No. 127805

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- TRUMANE TOMPKINS, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-19-0693. There on appeal from the Circuit Court of Cook County, Illinois , No. 18 CR 6765. Honorable Timothy Joseph Joyce, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

I. The court erred in denying the defense non-IPI instruction which, consistent with the language and purpose of the Body Camera Act, advised the jury to consider whether Officer Martinez intentionally failed to activate his camera, and if so, to determine what weight to give that fact in evaluating his testimony. Because a finding of guilt depended on the jury's assessment of Martinez's credibility, the error was reversible.

Officer Constantino Martinez, the sole officer to observe Trumane Tompkins holding the weapon he was convicted of possessing, violated §10-20(a)(3)(A) of the Body Camera Act by failing to record his foot pursuit of Trumane, when he allegedly made the observation. 50 ILCS 706/10-20(a)(3)(A)(West 2018). Consistent with the plain language of §10-30 of the Body Camera Act, the defense tendered a non-IPI jury instruction that would have instructed the jury to determine whether Martinez intentionally failed to activate his camera and, if so, the weight to apportion to that violation in assessing Martinez's testimony. While the trial court agreed that the proffered non-IPI was an accurate reflection of the Act, the judge refused the instruction because he believed Martinez offered a reasonable explanation for failing to turn on his camera and that he did not intentionally violate the Act. The issue before this Court is straightforward — whether the instruction was legally correct and if so, did the trial judge commit reversible error by refusing the plainly worded non-IPI jury instruction based on his finding that Martinez did not intentionally violate the statute by failing to record the foot chase.

In its response brief, the State presents three ineffectual arguments. First, the State suggests that the Body Camera Act's use of qualifying phrases creates ambiguity as to whether the trial court or the jury should make a factual determination of the officer's intent and the reasonableness of his actions. Ultimately, however, the State concedes that Trumane's interpretation represents the better approach. (St. Br. 16-17). Although the State never previously disputed the trial court's finding that the proffered instruction accurately reflected the law, it now changes course. The State backtracks, conceding that the reasonableness of Martinez's

failure to activate his camera was a question for the jury to resolve. While the State's current position presupposes that the trial court erred in making this determination and in finding the instruction legally correct, the State shifts blame for the error from the court to the defense. Besides lacking merit, the State's position contradicts the position it advanced in the proceedings below. Finally, the State claims that any error is harmless. In so arguing, however, the State ignores many of the arguments contained in Trumane's opening brief to this Court. For the reasons to follow, this Court should reject the State's arguments, reverse Trumane's unlawful use of a weapons conviction and remand his cause for a new trial.

The reasonableness of the officer's failure is a jury question

The State concedes that Martinez's intent and the reasonableness of his failure to activate his body camera presented questions of fact. (St. Br. 16). The State also concedes that traditionally such questions are reserved for the jury as the fact finder in a jury trial. (St. Br. 16-17). Nevertheless, the State suggests that the statute's use of qualifying phrases creates ambiguity as to whether the trial court or the jury should make these determinations. (St. Br. 15-16).

Contrary to the State's unsupported suggestion which it ultimately abandons, there is no ambiguity. As evidenced below, based on the statute's plain and repeated use of the phrase "court or other finder of fact," and the fact that the qualifying phrase "unless the State provides a reasonable justification" is set off from the rest of the statute by a comma, it is evident that the reasonableness of the officer's justification is simply a measure of the weight that the fact finder will place on a violation of the Body Camera Act. *Elementary School Dist. 159 v. Schiller*, 221 Ill. 2d 130, 145 (2006) (use of the disjunctive "or" in its ordinary sense connotes two alternatives by connecting various parts of a sentence which are separated from one another); *People v. Jackson*, 2011 IL 110615, ¶12 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous.") (Citations

omitted); see also *People v. Gutman*, 2011 IL 110338, ¶38 ("We construe statutes so as not to render any term superfluous"); *In re E.B.,* 231 Ill. 2d 459, 467-68 (2008) (qualifying phrase "unless it is found to be in [the dependant's] best interest" which was set off from the rest of the statute by a comma, applied to the two prior clauses of the statute).

Currently section 10-30 of the Body Camera Act provides in pertinent part:

> If a court or other finder of fact finds by a preponderance of the evidence that a recording was intentionally not captured, destroyed, altered, or intermittently captured in violation of this Act, then the court or other finder of fact shall consider or be instructed to consider that violation in weighing the evidence, unless the State provides a reasonable justification.

50 ILCS 706/10-30. So the only way to find the statute ambiguous is to read the phrase "or other finder of fact," out of the first clause, while inserting the phrase "the court finds that" into the last clause, *e.g.*;

> If a court [ ] finds by a preponderance of the evidence that a recording was intentionally not captured, destroyed, altered, or intermittently captured in violation of this Act, then the court or other finder of fact shall consider or be instructed to consider that violation in weighing the evidence, unless [the court finds that] the State provides a reasonable justification.

But this alteration contravenes a fundamental rule of statutory construction preventing courts from reading exceptions or conditions that do not exist into a plainly worded statute. *People v. Woodard*, 175 Ill. 2d 435, 443 (1997) ("There is no rule of construction which allows the court to declare that the legislature did not mean what the plain language of the statute imports. Where an enactment is clear and unambiguous, the court is not free to depart from the plain language and meaning of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express"). Not surprisingly, the State quickly agrees that a better reading of the Act reserves these determinations to the jury as fact-finder in a jury trial. (St. Br. 16-17).

The proffered instruction was an accurate statement of law

Although the State concedes Martinez's intent and the reasonableness of his actions presented questions of fact for the jury to resolve, State claims that the non-IPI tendered did not accurately convey the law because it did not account for an intentional but reasonable violation of the Body Camera Act. The State argues that pursuant to the Body Camera Act the finder of fact must determine that the violation was both intentional and unreasonable before it can consider that failure in evaluating the officer's testimony. (St. Br. 17). Trumane maintains that the proffered instruction accurately conveyed the law where it would have instructed the jury to determine if the officer's failure to activate his body camera was intentional. While the proffered instruction did not include language advising the jury to determine whether the State offered a reasonable justification, a finding that the officer's conduct was intentional encompasses the question of reasonableness, as an intentional violation of the Act during a foot chase is presumptively unreasonable. (Df. Br. 16-18). The State provides no convincing support for its claim that the instruction in this case did not accurately convey the law.

Nor in fact, has the State previously contested the accuracy of the proffered instruction below. At the instruction conference, defense counsel requested that the jury receive the following non-IPI jury instruction:

> You have heard testimony that Officer Martinez was wearing a body-worn camera but did not turn it on prior to or during his encounter with the defendant. If you find that the officer intentionally did not capture a recording of this encounter, then you should consider that fact when determining what weight to give to Officer Martinez's testimony. (Sup. Sec. C. 36).

The prosecutor confirmed to the court that she was objecting to the instruction but she repeatedly declined to explain the basis for the objection. (See R. 311, when the court asked if the State was objecting, the prosecutor replied, "We are, Judge," and R. 313, again replying "yes," when the court asked a second time if the State wished to object). After hearing defense counsel's argument in favor of the instruction, the trial judge agreed that the non-IPI was both well-written

and that it correctly tracked the statutory language. (R. 313). Notably, the prosecutor again remained silent, tacitly agreeing to this aspect of the court's finding. (R. 313). Nor did the State contest the accuracy of the instruction before the appellate court. Rather, the State argued that the trial court correctly made a threshold legal determination of the officer's intent and that the trial court correctly determined that the instruction was not applicable because Martinez *did not intentionally* violate the Body Camera Act. (St. Br. 1-19-0693 at 13-16) (arguing "here, the trial court's determination that the officer did not act intentionally was fully supported by the record.").

Even though the appellate court on its own found the instruction was not an accurate statement of law, this Court should decline to review the State's belated claim. *Garza v. Navistar Intern. Transp. Corp*., 172 Ill. 2d 373, 383 (1996) ("[w]here [a party] in the appellate court fails to raise an issue in that court, this court will not address it.") (quoting *Hammond v. North American Asbestos Corp.*, 97 Ill.2d 195, 209 (1983)); *People v. Wells*, 182 Ill. 2d 471, 490 (1998) (State estopped from advancing an argument it did not advance until case reached Supreme Court). Indeed, the State's acquiescence to the trial court's determination that the instruction correctly conveyed the law precluded the defense from any opportunity to alter the instruction to include the language that the State now argues was incorrectly omitted.

Moreover, the trial court's findings and the arguments advanced by the State below support Trumane's reading of the statute, that a jury finding of intentional conduct presumptively encompasses a finding of unreasonableness. In the proceedings below, Martinez testified that he "wasn't thinking about" activating his body camera due to the spontaneity of the event and a concern for his partner's safety. (R. 263-65). The trial court found Martinez's explanation constituted a reasonable justification for his violation because Martinez's failure was unintentional. (R. 311). In other words, the trial judge equated the officer's intention, or lack

thereof, with a finding that he provided a reasonable justification for his conduct. For its part, the State has never claimed that Martinez's failure to record the foot chase was intentional but reasonable. Instead, in its brief to this Court the State reiterates Martinez's testimony regarding the spontaneity of the event in claiming that the jury would have likely found his failure to be *unintentional* and consequently reasonable. (St. Br. 20-21). Therefore, like the trial judge, the State also equates intent with reasonableness. Of course, this is fully consistent with Trumane's argument that the tendered instruction accurately conveyed the law and did not need to include additional language regarding the reasonableness of the officer's explanation for failing to activate his camera. See *e.g.*., *People v. Rubin*, 361 Ill. 311, 329-30 (1935) (reasonable explanation for possession of stolen property negates guilty mental state).

Importantly, the State does not even so much as suggest an applicable explanation for when an officer's intentional failure to activate his body camera during a foot chase would be reasonable. Rather, the examples proffered by the State have no application to this case and do not refute the legal accuracy of the instruction as it pertains to the facts of this case. As an example of an intentional but reasonable violation, the State refers to an exception contained in a different section of the Body Camera Act, §10-20(a)(3)(C), which permits officers to turn off their body-worn cameras when inside of a courthouse that is equipped with a functioning camera system. (St. Br. 14-15); 50 ILCS 706/10-20(a)(3)C), (*eff.*, July 1, 2021). Because the Body Camera Act carves out this specific exception, an officer's failure to activate his camera inside a courthouse is presumptively *reasonable,* particularly given that an officer is generally unlikely to make an arrest or be involved in a foot pursuit in such a place.

Similarly, §10-20(a)(4.5) of the Body Camera Act provides that an officer "may" turn off his body camera while performing a community caretaking function, such as rendering medical aid, another example of an intentional but reasonable explanation the State claims

may cause an officer not to activate his body camera. (St. Br. 14); 50 ILCS 706/10 (a)(4.5)(West 2018). Importantly, however, that same subsection provides: "[*h*]*owever, the camera must be turned on when the officer has reason to believe that the person on whose behalf the officer is performing a community caretaking function has committed or is in the process of committing a crime*." 50 ILCS 706/10 (a)(4.5)(West 2018). In other words, as with an officer's intentional failure to activate his body camera within a courthouse, an officer's intentional failure to record himself rendering aid to someone *who is not actively in the process of committing a crime*, is presumptively reasonable under the statute.

The same is not true of a responding officer's failure to activate his camera during a foot chase. Martinez's duty to activate his body camera during the foot chase is covered by a different subsection of §10-20(a) of the Body Camera Act. 50 ILCS 706/10-20(a)(3) (West 2018) ("Cameras *must* be turned on at all times when the officer is in uniform and is responding to calls for service or engaged in any law-enforcement related encounter or activity that occurs while the officer is on duty"). Nor is there a similar exception to excuse an officer's failure during a foot chase, which clearly falls under the ambit of "any law enforcement related encounter or activity." 50 ILCS 706/10-20(a)(3). Indeed, even where an exigent circumstance might arguably prevent an officer from activating his camera during such a traditional crime prevention/detection function, the statute directs the officer to turn his camera on "as soon as practicable," thereby reaffirming the importance of body cameras during such basic law enforcement duties. 50 ILCS 706/10-20(a)(3)(A). Consistent with the Body Camera Act's treatment, Special Order 03-14, separately "mandate[s]" that Chicago Police Officers must activate their body cameras during all *"foot and vehicle pursuits*," allowing for no exceptions. Chicago Police Department Special Order No. SC 03-14 (Special Order 03-14), (*eff*. May 10, 2016). Therefore, under the statutory construction canon of *expressio unius est exclusio alterius* ("to express or include

one thing implies the exclusion of the other"), the Body Camera Act's differential treatment of foot chases must be seen as deliberate. *Metzger v. DaRosa*, 209 Ill. 2d 30, 44 (2004) *quoting Burke v. 12 Rothchild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 ("Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions").

So while an intentional action *can* be reasonable, an officer's intentional failure to activate his body camera when responding to a fleeing suspect, is presumptively *un*reasonable pursuant to the plain language of this statute. Of course, treating an officer's violation of the Body Camera Act during a foot chase as presumptively unreasonable, is fully consistent with the Body Camera Act's stated purpose of protecting members of the police from false accusations and to assist in prosecutions with additional visual evidence. 50 ILCS 706/10-5.

The State's intentional murder/self-defense analogy does not compel a contrary conclusion. (St. Br. 13). An intentional killing, like an intentional violation of the Body Camera Act during a foot pursuit, is presumptively unreasonable.720 ILCS 5/9-1(a)(1). Importantly, the onus is on the proponent of the defense to raise self-defense as an affirmative defense to an intentional act and to request jury instructions consistent with this defense. ILL. PATTERN JURY INSTR.-CRIM 7.01 (defining offense of first-degree murder); Comm. Notes, IPI7.01, citing *People v. Worsham*, 26 Ill. App. 3d 767, 771 (1st Dist 1975) (rejecting defendant's argument that "without legal justification" is a necessary element of offense and finding no error in jury instruction which did not include the "without legal justification" phrase where defendant did not raise self-defense at trial). Similarly, if the State believes it has elicited evidence to support an argument or warrant a further instruction to rebut the presumption that an intentional violation was reasonable, the prosecutor, as the proponent of such an argument, bears the burden of requesting that the jury be so instructed. This is evident by the statute's own language: unless the *State* provides a reasonable justification. 50 ILCS 706/10-30 (emphasis supplied).

Had the jury received the tendered non-IPI at issue here, the prosecutor was still free

to argue, consistent with Martinez's testimony, that his failure was reasonable and that he did not intentionally violate the statute. The prosecutor was also free to request additional instructions defining intent. See ILLINOIS PATTERN JURY INSTRUCTION-CRIMINAL 5.01A ("A person acts intentionally to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct"). Having repeatedly failed to raise the issue, the State intentionally relinquished the right to contest the accuracy of the instruction before this Court. Instead, the State has repeatedly acquiesced to the trial judge's determination regarding the accuracy of the non-IPI at issue here, effectively preventing defense counsel the opportunity to respond to a challenge to the accuracy of the instruction or to correct it, if necessary. *People v. Hughes*, 2015 IL 117242, ¶¶39-46 (finding issue waived where defendant by framing claim differently in the trial court than on appeal deprived the trial court of the opportunity to decide the issues and the appellate court of an adequate record). In any case, the State fails to support its argument that the instruction as given here was incorrect. Accordingly, this Court should find that the appellate court erred in finding the trial court did not abuse its discretion in rejecting the tendered non-IPI.

The instructional error was not harmless beyond a reasonable doubt

The State has also failed to demonstrate that the fully preserved error was harmless. *People v. Thurow*, 203 Ill. 2d 352, 363 (2003) (State bears the burden of persuasion to prove harmless error for fully preserved claims). Initially, the State takes issue with the harmless error standard, claiming that the harmless beyond a reasonable doubt standard does not apply. (St. Br. 18). The State's argument is not well taken. Generally, a fully preserved instructional claim requires the State to demonstrate that the result of trial would not have been different if the jury had been properly instructed. *People v. Mohr*, 228 Ill. 2d 53, 69 (2008); *People v. Washington*, 2021 IL 110283, ¶28. In this case, the instructional error impinged on Trumane's constitutional right to a fair trial and an impartial jury, thereby triggering the harmless beyond

a reasonable doubt standard. *People v. Ogunsola*, 87 Ill. 2d 216, 222 (1981). Virtually identical to the harmless error standard for traditional instructional errors, the harmless beyond a reasonable doubt standard requires "the beneficiary of the constitutional error [to] prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 23 (1967). Nevertheless, under any standard, the State has failed to prove that Trumane was not prejudiced by the trial court's error.

The State concedes, as it must, that the jury was not instructed to consider whether Martinez intentionally violated the Body Camera Act by failing to turn on his body camera. (St. Br. 19). Yet, the State boldly claims that the court's general instruction, IPI 1.02, advising the jury that it "may take into account [a witness's] ability and opportunity to observe, [his age,] his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case," was sufficient to apprise the jury of Martinez's specific violation of the Body Camera Act. As Trumane explained, Illinois courts have repeatedly rejected similar arguments. (Df. Br. 20; citing cases). The State's failure to cite any legal authority in support of its argument or respond to those relied on by Trumane speaks volumes. Though the State may wish it were not so, the Body Camera Act was not implemented as "some pointless exercise in virtue signaling." *Tompkins*, 2021 IL App (1st) 190693-U, ¶47 (Walker, J., dissent). Rather, it was intended to increase transparency and foster trust in the police, at a time when officer testimony is increasingly being challenged in court by contrary video and body camera evidence. *Investigation of the Chicago Police Department*, United States Dep't of Justice Civil Rights Div. & U.S. Attorney's Office, Northern Dist of Illinois, Jan. 13, 2017, page 6; See *e.g.*, *People v. Randall*, 2022 IL App (1st) 210846 ¶38 (rejecting officer's testimony regarding defendant's alleged nervousness, which was contradicted by "body camera video show[ing] that defendant appears compliant and calm throughout" challenged traffic stop). To hold, as the State requests,

that a general jury instruction sufficiently conveyed this statute's specific purpose would undermine the very real problem that served as an impetus to §10-30's passage.

Equally unavailing, the State briefly suggests that defense counsel's remarks during closing arguments cured any error. (St. Br. 19). Yet, the State fails to acknowledge that without a jury instruction to consider Martinez's violation of the Body Camera Act, the prosecutor was able to effectively minimize Martinez's failure to activate his body camera and undermine Trumane's defense as "a great distraction," and merely an improper attempt to "vilify" Martinez and deflect the jury's attention from Trumane's guilt and flight from Martinez. (R. 329). Moreover, there is appreciable distinction between a neutral instruction tendered by an unbiased authority figure and an impassioned argument from a partial advocate with a vested interest in the case's outcome.

In characterizing the State's evidence as overwhelming, the State cites Trumane's flight from the officer. (St. Br. 21-22). But the evidence in this case and recent case law establish that a Black man's flight, following a routine traffic stop, is no longer incontrovertible evidence of consciousness of guilt. First, Trumane was not the driver of the Hyundai that Officer Opacion attempted to curb and the prosecution presented no evidence that Trumane had any control over the driver's refusal to curb her vehicle when the officer initiated the traffic stop. Thus, the car's flight from police reveals little to nothing about Trumane. In addition, given the recent police shootings of young Black men for seemingly minor infractions, it is now recognized that one might flee on foot not out of a consciousness of guilt but out of fear, either for one's safety or for an unfair association with a codefendent. *People v. Horton*, 2019 IL App (1st) 142019-B, ¶¶69-71 (explaining the "troubling reality" that young minority men may flee from police out of "fear and distrust of police" and to avoid the recurring indignity of racial profiling, as opposed to attempting to conceal criminal activity).

The State also asserts that Trumane benefitted from the court's refusal to instruct the

jury on Martinez's violation of the Body Camera Act, claiming Trumane would not have been able to demonstrate that Martinez's violation was intentional. (St. Br. 20-21). The record, however, reveals otherwise. Officers Martinez and Blocker responded to Officer Opacion's calls of assistance with a fleeing a vehicle. (R. 247-48). Thus, Martinez, who admitted a familiarity with his body camera's usage and the Act's requirements, had time to anticipate the ensuing police encounter he would be facing. (R. 263-64). This of course directly refutes his testimony regarding the "spontaneity" of the incident, particularly where Blocker and Opacion both activated their body cameras despite the claimed "spontaneity" of the event. (R. 231, 263-65, 295). Where spontaneity and concern for fellow officers is inherent in most foot chases, Martinez's claim that his conduct was unintentional may well have been perceived by the jury as pretextual. And the jury had additional reason to question Martinez's veracity where his account of the incident was otherwise impeached by the police reports, none of which reflected the fact that Trumane held onto his waistband as if he was holding a handgun, despite Martinez's insistence that he told this critical fact to the officers to document. (R. 278).

The State also takes issue with Trumane's argument that the State's evidence left open the possibility that the gun police located belonged to someone other than Trumane. (St. Br. 22). This argument, however, is supported by the State's own evidence. Police presented no physical evidence to link Trumane to the gun. Importantly, Officer Martinez conceded that it was not unusual for individuals "to stash their guns around the neighborhood and not keep them on their person." (R. 276). He also offered an innocent explanation for why Trumane might have been holding onto his waistband: to hold onto a pant that is too baggy. (R. 276). Of course, the State's own evidence also established that the sedan contained two other individuals who fled from police and could have easily dropped the gun in question. (R. 210-11). In short, the State's complaint is wholly unwarranted.

Finally, the State attempts to factually distinguish *People v. Naylor*, 229 Ill. 2d 584

and *People v. Sebby*, 2017 IL 119445, because in contrast to those cases, Trumane did not present any witness testimony. (St. Br. 22). Such an argument misses the mark entirely as the State fails to respond to Trumane's larger argument: where a case rests on a single witness's uncorroborated account, the evidence cannot be fairly characterized as overwhelming. See e.g., *People v. Piatowski,* 225 Ill. 2d 551,567 (2007) (jury instructional error reversible under closely-balanced prong even though defendant did not testify in his own defense or offer an alibi because the State offered no physical evidence connecting defendant to crime and relied solely on the credibility of two eyewitnesses); *People v. Hayes*, 183 Ill. App. 3d 752, 757-58 (1st Dist. 1989) (State's evidence, which rested largely on the victim's testimony, not overwhelming).

Again, the State presented no physical evidence to connect Trumane to the weapon, and he never made an inculpatory statement to the police. Thus, Trumane's conviction hinged on the uncorroborated account of Officer Martinez, who failed to activate his body camera like his colleagues and as required by law. Furthermore, even accepting Martinez's account, his version of events left open the possibility that he was mistaken in his belief that the gun belonged to Trumane. Accordingly, the facts here are vastly different from *People v. Williams*, 2022 IL 126918, on which the State principally relies. *Id*.¶62-64 (although the State's evidence rested on two accounts of sexual assault, evidence not closely balanced where the complainants' testimony was consistent in important details and the State presented additional expert testimony to explain any perceived weaknesses in and corroborate their accounts). Because the proffered instruction went directly to the jury's ability to evaluate Martinez's credibility, the error in the trial court's ruling was not harmless, under any standard. Accordingly, this Court should vacate the appellate court's decision affirming Trumane's conviction and remand his cause for a new trial.

II. This Court should also reverse Trumane Tompkins's conviction where the trial

judge erred in allowing the prosecution to introduce irrelevant and prejudicial body cam video of the recovery of drugs that belonged to Trumane's codefendant.

The State does not contest that the trial judge erred in allowing the prosecution to present an irrelevant and highly prejudicial body camera video featuring a large bag of marijuana. Consequently, the State has abandoned an argument to the contrary. This Court should hold the State to its forfeiture and affirm the portion of the appellate court's decision finding error in the admission of this evidence. ILL. SUP. CT. R. 341(h)(7) ("Points not argued are forfeited."); See *People v.O'Neal*, 104 Ill.2d 399, 407 (1984) (principles of waiver and forfeiture apply to the State, and well as to the defendant).

Despite this concession, the State argues that any error is harmless, both individually and cumulatively. However, in so arguing, the State largely refers back to the arguments it advanced in responding to Argument I. (St. Br. 24-25) Trumane has already explained, at length, why those arguments lack merit, both in his opening brief and *supra* at 9-13. (Df. Br. 23-25, 30-33). To avoid any redundancy, Trumane respectfully directs this Court back to those arguments.

Two additional points, however, are warranted. First, the State again argues that the harmless beyond a reasonable doubt standard does not apply. (St. Br. 23). Initially, as with the instructional error in Argument I, the instant claim is fully preserved. (Df. Br. 27). The State does not argue otherwise. Consequently, the State bears the burden of persuading this Court that Trumane did not suffer any prejudice, regardless of the harmless error test this Court employs. *People v. Thurow*, 203 Ill. 2d 352, 363 (2003).

Here, the trial court stacked the decked against Trumane in favor of the prosecution through the admission of highly prejudicial and admittedly improper evidence on the one hand and the refusal of a proper jury instruction on a valid defense with the other. Whether viewed individually or cumulatively, these errors impinged on Trumane's constitutional right to a fair trial. As such, this Court should apply the harmless beyond a reasonable doubt test. *People*

v. King, 2020 IL 123926 ¶40. Under any standard, however, the State has failed to establish that these errors were harmless.

Secondly, the State speculates that the marijuana evidence "may have helped" Trumane by offering an alternative explanation for his flight from Martinez, reasoning that the jury may have believed that Trumane fled because of the marijuana. (St. Br. 24). Implicit in such an argument, however, is an acknowledgment that the jury likely connected the irrelevant drug evidence to Trumane. That alone is reason enough to find the error prejudicial.

Ultimately, the State's argument, predicated on nothing but the State's own speculation, fails to account for the legal recognition that juries often equate guns with drugs, which might have led the jury to assume, based on the presence of the drugs alone, that the gun belonged to Trumane. See *United States v. Johnson*, 592 F.3d 164, 169 (D.C. Cir. 2010); *United States v. Lopez*, 649 F.3d 1222, 1242 (11th Cir.2011) ("[T]his Court has long recognized that, as Forrest Gump might say, drugs and guns go together like peas and carrots."); see also *People v. Robinson*, 167 Ill. 2d 397, 408 (1995) (one of the indicators of an intent to deliver drugs is the presence of a weapon). That the jury would have made such an association in Trumane's case is even more likely given that Opacion's oblique testimony that the drugs were not "from" Trumane did not preclude the jury, like the State here, from inferring that Trumane had some connection to the marijuana. (R. 220-21). In light of the foregoing, the risk that the jury was persuaded to believe that Trumane was guilty, either through his association with his codefendants or a perceived connection between guns and drugs, precludes a finding of harmlessness.

Together, the trial court's errors gave the prosecution an unfair advantage in prosecuting its case against Trumane by bolstering the strength of its case in the eyes of the jury. Under any standard, the prosecution did not, and indeed cannot, prove that these errors are harmless. Accordingly, this Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, Trumane Tompkins, defendant-appellant, respectfully requests that this Court vacate the appellate court's decision below, reverse Tompkins's unlawful use of a weapon by a felon conviction and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 16 pages.

/s/Yasaman Hannah Navai
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NOTICE AND PROOF OF SERVICE

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Trumane Tompkins,

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 25, 2022, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Piper Jones
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