – except for Romeo and Juliet offenders – would effectively override section 11-9.3(a-10), which allows child sex offenders to be present in public parks provided their minor children are present, too.

In essence, the State asserts that the enactment of section 11-9.4-1(b) implicitly served to repeal section 11-9.3(a-10), given its argument that "the plain language of the [section 11-9.4-1(b)], which prohibits child sex offenders and sexual predators from being in a public park, contains no exemption from liability when their children are present" (St. Br. 6). Yet, repeal by implication is not favored. *People v. Isaacs*, 37 Ill.2d 205, 226 (1967). Unless the exemption contained in section 11-9.3(a-10) is read into section 11-9.4-1(b), the result is absurd. As noted by the trial court, it is "ridiculous" that one section of Article 11 permits child sex offenders to approach a child in a public park, but under the provision elected by the State, Legoo could not even "be in the park" (R28). It is presumed that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice. *Michigan Avenue National Bank v. County of Cook*, 191 Ill.2d 493, 504 (2000). As a result, this Court should hold that section 11-9.3(a-10) exempts from prosecution child sex offenders who, like Legoo, are present in public parks at the same time as their minor children.

The State also argues that the exception created in section 11-9.3(a-10) for a child sex offender who is present in a park in which his child is also present does not apply to section 9.4-1 because violations of section 11-9.3 constitute a

class 4 felony, while violations of section 11-9.4-1 are merely misdemeanors, although it should be noted that second or subsequent violations of this section are also Class 4 felonies (St. Br. 10-14). 720 ILCS 5/11-9.4-1 (2016). Section 9.3 states that it "is unlawful for a child sex offender to knowingly be present in any public park . . . when persons under the age of 18 are present . . . and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present . . . on the grounds." 720 ILCS 5/11-9.3(a-10)(2016). The defendant respectfully submits that the term "unlawful" does not distinguish between a felony and a misdemeanor. Rather, that a child sex offender does not act unlawfully when he is in a park at the same time his minor child is present in the park means that he has committed neither a felony nor a misdemeanor. He has simply not committed any criminal violation.

The State claims, as did the Appellate Court, Third District, that section 11-9.4(b) differs from section 11-9.3 because the former includes "sexual predators" as defined in section 2 of the Sex Offender Registration Act ("SORA) in its list of persons prohibited from the park and the latter does not. *Legoo*, 2019 IL App (3d) 160667, ¶ 13, citing 730 ILCS 150/2 (2016); (St. Br. 11). In his opening brief, the defendant stated that each of the offenses listed in subsection E of section 2 of SORA is "included in 720 ILCS 5/11-9.3(d)(a)(iii) (2016)." As the State correctly notes at page 11, fn. 2, of its brief, defendant's citation is incorrect; counsel should have cited to 720 ILCS 5/11-9.3(d)(2)(i-iii)(2016). Moreover, the defendant's statement should have been that each of the offenses set forth in section 11-9.3(d)(2) is also found in subsection E of section 2 of SORA, except that section 11-9.3 (d)(2) does not refer to the Uniform Code of Military Justice, only includes sexually

dangerous persons who committed offenses against children, and does not include sexually violent persons, sexually motivated murders, or violators of section 10-5.1. See 720 ILCS 5/9.3 (d)(2)(i-iii) (2016); 730 ILCS 150/2 E, E-5 (2016). Counsel apologizes to the Court and to the State for the error, but stands by his claim that this does not distinguish the two statutory provisions from one another.

Moreover, to the extent that section 11-9.4-1(b) includes extra offenses in its definition of sexual predator (including some involving adult victims), this does not mean that the exemption set forth in section 11-9.3(a-10) should not be read into section 11-9.4-1(b), or that section 11-9.3(a-10) is inconsistent with the aims of section 11-9.4-1(b). Those offenders who qualify for section 11-9.3(a-10)'s exemption by virtue of their offenses and the presence of their minor children should still be allowed in public parks, and those who have committed other serious offenses the legislature determines merit exclusion or who are not tending to their children should be excluded, at all times, regardless of whether or not children are present.

The State asserts that "the statutes do not conflict simply because a child sex offender may violate § 9.4-1 without at the same time violating § 9.3" (St. Br. 13). Yet, the conflict could not be more dramatic. If read as a flat ban, as the State urges, there is no way for a child sex offender to violate section 11-9.4-1 without also violating section 9.3 because the protection provided by section 11-9.3 will no longer exist. Section 11-9.3(a-10) states that it "is unlawful for a child sex offender to knowingly be present in any public park . . . when persons under the age of 18 are present . . . and to approach, contact, or communicate with a child under 18 years of age, unless the person is a parent or guardian of a person under 18

years of age present . . . on the grounds." 720 ILCS 5/11-9.3(a-10)(2018). Conversely, section 11-9.4-1 states that it "is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park . . . ." 720 ILCS 5/11-9.4-1(b)(2018). As interpreted by the State, a child sex offender could not both be protected by section 11-9.3 and in violation of section 11-9.4-1.

The State is wrong when it asserts that no sex offender may lawfully be in a public park. As this Court stated in *People v. Pepitone*, 2018 IL 122034, ¶ 28 ("Section 11-9.4(a) [the precursor to section 11-9.3(a-10)] did not criminalize sex offenders' mere presence in public parks but rather specific conduct by sex offenders – approaching, contacting, or communicating with minors."). Because it is not unlawful for a child sex offender whose child is also present in the park to be present and speak with a child, a parent who is merely present, by definition, also does not act unlawfully. If it is not a felony for a child sex offender to be present in a public park and talk to another child [720 ILCS 5/11-9.3(a-10)], it seems an absurdity that he can nonetheless be prosecuted for a misdemeanor because of his presence, which had – under the original version of the parks provision – been rendered lawful by his child's presence. Because it is presumed that the General Assembly did not intend absurdity, the trial court erred when it found that the defendant was guilty of being in a public park despite section 11-9.3(a-10)'s clear statement that it is not unlawful for a parent to be present in a public park if that offender's child is present in the park, too.

In his opening brief, the defendant also argued that interpreting section 11-9.4-1(b) without incorporating the exemption found in section 11-9.3(a-10) violates the doctrine of constitutional avoidance (Def. Br. 22). The State responds that

there is "no precedent holding that the right of parents to care for and raise their children includes the right to take them to a park" (St. Br. 14). However, prior to 1923, there was no precedent holding that parents could hire a teacher to instruct their children in German, either, but the United States Supreme Court readily accepted this as one aspect of a parent's fundamental right to establish a home and bring up children. *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923). The right to be present with one's children in a public park was implicitly recognized as being as fundamental as the right of a child sex offender to enter his child's school, under appropriate circumstances, as demonstrated by the inextricable connection between sections 9.3 and 9.4 of Article 11. And this Court recently reiterated that a parent's liberty interest in raising and caring for his or her children is among the most fundamental of rights. See *In re N.G.*, 2018 IL 121939, ¶¶24, 26. The State, in noting defendant's concession that, as this Court held in *Pepitone*, there is no constitutional right for a child sex offender to walk in a public park, views the issue too narrowly. (St. Br. 15, citing *Pepitone*, 2018 IL 122034, ¶ 14, and *Doe v. City of Lafayette, Ind.*, 377 F. 3d. 757, 772-73 (7th Cir. 2004)); (Def. Br. 24). Legoo does not claim, as did the defendants in *Pepitone* and *Doe*, that he has a fundamental right to be in a park. Rather, Legoo asserts that parents, even those who are convicted sex offenders, have a fundamental right to participate in the upbringing of their children, whether that involves their presence in a public school, under controlled circumstances, or in a public park, under appropriate circumstances. Because the legislature's aims of protecting children can be met by reading section 11-9.3(a-10) into section 11-9.4-1(b), this Court should adopt that interpretation, thus avoiding the infringement of Legoo's right to the society of his minor child.

In sum, this Court should construe section 11-9.4-1(b), which is silent about child sex offenders who are parents of children present in the same park, as containing the same exclusion from prosecution that is contained in section 11-9.3(a-10) of the same subdivision of Article 11. Prior to the consolidation of sections 11-9.3 and 11-9.4, courts made clear that section 11-9.3 was intended to protect school children from known child sex offenders, and that then-section 11-9.4 was meant to keep known child sex offenders who were not present with their children from approaching, contacting or communicating with a child under 18 years of age in a public park. *People v. Diestelhorst*, 344 Ill.App.3d 1172, 1184-1185 (5th Dist. 2003), citing with approval *People v. Stork*, 305 Ill.App.3d 714, 721 (2d Dist. 1999). The laws contained within these sections, both of which included provisions allowing parents to be present in schools and parks when their children were present, were – and continue to be – considered reasonably related to protecting children from known sex offenders. *Diestelhorst*, 344 Ill.App.3d at 1184; *Stork*, 305 Ill.App.3d at 722. With the aims and history of sections 11-9.3 and 9.4-1 in mind, this Court should hold that Section 9.3 permits a child sex offender, whose child under the age of 18 is present in a public park, to be present in the park as well. As a result, the defendant's conviction of unlawful presence by a child sex offender in a public park should be reversed.

CONCLUSION

For the foregoing reasons, Patrick A. Legoo, defendant-appellant, respectfully requests that this Court reverse his conviction.

Respectfully submitted,

THOMAS A. KARALIS
Deputy Defender

JAY WIEGMAN
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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 14 pages.

/s/Jay Wiegman
JAY WIEGMAN
Assistant Appellate Defender

No. 124965

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 3-16-0667.
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Thirteenth Judicial
-vs-	)	Circuit, LaSalle County, Illinois, No. 16 CM 530.
PATRICK A. LEGOO	)	Honorable H. Chris Ryan, Jr.
Defendant-Appellant	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Ms. Karen Donnelly, LaSalle County State's Attorney, 707 Etna Road, Room 251, Ottawa, IL 61350;

Mr. Patrick A. Legoo, 1000 Main Street, Apt 1, Mendota, IL 61342

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 February 14, 2020, 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 defendant-appellant in an envelope deposited in a U.S. mail box in Ottawa, 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/Esmeralda Martinez
LEGAL SECRETARY
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
Service via email will be accepted at
3rddistrict.eserve@osad.state.il.us