No. 131337

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee, -vs- ANTRELL JOHNSON, Plaintiff-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-22-0494. There on appeal from the Circuit Court of Cook County, Illinois, No. 17 CR 08698. Honorable Thaddeus L. Wilson, Judge Presiding.

BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLANT

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ISSUES PRESENTED FOR REVIEW

I. Whether inconsistent and unreliable eyewitness testimony alone provided sufficient evidence to sustain Antrell Johnson's first-degree murder conviction beyond a reasonable doubt.

II. Whether the eyewitness reliability factors outlined by the United States Supreme Court in *Neil v. Biggers,* 409 U.S. 188 (1972)**,** are appropriate and relevant to appellate review of the sufficiency of the evidence. Also, whether this Court should reject the remaining State's arguments concerning appropriate use of the *Biggers* factors, the appellate court's citations to secondary authorities, and a claimed violation of the Supremacy Clause, where the State should be estopped from asserting the first claim, all are wholly unnecessary to resolution of this appeal, and where the arguments lack merit.

STATEMENT OF FACTS

Antrell Johnson was found guilty of first-degree murder and acquitted of attempt murder after a jury trial based entirely upon eyewitness testimony. He was sentenced to 55 years in prison. On direct appeal, Antrell argued, *inter alia*, that the State had not presented sufficient evidence at trial to prove his guilt beyond a reasonable doubt. The appellate court agreed and reversed Antrell's conviction outright. The State filed a petition for leave to appeal to this Court.

The charges were based on a shooting that occurred on April 24, 2017, around 7:30 p.m. in Chicago. Witnesses described someone wearing a black jacket, white pants and a hat running up behind two men walking down the street – Deangelo Mixon and Taurean Tyler – and firing several times toward their backs. (R. 429-30, 468-72, 518-19, 551-53). Mixon and Tyler were transported to the hospital for their injuries, where Mixon recovered and Tyler died. (R. 407, 475-76, 603). Following an investigation, Antrell was charged with the first-degree murder of Tyler and the attempt murder of Mixon.

The State presented four eyewitnesses. Two of those witnesses recanted their pre-trial identifications of Antrell in court. The first recantation was from Tristan Thomas. Thomas saw the shooting from his front porch near the corner of 69th and Honore. (R. 425). Initially, Thomas identified Antrell in a photo array during a conversation with the police the day after the shooting. (R.434, 436-37). However, at the trial, when asked by the State how he recognized the person he circled in the photo array, Thomas responded it was because he knew him, but not because he had actually seen that person do anything. (R. 437-38). Thomas

testified that he ran up to Mixon after the shooting and Mixon told him, "It was Trell." (R. 446). Thomas knew to whom Mixon was referring and testified that he based his photo array identification on that knowledge. (R. 437-39, 448, 455).

Thomas saw Tyler and Mixon walking down the street and went out onto his porch. (R. 435-26). From there he saw the shooter run up behind Mixon and Tyler and shoot at their backs from about seven or eight feet away. (R. 429-31). He saw the shooter was light-skinned and wearing a black jacket, but could not tell if the person was a man or a woman, in part because the shooter's face was partially obscured and because Thomas was standing some distance away, and he admitted to not seeing distances well and that he probably should wear glasses. (R. 429-31, 438, 451-52).

Deangelo Mixon also admitted at trial that he regretted identifying Antrell as the shooter when he actually did not see who shot him. (R. 471-72, 504, 507-08). Mixon recalled the shooting; he was walking with Taurean Tyler along 69th Street toward Honore, where Tristan Thomas lived. (R. 462-64). As they approached the house, where Thomas awaited them, Mixon saw a shocked look on Thomas's face. Mixon glanced behind him and saw a person pointing a gun about a foot away from Tyler's back. (R. 469-72). He heard about seven shots go off, fell, and saw Tyler on the ground next him. (R. 472-73). He felt the pain from his own wound and saw the shooter run back down the street to a black car, which drove away. (R. 473-74).

At trial, Mixon said he could not remember telling Thomas that it was Antrell who shot him, nor did he remember his conversation with an assistant state's

attorney ("ASA") while he was at the hospital. (R. 471, 475, 480-81, 485). Mixon acknowledged that the statement existed, that it was recorded, and that he identified Antrell during that conversation, but maintained that he did not have an independent recollection of the conversation. (R. 485, 488, 492). Mixon also testified that he was worried for his safety, but he did not say why. (R. 513).

The State presented the testimony of ASA Joseph Hodal, who interviewed Mixon at the hospital. (R. 678). After Mixon went over the events of the prior day once, Hodal asked if they could do it again, on video. (R. 680). Mixon and his sister, who was present for the interview, agreed. (R. 679-80). The State played the recording for the jury, in which Mixon stated that Antrell was the shooter. (St. Ex. 66-68). Hodal confirmed that he asked Mixon questions regarding his observations of Antrell. (R. 684). He also stated that Mixon did not seem to be in pain and had last taken medication at 4:30 that morning, though Hodal did not specify how much time had passed since then. (R. 685).

The State's third eyewitness was not able to make an identification. Robert Laster testified that he and his wife, Janeese Washington, were sitting in a car in the church parking lot on 69th and Honore around 7:30 p.m. on the night of the shooting. (R. 516, 549-50). Laster and his wife were in the backseat and their friends were sitting up front. (R. 516-17, 568). Laster testified that the car was facing south, putting Honore to Laster's left. (R. 517). He was seated behind the driver, and his wife, seated to his right, was farther away from Honore. (R. 517, 529, 566; St. Ex. 24). Laster saw two men walking down the street and a third man running towards them from behind. (R. 517-18). The third man pulled a gun

out of his right pocket and fired five shots at the other two men from about 20 feet away. (R. 518-19, 532-33). Laster described the shooter as wearing white pants, a black bomber jacket, and a black baseball hat. (R. 519, 532). The shooter turned and ran northbound on Honore, away from the scene. (R. 519). Laster testified that he had yelled to get down and everybody in the car crouched so that they would not be seen. (R. 520, 534).

Janeese Washington, sitting to the right of her husband, testified that she saw the shooting from her position in the rear passenger-side seat, looking diagonally through the windshield, past the driver. (R. 568). There was also a driver positioned behind the wheel, but that person did not testify. (R. 568). Washington said that she saw someone run up behind the two men walking down the middle of the street, which was on the driver's side of the car. (R. 551, 556-68; St. Ex. 24). The runner pulled out a gun and shot at the other two men. (R. 552). Washington described the shooter as wearing white jeans and a baseball hat, but could not recall what he wore on top. (R. 552, 573). Washington testified that she was scared when she heard the gunshots and "scooted back" in her seat to avoid being seen. (R. 570-71). She said that the entire shooting lasted maybe a minute. (R. 572).

After the shooting, Laster and Washington stayed on the scene to talk to the police. (R. 520-21, 553-54). The interviewing officer testified that he spoke to the couple together and they described the shooter as a Black male with a medium-brown complexion between the ages of 16-25, about 5'5" to 5'9", and around 150 pounds. (R. 584-85). Laster told the officer that he had gotten a pretty good look at the shooter and believed he would be able to identify him. (R. 535).

When the pair went to the station a few weeks after the shooting, Laster was unable to identify the shooter in a photo array, which included Antrell. (R. 539-40; Def. Ex. 2). A few days later, Laster viewed a live lineup, also including Antrell, and identified someone else. (R. 543-46; Def. Ex. 4, 5, 6).

Washington identified Antrell in a photo array on the same day as Laster, saying that she made the identification based on his nose and mouth and the fact that he had "just about" the same hair, though she admitted that the shooter had been wearing a hat and she could not see the top half of his face. (R. 557-58, 574-78).

The State presented a stipulation that a gun matching the bullet casings found at the scene of the shooting was recovered months later by the Riverdale police. (R. 699, 721-22). A medical examiner testified that Tyler had sustained five gunshot wounds that were consistent with him being shot from behind, not from close range. (R. 627, 629, 631-32, 639-40). An officer also testified that he recovered surveillance footage of a black sedan approaching and leaving the scene and of the shooter running. (R. 728-29; St. Ex. 25). The same officer spoke to Mixon in the hospital and confirmed that Mixon had told him that Antrell was the shooter. (R. 730, 735).

During his case-in-chief, Antrell presented testimony from his mother, Dorothea Morris, and his ex-girlfriend, Kennedi Myles. Myles testified that she went to Antrell's grandmother's house some time in the afternoon on the night of the shooting and Antrell was there. (R. 777-82). After the party, they walked to her house along with his daughter. (R. 687-88). Around 8 or 9 p.m., Antrell went back to his mother's house with his daughter. (R. 790).

In closing, the State argued that Mixon and Thomas were scared and were lying at trial about not having a good view of the shooter. (R. 808-12). Defense counsel argued that the identifications of Antrell were unreliable and that Thomas and Mixon were sincere in their trial testimony. (R. 830-39).

After nearly five hours, the jury returned a verdict. (R. 900, 917). The jury found Antrell guilty of first-degree murder and that the State had proved Antrell had personally discharged a firearm in the commission of that offense. (R. 928). The jury acquitted Antrell of attempt first-degree murder of DeAngelo Mixon, but inexplicably signed the special interrogatory, finding that Antrell personally discharged a firearm and caused bodily harm during the commission of attempt first-degree murder. (R. 927-28). The trial court ruled that the finding of personal discharge was superfluous to the not-guilty verdict for attempt murder. (R. 927).

After denying Antrell's motion for a new trial, the trial court sentenced him to 55 years in prison. (Supp. R. 12).

Appellate Court Proceedings

On direct appeal, Antrell argued that the three eyewitness who identified him as the shooter were unreliable and so the State had not presented sufficient evidence to sustain his conviction. He also argued that his trial counsel was ineffective for failing to call an additional witness to support his alibi defense. (App. Ct. Op. Brief, p. 11-22).[1]

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[1] Pursuant to Illinois Supreme Court Rule 318(c), Antrell has requested that the First District Appellate Court file the e-filed, stamped copies of the appellate court briefs with this Court because it is important for this Court to know the contentions of the parties in the appellate court.

In responding to Antrell's sufficiency argument, the State argued, in part:

> Defendant's attempt to analyze the issue of eyewitness credibility using *Lerma* is incorrect, and the People refrain from doing the same, relying instead on the well-settled and widely recognized factors under [*Neil v.*] *Biggers* [409 U.S. 188 (1972)].
> App. Ct. Res. Brief, p. 31).

The State argued that the evidence was sufficient, using the *Biggers* factors as guideposts. (App. Ct. Res. Brief, p. 24-25).

A majority of the appellate court found that the eyewitness testimony presented by the State at trial was legally insufficient to sustain Antrell's conviction. *People v. Johnson*, 2024 IL App (1st) 220494, ¶ 62. In so finding, the appellate court considered each of the *Biggers* factors and concluded that all but one of the factors favored Antrell. *Id.* at ¶ 62. The totality of the eyewitnesses' statements, both prior to and during trial, "left little for the jury to sift, weigh, and assess before drawing inferences." *Id.* at ¶ 61. The court found that the sum of the State's evidence failed to prove that Johnson was the person who shot Tyler. *Id.* at ¶69.

The dissenting justice would have found the eyewitness testimony evidence sufficient to convict Antrell. *Id.* at ¶ 114. Also applying the *Biggers* factors, the dissent would have held that Thomas and Mixon's initial identifications of Antrell were reliable, particularly where they knew Antrell. *Id.* at ¶¶ 119-20, 121-22, 124, 126-27, 130. The dissent discredited Thomas and Mixon's recantations at trial, finding that their in-court testimony did not outweigh the reliability of their initial identifications, which it found reliable when analyzed under the *Biggers* factors. *Id.* at ¶¶ 123, 125. Finally, again applying the *Biggers* factors, the dissent would have found that the circumstances of Washington's identification were

sufficiently reliable to support a finding by a reasonable fact finder that Antrell was the shooter. *Id.* at ¶¶ 133-142. The dissent also objected to the majority's citations to social science research, *Id.* at ¶¶ 144-150, and its reference to the jury's split verdict to suggest that the jurors harbored doubts about some aspects of the State's evidence. *Id.* at ¶ 151.

The majority addressed the concerns outlined by the dissent, stating that it weighed the totality of the circumstances, including the *Biggers* factors, the evidence in the case, and "factors outside the criminal justice system that affect eyewitness perception." *Id.* at ¶¶ 72-74. The majority explicitly acknowledged that the five *Biggers* factors were an incomplete list of analytical factors and stressed that even the dissent evaluated some of the evidence using additional considerations. *Id.* at ¶¶ 75-77. Noting the fallibility of eyewitness testimony and its proven unreliability, the majority pointed out that its reference to academic articles is a matter of "procedural fairness" and common sense, a way to inform the court's decision that otherwise would only rely on outdated caselaw issued before new developments in the study of eyewitness testimony. *Id.* at ¶¶ 78-80. The majority reaffirmed its practice of accepting only reasonable inferences in favor of the State, finding the dissent's analysis of the evidence to be too deferential, noting that juries are owed deference but not "unfettered reverence." *Id.* at ¶¶ 81-97. Regarding the jury's split verdict, the majority recognized that the State's case relied singularly upon unreliable eyewitness testimony, which was the likely cause of the internal conflict of the jury indicated by the verdict. *Id.* at ¶ 99. To further that point, the majority also noted the absence of physical evidence or evidence of motive. *Id.*

at ¶¶ 101-104.

The State filed a petition for leave to appeal on January 27, 2025, which this Court granted on March 26, 2025.

ARGUMENT

I. The State's evidence at trial was insufficient to prove Antrell Johnson's guilt beyond a reasonable doubt of first-degree murder where the entirety of its case rested upon recanted, inconsistent, and unreliable eyewitness testimony.

The only inculpatory evidence presented against Antrell Johnson at his trial was the unreliable identification testimony of three eyewitnesses – there was no other direct or any circumstantial evidence. One of the witnesses identified Antrell to the police soon after the shooting, but recanted his identification at trial. The second eyewitness told police that the shooter's mouth and nose were covered and that he identified Antrell only because the first eyewitness had told him that he was the shooter. The third witness, meanwhile, had a poor view of the shooter and said that she could see *only* his mouth, nose, and skin tone. The appellate court properly analyzed the sufficiency of the evidence in the light most favorable to the State, employing the five *Biggers* factors along with others, to evaluate "the likelihood of misidentification" based on: 1) the opportunity of the witness to view the offender at the time of the crime; 2) the witness' degree of attention; 3) the accuracy of the witness' prior description of the offender; 4) the level of certainty demonstrated by the witness at the confrontation; and 5) the length of time between the crime and the confrontation. *People v. Johnson*, 2024 IL App (1st) 220494, ¶ 30, *citing Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). The appellate court used the *Biggers* factors as a tool in its analysis, finding that the only evidence against Antrell – eyewitness testimony – was so unreliable that no reasonable trier of fact could have found him guilty beyond a reasonable doubt, even in the light most favorable to the State. *Johnson*, 2024 IL App (1st) 220494,

¶ 62.

The State's burden at trial is a high one – proving guilt "beyond a reasonable doubt" is not a phrase owed mere lip service. Due process requires the State to prove every element of a charged offense beyond a reasonable doubt in order to sustain a conviction. *In re Winship*, 397 U.S. 358, 364 (1970); U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2. This includes the offender's identity. *People v. Slim*, 127 Ill.2d 302, 307 (1989). When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Maggette*, 195 Ill.2d 336, 353 (2001). While the review of evidence on appeal is done with deference to the fact-finder, the court does not act as a rubber stamp. *People v. Cunningham*, 212 Ill 2d 274, 280 (2004)(a fact finder's credibility determination "is entitled to great deference but it is not conclusive and does not bind the reviewing court.") Eyewitness identifications are fallible, and "the annals of criminal law are rife with instances of mistaken identification." *Perry v. New Hampshire*, 565 U.S. 228, 245 (2012)."[E]yewitness misidentification is now the single greatest source of wrongful convictions in the United States, and responsible for more wrongful convictions than all other causes combined." *People v. Lerma*, 2016 IL 118496, ¶24.

DeAngelo Mixon, one of the State's primary witnesses, recanted his prior identification of Antrell when he testified at trial, saying that he felt he was

"supposed" to pick out Antrell as the shooter and that he regretted doing so. (R. 471, 472, 504, 505-08). Mixon gave a statement to a police officer at the hospital when he was recovering from his own gunshot wound, saying that Antrell was the shooter. (R. 730, 735). While still in the hospital, he also gave a recorded statement to an ASA, in which he identified Antrell in a photo array as the shooter. (R. 488). At trial, Mixon testified that he could not recall either of these conversations. (R. 485, 492). He agreed that he did, in fact, identify Antrell while he was hospitalized, but at trial admitted that he was actually not sure who the shooter was, and instead just told the detectives who he thought the shooter may have been. (R. 488, 503-04). Mixon regretted identifying someone when he was not sure who shot him. (R. 507). While Mixon also testified that he was scared, both at the time of the shooting and at trial, he also testified that he thought he was going to get into trouble if he did not testify. (R. 508, 512-13). Mixon's statements at trial, contradicting the initial identification of Antrell, and his expression of regret show that he was not confident in his identification of Antrell.

Mixon's original identification of Antrell was suspect for other reasons. Mixon testified that he had been drinking prior to the incident. (R. 499). He testified that he saw Tristan Thomas's surprised face, turned around, and saw a gun before he heard shots and "blinked" out. (R. 469-71). Mixon, on his own, brought up the fact that he was focused on the weapon and not looking at the person holding the gun. (R. 471-72); *see People v. Hayes*, 2022 IL App (1st) 190881-B, ¶ 41("weapon focus 'can impair a witness' ability to make a reliable identification'...'weapon-absent' conditions [lead] to 'significantly more accurate descriptions of the perpetrator'

and weapon focus can be exaggerated by an offense of short duration where the witness does not have a chance to acclimate to the presence of weapon.")(citing *People v. Henderson,* 27 A.3d 872, 905 (N.J. 2011)). Further, Mixon's testimony that the shooter was standing about one foot away was contradicted by the medical examiner's testimony that there was no evidence of close-range shooting and other eyewitnesses' testimony that the shooter was much farther away from Mixon. (R. 469-71, 628-32). Mixon also testified that he was scared and tried to run right after turning around. (R. 501). The fear of the moment, combined with Mixon's intoxication and focus on the gun as opposed to the identity of the shooter, cast doubt on his initial identification of Antrell in the hospital. These factors, and the fact that he explicitly said that he regretted identifying Antrell because he was not sure that was who shot him, make Mixon's identification unreliable.

Tristan Thomas's identification, he admitted, was based on hearsay – Mixon's statement to him on the scene – rather than personal knowledge. (C. 439, 447). Thomas was standing on his porch, facing Tyler and Mixon as they approached the house. (R. 429). He saw the shooter run up to the two of them and fire the gun. (R. 430). He quickly ran up to Mixon, who told him, "It was Trell." (R. 445, 447). At trial, Thomas said the reason he identified Antrell in the photo array was because he knew who Mixon meant when he told him the shooter was "Trell," and he recognized Antrell in the photo array because he was light-skinned. (R. 448). Thomas also made it clear that he felt he was supposed to pick Antrell when confronted with the photo array. (R. 455). He did not want to be at the police station that day, nor was he willingly in court testifying. (R. 434, 449, 455).

Thomas's testimony regarding the appearance of the shooter displays his limited personal knowledge on that point. He stated that he could only see that the shooter was Black with light skin and wearing a black jacket. (R. 431). He could not even tell if the shooter was a man or a woman. (R. 431). Thomas said that the shooter wore a tightly-pulled hoodie, which obscured "his head and a little bit of his mouth." (R. 444, 450). He also admitted that his eyesight was poor and he should probably have glasses. (R. 451-52).

Both Thomas and Mixon acknowledged that they were familiar with Antrell prior to the shooting. (R. 437, 455, 505-06). Antrell's sister has a child with Mixon's brother. (R. 511-12). While prior familiarity is a factor in considering eyewitness reliability, it is not dispositive where the evidence must be considered in its totality. *See Biggers*, 409 U.S. at 199. Further, Thomas explained why he initially incorrectly identified Antrell – he picked Antrell out in a photo array because Antrell was light-skinned and he recognized him as the person Mixon had told him was the shooter. Aside from being based on his friend's (subsequently recanted) opinion, Thomas's testimony implies that he picked Antrell out of the photo array because it was someone he recognized as opposed to based on his own recollection. As for Mixon, he testified that his familial connection with Antrell is not the reason that he could not remember his prior statements at trial. (R. 512). He also acknowledged that he was never sure of his identification, even though he knew Antrell, and that he regretted identifying Antrell despite not being sure. (R. 504, 507-08). Therefore, when considered as one factor within the totality of the circumstances, the fact that Thomas and Mixon were familiar with Antrell is not definitive of

their reliability as eyewitnesses. *See Biggers*, 409 U.S. at 199 (analyzing reliability of eyewitness identification under the totality of the circumstances).

Another of the State's eyewitnesses, Janeese Washington, also had a poor opportunity to view the shooter where she was sitting in the back passenger-side seat in a car parked an estimated 30 feet away from the shooting, which occurred on the driver's side of the car. (R. 520, 550, 566). Her view was partially blocked by the driver's seat and the frame of the car; she testified that she saw the shooting through the front driver's window and the windshield. (R. 568). When Washington heard the gunshots, she "scooted" back into her seat, further impacting her ability to get a good look at the shooter, because she did not want to be seen from the street. (R. 571). Washington also said that she was not sure what the shooter was wearing besides a "dark baseball cap" and white pants because the shooting happened quickly. (R. 572-73). It defies logic that she could not ascertain what he wore on top but was able to describe the skin tone, nose, and mouth despite the partial covering of his hat or hoodie. (R. 572-75).

Even when Washington identified Antrell in the photo array, she said, "I *think* he's the one that shot those two boys, he has the same mouth and nose," expressing some uncertainty at a time much closer to the shooting than the trial was. (R. 574-75, emphasis added). She also admitted when she made that initial identification that she could not see the shooter's eyes because of his cap. (R. 575). This undermines her testimony that she would "never forget" the shooter's face – she barely saw the shooter's face to begin with. (R. 577). Washington's photo array identification was not tested any further with the administration of a live

lineup. Because Washington had such a poor view of the shooter, her identification was unreliable.

The testimony of these witnesses was also undermined by another of the State's witnesses, Robert Laster. Laster was sitting on the side of the car that was closest to the street, and had an unobstructed view of the shooting through his own rear passenger window, as opposed to Washington, who was on the other side of the car with obstructions in her line of sight. (R. 517, 529, 566, 568). Indeed, Laster told one of the responding officers that he had gotten "a pretty good look at the guy," believing he could identify the shooter. (R. 529, 535). Laster, however, could not identify anyone in the photo array, in which Antrell was depicted. (R. 521, 539-40). Further, when brought in to view a live lineup a few days later, Laster identified someone other than Antrell. (R. 539-40, 543-46). Laster believed he had gotten a good enough look to identify the shooter, was sitting closer to the scene of the shooting with fewer obstructions, and he identified someone besides Antrell. Laster had an unquestionably better opportunity to view the shooting yet did not identify Antrell, thus casting doubt on the reliability of Washington's more suspect identification.

Additionally, these witnesses' accounts contain a multitude of contradictions. Mixon testified that the shooter was about one foot behind him and Tyler when the shots were fired (R. 469-70), yet Thomas testified that the shooter was seven or eight feet away from the two boys (R. 430), Laster testified that the shooter was about 20 feet away from Tyler and Mixon (R. 533), and the medical examiner only testified that the shooting was not done at close range (R. 628).

None of the witnesses gave similar physical descriptions. Thomas said that the shooter's face was not visible, namely, he had a hoodie "pulled tight," partially covering his face, including his head and mouth. (R. 444, 450).Washington, on the other hand, testified that the shooter was wearing a baseball hat which left the bottom portion of his face exposed. (R. 574-75). Washington also told police officers, when viewing the photo array, that the shooter had "just about" the same hair as Antrell, though, again, she said he was wearing a hat. (R. 574-75, 557). Laster testified that the shooter was wearing white pants, a black bomber jacket, and a black hat, but did not specify what type. (R. 519). Based on these descriptions, the shooter was wearing white pants, could have been wearing either a baseball hat or a hoodie, his mouth and nose were either covered or the only thing visible, his hair was either partially obscured or completely obscured, and he was somewhere between one and twenty feet away from Tyler and Mixon when he fired the gun. The witnesses' descriptions of the shooter are incompatible.

Finally, there was no physical evidence presented against Antrell. A gun recovered months later by Riverdale police officers fired the bullets from this shooting, but could not in any way be tied to Antrell. (R. 699, 721-22). There was no DNA or GSR evidence to indicate that Antrell was at the scene or had recently fired a gun. Also, Antrell presented the testimony of an alibi witness at trial, Kennedi Myles, an ex-girlfriend, who said that Antrell was with her at Antrell's grandmother's house on the night of the shooting. (R. 777-90). In light of the witnesses' recantations, inconsistencies, and the lack of any other direct evidence against Antrell, the appellate court correctly held that the State's evidence was

insufficient to sustain Antrell's conviction beyond a reasonable doubt.

The State misconstrues the appellate court's opinion, claiming that the appellate court considered the *Biggers* factors (which, as set forth in Argument II, are entirely appropriate) to the exclusion of all else. (St. Br. 33-34). This is untrue. The appellate court explicitly enumerated several other relevant factors to be applied, in addition to the "incomplete" *Biggers* factors, to review of eyewitness identification. *Johnson*, 2024 IL App (1st) 220494, ¶¶ 75-76 (listing physical and mental health, memory issues, intoxication, *inter alia*, as impacting reliability). Indeed, the court explicitly acknowledged the fallibility of one of the *Biggers* factors – witness certainty – which has been criticized by scholars and courts alike. *Id.* at ¶ 53.

The State also points to the appellate court's statement that "*Biggers* contains no exception for eyewitness familiarity," as if to suggest that the appellate court refused to consider the fact that Thomas and Mixon knew Antrell. (St. Br. 33-34); *Johnson*, 2024 IL App (1st) 220494, ¶ 89. However, the appellate court was simply stating the truth – eyewitness familiarity is not among the *Biggers* factors. The appellate court goes on to say that Thomas and Mixon's prior familiarity with Antrell, on its own, did not entirely resolve the question of reliability. *Johnson*, 2024 IL App (1st) 220494, ¶¶ 65-67, 89. It found that Thomas and Mixon's prior acquaintance with Antrell did not make up for the fact that they gave no physical description of the shooter, which meant that there was not sufficient evidence for the jury to determine whether their initial identifications were reliable at trial. *Johnson*, 2024 IL App (1st) 220494, ¶¶ 65-67, 89. Because the State disagrees

with that conclusion, it argues that the appellate court abused its use of the *Biggers* factors. (St. Br. 34). However, the appellate court considered the fact that Mixon and Thomas knew Antrell, it just did so in context of the other evidence presented. *Johnson*, 2024 IL App (1st) 220494, ¶ 89.

The hearsay, recantations, and inconsistencies among the four witnesses, and even inconsistencies within their own descriptions and identifications, cannot be ignored. Even viewing this evidence in a favorable light to the State, none of these eyewitnesses provide a confident and reliable identification that proves beyond a reasonable doubt that Antrell was the shooter. This Court should not gloss over these inconsistencies, simply to provide a "rubber stamp" to the findings of Antrell's jury. *See People v. Hernandez*, 312 Ill.App.3d 1032, 1037 (1st Dist. 2000); *People v. Vasquez*, 233 Ill.App.3d 517, 527 (2d Dist. 1992).

Because the State did not provide sufficient evidence to prove Antrell guilty beyond a reasonable doubt, this Court should affirm the appellate court.

II. The appellate court appropriately applied the *Biggers* and other relevant factors as a tool to assess the reliability of eyewitness testimony and the sufficiency of evidence. The court also did not err in considering scholarly persuasive authorities, nor in briefly considering the jury's split verdict.

The State argues that the eyewitness identification factors outlined in *Neil v. Biggers*, 409 U.S. 188 (1972), are inapplicable to appellate review of sufficiency of the evidence, and, to the extent that they may be used, the State argues the appellate court erred in how it applied those factors in this case. (St. Br. 27-37). The State further takes issue with the appellate court's citations to academic literature and its reference to the jury's split verdict. (St. Br. 37-41). The State

is estopped from issuing a challenge to use of the *Biggers* factors by the appellate court because it contradicts its argument on direct appeal. Moreover, resolution of the State's allegations are not necessary to the disposition of this appeal, which concerns the sufficiency of the evidence. As such, this Court should not address them. *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 348 (2022)(Roberts, C.J., concurring)("[A] simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more.")(emphasis in original). Nevertheless, if this Court decides to engage with these issues, the State is incorrect in its assessment of the appellate court's opinion and this Court should affirm.

A. The State's claim that the *Biggers* factors are inapplicable to appellate review of a sufficiency claim is directly contrary to its position below and should therefore be estopped. Further, the resolution of this issue is not necessary to the disposition of this appeal.

As an initial matter, the State should be estopped from arguing that the *Biggers* factors are not to be used in a sufficiency analysis on appeal because of its contradictory stance in the appellate court. In its response brief in the appellate court, the State took issue with Antrell's "failure" to singularly rely upon the *Biggers* factors in his opening brief:

> Defendant's attempt to analyze the issue of eyewitness credibility using *Lerma* is incorrect, and the People refrain from doing the same, relying instead on the well-settled and widely recognized factors under *Biggers*.
> (App. Ct. Res. Brief, p. 31).

The State argued throughout its brief that the *Biggers* factors favored its position that the eyewitness identifications were reliable. (App. Ct. Res. Brief, p. 25-26,

27-28). Now, the State argues for the first time in this Court that the *Biggers* factors do not apply to appellate review of the reliability of eyewitness testimony, such that reversal is required. (St. Br. 25-32). However, "[a] party may not request to proceed in one manner and then later contend on appeal that the requested course of action was in error." *People v. Denson*, 2014 IL 116231, ¶ 17 (rejecting a State argument that an issue was forfeited on appeal for lack of contemporaneous objection at trial, when the State litigated the issue in a pre-trial motion to avoid the disruption of a defense objection at trial); *see also People v. Wells*, 182 Ill.2d 471, 490 (1998) (State estopped from making laches argument on appeal where State never asserted doctrine until case reached Supreme Court). In other words, the State invited what it now alleges is error – that it was improper for the appellate court to use the *Biggers* factors framework in a sufficiency analysis when it argued that Antrell's argument, that did not exclusively rely on the *Biggers* factors, was improper. Further, the State's reliance on the *Biggers* factors on direct appeal are an indication that they *are* a helpful tool to analyze reliability within the sufficiency context, even viewing the evidence in the light most favorable to the State.

In any event, this Court need not consider this issue to resolve this appeal, which, as argued in Issue I, centers on whether the State proved Antrell guilty beyond a reasonable doubt based upon the eyewitness testimony it presented. This Court need not examine, much less depart from, using the *Biggers* factors in a sufficiency context, particularly where reliance on these "well-settled, widely recognized" factors has been a regular practice for Illinois courts for decades. (See

App. Ct. Res. Br. p. 31)*; see infra*, p. 23-25; *see Dobbs*, 597 U.S. at 348 (Roberts, C.J., concurring). Therefore, this Court should reject the State's argument that the *Biggers* factors should not be used in the sufficiency context because it contradicts the State's prior position and because it is not necessary to the resolution of this appeal.

B. Illinois courts have long used the considerations outlined in *Biggers* to analyze the reliability of eyewitness testimony for its sufficiency, though the factors are nonexhaustive and evolving.

The State seeks to dismantle a helpful tool that Illinois courts have long applied to analyze the sufficiency of eyewitness identification testimony. This Court should decline to do so. It is true, the factors outlined in *Biggers* were originally enunciated in the context of reviewing the admissibility of tainted identifications. *Biggers*, 409 U.S. at 198-99. However, long before the United States Supreme Court explicitly outlined those factors in *Biggers*, this Court routinely used those same common-sense considerations to analyze the reliability of eyewitness identification testimony in sufficiency challenges. *See, e.g., People v. Williams*, 28 Ill.2d 53, 54-55 (1963)(considering the distance between the witness and the subject); *People v. Brown*, 16 Ill.2d 482, 485 (1959) (citing the witness's opportunity to view the subject and the level of detail in the original description); *People v. Duval*, 361 Ill. 496, 497-98 (1935)(considering the close contact the witness had with the subject); *People v. Gerdy*, 362 Ill. 130, 135 (1935)(considering the detail of the eyewitness's description and opportunity to view the subject); *People v. Nehrkorn*, 305 Ill. 467, 473-74 (1922)(considering the length of time the witness had to view the subject). It was then a natural transition for this Court to explicitly

adopt the *Biggers* factors in a sufficiency context, in *People v. Slim*, 127 Ill.2d 302, 307-08 (1989), because it had already been doing so for decades.

The appellate court has since followed this Court's lead, routinely applying *Biggers* factors to sufficiency analyses. *See, e.g., People v. Davidson*, 2024 IL App (1st) 221269-U (recognizing that the *Biggers* factors were originally used to consider the likelihood of misidentification after a suggestive confrontation but have been used to evaluate the reliability of witness identification testimony absent a suggestive confrontation); *People v. Carini,* 254 Ill.App.3d 1, 9 (2d Dist. 1993)(citing *Slim* and applying the *Biggers* factors to a sufficiency analysis); *People v. Crespo*, 2024 IL App (3d) 230311-U, ¶¶ 13-17 (same); *People v. Standley*, 364 Ill.App.3d 1008, 1014-15 (4th Dist. 2006)(same); *People v. Phillips*, 2015 IL App (5th) 130093-U, ¶ 10 (same). Thus, the State's new claim that the *Biggers* factors (however labeled) do not apply to sufficiency analyses goes against over 100 years of Illinois precedent.

This evolution, both in the contexts in which the factors have been used, the weight the individual factors carry, and what other factors are considered alongside them, show how the use of *Biggers* factors are less about the factors themselves and more about providing reviewing courts with a useful tool for analyzing the reliability of eyewitness testimony. Therefore, an analysis employing the *Biggers* factors should be based on common sense, society's increased understanding of memory recall, and science-backed research. Ultimately, that is what the appellate court did here, as discussed below.

But *Biggers* factors are useful not only on review – indeed, as the State concedes in its own brief – juries are required to consider these factors in analyzing

eyewitness identification testimony. Illinois Pattern Jury Instructions, Criminal, No. 3.15 (listing five factors outlined in *Biggers* and, in the committee note, recognizing the factors as "well-established," citing U.S. Supreme Court cases and *Slim*); *see Slim*, 127 Ill.2d at 307-08; (St. Br. 30, 33). On appeal, a reviewing court is asked to analyze that evidence on that same basis, though of course, under a different standard. Still, the factors and their applications to a sufficiency analysis remains the same. Illinois caselaw and trial practices show how the *Biggers* factors have long provided a helpful framework for analyzing eyewitness testimony for juries and courts alike.

C. The State's position that the *Biggers* factors should only be used in the admissibility context is incorrect and untenable.

In its brief, the State cannot explain why the reliability factors outlined in *Biggers* should be limited to determining admissibility when the reliability of the identifications is also relevant to whether the evidence is sufficient. Indeed, the State concedes in its own brief that the *Biggers* factors are relevant to a sufficiency analysis. (St. Br. 33)("To be sure, the five factors enumerated in *Biggers* are relevant to the factfinder's evaluation of an eyewitness identification that has been admitted into evidence.") The State iterates no reason why the factors would be relevant to a fact-finder at trial, but barred from use by the reviewing court on appeal.

The State cites to *People v. Brooks,* 187 Ill.2d 91 (1999), to support its contention that this Court does not endorse the use of the *Biggers* factors in a sufficiency claim (St. Br. 29). In *Brooks*, the defendant challenged the reliability of some eyewitness testimony, citing "suggestiveness of the identification procedures"

as well as lack of opportunity to view the offenders, lapse of time between the offense and the identifications, and pressure to make an identification. *Id.* at 134. This Court recommended that "these arguments are better directed toward the admissibility of the statements, " reflecting its view that the sufficiency was an attempt to argue a suppression issue the Court had previously found to be waived. *Brooks* does not cite *Biggers* at all, much less hold that the reliability factors may never be applied in a sufficiency analysis. To do so would have overruled *Slim*, (which *Brooks* does not purport to do), because this Court explicitly incorporated the *Biggers* factors as a tool in the sufficiency context. *Slim*, 127 Ill.2d at 307-08.

The State does not explain why *Brooks* controls over *Slim,* which Illinois courts have followed for decades. Indeed, this Court has used the *Biggers* factors as a tool to determine eyewitness testimony sufficiency post-*Slim*. *See e.g., People v. Holmes*, 141 Ill.2d 204, 239-240 (1990); *see also People v. Herrett*, 137 Ill.2d 195, 203-04 (1990). The appellate court has followed suit. *See citations supra*, p. 24. *Brooks* did nothing to change that framework, and thus, does not require the abandonment of the use of the *Biggers* factors in a sufficiency context.

Further, the State offers no alternative framework for appellate analysis of eyewitness identification testimony in the sufficiency context. The State contends that reviewing courts must only look to the standard of review outlined in *Jackson v. Virginia*. (St. Br. 32). But a standard of review does not a legal framework make. It is not a set of guidelines (e.g., opportunity to view, lapse of time from event to identification) that assists courts in determining the reliability of eyewitness testimony. In any event, Illinois reviewing courts have applied the *Biggers* factors

under the *Jackson* standard of review for decades. *See, e.g., Carini,* 254 Ill.App.3d at 9-10 (applying both the deferential *Jackson* standard to an analysis of the sufficiency of evidence using the *Biggers* factors). Still, as here, a reviewing court may find the eyewitness testimony so unreliable that, even viewing the evidence in the light most favorable to the State, there was not sufficient evidence to sustain a conviction. *Johnson*, 2024 IL App (1st) 220494, ¶ 62; *see also In re O.F.* 2020 IL App (1st) 190662, ¶ 56 (finding the eyewitness testimony so "unreasonable, improbable, and unsatisfactory that it justifies a reasonable doubt," after analyzing the testimony using the *Biggers* factors); *People v. Powell*, 2021 IL App (1st) 181745, ¶¶ 49-50 (after analyzing eyewitness testimony using the *Biggers* factors, finding that the evidence lacked "the probative force necessary for the trier of fact to conclude beyond a reasonable doubt" that the defendant was guilty).

Barring use of the *Biggers* factors, would, in practice, eviscerate appellate review of eyewitness testimony. Reviewing courts would become a rubber stamp for fact-finders at trial, without the ability to review the reasonableness of their conclusions. The State's position is essentially that reviewing courts should not consider whether an eyewitness viewed the offender for one second or ten or whether the incident happened at noon or midnight. According to the State, a reviewing court should not consider whether a witness was under the influence, how capable the witness is of seeing long distances, or how much time passed between the offense and the identification. If a reviewing court cannot consider how reliable an eyewitness's testimony is, particularly in a case like Antrell's where that was the only evidence presented against him, there would be no backstop for an unreasonable

fact-finder at trial. The State offers no practical rule to avoid that outcome, arguing only that the *Biggers* factors should not be applied. But a defendant must have a right to meaningfully challenge the evidence against him, even on appeal.

Moreover, there is no practical difference between analyzing reliability for admissibility versus sufficiency. The State contends that the *Biggers* factors can be applied only by trial courts to assess whether an eyewitness identification is reliable and therefore admissible. (St. Br. 28). The State gives no reason as to why those same factors cannot be applied in the sufficiency context on appeal. A trial court tasked with determining whether an identification is admissible must determine if the identification was made under such circumstances that it could still be reliable, despite the taint of police misconduct. *Biggers*, 409 U.S. at 199. A reviewing court must also determine the reliability of eyewitness testimony evidence on direct appeal in a case raising a challenge to the sufficiency of the evidence. *See People v. Thompson*, 2020 IL App (1st) 171265, ¶ 42 ("[I]dentification evidence that is vague or doubtful is insufficient to support a conviction.") At the heart of both inquiries is whether the identifications were reliable and the *Biggers* factors are a helpful tool in that inquiry.

The difference between the two uses (admissibility versus sufficiency) is only a matter of degree. An eyewitness identification, whether or not it was tainted by police misconduct, may be admissible but not be sufficient to sustain a conviction beyond a reasonable doubt. The State does not answer why the trial court's use of the *Biggers* factors in the context of admissibility must preclude a reviewing court from using the same factors to assess whether the admitted eyewitness

testimony was sufficient evidence to sustain a conviction.

Indeed, the State acknowledges that the *Biggers* factors have been used in another context – to determine whether evidence was closely balanced under a plain error review. (St. Br. 31). In a footnote, the State claims that reviewing evidence to determine whether it is closely balanced is "not the same" as reviewing evidence for its sufficiency, without an explanation as to why such a distinction matters. (St. Br. 31). The practical difference is nonexistent. The two analyses are different in that they are reviewed under a different standard (and to different ends), but the State does not articulate a reason why that distinction would preclude a reviewing court from using the *Biggers* factors in both contexts. If anything, the fact that courts use the *Biggers* factors to assess whether the evidence is closely balanced supports Antrell's position that these considerations are equally applicable when assessing the sufficiency of the evidence.

In sum, the State's argument that the *Biggers* factors can only be applied in an admissibility analysis and not in the context of a review for sufficiency is forfeited, contradicts well-established Illinois caselaw, is impractical, and lacks substantive reasoning. Should this Court elect to consider the issue, this Court should affirm the continued use of the *Biggers* factors as a tool for reviewing courts to analyze the sufficiency of eyewitness identification testimony.

D. The appellate court's use of secondary sources was not an abuse of discretion.

The State argues that the appellate court's references to academic articles amounted to improper judicial notice of new evidentiary material. (St. Br. 37). But the appellate court did not take judicial notice of any evidentiary facts; rather, it appropriately used the academic articles as persuasive authority to explain its reasoning. Therefore, this Court should affirm.

As an initial matter, once again, resolution of this issue is not necessary to the disposition of this appeal. *Italia Foods, Inc. v. Sun Tours, Inc.,* 2011 IL 110350, ¶ 41 ("Generally, Illinois courts do not decide ... or consider issues where the result will not be affected regardless of how those issues are decided.") The State exaggerates the appellate court's reliance on academic articles. The appellate court cited academic articles, not to establish any new facts on appeal, rather, they were used as persuasive authority that assisted the appellate court in explaining its reasoning. (See *infra*, pg. 32). The appellate court cited six academic articles, most of which discuss well-researched phenomena related to eyewitnesses identification – e.g., weapons focus, increasing skepticism of confidence as reflective of accuracy, own-race identification bias, and additional non-*Biggers* factors (including intoxication, concealing clothing, physical/mental health) – that bear on the reliability of eyewitness identification testimony. *Johnson*, 2024 IL App (1st) 220494, ¶¶ 33, 53, 68, 72, 76, 91-92; *see Young v. State*, 374 P.3d 395, 414-15 (Alaska 2016)(Alaska Supreme Court recognizing that research regarding eyewitness reliability has evolved over decades and acknowledging the "scientific consensus" regarding these advances). The language and reasoning from the appellate court's

opinion that pulls from academic articles, particularly in relation to its application of the *Biggers* factors, could be excised and the appellate court's ultimate judgment could still stand. As such, this Court is not required to resolve this issue as a part of this appeal.

Regardless, a secondary source can be used to explain the law, direct to primary law, or serve as persuasive authority. *People v. Paranto*, 2020 IL App (3d) 160719, ¶ 21 (citing *Tilschner v. Spangler*, 409 Ill.App.3d 988, 994, n.2 (2d Dist. 2011)). While *parties* may not cite secondary sources to "introduce substantive evidence to establish the necessary scientific facts," a reviewing court is the backstop for determining whether secondary authorities should be considered. *Id.*; *see In re M.M.*, 156 Ill.2d 53, 56 (1993)(Supreme Court Rule 341 does not restrict the types of material which may be cited in support of an argument, and "whether the authority cited may be non-precedential, irrelevant, or incomplete will be determined by the reviewing court as a proper consideration in assessing the merits of a proponent's brief."); *see also in re Marriage of Cotton*, 103 Ill.2d 346, 358-59 (1984)(using academic literature to ascertain whether a change in a custody decree was against the manifest weight of the evidence); *see also People v. Bush*, 2023 IL 128747, ¶ 61 (considering an academic article as persuasive authority in deciding whether a rap video was admissible evidence); *see also Young*, 374 P.3d at 414-15 (relying on scientific research presented on appeal to reevaluate test for admissibility of eyewitness testimony). It follows, then, that the appellate court's citations to academic secondary sources are presumed to be considered for proper purposes. There is a distinction, which the State ignores, between what a party in an appeal

is allowed to do, versus what a reviewing court is allowed to do.

The appellate court did not err in citing to relevant legal and scientific articles. The State's characterization of the appellate court's actions as judicial notice is incorrect. (St. Br. 37). The appellate court did not take judicial notice of facts or conclusions made in the articles, rather, it cited to them as additional persuasive authority. *Johnson*, 2024 IL App (1st) 240443, ¶ 33 (citing to a case and a research article discussing the dangers of weapons focus), ¶ 53 (citing research showing that mistaken witness identifications are often a part of DNA-exoneration cases), ¶ 68 (citing research that notes that people are better at recognizing features of people of the same race as themselves), ¶ 72 (citing a study that showed that judges are susceptible to cognitive biases), ¶ 76 (citing a study that noted that the *Biggers* factors relied on complicated psychological issues), ¶¶ 91-92 (citing a study that showed that there have been wrongful convictions involving an eyewitness with prior familiarity with the suspect, and that an eyewitness's prior familiarity does not make the other factors less relevant). But the appellate court's citations to these authorities did not rise to the level of judicial notice of an evidentiary fact because the court never cited to an article as a dispositive authority that would establish any one particular fact as true. *Id.*; *see People v. Davis,* 65 Ill.2d 157, 161 (1976)(judicial notice can be taken of *facts* that are based upon sources of indisputable accuracy). The court cited to scientifically-backed articles as persuasive authority to inform why the inferences made by the jury concerning particular aspects of the eyewitness testimony were unreasonable despite the counterintuitive nature of the reasoning. The appellate court was not using the articles to establish

any particular facts, rather, the court was citing persuasive authorities as an explanation as to its reasoning and ultimate decision that the fact-finders were unreasonable in finding Antrell guilty based on the unreliability of the eyewitness testimony. *See Paranto*, 2020 IL App (3d) 160719, ¶ 21.

Because the appellate court did not take judicial notice of the academic articles it cited in its opinion, nor use them for anything beyond persuasive authority, this Court should affirm.

E. The appellate court's consideration of the split jury verdict was not a violation of the Supremacy Clause.

The jury convicted Antrell of first degree murder, but acquitted him of attempt murder. The appellate court wrote that the jury's split verdict "signals potential doubts about the reliability of the evidence and the credibility of the witnesses." *Johnson*, 2024 IL App (1st) 220494, ¶ 99. According to the State, this simple observation violated the Supremacy Clause. (St. Br. 39-41).

This issue was not raised in the State's petition for leave to appeal, and is therefore forfeited. Forfeiture rules apply to all parties appearing before this Court. *People v. Harris*, 2024 IL 129753, ¶ 63 (noting that forfeiture rules apply to the State and the defendant). Because the State did not include an issue regarding the consideration of the jury's verdict in its petition for leave to appeal, this Court may, and should, disregard the State's argument on this matter. *See People v. Collins*, 2022 IL 127584, ¶ 23 (dismissing State appeal when the State did not argue a threshold question from its petition for leave to appeal).

Further, a determination of whether the appellate court improperly considered the jury's split verdict is not necessary to a resolution of this case. The appellate

court, in one paragraph out of over one hundred, referred to the jury's split verdict as an indication that the jury was not fully convinced by the State's evidence. *Johnson*, 2024 IL App (1st) 220494, ¶ 99. This Court need not engage in whether the appellate court's consideration of the jury's split verdict was relevant to the inquiry of the sufficiency of the evidence, particularly where the issue was not raised in the State's petition for leave to appeal. See *Dobbs*, 597 U.S. at 348 (Roberts, C.J., concurring)("If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more.")(emphasis in original).

Even on its merits, however, the State's argument is frivolous. The State argues that the appellate court violated the Supremacy Clause by considering the fact that the jury acquitted Antrell of the attempted murder of Mixon but found him guilty of the first-degree murder of Tyler to support the notion that the jury entertained some doubts about the State's proof. (St. Br. 39-40). According to the State, the appellate court ran afoul of *United States v. Powell,* 469 U.S. 57 (1984) in reaching this conclusion. (St. Br. 39). However, *Powell* held only that inconsistent verdicts are generally allowed to stand, even if the jury's verdict cannot rationally be reconciled. *Powell,* 469 U.S. at 65-66. Indeed, the *Powell* Court reiterated that the independent review of the sufficiency of the evidence by an appellate court is a safeguard against an irrational jury verdict. *Id.* at 67. Here, the appellate court did not hold that the jury's split verdict required the *vacatur* of Antrell's murder conviction. Rather, the appellate court rationally observed that the acquittal was a reflection of the jury's uncertainty regarding the State's evidence. *Johnson*, 2024 IL App (1st) 220494, ¶ 99.

For the reasons stated above, the eyewitness identifications presented at trial were unreliable and inconsistent. Because there was no other evidence presented against Antrell at trial, the evidence was insufficient to sustain his conviction. The remaining issues raised by the State are unnecessary to the resolution of this appeal and are, in large part, forfeited, particularly the claim related to appellate use of the *Biggers* factors, which is directly contrary to its position in the appellate court. This Court should therefore decline to consider the State's arguments on those issues. Should this Court decide to consider the State's claims, it should reaffirm *Slim,* 127 Ill.2d 302*,* and hold that the *Biggers* factors may properly be used as a framework for analyzing the sufficiency eyewitness testimony on review. It should likewise hold that the majority did not err by citing to scholarly articles as persuasive authority, nor violate the Supremacy Clause in briefly mentioning the jury's split verdict. Thus, this Court should affirm the judgment of the appellate court.

CONCLUSION

For the foregoing reasons, Antrell Johnson, plaintiff-appellant, respectfully requests that this Court affirm the appellate court's judgment reversing his conviction outright. In the event that this Court vacates the appellate court's opinion and judgment, Antrell respectfully requests that this Court remand with instructions for the appellate court to consider the remaining issue raised in his appellate briefs.

Respectfully submitted,

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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 or words contained in 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, is 36 pages.

/s/Christina Solomon
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No. 131337

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Defendant-Appellee, -vs- ANTRELL JOHNSON, Plaintiff-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-22-0494. There on appeal from the Circuit Court of Cook County, Illinois , No. 17 CR 08698. Honorable Thaddeus L. Wilson, Judge Presiding.

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 November 17, 2025, the Brief and Argument 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 plaintiff-appellant 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 Brief and Argument to the Clerk of the above Court.

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