

TABLE OF CONTENTS

	Page(s)
ARGUMENT.....	1
CONCLUSION.....	6

POINTS AND AUTHORITIES

I. The People’s Argument that the 2013 Amendment to the Illinois Sexually Dangerous Persons Act Obviated <i>People v. Masterson</i> is Most Likely Correct.....	1
<i>People v. Masterson</i> , 207 Ill. 2d 305 (2003).....	1
725 ILCS 205/0.01.....	1
725 ILCS 205/4.05.....	2
Ill. Senate Tr., 2013 Reg. Sess. No. 31 (Apr. 10, 2013).....	2
II. If <i>Masterson</i> Still Applies, Mr. Snapp did not Forfeit his Claim, the Trial Court’s Error was not Harmless, and the Appellate Court Ordered the Appropriate Remedy.	3
A. Mr. Snapp did not Forfeit his <i>Masterson</i> Claim.....	3
<i>People v. Coan</i> , 2016 IL App (2d) 151036.....	3
725 ILCS 205/3.01.....	3
<i>People v. Pomykala</i> , 203 Ill. 2d 198 (2003).....	3
<i>In re Winship</i> , 397 U.S. 358, 364 (1970).....	3
<i>People v. Brown</i> , 2017 Il App (3d) 140514.....	3
<i>People v. Walker</i> , 7 Ill. 2d 158 (1955).....	3
B. The Trial Court’s Failure to Make the Explicit Finding Required by <i>Masterson</i> was not Harmless.....	4
<i>People v. Bailey</i> , 2015 IL App (3d) 140497.....	4
<i>People v. Masterson</i> , 207 Ill. 2d 305 (2003).....	4

C. Remanding the Case for a New Trial is the Appropriate Remedy..... 5

People v. Bailey, 2015 IL App (3d) 140497 5

People v. Masterson, 207 Ill. 2d 305 (2003) 5

I. The People’s Argument that the 2013 Amendment to the Illinois Sexually Dangerous Persons Act Obviated *People v. Masterson* is Most Likely Correct.

Given the Illinois Legislature’s 2013 Amendment to the Illinois Sexually Dangerous Persons Act (“SDP Act”), it is reasonable to conclude that *Masterson*’s requirement of an explicit finding that a defendant is “substantially probable” to reoffend is no longer required.

The pre-2013 SDP Act defined the term “sexually dangerous persons” as follows:

“All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children * * *.”

People v. Masterson, 207 Ill. 2d 305, 318 (2003) (citing 725 ILCS 205/0.01 (West 1998)). In reviewing the elements required to commit a defendant under the SDP Act, *Masterson* noted that while the Illinois Sexually Violent Persons Commitment Act’s (“SVP Act”) required the trier of fact to find that the defendant is “substantially probable” to engage in acts of sexual violence, the SDP Act had no such requirement. *Id.* To clarify the elements for commitment under the SDP Act, *Masterson* required an explicit finding by the trier of fact that it was “substantially probable” the defendant would engage in the commission of future sex offenses if not confined. *Id.* at 330.

The Illinois Legislature in 2013 Amended the SDP Act to define “criminal propensities to the commission of sex offenses” to mean “that it is

substantially probable that the person subject to the commitment proceeding will engage in the commission of sex offenses in the future if not confined.”

725 ILCS 205/4.05. As noted in the People’s Brief, the legislative history of the amendment specifically mentions that the addition of this definition comports with *Masterson*. *People’s Brief* p. 9 (citing *Ill. Senate Tr., 2013 Reg. Sess. No. 31* (Apr. 10, 2013)). The 2013 amendment did not alter the definition of “sexually dangerous person,” but by defining the “criminal propensities to the commission of sex offenses,” component of the definition to incorporate *Masterson’s* “substantially probable” language, it presumably eliminated *Masterson’s* requirement the trier of fact make an explicit finding on that issue.

In this case the trial court signed an order which memorialized its finding after a bench trial that Mr. Snapp was still a sexually dangerous person. (C1185). The version of the SDP Act in effect during Mr. Snapp’s trial provided that, by definition, a sexually dangerous person is substantially probable to engage in the commission of sex offense in the future if not confined. It is reasonable to presume that the trial court’s finding that Mr. Snapp is a sexually dangerous person satisfies *Masterson* given the “substantially probable” language is now included in the definition.

II. If *Masterson* Still Applies, Mr. Snapp did not Forfeit his Claim, the Trial Court’s Error was not Harmless, and the Appellate Court Ordered the Appropriate Remedy.

If *Masterson* still applies, this Court should affirm the appellate court’s decision.

A. Mr. Snapp did not Forfeit his *Masterson* Claim.

Due process requires the trial court to make a finding on every element required for commitment enumerated in the SDP Act, and a challenge to a failure to do so may be raised for the first time on appeal. Although proceedings under the SDP Act are civil in nature, “the Act provides certain due process protections that are afforded to criminal defendants, because commitment pursuant to the Act entails a loss of liberty.” *People v. Coan*, 2016 IL App (2d) 151036 ¶ 19. The SDP Act provides that “to commit a defendant to confinement as a sexually dangerous person, the standard of proof required is that in a criminal proceedings of proof beyond a reasonable doubt.” *725 ILCS 205/3.01*. “[D]ue process requires that the State prove every element of [a criminal] offense beyond a reasonable doubt.” *People v. Pomykala*, 203 Ill. 2d 198, 203 (2003) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). In a criminal case, “the failure to prove a material allegation of an indictment beyond a reasonable doubt is fatal to a judgment of conviction, and the question may be raised for the first time upon review.” *People v. Brown*, 2017 Il App (3d) 140514 ¶ 12 (quoting *People v. Walker*, 7 Ill. 2d 158, 160 (1955)). Given the SDP Act bestows due process rights upon a defendant and requires the same burden of proof as a criminal case, the ability to

challenge a trial court's failure to find every element of an offense beyond a reasonable doubt in a criminal case for the first time on appeal should also apply to a proceeding under the SDP Act.

B. The Trial Court's Failure to Make the Explicit Finding Required by *Masterson* was not Harmless.

If *Masterson* still applies, then the failure to make an explicit finding that it is "substantially probable" the defendant will engage in the commission of future sex offenses if not confined is not harmless error. In *People v. Bailey*, the Third District of the Illinois Court of Appeals held that a "trial court's failure to make a finding that there was a substantial probability defendant would engage in the commission of sex offenses in the future if not confined **may not amount to harmless error.**" *People v. Bailey*, 2015 IL App (3d) 140497 ¶ 21 (emphasis supplied) (citing *Masterson*, 207 Ill.2d at 330). (emphasis supplied). *Bailey* noted that the Supreme Court was clear in requiring that the *Masterson* finding be "explicit," and that failure to do so was error. *Id.* It noted that the Supreme Court "explicitly rejected the position the failure of a court to make that finding is cured where the evidence at trial would have supported the finding. *Id.* Given the requirement that the *Masterson* finding be explicit and the supreme court's rejection that the failure to do so can be cured by the presence of sufficient evidence in the record to make the finding, such a failure is not harmless error.

C. Remanding the Case for a New Trial is the Appropriate Remedy.

If *Masterson* still applies, the appropriate remedy when a trial court fails to make an explicit finding that it is “substantially probable” the defendant would engage in the commission of future sex offenses if not confined is to remand for a new trial. *Bailey* held that, absent other independent reasons to reverse a trial court’s decision denying an application for discharge or conditional release, the appropriate remedy when no explicit finding is made regarding an individual’s probability to reoffend is to remand for a rehearing, even if evidence exists which would lead to such a finding. *Id.* ¶ 25. *Bailey* noted that *Masterson* “explicitly rejected the position the failure of a court to make that finding is cured where the evidence at trial would have supported the finding.” *Id.* ¶ 21. Here the trial court failed to make the requisite finding required by *Masterson* and a remand for a rehearing is required.

CONCLUSION

For the above reasons, Mr. Snapp requests this Honorable Court affirm the Appellate Court's decision and remand the case to the trial court for a new hearing on his Application for Discharge.

April 30, 2021

Respectfully submitted

POLLACKLAW GROUP, LTD
Pollack Law Group Zachary Pollack
3601 McDonough St.
Joliet, IL 60431
zac@zackpollacklaw.com
(815) 641-7560
ARDC: 6287108

Counsel for Defendant-Appellee

RULE 341(c) CERTIFICATE

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 6 pages.

/s/Zachary Pollack
Zachary Pollack
Pollack Law Group

PROOF OF 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 April 30, 2021, the foregoing Brief of Defendant-Appellee, Warren Snapp was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my email address to the email addresses below:

MICHAEL L. CEBULA
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2640
eserve.criminalappeals@atg.state.il.us

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

/s/ Zachary Pollack

Zachary Pollack
Pollack Law Group
zac@zacpollacklaw.com

E-FILED
4/30/2021 3:46 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK