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

No. 130618

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DAMARCO WATKINS-ROMAINE, Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-23-2479B There on Appeal from the Circuit Court of Cook County, Illinois, No. 23 CR 10584-01 The Honorable Mary Margaret Brosnahan, Judge Presiding

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ARGUMENT

Defendant forfeited his claim that the People's petition, filed in response to defendant's petition to reopen the conditions of his release and secure his release from pretrial custody, was untimely. And given that the appellate districts are split on the issue of statutory construction presented by this case, defendant cannot establish that the alleged error is clear or obvious, and thus his invocation of the plain-error rule to excuse his forfeiture fails at the threshold.

Moreover, because defendant invokes the second prong (and only the second prong) of the plain-error rule, he must further demonstrate that the asserted error is structural — that is, a fundamental constitutional error that undermines the integrity of the judicial process and defies harmless error analysis. The circuit court's alleged error — treating the People's response to defendant's subsection 110-7.5(b) petition as a petition under section 110-6.1 of the Act rather than under section 110-6 — is not such an error, as it did not affect defendant's constitutional right to a pretrial detention hearing (which defendant received), undermine the integrity of the judicial process, or defy harmless error analysis.

Even if defendant's claim was reviewable under the plain-error rule, it would fail on the merits because the People's filing was timely for two reasons, as demonstrated in the People's opening brief. First, once a detained defendant files a subsection 110-7.5(b) petition to reopen the conditions of his

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release and secure his release from pretrial custody, the People may respond by arguing that the defendant does not satisfy the Act's criteria for release, and therefore that the circuit court should "add or increase conditions of pretrial release" without limitation, 725 ILCS 5/110-6(g), up to and including the denial of pretrial release, *id*. § 110-6(i). Additionally, for the narrow class of defendants who were granted conditional release subject to payment of monetary bail before the Act's effective date and who later seek relief from that condition under the Act, the People may file a petition to deny pretrial release at the defendant's "first appearance before a judge" following the Act's effective date. *Id*. § 110-6.1(c).

The appellate court's contrary interpretation of the Act as barring the People from responding to a subsection 110-7.5(b) petition under circumstances like those here by opposing pretrial release would undermine the General Assembly's intent and would lead to absurd results because it would require circuit courts to release defendants who do not meet the Act's criteria for pretrial release. Accordingly, the Court should reverse the appellate court's judgment.

I. Defendant Forfeited His Claim that the People's Petition to Continue His Detention was Untimely, and the Claim Is Not Subject to Review as Second-Prong Plain Error.

A. Defendant forfeited his claim that the People's petition was untimely.

As an initial matter, defendant forfeited his claim that the People's petition was untimely twice over: first by not objecting to the People's

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petition on timeliness grounds in the circuit court, and again by failing to raise the issue in his notice of appeal. "To preserve an issue for review, a defendant must object at trial and raise the alleged error in a written posttrial motion." *People v. Reese*, 2017 IL 120011, ¶ 60 (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). Failure to take both steps forfeits any review of the error. *People v. Jackson*, 2022 IL 127256, ¶ 15; *Reese*, 2017 IL 120011, ¶ 60. This longstanding rule is necessary to preserve judicial resources — by allowing the circuit court to correct the error — and to discourage criminal defendants from knowingly allowing an erroneous proceeding to go forward in the hopes of securing reversal on appeal. *Jackson*, 2022 IL 127256, ¶ 15.

That forfeiture is a limitation on the parties, rather than the courts, *see* Def. Br. 30-31,[1] does not vitiate defendant's forfeiture, but merely permits *this* Court to overlook it. The maxim that forfeiture is a limitation on the parties, not the court, refers to this Court, which has supervisory authority to overlook a forfeiture when necessary to ensure "a just result" and maintain "a sound and uniform body of precedent." *Vill. of Lake Villa v. Stokavich*, 211 Ill. 2d 106, 121 (2004); *see also People v. Custer*, 2019 IL 123339, ¶ 19. Thus, defendant's argument is not that he preserved his claim, but that his forfeiture should be excused. It should not, for while *this* Court may excuse

[1] Citations to the People's opening brief, the appendix to the People's opening brief, and defendant's appellee brief appear as "Peo. Br. __," "A __," and "Def. Br. __," respectively.

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forfeiture whenever it determines that justice so requires under Rule 615(a), the appellate court may excuse forfeiture in the interest of justice only when an error constitutes plain error. *See People v. Whitfield*, 228 Ill. 2d 502, 521 (2007) (appellate court lacks supervisory authority and cannot disregard Rule 615 "in a misguided attempt to reach a 'fair' outcome"). And as explained in the People's opening brief, *see* Peo. Br. 26-37, and below, *see infra* Section I(B) & (C), because defendant cannot demonstrate plain error, the appellate court erred in excusing defendant's forfeiture as second-prong plain error.

B. The asserted error was not clear or obvious, as necessary to excuse forfeiture under the plain-error rule.

Defendant cannot excuse his forfeiture as plain error. "The first analytical step under the plain error rule is to determine whether there was a clear or obvious error." *People v. Moon*, 2022 IL 125959, ¶ 22; *see also Jackson*, 2022 IL 127256, ¶ 21 ("When a defendant invokes the plain error rule, the first step in the analysis is to determine whether a clear or obvious error occurred."). Rather than engaging with this well-established principle, defendant wrongly asserts that determining whether there was a clear or obvious error "adds unnecessary and unprecedented restrictions" on the plain-error rule. Def. Br. 35. In defendant's view, the cases establishing that an error must be clear or obvious to constitute plain error "add superfluous interpretations of the plain error doctrine." *Id.* at 37. But this Court's cases firmly establish that a clear or obvious error is the threshold requirement to excuse forfeiture under the plain-error rule, *Moon*, 2022 IL 125959, ¶ 22;

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Jackson, 2022 IL 127256, ¶ 21, and defendant offers no basis to depart from the settled rule. *See People v. Colon*, 225 Ill. 2d 125, 146 (2007) (any departure from *stare decisis* must be "specially justified").

Defendant's alternative argument that the circuit court's consideration of the People's petition *was* clear or obvious error ignores the split in authority on a disputed issue of statutory interpretation. Def. Br. 37-38 (arguing that appellate court below "essentially indicated there was no true 'split' in authority" because the cases holding that the People's petition was timely under these circumstances were either wrongly decided or distinguishable). Defendant's argument confuses both the nature of a split in authority and the relevance of a split for purposes of the plain-error rule.

Lower courts are split when they disagree about how to resolve a legal question, or when the state of the law on that question is uncertain. *See* Peo. Br. 28-29 (citing cases). Here, numerous appellate decisions have held that the People's petition to continue a defendant's detention in circumstances like those here was timely under the Act, either as a responsive petition authorized under subsections 110-6(g) and 110-6(i), as a section 110-6.1 petition, or as both. *Id*. at 29-30 (gathering cases). To be sure, other lower courts, such as the appellate court below, have concluded that such a filing is untimely. *See* A16-17, ¶ 53. But that disagreement merely demonstrates that the appellate panels and districts are divided on a disputed issue of statutory interpretation. *See, e.g.*, T. Cummins & A. Aft, *Appellate Review*, 2

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J.L.: Periodical Laboratory of Leg. Scholarship 59, 60 (2012) (split exists where one appellate court has decided a case in conflict with the decision of another appellate court).

Where such a split exists, a circuit court cannot possibly commit a clear or obvious error by adopting one side of the divide. *See, e.g.*, *State v. Barnes*, 759 N.E.2d 1240, 1248 (Ohio 2002); *see also* Peo. Br. 28-29 (collecting authority). Defendant's contention that some appellate court panels have incorrectly applied the Act to circumstances like those here does not change the fact that there has been disagreement about how to apply the Act in the present circumstances. Accordingly, defendant cannot show a clear or obvious error occurred, as is necessary to excuse his forfeiture under the plain-error rule.

C. The asserted error does not satisfy the second-prong plain error standard because it is not akin to structural error.

Even if the circuit court committed clear or obvious error by permitting the People to file a petition in response to defendant's petition and by considering the People's petition, Def. Br. 39-40, it is not second-prong plain error because it is not akin to structural error — that is, it is not a fundamental constitutional error that undermines the integrity of the judicial process and defies harmless error analysis. *See Jackson*, 2022 IL 127256, ¶¶ 26-30, 53, 67; *Moon*, 2022 IL 125959, ¶¶ 26-30.

The alleged error is not structural because (1) it is not a fundamental constitutional error, (2) it does not affect the integrity of the judicial process,

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and (3) it is amenable to harmless error analysis. First, the alleged error is not of constitutional dimension because it does not affect the only constitutional right at issue — the right to a hearing to determine whether the Act's substantive standards for denying pretrial release were satisfied. *See* Ill. Const. 1970, art. I, § 9; *People v. Presley*, 2023 IL App (5th) 230970, ¶¶ 41-42 ("The due process right provided by the Illinois Constitution is the right to a hearing to determine whether pretrial release is proper."). Defendant does not dispute that he received such a hearing. And defendant's assertion that he was not heard "at a meaningful time and in a meaningful manner," Def. Br. 41, is meritless. After defendant filed his petition for release and the People filed their response, the circuit court conducted a hearing. R2-34. At that hearing, the circuit court heard and evaluated defendant's arguments in favor of release,[2] found them unavailing, and denied defendant's petition. *See* R26-31. Due process required nothing more.

Second, the circuit court's alleged error did not affect the integrity of the judicial process. Beyond a conclusory statement, *see* Def. Br. 40, defendant offers no explanation of how the judicial system's integrity is harmed by the commonsense proposition that the People may oppose a detained defendant's petition for pretrial release. Thus, defendant fails to

[2] Although the circuit court heard and considered defendant's arguments in favor of pretrial release, defendant's failure to argue that the People's petition was untimely denied the People an opportunity to argue, and the circuit court to consider, that contention, resulting in forfeiture. *See supra* Section I(A).

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satisfy his burden of persuasion to establish plain error. *See Moon*, 2022 IL 125959, ¶ 20 (burden of persuasion remains with defendant under plain-error rule, once forfeiture is found); *People v. Herron*, 215 Ill. 2d 167, 187 (2005) (same).

Finally, the alleged error is not structural because it is amenable to harmless error review. An error is subject to review for harmlessness so long as a reviewing court "can conclude, by evaluating the record, whether the defendant's [proceedings were] fundamentally fair even though an error . . . occurred." *Jackson*, 2022 IL 127256, ¶ 49. Defendant's contention that the alleged error was not harmless because it was constitutional, Def. Br. 42-43, ignores that even most errors of constitutional dimension — which this alleged error is not — are still amenable to harmless error review. *See* Peo. Br. 36; *People v. Stoecker*, 2020 IL 124807, ¶ 23 ("This court has adhered to a strong presumption that most errors of constitutional dimension are subject to harmless error analysis").

Instead, any error was harmless because the standards for resolving defendant's request for pretrial release are the same under either potentially applicable section of the Act. *See* Peo. Br. 36-37. That is, regardless of whether section 110-6 or section 110-6.1 applied to defendant's petition for pretrial release and the People's response, the Act's criteria for evaluating whether defendant should be released pretrial are substantively identical. The circuit court appears to have resolved the issue under section 110-6.1,

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which asks, among other things, whether the People proved that "no condition or combination of conditions" can mitigate the threat defendant poses to "the safety of any person or persons or the community." 725 ILCS 5/110-6.1(e). It would have been equally appropriate for the circuit court to proceed under section 110-6, which addresses the modification of previously imposed conditions and therefore incorporates the release criteria set forth in section 110-5. That section, in turn, under which defendant's petition arose, requires considering what — if any — pretrial release conditions exist that will reasonably ensure, among other things, "the safety of any other person." *Id.* § 110-5(e); *see also id.* § 110-5(a). Thus, even if the Court were to find that the circuit court proceeded under the wrong section, that error was harmless, and the appellate court erred in excusing defendant's forfeiture as second-prong plain error.

II. The People's Petition for Defendant's Continued Detention was Timely.

Even if this Court were to excuse defendant's forfeiture, the People's petition for defendant's continued detention was timely and authorized for either of two reasons. *See* Peo. Br. 12-22. First, the People's filing was authorized as a responsive petition seeking to "add or increase conditions of pretrial release" without limitation, 725 ILCS 5/110-6(g), up to and including the denial of pretrial release, *id.* § 110-6(i). Second, the People were authorized to file a petition for pretrial detention at defendant's "first appearance before a judge" following the Act's effective date where defendant

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was granted conditional release, subject to payment of monetary bail, before the Act's effective date and then sought relief under the Act. *Id.* § 110-6.1(c). Defendant's arguments otherwise are inconsistent with the Act's text and its purpose.

The Court should reject defendant's interpretation of the Act for the additional reason that it would produce absurd results. Nothing in the Act suggests that the General Assembly intended to prohibit circuit courts from considering whether defendants satisfy the Act's statutory criteria for pretrial release merely because they petition under subsection 110-7.5(b).

A. Defendant's construction of the Act is inconsistent with its text and purpose.

1. Section 110-6 authorized the People's filing and the circuit court's consideration of that filing.

With respect to all defendants charged with detainable offenses, section 5 of the Act directs circuit courts to consider various factors and determine which — if any — conditions of pretrial release will reasonably ensure "the safety of any other person or the community" and defendant's compliance with those conditions. 725 ILCS 5/110-5(a). And a defendant who remains in pretrial detention 48 hours after being ordered released with pretrial conditions is entitled to a hearing where the circuit court will undertake that same inquiry. *Id.* § 110-5(e). Section 110-6 then allows the People to seek revocation of pretrial release or modification of previously imposed conditions by filing a responsive petition asking the circuit court to "add or increase conditions of pretrial release," *id.* § 110-6(g), up to and

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including denial of pretrial release, *id.* § 110-6(i). Relying on the plain language of these provisions, the Third, Fourth, and Fifth Districts have concluded that, in circumstances such as defendant's, "a motion to deny pretrial release following the Act's implementation operates as a motion to increase the pretrial release conditions to the furthest extent" and is therefore authorized under subsections 110-6(g) and 110-6(i). *People v. Jones*, 2023 IL App (4th) 230837, ¶ 17; *People v. Kurzeja*, 2023 IL App (3d) 230434, ¶ 15 (quoting *Jones*, 2023 IL App (4th) 230837, ¶ 17); *accord People v. O'Neal*, 2024 IL App (5th) 231111, ¶¶ 16, 18-19.

This approach is consistent with the Act's purpose as well as its text. The Act abolished monetary bail in favor of a system that permits the People to seek, and the circuit court to order, pretrial detention when the Act's criteria for doing so are satisfied; if the criteria are not satisfied, the circuit court must grant pretrial release subject to conditions that the court deems appropriate. *See Rowe v. Raoul*, 2023 IL 129248, ¶ 5. But circuit courts should not order pretrial release where the People have demonstrated that pretrial detention is needed to protect public safety, and the General Assembly did not intend that the Act be interpreted to require this result. *See* 725 ILCS 5/110-2(e) (instructing that Act should be construed "to effectuate the purpose of relying on pretrial release by nonmonetary means to reasonably ensure" "the protection of the safety of any other person or the community," while simultaneously "authorizing the court, upon motion of a

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prosecutor, to order pretrial detention" when "no condition or combination of conditions can reasonably ensure the effectuation of these goals").

Contrary to defendant's argument then, nothing in section 6, or elsewhere in the Act, contemplates that a defendant is entitled to release from pretrial custody upon filing a petition to reopen the conditions of his release. *See* Def. Br. 9-13. Indeed, as defendant acknowledges, subsection 110-6(i) "indicates that it does not limit the People's ability to file a petition to detain." *Id.* at 9. But defendant is wrong that subsection 110-6(i) "only allows for filing [a petition to detain] under the certain and limited circumstances enumerated in subsections 110-6.1(a) and 110-6.1(d)(2)." *Id.* Nothing in these provisions, or anywhere in the Act, precludes the People from filing a petition seeking detention in response to a defendant's petition to reopen the conditions of release and, as noted, it would be contrary to the General Assembly's intent to read such a limitation into the Act.

Nor does subsection 110-6.1(d)(2), which provides that when the People seek to file a "second or subsequent petition" to detain under the Act, that petition must include "a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition," 725 ILCS 5/110-6.1(d)(2), limit the People's ability to seek detention in response to a defendant's petition to reopen the conditions of his release. *Contra* Def. Br. 9-10. Where a defendant files such a petition, the People's

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filing is not "a second or subsequent petition." Rather, it is the People's *first* pleading under the Act.

For these same reasons, defendant's reliance on *People v. Watson*, 2024 IL App (1st) 240207-U, a nonprecedential order, is misplaced. *See* Def. Br. 11. In a 2-1 decision, *Watson*, like the appellate court below, concluded that the Act does not authorize the People to respond to a detained defendant's petition to reopen the conditions of his release by arguing that the defendant does not meet the criteria for release, and that, instead, a circuit court *must* release a defendant once he has petitioned to reopen the conditions of his release under subsection 110-7.5(b). *See* 2024 IL App (1st) 240207-U, ¶ 18. But the *Watson* majority was wrong for the same reasons as the appellate court below: it ignored both section 110-6, which authorizes the People to file, and the circuit court to consider, a responsive petition seeking to "add or increase conditions of pretrial release," 725 ILCS 5/110-6(g), up to and including denial of pretrial release, *id.* § 110-6(i), and the Act's directive that circuit courts should focus on the ultimate question of whether defendant satisfies the standards for pretrial detention, *see* Peo. Br. 23.

Indeed, as the dissenting Justice in *Watson* explained: "Practically speaking, the State's petition to detain is nothing more than a response in opposition to [the defendant's] petition to remove financial conditions." 2024 IL App (1st) 240207-U, ¶ 42 (Tailor, J., dissenting). Because there is no indication that the General Assembly intended to deprive the People of the

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opportunity to respond to a defendant's petition to reopen the conditions of his release by objecting to release, the People were entitled to file a responsive pleading asking the court to decide whether defendant met the statutory criteria for release.

Section 110-7.5(a) — on which defendant relies for the proposition that section 110-6 does not authorize the People to file a responsive pleading, *see* Def. Br. 19-21 — likewise does not offer defendant any support. Subsection 110-7.5(a) provides, in part, that "[t]his Section shall not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1." 725 ILCS 5/110-7.5(a). Contrary to defendant's argument, Def. Br. 20, this applies not just to defendants who were released from pretrial custody, as described in subsection 110-7.5(a), but also to defendants described in subsection 110-7.5(b) — those who remain in custody because they were unable to satisfy a financial condition for release. By employing the word "Section," the General Assembly demonstrated its intent to refer to the entirety of section 110-7.5, rather than to a single subsection. *See People v. Whitmore*, 2023 IL App (1st) 231807, ¶ 8 (explaining distinction between "section" and "subsection"). Accordingly, subsection 110-7.5(a) undermines, rather than supports, defendant's argument that the People cannot file a responsive petition seeking the continued pretrial detention of a defendant who files a subsection 110-7.5(b) petition seeking release through the removal of financial conditions.

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Nor is defendant correct that the circuit court violated his rights under subsection 110-7.5(b) — which entitles a defendant who remains in pretrial detention after having been ordered released with pretrial conditions to a hearing under subsection 110-5(e) — by considering the People's responsive petition. *See* Def. Br. 19-20. Even if this Court were to agree with defendant and hold that the People may seek pretrial detention only if a defendant's circumstances fall under subsection 110-7.5(a), defendant nevertheless received the hearing on his petition that subsection 110-7.5(b) contemplates. Peo. Br. 17-18; *see* R2-31. In sum, defendant's interpretation of the Act does not withstand scrutiny.

2. Section 110-6.1 also authorized the People's filing and the circuit court's consideration of that filing.

The People's pleading was also timely and authorized under subsection 110-6.1(c), 725 ILCS 5/110-6.1(c), which authorizes the People to file a petition for pretrial detention at the defendant's "first appearance before a judge" following the Act's effective date when a defendant was granted release subject to payment of monetary bail before the Act's effective date and later seeks relief under subsection 110-7.5(b) of the Act. *See* Peo. Br. 20-22.

Defendant is incorrect that, under subsection 110-6.1(c), the People were required to file any petitions to detain within 21 calendar days of the Act's effective date. *See* Def. Br. 22-24. Indeed, under defendant's construction, the People could not — as a categorical matter — seek the continued detention of any defendant who was detained prior to the Act's

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effective date and did not appear before a judge until more than 21 days after the Act took effect. But the People "cannot be expected to satisfy future statutory requirements before those requirements are in place." *Jones*, 2023 IL App (4th) 230837, ¶ 21; *see* Peo. Br. 21-22. Nothing in the Act indicates that the General Assembly intended this illogical result. *See People v. Johnson*, 2017 IL 120310, ¶ 15 (statutes should not be interpreted to produce results that legislature would not have intended).

To be sure, subsection 110-7.5(a) entitles defendants to "remain on pretrial release under the terms of their original bail bond" after the Act's effective date. 725 ILCS 5/110-7.5(a). Yet defendant's argument that the General Assembly did not contemplate that the Act would allow for the "reevaluation of a defendant" previously granted bond, and an order that the defendant be detained, Def. Br. 23-24, does not comport with the proceedings below. The circuit court's reevaluation of defendant's suitability for pretrial release was not prompted by the Act, but rather by defendant's petition to reopen the conditions of that release under subsection 110-7.5(b). Once defendant sought relief under the Act, the People were entitled to argue that he did not meet the criteria for pretrial release. *See People v. Davidson*, 2023 IL App (2d) 230344, ¶ 18.

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B. The People should be allowed to respond to a detained defendant's petition seeking pretrial release to avoid absurd results.

Defendant concedes that this Court should interpret the Act to avoid absurd results, but he is wrong that interpreting the Act to allow the People to respond to a detained defendant's petition seeking pretrial release by objecting to such release would result in absurdity. *See* Def. Br. 25-29. In fact, the opposite is true: it would be absurd to preclude circuit courts from considering whether defendants satisfy the Act's statutory criteria for pretrial release merely because they petition under subsection 110-7.5(b). The General Assembly demonstrated its intention to avoid that result by instructing that the circuit court determine whether there are conditions available that would allow for a defendant's release without jeopardizing public safety. *See* 725 ILCS 5/110-5(a), (e). If there are no such conditions, the circuit court may order defendant's continued detention. *See Davidson*, 2023 IL App (2d) 230344, ¶¶ 10, 18; *Jones*, 2023 IL App (4th) 230837, ¶ 17.

The facts of this case demonstrate the point. Defendant asserts that the circuit court did not effectively order his detention by imposing a $350,000 bond as a condition of pretrial release. *See* Def. Br. 26-27. But the court's statements at defendant's bond hearing demonstrate otherwise. The court found that compelling evidence showed that defendant was the shooter, and that "a substantial bond" was necessary "to assure the safety of the public in light of these allegations." SR21-22. Then, at the hearing on

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defendant's subsection 110-7.5(b) petition and the People's responsive petition, the circuit court observed that the $350,000 bond "operated as a no-bail in this case," as it did "in many, many cases," R30; *see also* A16, ¶ 51 (appellate court's description of defendant's $350,000 bond "as a *de facto* 'no bail' order"). Because the circuit court effectively ordered defendant's detention by setting bail at $350,000 prior to the Act's effective date, it would make no sense to interpret the Act to require the court to now order defendant's release without considering whether he meets the statutory criteria for release.

It is of no significance that defendant can identify other circumstances in which the People are not permitted to respond to a defendant's pleading, *see* Def. Br. 27-28, for they are not relevantly similar to a defendant's subsection 110-7.5(b) petition. For example, cases holding that the People may not respond to a defendant's motion for leave to file a successive postconviction petition, *see* Def. Br. 28, shed no light on whether the People may respond to a petition for pretrial release. A motion for leave to file a successive postconviction petition seeks, by definition, only preliminary relief: *leave to file* a postconviction petition. *See People v. Smith*, 2014 IL 115946, ¶¶ 33, 35. Thus, a circuit court's decision whether to allow a successive postconviction petition is "made on the pleadings prior to the first stage of postconviction proceedings." *Id.* ¶ 33. By contrast, a defendant's subsection 110-7.5(b) petition seeks the ultimate relief — release pending trial — and

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the decision whether to detain a defendant pretrial is a fact-intensive inquiry that is made after a hearing. *See* 725 ILCS 5/110-6.1 (explaining hearing requirement under the Act). It is not plausible to conclude that the General Assembly would have intended a circuit court to resolve disputed facts and grant the ultimate relief without the People's participation.

For similar reasons, that the People do not provide input during a preliminary *Krankel* inquiry, *see* Def. Br. 28, does not suggest that the General Assembly would have intended that the People may not respond when a defendant requests pretrial release under subsection 110-7.5(b). Like a motion for leave to file a successive postconviction petition, a preliminary *Krankel* inquiry "serves the narrow purpose of allowing the trial court to decide whether to appoint independent counsel to argue a defendant's pro se posttrial ineffective assistance claims." *People v. Patrick*, 2011 IL 111666, ¶ 39; *People v. Jolly*, 2014 IL 117142, ¶ 38 (describing preliminary *Krankel* inquiry "as a neutral and nonadversarial proceeding" with a narrow purpose). However, if, following the initial inquiry, the circuit court appoints counsel, then the People may participate in the court's subsequent proceedings to decide whether defendant's trial counsel was ineffective. *See People v. Downs*, 2017 IL App (2d) 121156-C, ¶¶ 43, 46. A defendant's subsection 110-7.5(b) petition to secure his release is more akin to the latter proceeding than it is to a preliminary *Krankel* inquiry.

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Here, the circuit court was tasked with deciding whether defendant, who had been detained since he was first arrested for the charged offenses, should continue to be detained pending trial. Because the circuit court would be determining the ultimate question of whether defendant was entitled to pretrial release, principles of due process and fairness required the People to have an opportunity to respond to defendant's petition. Peo. Br. 23-24. Defendant's construction of the Act — to bar the People from responding to defendant's petition — would give rise to "an unreasonable result" the General Assembly could not have intended. *People v. Hanna*, 207 Ill. 2d 486, 500 (2003). This Court should reject defendant's interpretation and reverse the appellate court's judgment.

III. The Court Should Remand for the Appellate Court to Consider Defendant's Remaining Arguments.

The parties agree that if this Court reverses the appellate court's judgment, it should remand for the appellate court to consider defendant's remaining arguments. *See* Def. Br. 43-44.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court and remand to the appellate court to consider defendant's remaining arguments.

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August 19, 2024

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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 4,941 words.

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CERTIFICATE 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 August 19, 2024, the foregoing **Reply Brief** was filed with the Clerk of the Supreme Court of Illinois using the Court's electronic filing system, which provided service to the following:

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