No. 127535

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | On Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-15-0880 |
| Plaintiff-Appellant, | ) | |
| | ) | There on Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 12-CF-1799 |
| v. | ) | |
| JAMES A. PACHECO, | ) | The Honorable Carla Alessio-Policandriotes, Judge Presiding. |
| Defendant-Appellee. | ) | |

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

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**ORAL ARGUMENT REQUESTED**

## POINTS AND AUTHORITIES

## ARGUMENT

In their opening brief, the People demonstrated that the appellate court erred when it reversed defendant's convictions based solely on two modest limitations that the trial court placed on defendant's cross-examination of the police officer witnesses. Indeed, defendant was permitted to inquire extensively into the officers' purported motive to lie and cover up an alleged improper use of force, and the trial court merely reasonably disallowed additional collateral and irrelevant inquiry into police department policies concerning (1) potential employment consequences for improper use of force and (2) preparation of written police reports.

In response, defendant abandons much of the appellate court's reasoning and his own arguments before the trial court. First, he disclaims any intention to inquire about *actual* employment consequences faced by Officer Adam Stapleton, Def. Br. 10, despite having told the trial court that "I wanted to ask [Stapleton] can you get fired if you use deadly force improperly or worse," R1072.[1] In this Court, defendant instead faults the trial court for not permitting him to ask whether the officer "*believed*" he could face such consequences "if he told the truth." Def. Br. 10 (emphasis in original). But defendant never drew such a distinction for the trial court. The trial court cannot have abused its discretion by declining to allow a line of questioning

[1] Defendant's brief is cited as "Def. Br. _," the People's opening brief and appendix as "Peo. Br. __" and "A_," the common law record and report of proceedings as "C_" and "R__," and People's brief in the appellate court and petition for leave to appeal as "Peo. App. Br. _" and "PLA _."

that counsel never suggested he intended to pursue. Nor did the modest limitation the court imposed violate defendant's constitutional right to confront the officer about potential bias. And even assuming error, this Court can be confident beyond a reasonable doubt that the outcome of the trial would not have been different.

Second, defendant does not dispute that the appellate court erred by disregarding the trial court's factual finding that police policy required that officers involved in a shooting give video-recorded statements about the incident and not prepare written police reports. He abandons the argument he made below (and which the appellate court accepted) that, in fact, the policy was ambiguous and the officers' decision not to prepare written reports in this case demonstrated their desire to cover up an improper use of force. Instead, he now argues that the mere existence of the policy requiring video-recorded, rather than written, reports demonstrates a "code of silence" within the Joliet Police Department generally. Even if defendant had presented this argument to the trial court, the court would not have abused its discretion by preventing defendant from making such a baseless argument. But defendant concedes that he forfeited the issue, and the trial court's ruling was certainly not plain error.

Finally, defendant does not dispute that any error was harmless with respect to his aggravated fleeing and driving under the influence (DUI) convictions. Instead, he argues that the People forfeited their request to have

these convictions reinstated. But the People have consistently argued that any error was harmless or not plain error with respect to *all* of defendant's convictions. There is no basis in this Court's forfeiture jurisprudence to preclude the People from arguing the narrower point — that the error is harmless with respect to two of the three convictions — as an alternative basis for relief.

## I. The Trial Court's Limitation on Questioning Officer Stapleton About Potential Employment Consequences Was Neither a Constitutional Violation Nor an Abuse of Discretion.

### A. The trial court ensured defendant's right to confront Officer Stapleton.

The appellate court erred in finding a violation of defendant's constitutional right to confront Officer Stapleton. As the People's opening brief explained, the Confrontation Clause guarantees a "reasonable opportunity" to elicit effective cross-examination, *United States v. Hart*, 995 F.3d 584, 589 (7th Cir. 2021), where such cross-examination is "designed to show a prototypical form of bias on the part of the witness," *People v. Blue*, 205 Ill. 2d 1, 14 (2001). But the constitution does not ensure "cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). After the defendant is provided "the chance to present a [witness's] motive to lie," "any constitutional concerns vanish." *Hart*, 995 F.3d at 589.

In this case, defendant had ample opportunity to explore his theory of Stapleton's bias: that Stapleton was purportedly trying to cover up his own

improper use of force by falsely alleging that defendant assaulted him. Peo. Br. 17-21. As defendant concedes, Def. Br. 25, he questioned Stapleton at length about his actions during and after the shooting. *See* R764-67, 879-83 (cross-examination about how shooting occurred and accuracy of Stapleton's memory); R768-72 (whether Stapleton knew defendant's identity); R773-75 (speed of car chase); R775-81 (non-functioning camera in police car); R783-84 (prior statements about shooting); R785-91 (number of rounds fired and necessity of shooting); R791-97, 847-48 (availability of other officers to respond); R799-809, 831-42, 877-79 (arrest of defendant and use of Taser). The overall thrust of defendant's questioning was to imply that Stapleton's version of events was improbable and that, in fact, Stapleton acted not out of concern for his own safety, but out of personal animosity towards defendant. Peo. Br. 8-9; *see, e.g.,* R785 ("[Y]ou were firing those rounds in order to kill him, agree?"); R787-91 (asking whether Stapleton firing his weapon "might not work stopping the car" but "could kill" defendant); R852-55 (asking whether Stapleton called defendant a "stupid shit" to "humiliat[e]" him). In closing, defendant made the argument explicit, urging before the jury that Stapleton had been "out of control" and was now lying to "protect his own interests." Peo. Br. 13. In sum, defendant had a reasonable opportunity to advance his theory through cross-examination, and, accordingly, any constitutional concerns "vanish." *See Hart*, 995 F.3d at 589.

Defendant does not dispute any of the governing legal principles. Indeed, he wastes little ink defending the appellate court's constitutional holding. Instead, he repeats the court's assertion that "'the defense was not able to present any motivation Stapleton may have had to testify falsely.'" Def. Br. 25 (quoting A13, ¶ 62) (emphasis omitted). But this assertion is belied by the record. As explained, defendant *was* permitted to question Stapleton about a purported motivation to cover up an improper use of force. The court merely placed some reasonable limitations on the scope and length of questioning related to that theory. In other words, defendant's proposed questions about potential employment consequences were not designed to show a *different* "form of bias," *Blue*, 205 Ill. 2d at 14; they were part and parcel of the same theory — that Stapleton lied to "protect his own interests." Because defendant was permitted to ask Stapleton about this alleged motive to lie, the trial court's modest limits on the cross-examination did not violate the constitution.

**B. The trial court reasonably exercised its discretion.**

Perhaps recognizing the weakness of the constitutional argument, defendant urges the Court to affirm the appellate court's judgment because the trial court purportedly abused its discretion in limiting the cross-examination of Officer Stapleton, Def. Br. 6-14,[2] but this argument is

[2] Defendant urges that the Court must decide the case on non-constitutional grounds, if possible, and thus should address the abuse-of-discretion argument before the Confrontation Clause argument. Def. Br. 2-6. But this Court has explained that a trial court's discretion to limit cross-examination

similarly without merit. As the People's opening brief explained, the trial court reasonably exercised its discretion to disallow defendant from asking Stapleton whether he could be fired for an improper use of force — questioning that would have resulted in a mini-trial on the collateral issue of police department policies about the use of force and potential employment consequences. Peo. Br. 21-22.

Defendant is wrong to think that the People's opening brief failed to adequately explain why questions about police policy were collateral and that the People thus forfeited or waived any such argument. *See* Def. Br. 10. "Collateral" simply means "accompanying as secondary or subordinate" and "serving to support or reinforce." *Collateral*, Merriam-Webster, https://www.merriam-webster.com/dictionary/collateral (last visited Oct. 27, 2022). Questions about police department personnel policy are collateral because they are "secondary or subordinate" to defendant's primary argument that Stapleton lied to cover up an improper use of force. In other words, the existence of such policies (at best) arguably "support or reinforce" the theory that Stapleton lied to protect his own interests. The People's brief made this exact point, Peo. Br. 21, and accordingly adequately explained

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"arises only after" it has permitted sufficient questioning to satisfy the Confrontation Clause. *Blue*, 205 Ill. 2d at 13. Thus, in addressing challenges like defendant's, logic would seem to dictate that the Confrontation Clause issue be decided first. Ultimately, here, the order in which the Court reaches the issues is irrelevant. Both arguments are meritless and should be rejected.

their argument based on the commonly understood word "collateral" and did not waive or forfeit any issue.

Defendant's attempts to re-characterize the argument he made in the trial court are also unavailing because they are contradicted by the record. Defendant insists that no mini-trial is necessary because he has no interest in asking "whether Stapleton *actually* would have faced any negative consequences such as termination or worse." Def. Br. 10 (emphasis in original). Rather, he asserts, "the true question" was whether the officer "*believed* that he could face negative consequences if he told the truth." *Id.* (emphasis in original). Defendant goes so far as to suggest that he would be satisfied with posing only a single yes-or-no question to Stapleton: whether, "in [Stapleton's] mind after he shot defendant, he was concerned that the shooting could have a detrimental impact on his employment." Def. Br. 23.

But this re-characterization is flatly contradicted by the record. Defendant never drew the distinction between actual consequences and Stapleton's belief in possible consequences that he presses in this Court. Instead, he repeatedly asserted that he wanted to explore whether Stapleton could actually be fired for an improper use of force. The issue first arose during a sidebar, when defendant told the trial court, "I am going to be able to establish that [Stapleton] knows if he uses lethal force, he is going to lose that job that he loves so much." R820. Later, when pressed by the trial court to identify what question defendant wanted to ask Stapleton, he told the

Court, "I wanted to ask him can you get fired if you use deadly force improperly or worse." R1072; *see also* Peo. Br. 12 (more fully describing defendant's proposed line of questioning before the trial court). The trial court did not abuse its discretion in limiting this line of questioning based on the arguments actually presented to it, nor can it have abused its discretion in disallowing additional questions that defendant never suggested to the court.

In any event, defendant's proposed distinction is one without a difference. Asking Stapleton whether he *believed* he would face employment consequences likely would have led to questions about the actual policies on which he based his belief. Stapleton testified that he acted properly — firing his weapon only after defendant drove in the officer's direction, putting him in fear of his life. Thus, Stapleton would have had no reason to believe that he faced adverse employment consequences. Indeed, as the record shows, by the time of trial, officials in Joliet had reviewed Stapleton's actions and concluded they were proper. R1075. The trial court reasonably exercised its discretion to cut off a line of inquiry that would have led inevitably into questions about police policies that could hypothetically apply if defendant's alternate version of events were vindicated.

Defendants cites four appellate court cases for the proposition that defendants are regularly permitted "to cross-examine police officers regarding whether they were motivated to testify falsely in order to protect their jobs or

avoid disciplinary actions," Def. Br. 7-8 (citing *People v. Averhart*, 311 Ill. App. 3d 492 (1st Dist. 1999), *People v. Phillips*, 95 Ill. App. 3d 1013 (1st Dist. 1981), *People v. Lenard*, 79 Ill. App. 3d 1046 (1st Dist. 1979), and *People v. Robinson*, 56 Ill. App. 3d 832 (5th Dist. 1977)), but each is distinguishable. In none of these four cases did the appellate court require a collateral inquiry into police disciplinary policies, as defendant requested below. In *Averhart* and *Lenard*, the appellate court found error where the trial court barred cross-examination of testifying officers about allegations that they had used improper force against the accused. *Averhart*, 311 Ill. App. 3d at 496, 501-02; *Lenard*, 79 Ill. App. 3d at 1049-50. Defendant here concedes that he was permitted to ask questions about his allegations of improper use of force. So, under *Averhart* and *Lenard*'s rule and reasoning, the scope of defendant's cross-examination in this case was sufficient. And in *Phillips* and *Robinson*, the appellate court merely held that it was error to prevent cross-examination about prior acts of discipline imposed on testifying officers. *Phillips*, 95 Ill. App. 3d at 1021; *Robinson*, 56 Ill. App. 3d at 840. It is undisputed that Stapleton was not subject to any discipline. Thus, none of these cases support defendant's abuse-of-discretion argument.

Finally, defendant is wrong that the trial court misapplied this Court's precedent in *People v. Adams*, 2012 IL 111168. Def. Br. 8-9, 12-14. *Adams* held that it was improper for a prosecutor to argue that testimony by police officers should be credited because the officers would be "risking their jobs"

by committing perjury. 2012 IL 111168, ¶¶ 16-20. Defendant contends that the dispositive fact in *Adams* was the lack of trial evidence about potential employment consequences tied to perjury. Def. Br. 9. Defendant seems to deduce from this that the *Adams* Court would have blessed the argument if the prosecutor had first asked the officers to describe the potential employment consequences for the jury, but this cramped interpretation of *Adams* cannot be correct. As the trial court properly recognized, R1076-79, *Adams* stands for the broader "principle that a prosecutor may not argue that a witness is more credible because of his status as a police officer," *Adams*, 2012 IL 111168, ¶ 20. If the prosecutor in *Adams* had attempted to introduce evidence about police department policies for disciplining officers who commit perjury, the defendant rightly would have objected to such testimony as collateral and improper.

In other words, under *Adams*, it is improper for either party to argue that, merely by virtue of his or her job, an officer is more or less credible than other witnesses. Here, after defendant cross-examined Stapleton, and Stapleton denied any improper use of force, the trial court correctly barred defendant from asking argumentative questions about whether Stapleton believed that he could face employment consequences if, hypothetically, his testimony had been shown to be false. Just as the People cannot bolster the credibility of police witness by pointing to generally applicable employment policies, defendant cannot use such policies to suggest that police witnesses

lack credibility. The trial court's reliance on *Adams* was well-placed, and the court properly barred the line of questioning.

**C. Any error was harmless.**

As the People's opening brief explained, even assuming the trial court erred in limiting defendant's cross-examination of Stapleton, any error was harmless beyond a reasonable doubt. Peo. Br. 22-25. Despite defendant's ample opportunity to cross-examine Stapleton, the jury credited the officer's testimony that he fired his weapon to save his own life as defendant drove toward the officer. This is unsurprising, because Stapleton's testimony was strongly corroborated by other evidence. And nothing in this record — especially considering defendant's failure to make an offer of proof — suggests that asking Stapleton about the employment consequences of a hypothetically improper use of force could have altered the outcome of the trial.[3]

Defendant now contends that "he wanted to ask Stapleton if, in his mind after he shot defendant, he was concerned that the shooting could have a detrimental impact on his employment." Def. Br. 23. And defendant suggests he would be satisfied with a simple yes-or-no answer to that question. *See* Def. Br. 24 (describing Stapleton's potential answers). Assuming that defendant's proposed cross-examination was limited in this

[3] Defendant incorrectly describes the People's harmlessness argument. Def. Br. 14-24. The People do not assert a forfeiture defense with respect to this issue; nor do they contend the evidence was overwhelming.

way, the harmlessness analysis is straightforward. Defendant thoroughly questioned Stapleton about the shooting, and it was clear to the jury that Stapleton believed he had acted appropriately, *see* R709-18 (Stapleton describing defendant's assault on direct); R764-67, 785-91, 879-80, 882-83 (cross-examination), and therefore had no reason to be concerned about discipline. Stapleton testified that he fired his weapon to stop defendant from running him over with his car. *Id.* And Stapleton denied any animus toward defendant. R785-94.

If defendant had instead proposed to ask whether Stapleton believed that, hypothetically, an officer who used force improperly would fear employment consequences, and the trial court denied the request, any error would again be harmless. It would be apparent to the jury, even without Stapleton's testimony, that an improper use of force might result in multiple negative consequences for an officer, including not only employment consequences but also potentially criminal or civil liability and/or reputational harms. Indeed, lawyers "may discuss subjects of common experience or common sense in closing argument," *People v. Runge*, 234 Ill. 2d 68, 146 (2009), and here, defense counsel in fact argued in closing that Stapleton had been lying "to protect his own interests." R1259. The jury considered this argument, contrary to defendant's suggestion, Def. Br. 21-22, and rejected it, and this Court can be sure, beyond a reasonable doubt, that

simply hearing Stapleton state the obvious would not have changed their minds.

Finally, if (as actually happened in this case) the trial court prevented defendant from asking Stapleton about actual police department policies that might apply to officers who use force improperly, that would be harmless as well. As the dissent pointed out below, because defendant never made an offer of proof, it is "speculative and uncertain" whether Stapleton's answer would have been helpful to the defense at all. A16, ¶ 87. And even if Stapleton had been prepared to testify about specific employment consequences that apply to the improper use of force, again, that potential bias was already apparent to the jury and argued by defense counsel.

Moreover, any possible detriment in limiting the cross-examination was more than outweighed by the strength of the People's evidence. Stapleton's testimony — that defendant did not stop his vehicle despite several orders to do so and then accelerated the vehicle toward Stapleton, placing Stapleton in fear for his life — was corroborated by the other evidence. Officer Eric Zettergren and eyewitness Michael McAbee both confirmed that defendant's car was moving before Stapleton began firing. R626-28, 631, 906-13. Although neither witness testified that they saw Stapleton standing in front of defendant's car, that is the most reasonable inference from the evidence that (1) Stapleton was yelling at defendant to stop, R646-47, 708-09; Peo. Exh. 6A, (2) defendant was yelling at Stapleton to

get out of his way, R646-47; Peo. Exh. 6A, (3) Stapleton can be seen in surveillance video running away from defendant's car, Peo. Exh. 6, and (4) the photographs show that Stapleton shot through defendant's front windshield, Peo. Exh. 7. The jury plainly found Stapleton's corroborated testimony convincing.

Defendant argues that Stapleton's account of events was suspect because the other evidence did not corroborate the fact that the officer was standing in front of defendant's car when defendant accelerated, as opposed to behind the police car, as eyewitness Jamie Kirk seemed to testify, Def. Br. 15-20, but this is not a fair reading of the record. While true that Stapleton and Kirk gave differing accounts of what occurred, Kirk's testimony was uncertain and contradicted by the other witnesses. Kirk testified that when he awoke in his bunk, he saw only one police officer, even though it is undisputed that both Stapleton and Zettergren were present. R647. Defendant asserts that Kirk testified that the officer he saw was standing "behind" the trunk, so that the officer was never in the path of defendant's vehicle. Def. Br. 18-19. But Kirk's actual testimony was more ambiguous. He said that the officer was "standing beside the [police] car on the driver's side," but also that the officer was standing "right there at the trunk [of the police car]." R647-50.[4] And Kirk testified that defendant spoke "to the cop,"

[4] Even if Stapleton had been standing behind the trunk of the police car, he still might reasonably have feared that defendant would kill or injure him by ramming his car into the police car.

telling him to get out of the way, R648, 667, suggesting that Stapleton was blocking defendant's escape.[5] And although Kirk initially testified that defendant's car did not move until after Stapleton started firing his gun, R649-50, he later acknowledged that it may have been moving slowly, R674-75.

In sum, the trial court's modest limitation on the cross-examination of Officer Stapleton did not violate the Confrontation Clause; nor did the trial court abuse its discretion. And even assuming error occurred, it was harmless in light of defendant's otherwise extensive cross-examination and the strength of the People's evidence.

## II. It Was Not Plain Error for the Trial Court to Bar Defendant from Questioning Officers Stapleton and Zettergren About the Joliet Police Department's Policy Concerning Written Police Reports.

Moreover, as the People explained in their opening brief, this Court should also reject the appellate court's holding that it was plain error to bar defendant from asking about a police department policy that required video-recorded statements, rather than written police reports. Peo. Br. 25-30. Defendant concedes that he forfeited the argument and is entitled to relief only if the trial court's ruling was first prong plain error. Def. Br. 34-35. He thus bears the burden of showing a "clear or obvious error occurred and the

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[5] Defendant posits that perhaps he was shouting for the police car to get out of his way, rather than at Officer Stapleton. Def. Br. 20. But besides contradicting Kirk's testimony, it would make little sense to think that defendant was shouting at an empty police car, considering that both officers had exited the vehicle.

evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant." *People v. Moon*, 2022 IL 125959, ¶ 20. He fails to make either showing here.

As an initial matter, defendant appears to concede that at least one basis for the appellate court's decision was erroneous. Def. Br. 30-31. The trial court found, as a factual matter, that Joliet Police Department policy prohibited officers from submitting written police reports following an officer-involved shooting; officers were instead directed to make video-recorded statements. R346-47. Defendant concedes that he presented no evidence to suggest a different policy, and the trial court properly relied on the officers' testimony about the policy. Def. Br. 30-31. It necessarily follows that the appellate court erred in describing the policy as ambiguous.

This concession undermines the appellate court's reasoning that Stapleton's and Zettergren's "failure to write reports . . . could support an inference that the officers sought to insulate themselves from potential scrutiny." A13-14 & n.2. In fact, the only possible inference from the lack of written police reports is that the officers followed the department policy, which prevented them from writing such reports.

Defendant argues instead that he should have been permitted to ask the officers about the policy because "the existence of the policy itself" suggests that the Joliet Police Department followed a "code of silence" and directed officers to "keep quiet in order to insulate the officers and the

department from civil liability." Def. Br. 32-34. According to defendant, the entire police force had an interest in falsely convicting defendant to avoid liability in a potential § 1983 lawsuit. *Id.*

Such an argument would be improper. Although attorneys are permitted wide latitude in making their arguments to the jury, they are limited to the facts in evidence and "reasonable inferences drawn from the evidence." *People v. Williams*, 192 Ill. 2d 548, 573 (2000). The existence of a policy requiring video-recorded statements rather than written reports following police-involved shootings does not give rise to a reasonable inference that the Joliet Police Department conspired to frame defendant. After all, a video-recorded statement is in many ways a more accurate and thorough record of an officer's contemporaneous account of an event. It allows the viewer to assess the way questions were presented to the officer, and the officer's demeanor when responding in a way that a cold, written report does not. It is simply not reasonable to infer that the existence of this policy alone is evidence of a "code of silence" designed to insulate officers from liability. Accordingly, the trial court did not abuse its discretion, much less commit clear and obvious error, in preventing defendant from pursuing this line of inquiry.

Defendant cites *People v. Gipson*, 203 Ill. 2d 298 (5th Dist. 2003), and *People v. Garner*, 2018 IL App (5th) 150236, for the proposition that "[i]t is proper for defense counsel to cross-examine officers about the policies under

which they have acted," Def. Br. 31, but these cases do not address the issue presented here: whether counsel may do so where the procedures are not relevant or their relevance is outweighed by other factors. In *Gipson*, counsel was entitled to ask about police policies for conducting inventory searches because controlling United States Supreme Court precedent made such searches illegal unless undertaken "pursuant to standard police procedures." 203 Ill. 3d at 304-05 (citing *Colorado v. Bertine*, 479 U.S. 367 (1987)). And the *Gibson* court held that, as a matter of fairness, defense counsel should be permitted to ask about crime lab policy where the People's witness addressed the policy on direct examination. 2018 IL App (5th) 150236, ¶¶ 23-24.

Defendant also fails to show that the evidence was closely balanced. As discussed, Stapleton's testimony that defendant drove his car in the officer's direction before Stapleton fired his gun was corroborated by the other evidence, including testimony by Officer Zettergren and McAbee, as well as the surveillance audio and video. In contrast, Kirk's testimony, which arguably supported defendant's case, was ambiguous and contradicted by the other witnesses. Given the strength of the evidence supporting the aggravated assault conviction, there was no possibility that testimony about the department's record-keeping policy would "tip the scales of justice against" defendant. *People v. Sebby*, 2017 IL 119445, ¶ 51.

## III. Defendant Does Not Dispute That Any Error Is Harmless With Respect to His Convictions for Aggravated Fleeing and DUI, and His Forfeiture Argument Is Meritless.

As a final matter, the purported errors have no bearing on defendant's convictions for aggravated fleeing and DUI. *See* Peo. Br. 30-32. Accordingly, even if the Court holds that the aggravated assault conviction must be vacated, the appellate court still erred in vacating defendant's remaining convictions. *Id.* Indeed, defendant does not defend the appellate court's unreasoned decision with respect to these two convictions. Instead, he argues that the People forfeited their alternative argument by not raising it in the appellate court or their PLA or citing supporting authority in their opening brief. Def. Br. 36-38. Defendant is incorrect.

This Court "requires parties to preserve issues or claims for appeal; [it] do[es] not require them to limit their arguments here to the same arguments that were made below." *Brunton v. Kruger*, 2015 IL 117663, ¶ 76. And when the appellate court reverses the trial court's judgment "and the appellee in the appellate court then brings the case to this [C]ourt on appeal, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if those issues were not raised in the appellate court." *People v. Brown*, 2020 IL 125203, ¶ 29 (citing *People v. Artis*, 232 Ill. 2d 156, 164 (2009)); *accord Bell v. Hutsell*, 2011 IL 110724, ¶¶ 20-21. And, regardless of any forfeiture, this Court "may affirm the circuit court's judgment on any basis contained in the record." *People v. Horrell*, 235 Ill. 2d 235, 241 (2009).

Here, the People have consistently argued that no error occurred below, but that if an error did occur, it was harmless or not plain error with respect to all of defendant's convictions. *See* Peo. App. Br. 11, 14-15 (arguing any error was harmless or not plain error); Peo. PLA 10-11, 13-14 (same); Peo. Br. 22-25, 29-30 (same). The narrower argument — that any error was harmless or not plain with respect to two of the three convictions — was necessarily part of the same "issue or claim," even if not articulated in precisely the same manner. *Brunton*, 2015 IL 117663, ¶ 76. Accordingly, the People preserved this alternative argument.

The Court should also reject as baseless defendant's argument that the People failed to cite "previous cases that have decided to separately affirm or reverse individual convictions based on overwhelming evidence." Def. Br. 37-38. The People cited ample case law to establish that an error does not require the reversal of a conviction if harmless beyond a reasonable doubt or where unpreserved error does not rise to the level of plain error. Peo. Br. 22 (citing *Blue*, Ill. 2d at 13, and *People v. Kliner*, 185 Ill. 2d 81, 134 (1998)); Peo. Br. 26 (citing *Moon*, 2022 IL 125959, ¶¶ 19-20). Indeed, as a matter of logic, if the Court finds that the alleged errors are harmless or not plain error with respect to some, but not all, of the convictions, there would be no reason to reverse the unaffected convictions. To do so would provide a windfall to defendant and waste judicial resources to retry defendant on charges that he does not seriously contest. *See People v. Jackson*, 2022 IL 127256, ¶ 15

(describing purpose of plain error rule to avoid "wasting time and judicial resources"); *People v. Stoecker*, 2020 IL 124807, ¶ 23 ("Harmless error analysis is based on the notion that a defendant's interest in an error-free proceeding must be balanced against societal interests in finality and judicial economy.") (cleaned up).

For that same reason — to avoid the waste of unnecessary resources — even if this Court finds that the People forfeited this argument, it should overlook the forfeiture and reinstate the aggravated fleeing and DUI convictions. *Horrell*, 235 Ill. 2d at 241. Defendant suffers no prejudice from having lawful convictions upheld.

The People agree with defendant, Def. Br. 38, that if the Court reverses the appellate court judgment with respect to any of the convictions, it is appropriate to remand to that court to consider defendant's remaining appeal arguments in the first instance.

## CONCLUSION

This Court should reverse the judgment of the appellate court. In the alternative, the Court should reinstate defendant's convictions for aggravated fleeing or attempting to elude a police officer and DUI.

October 27, 2022

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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, and the certificate of service is 5,167 words.

/s/ Jason F. Krigel
Jason F. Krigel
Assistant Attorney General

## PROOF 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 October 27, 2022, the foregoing **Reply of Plaintiff-Appellant People of the State of Illinois** 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 to the email addresses below through the court's electronic filing system:

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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.

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