No. 130716

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DAVID A. HIETSCHOLD, Defendant-Appellee.	)))))))))))	On Appeal from the Appellate Court of Illinois, Second District, No. 2-23-0047 There on Appeal from the Circuit Court of Sixteenth Judicial Circuit, Kane County, Illinois, No. 21 CF 608 The Honorable David P. Kliment, Judge Presiding.

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

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ARGUMENT

The People's opening brief explained that the trial court's admonishments to defendant substantially complied with 725 ILCS 5/113-4(e). The essence of the admonishment required by section 113-4(e) is that a defendant may be tried in his absence if he fails to appear. Because the trial court twice admonished defendant of that possibility, the admonishments substantially complied with section 113-4(e). Peo. Br. 9-15.[1]

As the opening brief further explained, substantial compliance does not require the court to also admonish the defendant that, if he fails to appear, he will be unable to confront the witnesses who testify at that trial. *Id*. at 16-21. The confrontation right to which section 113-4(e) refers is the defendant's right to observe the witnesses in person, which right is ancillary to the right to be present at trial. *Id*. at 16-17.

Defendant's contrary arguments do not withstand scrutiny. In arguing that the plain language of section 113-4(e) also requires the court to advise a defendant that he waives his right to confront witnesses by failing to appear for trial, defendant conflates strict compliance with substantial compliance. Moreover, defendant fails to explain how the trial court's admonishments here — that he could be tried in his absence if he failed to come to court — were insufficient to convey to defendant the natural and obvious consequence

[1] "Peo. Br. _," "Def. Br. _," "C_," and "R_" refer to the People's opening brief, defendant's response brief, the common law record, and the report of proceedings.

of his failure to appear, *i.e.*, that if he did not appear for his trial, he would not be able to watch the witnesses testify against him. For similar reasons, defendant fails to distinguish governing precedent establishing that the admonishment that failing to appear could result in trial in absentia substantially complies with section 113-4(e). Finally, defendant's unsupported argument that he was not arraigned does not require a different result.

Defendant Could Be Tried in Absentia Because He Failed to Appear After Being Admonished That Failure to Appear Could Result in Trial in Absentia.

A. The trial court substantially complied with section 113-4(e) by communicating the essence of the required admonishment, that defendant might be tried in his absence if he failed to appear.

Section 113-4(e) and section 115-4.1(a), which govern trial in absentia, reflect that the "legislature's intention was to provide for a trial *in absentia,* within constitutional limits, if a defendant willfully and without justification absented himself from trial." *People v. Smith*, 188 Ill. 2d 335, 341 (1999) (internal quotation marks omitted). Section 115-4.1(a) "sets forth the circumstances in which a trial *in absentia* may be conducted," *Smith*, 188 Ill. 2d at 341, providing that a defendant may be tried in absentia "after the State has affirmatively proven through substantial evidence that the defendant is willfully avoiding trial," 725 ILCS 5/115-4.1(a).

Section 113-4(e) provides that the court must admonish a defendant of the possibility of a trial in absentia, thereby ensuring that his waiver of the

right to be present is knowing, and his absence willful: "the court shall advise him at [arraignment] or at any later court date on which he is present that if he . . . fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." 725 ILCS 5/113-4(e).

Strict compliance with section 113-4(e) is not required; as defendant acknowledges, "only substantial compliance with section 113-4(e) is necessary to permit the trial of an absent defendant." Def. Br. 14 (internal quotation marks and brackets omitted); *see also* Peo. Br. 10.

To substantially comply with an admonishment requirement, a trial court need neither "strictly read verbatim" from the rule or statute requiring the admonishment nor "'completely' inform a defendant" of the rule or statute's contents. *People v. Dominguez*, 2012 IL 111336, ¶ 17. Instead, substantial compliance requires only that the court "impart to a defendant largely that which is specified in the rule, or the rule's 'essence,' as opposed to 'wholly' what is specified in the rule." *Id.* ¶ 19; *see also id.* ¶ 22 ("So long as the court's admonitions were sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied with the rule."). Accordingly, so long as the trial court's admonishment conveyed to defendant the "essence" of section 113-4(e), the court substantially complied with its requirements.

In determining whether the trial court substantially complied with section 113-4(e), this Court is not writing on a blank slate; the Court has held that the essence of the trial in absentia admonishment requires the trial court to convey to the defendant that failing to appear could result in trial in absentia: to "establish *a prima facie* case of willful absence, the State must demonstrate that the defendant: (1) was advised of the trial date; (2) was advised that failure to appear could result in trial *in absentia;* and (3) did not appear for trial when the case was called." *Smith*, 188 Ill. 2d at 343; *see People v. Ramirez*, 214 Ill. 2d 176, 184 (2005) (same). A defendant's failure to appear, "notwithstanding that the defendant has been previously informed of the time and date of trial and has been personally admonished by the trial court that a failure to appear could result in trial *in absentia*," supports "a 'very strong inference'" that the defendant is willfully absent. *Smith*, 188 Ill. 2d at 345 (quoting *People v. Broyld,* 146 Ill. App. 3d 693, 699 (4th Dist. 1986)). In other words, the admonishment that a defendant's "failure to appear could result in trial *in absentia*" communicates the essence of the risk of trial in the defendant's absence. *Id.*

Here, the trial court substantially complied with section 113-4(e) when it twice admonished defendant that he could be tried in absentia if he did not appear for trial. On October 20, 2021, the trial court admonished defendant that if he failed to appear on the trial date, "a warrant could issue for [his] arrest and [he] could be tried in [his] absence, and if found guilty, sentenced

in [his] absence." R27. Defendant, who appeared via Zoom, indicated he understood by giving a "thumps up." *Id.*

That trial date was stricken when defendant fired his attorney after "failing to cooperate" with him "in preparing a defense," C36; *see also* R41-44; and defendant was granted several continuances for his new attorney to try to reach a plea agreement with the prosecution, R52, 55, 59-60, 64. On July 22, 2022, when the trial court set the final trial date, it again admonished defendant that he could be tried in his absence if he did not appear on that date: "You do need to be present . . . . If you fail to come to court, that would constitute a waiver of your right be present, and the trial could continue without you. You could be found guilty, you could be sentenced if you don't come back to court." R67-. Defendant again assured the court that he understood. R68. Nevertheless, defendant failed to appear for trial.

In short, the trial court substantially complied with section 113-4(e), and defendant's failure to appear did not reflect any confusion about whether he could be tried in absentia and the natural consequences of such a trial. Rather, defendant simply willfully absented himself from his trial after not receiving the plea offer he wanted. R80 (defense counsel explaining that defendant "hired [him] to try to plead his case out" and when counsel was unable to do so, defendant became unreachable).

Defendant's contrary arguments lack merit. To be sure, section 113-4(e) instructs courts to admonish a defendant that his absence would

"constitute a waiver of his right to confront the witnesses against him *and* trial could proceed in his absence." 725 ILCS 5/113-4(e) (emphasis added). Defendant thus argues that the statute should be given its plain meaning and that the word "and" is generally used conjunctively. *See* Def. Br. 11, 17-21. But defendant's argument that "in order to *substantially comply* with section 113-4(e), a trial court must" "distinctly advise a defendant *both* that a trial can proceed in his absence *and* that he waives his right to confront witnesses by failing to appear for trial," *id*. at 11 (emphasis added), suffers from two fatal defects.

First, defendant confuses strict compliance with substantial compliance. Compounding this misunderstanding, he fails to appreciate that the right to personally view witness testimony is ancillary to the right to be present at trial. Second, defendant fails to distinguish precedent establishing that an admonishment advising a defendant that failing to appear could result in trial in absentia substantially complies with section 113-4(e). Finally, the fact that defendant may not have been arraigned is irrelevant to the analysis.

B. The trial court did not need to explicitly communicate that defendant would be unable to personally view the testifying witnesses because that was a natural consequence of defendant's failure to appear for trial.

Defendant's argument that the plain language of section 113-4(e) requires an admonishment that his failure to appear would constitute a waiver of his right to confront the witnesses against him *and* that trial could

proceed in his absence, Def. Br. 11, 17-21, misses the point. The question before this Court is not whether the admonishments here *strictly* complied with section 113-4(e), but, rather, whether there was substantial compliance. And here there was substantial compliance because the confrontation right to which section 113-4(e) refers is the defendant's right to observe the witnesses in person, which right is ancillary to the right to be present at trial. Thus, because the trial court informed defendant that he could be tried in absentia, the court adequately warned him that if he failed to appear, he would not be able to personally observe the witnesses against him.

Substantial compliance does not require that a trial court "'completely' inform a defendant" of the contents of a required admonishment. *Dominguez*, 2012 IL 111336, ¶ 17. As the People explained in their opening brief, *see* Peo. Br. 19-21, in a context mirroring this case, this Court held that trial courts substantially comply with Rule 402 when they admonish a defendant pleading guilty that he is waiving the right to a jury trial even when they do not *also* admonish the defendant that he is waiving the right to confront witnesses. *People v. Mendoza*, 48 Ill. 2d 371, 373-74 (1971). Rule 402(a) requires that the trial court admonish a defendant that if he pleads guilty, "there will not be a trial of any kind, so that by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him." Ill. S. Ct. R. 402(a)(4) (1970). In *Mendoza*, the trial court admonished the defendant that if he were to plead guilty, he would waive the

right to a jury trial, but the court did not also admonish him that he would waive the right to confront witnesses. 48 Ill. 2d at 373. This Court held that the record "show[ed] substantial compliance with our Rule 402" despite "[t]he fact that defendant was not specifically admonished by the court, on the record, as to each and every consequence of his plea." *Id.* at 373-74.

Defendant's argument that "any comparison to Rule 402 here is inappropriate" because, unlike Rule 402, section 113-4(e) is unambiguous, misses the point. Def. Br. 23. The version of Rule 402 at issue in *Mendoza* directed courts to admonish a defendant that "by pleading guilty he waives the right to a trial by jury *and* the right to be confronted with the witnesses against him." Ill. S. Ct. R. 402(a)(4) (1970) (emphasis added). Rule 402 thus was no less explicit than section 113-4(e): both provisions directed courts to admonish defendants of two consequences conjoined by the word "and." *Mendoza* thus is instructive.

Defendant, like the majority below, *see* A11-12, also seeks to distinguish *Mendoza* on the basis that "trials *in absentia* are abhorred" while guilty pleas are "encouraged," Def. Br. 24. But he fails to explain how or why that distinction is material to the question whether a trial court substantially complies with section 113-4(e) where it does not recite the statutory language verbatim. Nor is the distinction defendant attempts to draw between trials in absentia and guilty pleas persuasive: few decisions have greater importance than pleading guilty in a criminal case, for a "plea of guilty is

more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). This Court thus should reject defendant's invitation to hold admonishments relating to trials in absentia to a higher standard for substantial compliance than guilty plea admonishments.

Relatedly, while trials in absentia are generally disfavored, they nevertheless play an important role in the efficient operation of the justice system. As this Court has explained, sections 113-4(e) and 115-4.1(a) "balance the defendant's right to be present at trial, the State's interest in the expeditious administration of justice, and our traditional distrust of trials *in absentia*." *Smith*, 188 Ill. 2d at 342. In doing so, these provisions reflect that the "legislature's intention was to provide for a trial *in absentia,* within constitutional limits, if a defendant willfully and without justification absented himself from trial." *Id.* at 341. Allowing substantial rather than strict compliance with section 113-4(e) thus accounts for the general distrust of trials in absentia just as allowing substantial rather than strict compliance with Rule 402 reflects the gravity of guilty pleas. And, as explained, this Court held in *Mendoza* that when a trial court admonishes a defendant pleading guilty that he is waiving the right to a jury trial, the court substantially complies with the requirement that it *also* admonish the

defendant that he is waiving the right to confront witnesses. *Mendoza*, 48 Ill. 2d at 373-74. *Mendoza*'s reasoning compels the same result here.

Defendant's reliance on *Dominguez* for a different rule, Def. Br. 20-21, is misplaced because *Dominguez* supports the People's position. In *Dominguez*, this Court addressed whether a trial court substantially complied with Rules 605(c)(5) and 605(c)(2). Rule 605(c)(5) requires trial courts to advise any defendant convicted pursuant to a negotiated guilty plea that "counsel will be appointed to assist the defendant with the preparation of the [post-judgment] motions." Ill. S. Ct. R. 605(c)(5). Although the trial court admonished the defendant that counsel would be appointed, the court did not "explicitly inform [him] that he was entitled to have an attorney appointed to help him prepare the [postjudgment] motions." *Dominguez*, 2012 IL 111336, ¶ 51. Nevertheless, this Court found substantial compliance, reasoning that advising the defendant that he could have "an attorney free of charge" adequately informed him of the obvious consequence of such an appointment — that the appointed "attorney would be available for defendant." *Id.*

Similarly, although Rule 605(c)(2) requires trial courts to advise defendants that a post-judgment motion filed pursuant to Rule 604(d) must seek "to have the judgment vacated *and* for leave to withdraw the plea of guilty," Ill. S. Ct. R. 605(c)(2) (emphasis added), *Dominguez* held that the trial court's admonishment, which mentioned only that the post-judgment

motion must seek to "vacate" the "plea of guilty" and said nothing about moving to vacate the judgment, reflected substantial compliance. 2012 IL 111336, ¶¶ 41, 43. This Court reasoned that the admonishment adequately advised the defendant that "he must file a motion within 30 days if he wished to withdraw his guilty plea," *id.* ¶ 43, which was sufficient.

Put simply, this Court has repeatedly made clear, including in *Dominguez*, that a "court must impart to a defendant largely that which is specified in the rule, or the rule's 'essence,' as opposed to 'wholly' what is specified in the rule." *Dominguez*, 2012 IL 111336, ¶ 19. The essence of the admonishment required by section 113-4(e) is that a defendant who fails to appear may be tried in his absence. And the component of the right to confront witnesses that a defendant waives by not appearing for trial — the right to see the witnesses in person — is ancillary to the right to be present at trial. Thus, when the trial court informed defendant that he could be tried in absentia, the court substantially complied with the requirement that it admonish him that if he failed to appear he would not be able to confront the witnesses against him.

The right to "be confronted with the witnesses against him," U.S. Const. amend. VI, "'provides two types of protection for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination,'" *People v. Hood*, 2016 IL 118581, ¶ 19 (quoting *Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987)). By willfully failing to

appear for trial, a defendant waives only his right to physically face the witnesses against him; he retains the right to cross-examine witnesses through counsel. *See* Peo. Br. 16; *see also* R298, 307, 318, 333, 344, 350 (defendant's counsel cross-examining witnesses). Admonishing defendants that they may be tried in absentia if they fail to appear at trial necessarily informs them that they will not be able watch the witnesses testify in person, just as it necessarily informs them that they will not be able to testify in their own defense or participate in any way that requires their physical presence in the courtroom. *Cf. People v. Miller*, 107 Ill. App. 3d 1078, 1086 (1st Dist. 1982) ("admonition to defendant that a plea of guilty would waive his right to a trial would make it clear that the plea would also waive those rights that are ancillary to a trial").

Thus, as the appellate court explained in *Broyld*, "anyone who would be able to understand what the court meant when it stated that the right of confrontation would be lost, would understand that if he or she were not present at trial, that right could not be exercised." 146 Ill. App. 3d at 698. Defendant, quoting the majority below, asserts that "'if *Broyld* is correct'" then the legislature would not have included both "'components of section 113-4(e).'" Def. Br. 27 (quoting A9); *see also id.* (arguing that *Broyld* "renders section 113-4(e) as improperly superfluous with regard to admonishing a defendant concerning the right to confront witnesses"). Not so. As explained, this Court has consistently held that substantial compliance does not require

that every word or term must be included, and defendant's approach, which would require verbatim reading of every required admonishment, conflates substantial with strict compliance.

Defendant's related assertion that the trial court below provided "50% of the admonition," Def. Br. 22, fails to appreciate that by waiving the right to be present at trial, a defendant necessarily understands that he is also waiving the right to personally view witness testimony. Defendant's argument proceeds from the mistaken assumption that the terms on either side of an "and" must be unrelated. But "conjunctions are versatile words, which can work differently depending on context." *Pulsifer v. United States*, 601 U.S. 124, 151 (2024). "And" can be "used . . . to express logical modification, consequence, antithesis, or supplementary explanation." Merriam-Webster Dictionary, https://www.merriamwebster.com/dictionary/and (last visited May 1, 2025). In section 113-4(e), the "and" is best understood to express a "logical. . . consequence" of waiving the right to be present at trial: the corresponding inability to personally view witness testimony at that trial.

In the end, defendant concedes that an admonishment substantially complies with the statute if it "puts the defendant 'on notice' of both parts of section 113-4(e)." Def. Br. 20. The admonishments here did just that. By advising defendant that the trial could proceed in his absence if he failed to

appear, it also put him on notice that he would forgo his right to watch the witnesses testify in person if he was not present at his trial.

C. Illinois Courts Have Consistently Held That Warning a Defendant He Could be Tried in his Absence Substantially Complies With Section 113-4(e).

The People's opening brief explained that governing precedent establishes that the admonishment that failing to appear could result in trial in absentia substantially complies with section 113-4(e). Peo. Br. 11-13, 17-19. Defendant tries, but ultimately fails, to overcome this precedent. *See* Def. Br. 26-32.

As the People explained, the test for willful absence developed by this Court and the appellate court makes clear that the admonishment necessary to protect a defendant's right to be present at trial — that is, the essence of the admonishment required under section 113-4(e) — is the admonishment that failing to appear could result in trial in absentia. *See* Peo. Br. 13; *supra* p. 4. The second part of the three-part test requires the People to "demonstrate that the defendant: . . . (2) was advised that failure to appear could result in trial *in absentia*." *Smith*, 188 Ill. 2d at 343. True, the trial court in *Smith* advised the defendant that the People "could proceed to trial without" him, "which means [he] wouldn't be here to confront witnesses." *Smith*, 188 Ill. 2d at 347; *See* Def. Br. 30. But *Smith* followed a long line of appellate court decisions holding that admonishing a defendant that failing

to appear could result in trial in absentia substantially complies with section 113-4(e).

To begin, in *People v. Clark*, 96 Ill. App. 3d 491, 495-96 (3d Dist. 1981), *abrogated on other grounds by Ramirez*, 214 Ill. 2d 176, the Third District held that admonishing a defendant that she could be tried in absentia "satisfie[d] statutory requirements," and rejected the defendant's argument that the admonishment was insufficient because she was not specifically advised that she would waive her right to confront witnesses at trial.[2] Defendant, quoting the majority below, asserts that *Clark* "is not a persuasive holding" because it "'provided no explanation or rationale.'" Def. Br. 29 (quoting A8). Defendant is incorrect. *Clark* explained that the waiver of the right to confront witnesses is an "attendant inability" to "defendant's absence" from trial. 96 Ill. App. 3d at 496. In other words, by informing the defendant that her absence would waive her right to be present at trial, the trial court put her on notice that she would be waiving the accompanying right to personally confront the testifying witnesses because that is a logical consequence of being absent from trial.

Then, in *Broyld*, the Fourth District held that the trial court's admonishment that if the defendant failed to appear, "it is possible the trial could proceed in your absence" substantially complied with section 113-4(e),

[2] The provision that *Clark* construed — section 113-4(d) — later became section 113-4(e). *Broyld*, 146 Ill. App. 3d at 697.

and "no new trial [wa]s required merely because the admonition does not refer to loss of confrontation rights." 146 Ill. App. 3d at 697-98. Defendant criticizes *Broyld* for relying on *Clark* and *People v. Watson,* 109 Ill. App. 3d 880 (4th Dist. 1982). Def. Br. 27. However, as discussed, *Clark* persuasively explained why a trial court's admonishment that trial could proceed in the defendant's absence substantially complied with section 113-4(e) even though the court did not also specify that the defendant would waive her right to confront witnesses at trial. Meanwhile, *Broyld* recognized that *Watson*'s holding was that the section 113-4(e) admonishment was insufficient because it was provided by mail, not personally in court, but *Broyld* reasonably noted that *Watson* did not criticize the substance of the mailed admonishment even though it failed to "mention loss of confrontation rights." 146 Ill. App. 3d at 698. Moreover, *Broyld* cited *Watson* primarily for a different proposition: that once the People establish a prima facie case of willful absence, no further evidence is required unless the defendant presents evidence of lack of willfulness. 146 Ill. App. 3d at 699. This Court has subsequently adopted that holding. *See Smith*, 188 Ill. 2d at 342-45.

Finally, in *People v. Coppage*, 187 Ill. App. 3d 436, 442-43 (1st Dist. 1989), the First District held that where the trial court admonished the defendant that if he "failed to appear for trial or any scheduled court dates, he could be tried *in absentia*," the court substantially complied with section 113-4(e) because "the specific words used are not important as long as it is

apparent that defendant was made aware that he has the right to be present at his trial but that his absence need not preclude the court from proceeding."

In short, until the decision below, the appellate court had consistently held that an admonishment, like the admonishment here, that the trial could proceed in the defendant's absence if he failed to appear, substantially complies with section 113-4(e). And defendant's criticisms of the details of the appellate court's decisions do not call those decisions into question.

Defendant also argues that in *People v. Garner*, 147 Ill. 2d 467 (1992), this Court "implicitly overruled" *Clark*, *Broyld*, and *Coppage* in favor of a rule "requir[ing] that a defendant receive both components of the admonishment." Def. Br. 26, 29. But *Garner* addressed no question regarding substantial compliance with section 113-4(e); the question presented there (which this Court answered in the negative) was whether there is an exception to section 113-4(e)'s admonishment requirement for experienced criminals. *See* 147 Ill. 2d at 475-79. *Garner*'s holding thus has no bearing on a case like this one, where the defendant was admonished. Not only is *Garner* not contrary to *Clark, Broyld*, and *Coppage*, *Garner* described the essence of the section 113-4(e) admonishment the same way the appellate court had: "Since waiver assumes knowledge, a defendant who has not *received notice of the possibility of trial in absentia* cannot be deemed to have knowingly waived his right to be present at trial." 147 Ill. 2d at 477 (emphasis added); *see also Bryold*, 146

Ill. App. 3d at 699 (defendant must be "advised of the fact that his failure to appear may result in a trial *in absentia*").

Further confirming that *Broyld*, *Clark*, and *Coppage* remain good law, this Court cited *Broyld* and *Coppage* favorably in *Smith*, which it decided seven years after *Garner*. *See* 188 Ill. 2d at 343. Defendant acknowledges that *Smith* relied on *Broyld* and *Coppage*, *see* Def. Br. 29-30, but argues that *Smith* did not "adopt the[ir] holdings . . . that a trial court, to substantially comply with section 113-4(e), need not advise a defendant that his failure to appear results in the waiver of his right to confront witnesses," *id.* at 30. Instead, defendant states, *Smith* cited *Broyld* and *Coppage* when "recognizing that the 'appellate court developed a three-part test to determine whether the State has established *a prima facie* case of a defendant's willful absence within the meaning of' section 115-4.l(a)." *Id.* This reads *Smith* too narrowly. As *Smith* explained, the second part of the three-part test requires the People to "demonstrate that the defendant . . . was advised that failure to appear could result in trial *in absentia*." 188 Ill. 2d at 343. And, *Smith* also explained, where a defendant has been "personally admonished by the trial court that a failure to appear could result in trial *in absentia,* a 'very strong inference is raised that the defendant has elected not to appear.'" *Id.* at 345 (quoting *Broyld,* 146 Ill. App. 3d at 699)). In other words, *Smith* not only adopted the appellate court's three-part test, it also quoted *Broyld* when describing the second part of the test, including that substantial compliance

with Section 113-4(e) required admonishing a defendant "that failure to appear could result in trial *in absentia*." *Id.*

It is therefore unsurprising that, after *Garner* and *Smith*, the appellate court has continued to hold that an admonishment about the possibility of trial in absentia demonstrates substantial compliance with section 113-4(e). In *People v. Liss*, 2012 IL App (2d) 101191, ¶ 19, for example, the Second District reasoned that "the trial court substantially complied with the statute when it advised the defendant that the trial could proceed in his absence" even though "the defendant [was] not admonished about his confrontation rights." Like the majority below, *see* A7, A9, defendant characterizes this language from *Liss* as "*obiter dictum*" because the defendant there "was admonished about his confrontation rights at arraignment, which the court in part relied on to find substantial compliance," Def. Br. 32. But the defendant in *Liss* was not admonished that he would waive his right to confront witnesses if he failed to appear for trial. Instead, at arraignment, he was admonished before he pleaded not guilty that he would have the right to confront witnesses if he went to trial and then admonished after his plea that "if he failed to appear in court as required, the trial could proceed in his absence." 2012 IL App (2d) 101191, ¶ 18. On these facts, the appellate court held that "the trial court substantially complied with the statute when it advised the defendant that the trial could proceed in his absence." *Id.* ¶ 19.

Thus, defendant cannot distinguish or otherwise set to one side the decisions establishing that the admonishment that failing to appear could result in trial in absentia substantially complies with section 113-4(e). And the General Assembly has acquiesced to this long line of precedent by declining to amend section 113-4(e). *See People v. Caballero*, 228 Ill. 2d 79, 91 (2008) (legislature's "acquiescence in the judicial construction of [a statute] over the past 14 years dissuades us from overruling the appellate court decisions"). The precedent of this Court and the appellate court, as well as the acquiescence of the legislature, confirm that an admonishment that failing to appear could result in trial in absentia substantially complies with section 113-4(e).

D. Defendant's Alleged Lack of Arraignment Is Irrelevant.

Finally, defendant makes the alternative argument that because he "was never arraigned," the trial court was required to include "both components of the admonition." Def. Br. 36.[3] Defendant's argument fails for two reasons.

First, the record does not establish that defendant, in fact, was not arraigned, and provided admonishments during the arraignment, during the misdemeanor proceedings that took place before he was indicted on the felony counts and the cases consolidated. *See* Peo. Br. 3. Defendant asserts that

[3] Defendant does not assert that his alleged lack of arraignment provides an independent basis for reversal. *See* Def. Br. 37 (asking Court to remand for consideration of this argument if it reverses the appellate court's decision).

because admonishments were not mentioned in the minute orders, they must not have been provided. *See* Def. Br. 2. But the minute orders may not reflect everything that occurred in the pretrial proceedings. Without the transcripts, there is no way to know whether defendant was admonished during those proceedings. And because defendant failed to provide the transcripts of the misdemeanor proceedings, any doubts arising from the incomplete record must be resolved against him. *See* Peo. Br. 3; *see also Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

Second, section 113-4(e) admonishments may be given at arraignment "or at any later court date on which [defendant] is present." 725 ILCS 5/113-4(e). Thus, so long as the admonishments defendant later received substantially complied with the statute — which they did, *see supra* Sections A-C, whether defendant was arraigned is irrelevant.

* * *

In sum, the trial court's admonishments substantially complied with section 113-4(e) because they put defendant on notice that he could be tried in his absence and that he would not be able to personally observe the testifying witnesses at the trial at which he failed to appear.

CONCLUSION

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

May 1, 2025

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People of the State of Illinois

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, and the certificate of service, is 5294 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 May 1, 2025, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** 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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E-FILED
5/1/2025 1:25 PM
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