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IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. RALPH HARRIS, Petitioner-Appellee.	) Appeal from the Appellate Court of Illinois, First District, Nos. 1-22-1033, 1-22-1034 & 1-22-1035 (cons.))) There on Appeal from the Circuit Court of Cook County, Criminal Division, Nos. 95 CR 27596, 95 CR 27598 & 95 CR 27600)) The Honorable Michael R. Clancy, Judge Presiding

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

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

ARGUMENT

The People's opening brief demonstrated that the decision below (*Harris II*) — which dismissed the People's appeal for lack of jurisdiction because it interpreted a prior mandate (*Harris I*) as implicitly vacating petitioner's convictions and ordering new trials — must be reversed for several reasons, including that *Harris I* did not (and could not) grant such relief, for petitioner had not proved his Fifth Amendment claim and petitioner said he was *not yet* requesting vacatur or new trials. Petitioner does little to defend *Harris II*, as he fails to respond to most of the People's arguments. He instead offers an alternative argument: he *agrees* with the People that *Harris I* did not vacate his convictions and order new trials, but argues that the circuit court's order granting that relief after conducting an evidentiary hearing on remand nevertheless is not an appealable order. Petitioner is wrong because it is settled that an order granting such relief is appealable.

I. *Harris I* Did Not (And Could Not) Implicitly Vacate Petitioner's Convictions and Order New Trials.

The People's opening brief provided three reasons why the *Harris II* majority erred by holding that *Harris I* implicitly vacated petitioner's convictions and ordered new trials. Peo. Br. 17-37.[1] What little petitioner says in response is contrary to the record and settled law.

[1] The parties' briefs are cited as "Peo. Br." and "Pet. Br."

A. Petitioner had not yet proved his Fifth Amendment claim.

The People's opening brief demonstrated that *Harris I* did not implicitly grant relief on petitioner's postconviction claim — that his confessions were coerced and thus their admission at his trials violated the Fifth Amendment — by vacating his convictions and ordering new trials because, under the Post-Conviction Hearing Act, it was impossible for it have done so. Peo. Br. 19-27. As explained, courts may vacate convictions and order new trials only if the petitioner proves his constitutional rights were violated, and *Harris I* did not hold that petitioner had proved his confessions were coerced, such that their admission violated the Fifth Amendment. *Id.*

Petitioner does not contend that *Harris I* held that he had proved his confessions were coerced. Nor could he: after all, in his *Harris I* brief petitioner expressly stated that he was "not asking [the appellate court] for a new trial, or even for this Court to suppress his purported confessions," but was asking only for a hearing to determine the merits of his Fifth Amendment claim. A59-60. And, of course, if *Harris I* had found that petitioner had proved his confessions were coerced, then there would be no need to order a suppression hearing as *Harris I* did.

Petitioner instead contends that the People's brief "artificially raises the bar for postconviction relief" and that he "was not required" to "prove[ ] a violation of his Fifth Amendment rights" to obtain new trials. Pet. Br. 35.

According to petitioner, he was entitled to relief if he merely made a "substantial showing" his Fifth Amendment right was violated. *Id.*

But it is settled that a postconviction petitioner cannot obtain vacatur of his convictions and new trials unless he proves that he suffered "a denial of a constitutional right by a preponderance of the evidence." *People v. Coleman*, 2013 IL 113307, ¶ 92 (cleaned up); *see also People v. English*, 2013 IL 112890, ¶ 21 ("To be entitled to postconviction relief, a defendant must establish a substantial deprivation of federal or state constitutional rights."). Petitioner's argument that he needed to make only a "substantial showing" of a constitutional violation — *i.e.*, that his rights *might* have been violated — confuses the pleading standard that applies at the second stage of postconviction proceedings with standard that applies at the third stage. *People v. Domagala*, 2013 IL 113688, ¶ 35 ("[T]he 'substantial showing' of a constitutional violation that must be made at the second stage is a measure of the legal sufficiency of the petition's well-pled allegations of a constitutional violation, *which if proven* at [the third-stage] evidentiary hearing, would entitle petitioner to relief.") (emphasis in original); *Coleman*, 2013 IL 113307, ¶ 92 (petitioner must prove claim to obtain relief).

In sum, *Harris I* did not implicitly vacate petitioner's convictions and order new trials because it was undisputed that he had not yet proved his constitutional rights were violated.

B. Petitioner stated in *Harris I* that he was not yet requesting that the court vacate his convictions and order new trials.

Further evidence that *Harris I* did not implicitly vacate petitioner's convictions and order new trials is the fact that petitioner stated during the *Harris I* appeal that he was *not yet* requesting such relief. Peo. Br. 28-33. As the People noted, it is settled that courts do not grant relief on unbriefed issues or where the defendant did not request such relief on appeal. *E.g., Crim v. Dietrich*, 2020 IL 124318, ¶¶ 39-41 (where appellant's briefs did not request a new trial on one of his claims, the appellate court "could not remand the matter for a new trial" on that claim); *see also People v. Givens*, 237 Ill. 2d 311, 323-24 (2010) (appellate court could not reverse conviction based on argument defendant did not raise); *Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008) (reviewing courts should address only the issues parties present).

Petitioner cites no case holding that an appellate court may grant a party a new trial where the party disclaimed any entitlement to such relief on appeal, and he fails to address the People's authority. Although he attempts to distinguish *Crim* by characterizing it as merely concerning a party's forfeiture of a claim by not raising it in a posttrial motion, *see* Pet. Br. 34, *Crim* specifically held that the appellate court "could not remand the matter for a new trial" on the plaintiff's negligence claim because the plaintiff's appellate briefs did not request such relief. 2020 IL 124318, ¶¶ 39-41.

Thus, the question is whether petitioner asked the appellate court in *Harris I* to order new trials. And, as the People repeatedly noted in their opening brief, *see* Peo. Br. 7, 24, 28, 33, the record shows that petitioner expressly told the appellate court that he was *not yet* asking for new trials. Specifically, petitioner stated in his *Harris I* brief:

> [T]he relief requested by Petitioner is quite modest. *At this procedural juncture, Petitioner is not asking this Court for a new trial*, or even for this Court to suppress his purported confessions. He merely asks this Court to reverse the trial court's ruling and remand this case for a new suppression hearing at which all of the relevant newly discovered evidence can be considered.

A59-60 (emphasis added). Petitioner does not address this statement.

Instead, petitioner accuses the People of "baldly mispresent[ing] the record in asserting that [petitioner] never sought new trials *in his postconviction petition*." Def. Br. 3, 32-34 (emphasis added). But the People never made this assertion, and petitioner provides no citation for his accusation that they did. Rather, the People demonstrated that petitioner's appellate brief in *Harris I* stated that he was not yet requesting new trials and thus, *Harris I* could not grant such relief. Peo. Br. 30-31 (citing A59-60).[2]

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[2] Petitioner also incorrectly accuses the People of making other "false" statements. For example, he claims the People "made up" from "whole cloth" that ballistics evidence was introduced against him. Pet. Br. 6, n.3. Yet the People cited the appellate opinion that noted the evidence that petitioner killed William Patterson included, besides eyewitnesses, (1) expert testimony that bullets recovered from the bodies of people petitioner confessed he shot during his crime spree came from the same gun; and (2) testimony that bullets recovered from a home where petitioner resided had identical head stamps as the casings recovered from the murder scene. Peo. Br. 3-4 (citing CI188).

Petitioner is incorrect that he asked for new trials in his *Harris I* brief by citing *People v. Whirl*, 2015 IL App (1st) 111483, and in his prayer for relief. Pet. Br. 32-33. Petitioner relied on *Whirl* to support his request for a suppression hearing, not new trials. A59 (arguing that, "[u]nder *People v. Whirl*, 2015 IL App (1st) 111483," petitioner's new evidence of police coercion "[wa]s all that [he] need establish to be entitled to *a new suppression hearing*" (emphasis added)). Petitioner then stressed that "the relief requested . . . [wa]s quite modest" because he was "not asking [the appellate court] for a new trial," but rather for the court to remand "for a new suppression hearing" at which he could present "all of the newly discovered evidence." A59-60. And petitioner's prayer for relief merely asked for "a new suppression hearing before a different judge," A79, and thus was consistent with petitioner's earlier assurance that "[a]t this procedural juncture, Petitioner is not asking this Court for a new trial," A59.

Lastly, petitioner is incorrect when he suggests that *Harris I* framed his request on appeal as a request for new trials. Pet. Br. 33. To the contrary, *Harris I* noted that petitioner was requesting a "new suppression hearing," and the opinion never mentioned "new trials." 2021 IL App (1st) 182172, ¶ 1. And in this respect, it is important to note that petitioner's suggestion that *Harris I* understood he was asking for new trials and granted him that relief is contrary to the position he took in *Harris II*, where he expressly and repeatedly stated that it was the *circuit court* that "grant[ed]"

petitioner "a new trial," not *Harris I*. A118-20, 123-26. For example, petitioner argued in his appellate brief that the mandate in *Harris I* "d[id] not dictate the proceedings after the motion to suppress hearing" that the circuit court conducted on remand. A125. And petitioner further argued that the mandate "endowed the circuit court with the power to grant new trials at the conclusion of the suppression hearing" if petitioner proved his claims were meritorious. A124. Notably, although the People's opening brief discussed these passages, *see* Peo. Br. 36-37, petitioner's brief before this Court does not address them.

C. The parties and the circuit court understood that *Harris I* did not vacate petitioner's convictions and order new trials.

The People's brief also identified a third reason why *Harris I* cannot be read as implicitly vacating petitioner's convictions and ordering new trials: the record shows that, on remand, petitioner, the People, and the circuit court all understood that *Harris I* had *not* granted such relief, and they proceeded on the shared understanding that petitioner could not obtain postconviction relief unless the circuit court found that his constitutional rights had been violated. Peo. Br. 33-37.

As the People noted in their opening brief, when the case returned to the circuit court on remand, the circuit court stated that the appellate court had "told this court [to] conduct a suppression hearing" but had "not instructed [it] to do a new trial," and petitioner did not disagree. Peo. Br. 34; R13569. Indeed, throughout the remand proceedings, petitioner conducted

himself in accordance with the understanding that the postconviction proceedings were ongoing and *Harris I* had not ordered new trials:

- During remand, petitioner (1) repeatedly asked the circuit court to find that his Fifth Amendment rights had been violated and order "new trials" on that basis; and (2) raised a new postconviction claim (his *Brady*/*Giglio* claim) and asked the circuit court to order new trials on that basis, too. Peo. Br. 34-35; C3331, 3692, 3697-776.
- In the circuit court, petitioner's counsel stated that the case did not move to a "pre-trial" posture until the circuit court ordered new trials following the hearing on remand, thus acknowledging that *Harris I* had not ordered new trials. Peo. Br. 36; C3899.
- As discussed, during the appeal below, petitioner continued to acknowledge that the circuit court, not *Harris I*, had ordered new trials. Peo. Br. 36-37; *supra* pp. 6-7. For example, in addition to the passages quoted above, petitioner's prayer for relief asked the *Harris II* court to "affirm the circuit court's new trial order," A139, a request he would not make if *Harris I* had already ordered new trials.

Petitioner's brief fails to acknowledge any of these points. Accordingly, the record is clear that petitioner, the People, and circuit court all understood that *Harris I* did not vacate petitioner's convictions and order new trials.

D. Petitioner's limited arguments in support of *Harris II* are meritless.

Petitioner offers little argument that the *Harris II* majority correctly held that *Harris I* ordered new trials, and the little he says is incorrect. Petitioner first asserts that, "by reversing the denial of [petitioner's] postconviction petition, *Harris I* necessarily granted [petitioner] new trials irrespective of the outcome of a new motion to suppress hearing." Pet. Br. 31. In other words, petitioner contends that appellate courts may vacate a petitioner's convictions and order new trials based on a Fifth Amendment claim that his confessions are coerced even if the confessions are ultimately determined to have been voluntary. But, of course, courts may not vacate convictions and order new trials if a postconviction claim is meritless. *Supra* p. 3. And petitioner ignores that he expressly stated in *Harris I* that he was *not* asking the appellate court to order new trials and later repeatedly took the position that *Harris I* did not order new trials. *Supra* pp. 5-7.

Petitioner's argument also confuses an order reversing the denial of relief with an order granting relief. An appellate decision reversing an order denying the relief sought in a complaint or petition does not "necessarily" mean that the appellate court is granting the relief requested in that complaint or petition, especially where the order under review was entered before a trial or full evidentiary hearing had been conducted. To illustrate, imagine that a plaintiff sued a defendant for $50,000, the circuit court granted the defendant's motion for summary judgment, and the appellate

court reversed that grant of summary judgment and remanded; under petitioner's view, that appellate decision implicitly awarded the plaintiff $50,000 because that was the relief requested in the complaint, which is plainly incorrect. Simply put, *Harris I* found that it was premature to deny petitioner's Fifth Amendment claim, reversed on that basis, and remanded for further proceedings on the merits of that claim, but that does not mean *Harris I* held that petitioner had proved he was entitled to the relief he requested in his petition (*i.e.*, new trials).

Petitioner also argues that this Court is "required by *Almendarez II*," and three other appellate decisions to hold that *Harris I* implicitly ordered new trials. Pet. Br. 35 (citing *People v. Almendarez*, 2022 IL App (1st) 210029-U). But this Court is not bound by appellate decisions and, thus, is not "required" to follow them. Moreover, the issue here — interpretation of the *Harris I* mandate — turns on the language of *Harris I* and the specific circumstances under which the decision was issued because mandates must be interpreted based on their own language and in the context of the arguments the parties raised on appeal; therefore, the interpretation of a mandate in a particular case cannot be "controlled" by an unrelated case. Peo. Br. 17-37.

An examination of *Almendarez II* (a consolidated appeal involving petitioners named Galvan and Almendarez) illustrates the point. To begin, unlike the present case, at the time of their first appeals (1) Galvan and

Almendarez had already had an evidentiary hearing with live testimony; and (2) there is no evidence they told the appellate court they were *not* requesting new trials. In turn, the language of the mandates in *Almendarez II* was much different than *Harris I*: in Galvan's first appeal, the appellate court "grant[ed] petitioner's third-stage successive postconviction petition," and in Almendarez's, the appellate court noted the possibility of a "new trial," words that do not appear in *Harris I*. *People v. Galvan*, 2019 IL App (1st) 170150, ¶ 1; *People v. Almendarez*, 2020 IL App (1st) 170028 (*Almendarez I*), ¶ 78. Further, unlike petitioner, Galvan and Almendarez raised "compelling" actual innocence claims as there was (1) exculpatory eyewitness testimony; (2) expert testimony that the prosecution's theory of how Galvan and Almendarez started the deadly fire was impossible; and (3) new evidence inculpating another person. *Galvan*, 2019 IL App (1st) 170150, ¶¶ 19-60, 75; *Almendarez I*, 2020 IL App (1st) 170028, ¶¶ 11-57. Given these differences, that *Almendarez II* interpreted the prior mandates to grant new trials does not compel the same result here.

The other three appellate cases that petitioner says "require" this Court to rule in his favor do not involve the interpretation of mandates or otherwise support petitioner. Although petitioner claims these cases "revers[ed]" the "denial of postconviction relief," Pet. Br. 39, the first involved a different statute, the Torture Inquiry and Relief Commission Act, which the opinion noted permits remedies "beyond those allowed under the Post-

Conviction Hearing Act." *People v. Clayborn Smith*, 2022 IL App (1st) 201256-U, ¶¶ 1-2, 107. Petitioner's next case, *People v. Marshall*, is likewise irrelevant, as it affirmed the denial of a defendant's motion to dismiss an indictment. 2021 IL App (1st) 210096-U, ¶ 3. And in the third case, *Whirl*, the appellate court ordered "that [petitioner's] guilty plea be vacated," which shows that when the appellate court vacates convictions, it does so expressly. 2015 IL App (1st) 111483, ¶ 113.

Thus, petitioner is incorrect that these cases "require" this Court to rule in his favor. And, in any event, to the extent *Almendarez II* or any other decision stands for the proposition that petitioner argues here — that the appellate court can order new trials where the petitioner has not yet proven his postconviction claims — then they are wrongly decided. Peo. Br. 17-33; *supra* p. 3.[3]

* * *

In sum, *Harris I* did not vacate petitioner's convictions and order new trials because he had not yet proved that he was entitled to such relief. Therefore, the remand proceedings were a continuation of the postconviction proceedings, and the appellate court has jurisdiction to consider the People's appeal from the circuit court's order on remand granting postconviction relief.

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[3] Petitioner is incorrect that he will be left without "any remedy or appellate rights" if *Almendarez II* was wrongly decided, Pet. Br. 37, because if this Court finds that the appellate court had jurisdiction, then this case will be remanded to the appellate court to resolve the parties' non-jurisdictional arguments.

II. *Harris II* Cannot Amend *Harris I* to Vacate Petitioner's Convictions and Order New Trials.

The People's opening brief established that because *Harris I* did not vacate petitioner's convictions and order new trials, *Harris II* was barred from (1) amending *Harris I* to retroactively grant such relief; or (2) providing "a new interpretation as to the *meaning* or *intent*" of the mandate in *Harris I*. Peo. Br. 37-38 (quoting *Crim*, 2020 IL 124318, ¶ 21 (emphasis in original) and citing *People v. Collins*, 202 Ill. 2d 59, 65 (2002)).

Petitioner ignores *Crim* and *Collins* and instead argues that appellate courts "regularly clarify" their "prior decisions." Pet. Br. 40. However, most of his cited cases are inapposite, as they involve courts distinguishing prior precedent, not modifying an earlier mandate in the same case. For example, petitioner quotes the nonprecedential decision *In re Victor H.*, 2015 IL App (4th) 140796-U, ¶ 19, for its statement that "[t]his court . . . took the opportunity to clarify our earlier opinion as follows . . . ." Pet. Br. 40.[4] But petitioner's ellipses obscure the meaning of this passage: *Victor H.* was not modifying an earlier mandate in the same case, but instead was describing a passage in an entirely different case (*In re Ashley C.*) that "distinguished" a third case (*In re Raheem M.*). The only authority petitioner cites that interprets a prior mandate in the same case is *Almendarez II*, which, as

[4] Petitioner violates Supreme Court Rule 23(e) by relying on unpublished cases, such as *Victor H.*, that were decided before 2021. Pet. Br. 28, 40; *see People v. Johanson*, 2024 IL 129425, n.3 (applying Rule 23). The People cite *Victor H.* only to correct petitioner's description of that case.

explained, is inapposite and, in any event, cannot overrule this Court's decisions in *Crim* or *Collins*. *Supra* p. 12.

In sum, *Harris II* must be reversed because it impermissibly modified *Harris I* to provide relief that *Harris I* did not (and could not) provide.

III. Petitioner's Alternative Argument Is Meritless.

As noted, petitioner makes little attempt to defend *Harris II*'s holding that it lacked jurisdiction because *Harris I* had "implicitly" ordered new trials, rendering the circuit court's order granting that relief on remand superfluous and unappealable. 2023 IL App (1st) 221033, ¶¶ 33-40. Instead, petitioner offers an alternative argument: he contends (1) the People are correct that *Harris I* did *not* vacate his convictions or order new trials; (2) yet *Harris I* (somehow) ended the postconviction litigation and moved the case to "pre-trial" status; (3) the proceedings on remand thus were not part of the postconviction proceedings; (4) the circuit court on remand ordered new trials; and (5) an order granting new trials when a case is in "pre-trial" posture is not listed as an appealable order under Supreme Court Rule 604. Pet. Br. 28-29.[5]

[5] Petitioner contends that *Harris II* adopted his alternative argument based on a single sentence in the opinion citing Rule 604. Pet. Br. 28. If so, that illustrates how incoherent and unjust *Harris II* is, as it means the majority dismissed the People's appeal because it simultaneously believed that (1) *Harris I* ordered new trials, not the circuit court; and (2) the circuit court ordered new trials, not *Harris I*.

That argument fails because there is no such thing as a "pre-trial" order vacating a petitioner's conviction and ordering a new trial. Rather, vacatur of convictions and grants of new trials are the type of relief provided in postconviction proceedings, and it is settled that orders granting such postconviction relief are appealable. *People v. Joyce*, 1 Ill. 2d 225, 227 (1953).

Put another way, petitioner's argument is illogical because it posits both that (1) the People are correct that *Harris I* did not order new trials; (2) but *Harris I* nevertheless ended the postconviction proceedings and moved the litigation to a "pre-trial" status. But, logically, postconviction cases cannot be moved to "pre-trial" status by an appellate decision that petitioner admits did not vacate his convictions or order new trials; nor do circuit courts grant new trials when a case is already in "pre-trial" status.

Moreover, petitioner's argument is contrary to his own conduct: as discussed, during remand petitioner conducted himself as if the postconviction proceedings were ongoing, such as by asserting new postconviction claims, captioning his pleadings as "Post-Conviction Cases," and asking the circuit court to order new trials. Peo. Br. 34-37; *supra* pp. 7-8. And in the circuit court petitioner's counsel correctly took the position that it was not until that court ordered new trials at the end of remand that the litigation moved to a "pre-trial" posture. Peo. Br. 36; C3899.

After all, the "purpose" of postconviction proceedings "is to *resolve* allegations of constitutional violations that occurred at trial." *People v.*

Richardson, 189 Ill. 2d 401, 407 (2000) (emphasis added); *see also Coleman*, 2013 IL 113307, ¶ 92 (at third stage of postconviction proceedings, court must determine whether the petitioner proved his constitutional rights were violated). Thus, postconviction proceedings do not "end" until the court determines that the petitioner's claim is meritorious (in which case a new trial is ordered) or meritless (in which case the petition is denied). Because petitioner agrees that *Harris I* did neither of those things, it did not end the postconviction proceedings.

Petitioner cites no authority supporting his theory that *Harris I* ended the postconviction litigation. Instead, he asserts that *Harris I* could not have remanded for further postconviction proceedings because it is "unheard of" for postconviction litigation to proceed as it did here, *i.e.*, for the circuit court to conduct an evidentiary hearing at which the parties present only documentary evidence to determine whether petitioner's confessions may have been coerced, then conduct a second evidentiary hearing with live witnesses to determine whether his confessions actually were coerced. Pet. Br. 29-30. But circuit courts "are permitted to exercise a great deal of discretion in resolving post-conviction petitions" to "ensure that [petitioners] are permitted an opportunity to advance [their] claims." *People v. Wilson*, 191 Ill. 2d 363, 370 (2000).

Moreover, the procedure the circuit court used here to resolve petitioner's claims is the procedure petitioner requested and benefitted from.

As noted, at the initial third-stage evidentiary hearing (*i.e.*, the evidentiary hearing held before *Harris I*), the parties presented only documentary evidence. R10024-62. At that hearing, petitioner's counsel emphasized that petitioner was "not asking [the court] to grant a new trial" and was "not even asking at this point that [the court] suppress the confessions," but was "only asking for a new suppression hearing" at which the court could consider "all [of petitioner's] evidence." R9954. But after the circuit court denied petitioner's claim based on the documentary evidence, petitioner appealed. And on appeal petitioner did not request new trials, but instead asked the appellate court to remand for the second hearing: a hearing at which petitioner would present *all* of his evidence to prove his claim, not just the documentary evidence. *Supra* p. 5; A59-60.

Harris I agreed that the circuit court had prematurely decided the merits of petitioner's Fifth Amendment claim, and granted petitioner's request to remand for another hearing in front of a different judge. 2021 IL App (1st) 182172, ¶¶ 48-64. As discussed, on remand, petitioner conducted himself like a postconviction petitioner, and after months of live testimony the circuit court granted him postconviction relief, vacating his convictions and ordering new trials. *Supra* pp. 7-8. Because petitioner received the process he requested, he is estopped from arguing now that that the People cannot appeal the circuit court's ruling on remand because the second phase of his requested postconviction procedure was not properly part of his

postconviction proceedings. *See, e.g., People v. Matthews*, 2016 IL 118114, ¶ 14 (where a defendant "ask[s] the court to proceed" a particular way, he is "estopped from alleging that the court erred in acquiescing to this request"); *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004) (similar).

Likewise meritless are petitioner's arguments that the parties thought the proceedings on remand were "pre-trial" proceedings. He first notes that during remand his pleadings were "captioned with [petitioner's] ***criminal*** case numbers." Pet. Br. 29 (emphasis in original). But that is because postconviction petitions must be filed in the court in which the petitioner was convicted, 725 ILCS 5/122-1(b), and are filed under the same case numbers as the criminal cases that resulted in the challenged convictions. Indeed, the documents petitioner filed *before* the remand proceedings (*i.e.*, when petitioner agrees postconviction proceedings were ongoing) were captioned with petitioner's criminal case numbers, including his postconviction petitions, related pleadings, and *Harris I* briefs. *E.g.*, C159, 199, 1308, 2846; A19.

Petitioner also observes that the parties referred to the second hearing as a "suppression hearing." Pet. Br. 29. But in requiring proof of coercion, a third-stage evidentiary hearing on a Fifth Amendment claim that a confession was coerced is no different than a pre-trial suppression hearing on a Fifth Amendment claim that a confession was coerced. Just as a court cannot suppress a confession under the Fifth Amendment before trial without

finding that the confession was coerced, *see, e.g., People v. Salamon*, 2022 IL 125722, ¶¶ 119, 130, it cannot order a new trial in postconviction proceedings based on a Fifth Amendment violation without finding that the confession was coerced, *supra* p. 3. Thus, contrary to petitioner's assertion, *Harris I*'s description of the evidentiary hearing on his Fifth Amendment claim as a "suppression hearing" does not change the fact that it was a hearing on his yet-unadjudicated *postconviction* claim of a Fifth Amendment violation. Indeed, petitioner's contention that the hearing was understood to be a "pre-trial" suppression hearing is contradicted by his admission that at the end of the hearing the circuit court vacated his convictions and ordered new trials — relief that is provided in postconviction proceedings, not "pre-trial" suppression hearings. Pet. Br. 7.

For similar reasons, petitioner is incorrect that the parties understood the remand proceedings were in a "pre-trial" posture because "the circuit court placed the burden on [the People] to show that [petitioner's] statements were voluntary." Pet. Br. 29-30. Petitioner ignores that the circuit court expressly stated that the appellate court had not granted new trials, petitioner acknowledged in the circuit court that he would not be entitled to new trials unless the circuit court found that his constitutional rights had been violated, and petitioner conducted himself during remand as if the postconviction proceedings were ongoing. *Supra* pp. 5-8; Peo. Br. 24-36.

In sum, petitioner's alternative argument is illogical, inconsistent with his own conduct, and contrary to settled law.

IV. This Court May Exercise Its Supervisory Authority to Remand for Consideration of the People's Appeal.

The People's brief demonstrated that if this Court believes the appellate court lacks jurisdiction because *Harris I* ended the postconviction proceedings, then the Court should exercise its supervisory authority to order the appellate court to consider the People's appeal because it is evident that the parties and the circuit court all believed *Harris I* had *not* granted postconviction relief. Peo. Br. 39-40 (citing *People v. Salem*, 2016 IL 118693, ¶¶ 20-23 (ordering appellate court to consider untimely appeal where there had been confusion about when notice of appeal was due)).

Petitioner is incorrect that *Salem* "explained" that supervisory relief "would be inappropriate even '[s]hould a similar situation present itself in the future.'" Pet. Br. 49. In the portion of *Salem* that petitioner partially quotes, the Court was discussing the appellate court's duty to comply with procedural rules, not limiting the scope of its own supervisory authority. 2016 IL 118693, ¶ 23. Following *Salem*, this Court has continued to recognize that it possesses "unlimited" supervisory authority and may exercise that authority to overcome jurisdictional limitations. *Gonzalez v. Union Health Serv.*, 2018 IL 123025, ¶ 16 ("An order need not be final and appealable in order that this court exercise its supervisory authority.") (internal quotations omitted).

Petitioner's other argument — that this appeal is not sufficiently important to justify the use of supervisory authority — is plainly incorrect. Pet. Br. 49. The "principle of finality" of convictions "'is essential to the operation of our criminal justice system,'" *People v. Mickey Smith*, 2015 IL 116572, ¶ 24, and that principle is under attack here.

Petitioner was convicted of multiple murders, aggravated sexual assaults, and other violent felonies three decades ago. Those convictions were affirmed on appeal, where the appellate court held that the evidence against petitioner was "overwhelming." CI199, 4554-55. And the evidence *is* overwhelming: for example, the evidence petitioner murdered William Patterson includes (1) eyewitness testimony that petitioner shot Patterson; (2) testimony from another eyewitness who saw petitioner carrying a gun and walking toward Patterson; and (3) testimony that bullets recovered from the home where petitioner had resided had identical head stamps as the casings recovered from the murder scene. CI184-88.

Petitioner's coerced confession claim was rejected before his trials, after the first postconviction evidentiary hearing, and again on remand. Peo. Br. 3-11. Yet on remand the circuit court ordered new trials because it believed that if jurors heard evidence of police coercion in other cases, they might find petitioner not guilty, a ruling that ignores that (1) petitioner did not raise such a claim; (2) the court itself found that petitioner's confessions

were voluntary and identified no reason jurors would disagree; and (3) the evidence against petitioner is overwhelming.

Protecting the People's right to appeal in these circumstances is important to maintaining the finality of convictions, it is important to society's interest in keeping a convicted murderer and sex offender off the streets, and it is important to the victims and their families. Accordingly, this Court should remand for consideration of the People's appeal.

V. The Merits of Petitioner's Claims Are Not Before The Court.

Lastly, the Court should decline to consider the merits of petitioner's two claims for postconviction relief — his Fifth Amendment claim and his *Brady/Giglio* claim — which the circuit court denied, and the appellate court has not yet addressed. Pet. Br. 41-49.

To recap, the People asked the appellate court to reverse the circuit court's judgment because the circuit court vacated petitioner's convictions based on what was essentially an actual innocence claim that petitioner had never raised and that was meritless given the overwhelming evidence of his guilt. *Harris II*, 2023 IL App (1st) 221033, ¶ 3. Petitioner responded in part that he was entitled to new trials based on his *Brady/Giglio* claim, which the circuit court found forfeited, R13569-70; and his Fifth Amendment claim, which the circuit court found meritless, A129-38. The appellate court dismissed the appeal for lack of jurisdiction without addressing either party's arguments. *Harris II*, 2023 IL App (1st) 221033, ¶ 3.

Because the appellate court has not addressed petitioner's claims, this Court should not address them now. It is settled that "arguments of counsel on a point other than one decided by the Appellate Court are not properly directed to this Court until the question has first been decided by the appellate court." *Williams v. BNSF Ry. Co.*, 2015 IL 117444, ¶ 55 (internal quotations omitted). In *Williams*, the appellate court dismissed an appeal for lack of jurisdiction without addressing any claims; this Court held that the appellate court had jurisdiction and remanded. The Court declined to address the parties' unadjudicated claims because it "'would in effect constitute the allowance of a direct appeal to this court in contravention of'" the normal appellate rules. *Id.* And the Court emphasized that the bar against addressing claims the appellate court had not addressed was "particularly applicable" where, as here, "the appellate court dismissed the appeal for lack of jurisdiction." *Id.* For the same reasons, this Court should not address petitioner's claims.

Petitioner's observation that reviewing courts can affirm a circuit court's judgment on any ground is irrelevant. Pet. Br. 45. Again, this Court does not address claims that the appellate court has not yet addressed, especially where the appellate court dismissed the appeal for lack of jurisdiction. *Williams*, 2015 IL 117444, ¶ 55. Moreover, the circuit court denied petitioner's Fifth Amendment and *Brady/Giglio* claims, R13569-70,

13947, so he is not asking this Court to "affirm" those rulings, he is challenging adverse rulings.

Nor would it be efficient to address petitioner's claims now, in part because the parties' briefs do not adequately address them. For example, to rule on petitioner's *Brady/Giglio* claim this Court first would have to decide whether the circuit court erred by ruling that petitioner forfeited that claim, R13568-70, an issue petitioner does not address.[6] If the claim is preserved, then the Court would have to determine whether prosecutors withheld evidence decades ago and whether that evidence would change the results of each of petitioner's three trials, issues that (1) petitioner's brief addresses only perfunctorily, without a discussion of the evidence against him; (2) the People cannot adequately address in the limited space available here; and (3) would require this Court to review thousands of pages of records. And, depending on how the Court ruled on that claim, remand *still* might be required for the appellate court to address the People's appeal (which has not been briefed here). Accordingly, this Court should remand to the appellate court to address the parties' arguments.

[6] Petitioner contends the forfeiture ruling was an "interim order," Pet. Br. 43, but the circuit court did not describe it as such, R13568-70.

CONCLUSION

This Court should remand for consideration of the People's appeal.

November 15, 2024

Respectfully submitted,

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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, and the certificate of service is 5,997 words.

/s/ Michael L. Cebula
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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 November 15, 2024, the foregoing **Reply Brief of Respondent-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 notice to the following email addresses:

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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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