IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Respondent-Appellee,<br><br>-vs-<br><br>JARED M. STAAKE<br><br>Petitioner-Appellant | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Appellate Court of Illinois, No. 4-14-0638.<br><br>There on appeal from the Circuit Court of the Eighth Judicial Circuit, Schuyler County, Illinois, No. 13-CF-29.<br><br>Honorable Alesia A. McMillen, Judge Presiding. |

# REPLY BRIEF FOR PETITIONER-APPELLANT

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**ORAL ARGUMENT REQUESTED**

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# ARGUMENT

## I.

**Because Mr. Staake was tried for a first degree murder charge that was subject to compulsory joinder with the original second degree murder charge, but was filed more than 120 days after the original charge, his conviction must be reversed and he must be discharged from custody. The appellate court erred in holding that first degree murder was not a new and additional offense.**

**First degree murder is a "new and additional charge" to second degree murder because it created an additional burden on Mr. Staake of proving a mitigating factor.**

Both the State's argument and the Fourth District's opinion assert that under compulsory joinder analysis it is irrelevant that changing a charge from second degree murder to first degree murder "placed on defendant a burden that did not exist before."(St. Br. at 26-27), citing *People v. Staake*, 2016 IL App (4th) 140638, ¶ 73 (quoting *People v. Izquierdo-Flores*, 367 Ill. App. 3d 377, 383 (2d Dist. 2006)). However, courts must consider if the two charges "had essentially the same elements" when determining if a charge is "new and additional" for the purposes of compulsory joinder. *People v. Phipps*, 238 Ill. 2d 54, 68 (2010); (Df. Br. at 11-14). The analysis by the State and Fourth District distinguishes between a defendant being required to prove a mitigating factor and the State being required to prove a new element of a charged offense. (St. Br. at 26-27), citing *Staake*, 2016 IL App (4th) 140638, ¶ 74 (quoting *Izquierdo-Flores*, 367 Ill. App. 3d at 388 (2d Dist. 2006) (Bowman, J., dissenting)). This is a distinction without a difference in light of the compulsory joinder statute's purpose of ensuring the defendant has notice of the charges he is facing. (Df. Br. at 15-18)

The majority in *Izquierdo-Flores* properly noted that for second degree murder, the "mitigating factor is an additional element or fact that distinguishes" the crime from first degree murder. *Izquierdo-Flores*, 367 Ill. App. 3d at 384. This view is consistent with the necessary changes that occurred in the criminal code regarding these offenses. See *Staake*, 2016 IL App (4th) 140638, ¶¶ 54-57. It was a "perverse system" that required the State, in a voluntary manslaughter case, to prove a mitigating factor beyond a reasonable doubt because it was "an element that benefitted defendant." *Staake*, 2016 IL App (4th) 140638, ¶¶ 55-56. Often, the State would argue it had not proved mitigation and "defense counsel would contend that the evidence had proved that element." *Staake*, 2016 IL App (4th) 140638, ¶ 55. As noted by the Fourth District, it is a "more sensible arrangement" to have the "defendant to establish the facts necessary to mitigate first degree murder to second degree murder." *Staake*, 2016 IL App (4th) 140638, ¶ 57. Since the onus is on the defendant to prove a mitigating factor when first degree murder is charged, but not when second degree murder is charged, it is relevant to the analysis under the compulsory joinder statute. See *Izquierdo-Flores*, 367 Ill. App. 3d at 384.

The purpose of the compulsory joinder statute is to prevent "trial by ambush" and prevent the State from lulling the "defendant into acquiescing to pretrial delays on pending charges, while it prepared for a trial on more serious, not-yet-pending charges." *People v. Williams*, 204 Ill. 2d 191, 207 (2003). Providing proper notice to the defendant includes informing him of whether or not he will be required to prove a mitigating factor. *Izquierdo-Flores*, 367 Ill. App. 3d at 384. Allowing the State to change the charge to first degree murder on the eve of trial creates a loophole that "circumvent[s] a statutorily implemented constitutional right." *Izquierdo-Flores*, 367 Ill. App. 3d at 384, quoting *Williams*, 204 Ill. 2d at 207.

During this trial, defense counsel went to lengths to show that he was ambushed by the constant changes to the charges he was required to defend against. (Df. Br. at 16-18) On July 8, 2013, Mr. Staake was charged with second degree murder alleging he acted under a sudden and intense passion resulting from Mr. Box's serious provocation. (C. 3) It was not until 150 days later, on December 5, 2013, that the State first charged Mr. Staake with first degree murder, and it took another 35 days, until January 9, 2014, for the state to charge the first degree murder theory on which it proceeded to trial. (C. 66, 124) Counsel was so surprised by these amended charges, that he objected to the amended complaint and requested a continuance. (R. XIII, 7-10) Defense counsel expressly stated they were surprised by the amended complaint. (R. XIII, 9) The trial court denied the defense's request for a continuance. (R. XIII, 13)

After the close of evidence, during the jury instruction conference, the State then requested a jury instruction on second degree murder under the theory of unreasonable self defense. (R. XV, 81) Counsel argued that the State's request for second degree instructions amounted to "the fourth notice of what this man has to defend against after the close of all evidence." (R. XV, 111) Contrary to the State's assertions that defense counsel should have been unsurprised by this (St. Br. at 24-25), counsel argued that "had we known that we were simultaneously defending against a first-degree and a second-degree murder case, that we would have also catered to that second-degree case as well." (R. XV, 108) Defense counsel repeatedly objected to instructing the jury on second degree murder. (R. XV, 74-78, 105-111) The constant changing of charges and claims that needed to be defended against created a trial by ambush for Mr. Staake, where his counsel admitted

he would have argued the case differently if he had known he was defending against both first and second degree murder. See (R. XV, 108)

"Second degree murder is a separate offense from first degree murder." *People v Fort*, 2017 IL 118966, ¶ 31, citing 720 ILCS 5/9-1, 9-2 (2008). This is true even though second degree murder is a lesser mitigated offense of first degree murder. *Staake*, 2016 IL App (4th) 140638, ¶ 60, quoting *People v. Jeffiers*, 164 Ill. 2d 104, 122 (1995). Plainly, the Fourth District was wrong in its analysis that "[t]he two offenses are better thought of as different postures of the same offense." *Staake*, 2016 IL App (4th) 140638, ¶ 67.

Although the two crimes share elements, these crimes are not interchangeable. See *Fort*, 2017 IL 118966, ¶¶ 31-34 (a juvenile defendant convicted of second degree murder was not also "convicted" of first degree murder). First and second degree murder are "alternative theories on the same facts" and, thus, subject to compulsory joinder. *Izquierdo-Flores*, 367 Ill. App. 3d at 385.

As this trial made clear, there can be numerous alternative theories based on the same facts. (Df. Br. at 16-18) Moreover, Mr. Staake was prejudiced by the constant changing of the State's theory of the case. (Df. Br. at 20-22) If trial counsel had properly raised a speedy trial claim, Mr. Staake could not have been tried on the original second degree murder charge since it was a lesser mitigated offense of the time-barred first degree murder charge. (Df. Br. at 21) Thus, if first degree murder is found to be a "new and additional" charge, Mr. Staake's conviction should be reversed and he should be discharged from custody because he cannot be convicted of a charge filed in violation of the speedy-trial act. See *Williams*, 204 Ill. 2d at 207-208.

**First degree murder is a "new and additional charge" to second degree murder because it created a more severe potential penalty than second degree murder.**

Furthermore, the Fourth District and the State failed to appreciate the importance of first and second degree murder convictions having different penalties. (St. Br. at 29-30) Another factor in determining if a charge is "new and additional" is if the charges "provided the same penalty." *Phipps*, 238 Ill. 2d at 68; (Df. Br. at 13-15). Obviously, first degree murder has greater penalties than second degree murder. (Df. Br. at 15) citing *Izquierdo-Flores*, 367 Ill. App. 3d at 384. The State essentially argues that the difference in penalties does not matter and shifts the focus back to the shared elements of the two crimes. (St. Br. at 29-30) The Fourth District's opinion does not even address the differences in the penalties. See *Staake*, 2016 IL App (4th) 140638; (Df. Br. at 19).

The reason the difference in penalties is a factor to be analyzed to determine if a charge is "new and additional," relates to defendant having proper notice of what he is facing. See *Phipps*, 238 Ill. 2d at 68 (both original and subsequent charge were subject to the same penalty). Part of "adequate notice to prepare [a] defense" includes being able to properly weigh the risks of the potential penalty. See *Phipps*, 238 Ill. 2d at 68-69; see also *Izquierdo-Flores*, 367 Ill. App. 3d at 384.

For months before trial, Mr. Staake believed he would be subject to the penalties of second degree murder, a class 1 felony which include a prison term of 4 to 15 years or an extended term of 15 to 30 years, and day-for-day credit. See 720 ILCS 5/9-2(d) (2013); 730 ILCS 5/5-4.5-30(a) (2013); 730 ILCS 5/3-6-3(a)(2.1) (2013). However, a month before trial, Mr. Staake learned he would actually be subject to the penalties of first degree murder, which include a prison term of 20

to 60 years, possibly extending to natural life, and no sentence credit. 720 ILCS 5/9-1 (2013); 730 ILCS 5/5-4.5-20 (2013); 730 ILCS 5/3-6-3(a)(2)(i) (2013). Since the first degree murder charge has higher potential penalties, that indicates it is a "new and additional" charge. See *Phipps*, 238 Ill. 2d at 68.

This drastic change in possible penalties contributed to the ambush Mr. Staake faced when the State changed the charge from second degree murder to first degree murder. (Df. Br. at 13-15) The State argues that these heightened penalties are essentially irrelevant and ignores the language in *Phipps* stating otherwise. (St. Br. at 29-30) Surely, the constant changes in potential penalties that Mr. Staake could be subjected to contributed to defense counsel's sense of surprise and that the trial was "manifestly unfair to the defendant." (R. XV, 110) By failing to weigh this factor, the Fourth District erred in concluding that first degree murder was not a "new and additional charge" to second degree murder. See *Staake*, 2016 IL App (4th) 140638; (Df. Br. at 19).

Thus, first degree murder is a "new and additional charge" from second degree murder because it altered the burden on Mr. Staake and allowed for more extreme potential penalties. See *Izquierdo-Flores*, 367 Ill. App. 3d at 384; (Df. Br. at 11-19).

**This claim was not waived and can be reviewed under the plain error doctrine, or in the alterative, counsel was ineffective for failing to raise the claim.**

*Waiver*

Contrary to the State's assertion, this claim was not expressly waived. (St. Br. at 13) In its brief before the Appellate Court, the State merely made a factual statement that Mr. Staake waived his statutory right to speedy trial during

the course of proceedings but did not engage in a waiver analysis on appeal. See (St. App. Ct. Br. at 12-13 (certified copies of Appellate Court Briefs have been filed with the Illinois Supreme Court pursuant to Rule 318(c)) "The rules of forfeiture in criminal proceedings are applicable to the State as well as to the defendant." *People v. Artis*, 232 Ill. 2d 156, 177-178 (2009). By failing to raise this waiver argument in the appellate court, the State has forfeited the argument by not properly preserving it for review. See *People v. Lucas*, 231 Ill. 2d 169, 175 (2008).

Moreover, there is no merit to this argument. The State accurately notes that counsel waived Mr. Staake's right to speedy trial for the pending second degree murder charge. (R. V 60-64) This was over four months before the charges of first degree murder were added and five months before the State again amended the charges to a different first degree murder theory. See (C. 33, 66, 124; R. V. 60-64) Mr. Staake could not waive a speedy trial claim to a charge that did not yet exist. Therefore, this Court can consider the speedy trial violation as plain error or, alternatively, as ineffective assistance of counsel for failing to raise the claim.

*Plain Error*

"The sixth amendment right to a speedy trial is fundamental and, like other sixth amendment rights, is made applicable to the states by the due process clause of the fourteenth amendment." *People v. Crane*, 195 Ill. 2d 42, 46 (2001). A speedy trial violation is so serious it affects the fairness of the defendant's trial and challenges the integrity of the judicial process. *People v. Smith*, 2016 IL App (3d) 140235, ¶¶ 11, 21. Thus, a violation of the right to a speedy trial should be reviewed under the second-prong of plain error. *Smith*, 2016 IL App (3d) 140235, ¶¶ 10-11; see (Df. Br. at 19-20). Here, since Mr. Staake's right to a speedy trial was violated,

this error should be considered under the second-prong of plain error, even though the claim was not preserved for appeal in the trial court. (Df. Br. at 19-20)

The State asserts both that the error here is not a "clear or obvious" error and that speedy trial violations should not be subject to second-prong plain error review. (St. Br. at 15-17) The State argues that because Mr. Staake waived his speedy-trial rights to the originally filed second degree murder charge, the error is not "clear or obvious." (St. Br. at 15) However, Mr. Staake made this waiver months before the State made multiple amendments to the charges. See (C. 33, 66, 124; R. V. 60-64) The State's one sentence analysis is essentially that no error occurred because defense counsel did not make a speedy trial demand. See (St. Br. at 15) By that circular logic, there would never be any "clear or obvious" error because almost any error being reviewed under the plain error doctrine would not have been preserved by trial counsel. Here there was clear error in failing to object on speedy trial grounds to the first degree murder charges filed 150 days after the original second degree murder charges. See *supra* at 1-6; (Df. Br. at 9-22).

The State asserts that this Court need not follow the First, Third, Fourth, and Fifth Districts of the Appellate Court which have held that speedy trial violations are subject to second-prong plain error review. (St. Br. at 16-17) citing *People v. Mosley*, 2016 IL App (5th) 130223, ¶ 9 (noting that "we will address the issue under the plain-error doctrine because a speedy trial is a substantial fundamental right"); *Smith*, 2016 IL App (3d) 140235, ¶ 10 (same); *People v. McKinney*, 2011 IL App (1st) 100317, ¶ 29 (same); *People v. Gay*, 376 Ill. App. 3d 796, 799 (4th Dist. 2007) (same). Although this Court is not bound by the decisions of the lower court, these cases were properly decided because the Speedy Trial

Act protects defendants from being stripped of their liberty for an endless period while awaiting trial, or from being denied due process of the law. See *Crane*, 195 Ill. 2d at 46. "Under the second prong of plain-error review, prejudice to the defendant is presumed because of the significance of the right involved." *People v. Lewis*, 234 Ill. 2d 32, 47 (2009).

Importantly, in its brief before the Appellate Court, the State did not contend that speedy trial violations were not subject to second-prong plain error review, even though Mr. Staake argued in his Appellate Court brief that the issue was subject to that review. (St. App. Ct. Br. at 2-19) (Df. App. Ct. Br. at 22-23). By failing to raise the argument that a speedy trial violation is not subject to second-prong plain error review in the Appellate Court, the State has forfeited the issue. See *Lucas*, 231 Ill. 2d at 175. Nevertheless, the argument is without merit.

The State argues that because the Speedy Trial Act requires a defendant to file a pretrial motion to invoke his statutory right to a speedy-trial, this error should not be subject to second-prong plain error. (St. Br. at 18-19) Filing a pretrial motion would be the first step in actually preserving a speedy trial error for review. See 725 ILCS 5/114-1(a)(1), (b) (2013); 725 ILCS 5/103-5(a) (2013). The purpose of second-prong plain error review is to address issues which have not been preserved, but affect a fundamental right. See *Smith*, 2016 IL App (3d) 140235, ¶¶ 11, 21.

By the State's logic, the second-prong of plain error would be obliterated any time trial counsel failed to take the first step of raising an issue in the trial court. For example, if defense counsel fails to file a motion for a fitness hearing, errors related to a *bona fide* doubt as to the defendant's fitness are still reviewable

under second-prong plain error review. *People v. Sandham*, 174 Ill. 2d 379, 382-383 (1996). Moreover, the "requirement for a written post-trial motion is statutory, and the statute requires that a written motion for a new trial shall be filed by the defendant and that the motion for a new trial shall specify the grounds therefor." *People v. Enoch*, 122 Ill. 2d 176, 187 (1988); see 725 ILCS 5/116-1, 116-2 (2013). However, if counsel fails "to specify grounds for a new trial in writing in a motion for a new trial," then those errors may still be reviewable for plain error. *Enoch*, 122 Ill. 2d at 187. Ultimately, the State does not explain why a right which is required by statute to be asserted by a motion is not appropriate for plain error review.

The State also argues that Mr. Staake was not prejudiced by the violation of his statutory right to a speedy trial. (St. Br. at 17-18) The second-prong of plain error review is appropriate even for "a relatively small amount of money or unimportant matter" such as a street value fine, if it was imposed with no evidentiary basis. *Lewis*, 234 Ill. 2d at 48-49. This is because these errors can "still affect the integrity of the judicial process and the fairness of the proceeding." *Lewis*, 234 Ill. 2d at 48-49. The holdings of the First, Third, Fourth, and Fifth Districts of the Appellate Court that speedy trial violations are subject to second-prong plain error review are correct because a fundamental right is at issue. See *Mosley*, 2016 IL App (5th) 130223, ¶ 9; *Smith*, 2016 IL App (3d) 140235, ¶ 10; *McKinney*, 2011 IL App (1st) 100317, ¶ 29; *Gay*, 376 Ill. App. 3d at 799.

Therefore, Mr. Staake requests this Court find the violation of his right to a speedy trial reviewable under the second-prong of plain error. See *Smith*, 2016 IL App (3d) 140235, ¶¶ 10, 21; see (Df. Br. at 19-20).

*Ineffective Assistance of Counsel*

Finally, as related to Mr. Staake's argument that trial counsel was ineffective for failing to raise this claim, the State argues that "reasonable counsel could decline to raise a speedy-trial objection under the circumstances here." (Df. Br. at 20-21) (St. Br. at 19-20) The State hypothesizes that "reasonable defense counsel could have declined to object to the amended charge, considering that defendant has expressly waived his speedy-trial right at the preliminary hearing, and counsel had no good-faith basis to claim that he was surprised or prejudiced by the amendment." (St. Br. at 19) This hypothesis ignores the actual strategy of trial counsel. First, counsel only waived Mr. Staake's speedy trial right at the preliminary hearing for the original charge of second degree murder, and did not waive any speedy trial right as related to the amended charge of first degree murder. See (C. 3, 66, 124; R. V, 60-64) Furthermore, trial counsel objected or expressed surprise to the filing of both first degree murder charges on other grounds. (R. IX, 9-10; R. XIII, 7-10) It is clear that counsel's actual strategy was to prevent the State from trying Mr. Staake for first degree murder. Since counsel objected on other grounds, it was not in fact counsel's strategy to not object.

Moreover, the record shows that counsel was surprised by the amended charges. So much so, that after the State filed its second amended complaint, on the eve of trial, counsel objected to the amended complaint and requested a continuance. (R. XIII, 7-10) Defense counsel expressly stated they were surprised by the amended complaint but the trial court denied the defense's continuance. (R. XIII, 9, 13) Therefore, counsel was not acting reasonably in failing to assert Mr. Staake's right to a speed trial. (Df. Br. at 20-21); see also *People v. Boyd*, 363 Ill. App. 3d 1027, 1038 (2nd Dist. 2006) ("defense counsel's failure to invoke defendant's speedy-trial rights cannot be justified as a matter of trial strategy").

**Conclusion**

This Court should find that first degree murder is a "new and additional charge" from second degree murder because it creates an additional burden of proving a mitigating factor and allows for more extreme potential penalties. (Df. Br. at 11-19); see *Izquierdo-Flores*, 367 Ill. App. 3d at 384. Thus, the State was required to bring its first and second degree murder charges in a single prosecution based on the compulsory joinder statute. See 720 ILCS 5/3-3; (Df. Br. at 10-14). Since the first degree murder charge was a "new and additional" charge, the speedy trial term applicable to the original charge of second degree murder applied to the subsequent charge of first degree murder. See *Williams*, 204 Ill. 2d at 207-208; *Phipps*, 238 Ill. 2d at 67-68; see also (Df. Br. at 11-12). Furthermore, since these charges were subject to compulsory joinder, delays attributable to Mr. Staake on the initial charges were not attributable to him on the subsequent first degree murder charge. See *Izquierdo-Flores*, 367 Ill. App. 3d at 386; see also (Df. Br. at 19).

Therefore, the State violated Mr. Staake's right to a speedy trial by filing the first degree murder charge 150 days after the second degree murder charge. See *Izquierdo-Flores*, 367 Ill. App. 3d at 384; see also (Df. Br. at 11-19). Mr. Staake's conviction should be reversed and he should be discharged from custody because had trial counsel properly raised a speedy trial claim, Mr. Staake could not have been tried on the original second degree murder charge since it was a lesser mitigated offense of the time-barred first degree murder charge. (Df. Br. at 21); see *Williams*, 204 Ill. 2d at 207-208.

## II.

**The trial court erred in granting the state's motion *in limine* to preclude the defense from arguing that Mr. Box's refusal to accept medical treatment was the cause of his death. The ruling deprived Mr. Staake of a legally viable defense and effectively directed a verdict for the state on what should have been a contested element of the offense. The appellate court erred by failing to address the claim that foreclosing argument on causation denied Mr. Staake his right to present a defense.**

The State contests that the appropriate standard of review is *de novo* but does not explain why it is not the appropriate standard. (St. Br. at 30) This Court has stated, "where the ruling on a motion *in limine* is based on an interpretation of law, our review proceeds *de novo*." *People v. Way*, 2017 IL 120023, ¶ 18; see (Df. Br. at 26).

The State further argues that "it is irrelevant whether [Mr.] Box's conduct contributed to his own death." (St. Br. at 31) The State cites to no case which says that a decedent's actions can never be an intervening cause of death. Moreover, the facts of this case show that a decedent's actions can be an intervening cause of death. The trial court erred in its ruling on the motion *in limine* that as a matter of law Mr. Staake could not argue that Mr. Box's action were a supervening cause of death. (Df. Br. at 26-30)

The State correctly asserts that "[t]he injury inflicted by an accused need not be the sole or immediate cause of death in order to constitute the legal cause of death." (St. Br. at 32), quoting *People v. Mars*, 2012 IL App (2d) 110695, ¶ 16; see also Illinois Pattern Jury Instructions, Criminal, No. 7.15. However, "[i]f death results indirectly from a blow through a chain of natural causes, *unchanged by human action*, the blow is regarded as the cause of death." *Mars*, 2012 IL App (2d) 110695, ¶ 16, citing *People v. Meyers*, 392 Ill. 355, 360 (1945) (emphasis added).

One type of human action that is considered an intervening cause to create a valid defense to homicide, is "[g]ross negligence or intentional medical maltreatment." *People v. Domagala*, 2013 IL 113688, ¶ 39 (finding a post-conviction petition adequately alleged a doctor had committed gross negligence). In cases alleging gross negligence or intentional medical maltreatment, defendants can rebut the presumption that they are responsible by "presentation of contrary evidence that the sole cause of death was the intervening gross negligence of physicians." *Mars*, 2012 IL App (2d) 110695, ¶ 17. "Gross negligence or intentional medical maltreatment constitutes a valid defense where it is disconnected from the culpable act of the defendant, because the *intervening conduct is abnormal and not reasonably foreseeable*." *Mars*, 2012 IL App (2d) 110695, ¶ 17 (emphasis added).

Likewise, the actions of a decedent can be so abnormal and not reasonably foreseeable that those actions would also constitute a intervening cause that creates a valid defense to homicide. For example, where a defendant was charged with drug induced homicide, he was allowed to present to the jury an alternative theory that the decedent "deliberately overdosed to commit suicide." *People v. Boand*, 362 Ill. App. 3d 106, 134 (2nd Dist. 2005) (finding the trial court properly instructed the jury with the patterned jury instruction on the issue of causation).

Here Mr. Box's actions while obtaining medical treatment were so abnormal and not reasonably foreseeable that these actions constitute a intervening cause of death. (Df. Br. at 23-26) Dr. Mark Day testified that he treated Mr. Box for "a small stab wound in his left upper abdomen." (R. XIV, 153, 154) The wound was approximately 1 inch long and Mr. Box was not bleeding much. (R. XIV, 163) Mr. Box's blood alcohol level was 0.179 and Dr. Day suspected he had been using drugs. (R. XIV, 169-170)

Mr. Box would not cooperate with Dr. Day's evaluation. (R. XIV, 155) Mr. Box did not tell Dr. Day much, except to get away from him. (R. XIV, 172) Mr. Box alternated between being unconscious and attempting to punch or take a "swipe" at the doctor, who would then leave the room. (R. XIV, 155, 165-166) There were three or four cycles of Dr. Day attempting to look at the wound, backing off, leaving, and returning. (R. XIV, 156, 167)

Dr. Day wanted to either keep Mr. Box in the hospital for observation, or send him to a larger facility with a trauma surgeon. (R. XIV, 171) He did not do so, because Mr. Box would not let him. (R. XIV, 172) Dr. Day simply stitched Mr. Box up, and explain it was "because it was clear to me that he didn't want me doing anything else."(R. XIV, 158, 172) Mr. Box left the hospital without being discharged by Dr. Day. (R. XIV, 158, 172) Mr. Box's actions of trying to hit the doctor and leave the hospital without being discharged were abnormal and not reasonably foreseeable.

Overall, the trial court's ruling on the motion *in limine* prevented Mr. Staake from presenting arguments as to whether Mr. Box's abnormal conduct was an intervening cause in his death. See *People v. Caldwell*, 295 Ill. App. 3d 172, 180 (4th Dist. 1998). It was a question for the jury to determine whether a causal connection existed between Mr. Staake's conduct and Mr. Box's death. See *Caldwell*, 295 Ill. App. 3d at 180. Just as the defendant would be allowed to argue the gross negligence or intentional medical maltreatment of a physician, here Mr. Staake should have been allowed to argue that Mr. Box's actions were so abnormal and not reasonably foreseeable it rose to an intervening cause of death. See *Mars*, 2012 IL App (2d) 110695, ¶ 16; *Caldwell*, 295 Ill. App. 3d at 180. Thus, this motion *in limine* should not have been granted because the defense was not unavailable

as a matter of law. (Df. Br. at 26-29); *People v. Berquist*, 239 Ill. App. 3d 906, 908 (2nd Dist. 1993).

Moreover, the ruling on the motion *in limine* prevented Mr. Staake from making arguments related to causation in closing statements. (Df. Br. at 29-30) The State argues that Mr. Staake waived a claim that it was error for the trial court to prevent him from arguing causation to the jury because counsel conceded that the State had met its burden of proof on this element during closing statements. (St. Br. at 31-32) Defense counsel's closing arguments reflected that he was following the orders of the trial court to "not go into those issues" of causation as related to Mr. Box's choice on seeking medical treatment. (R. XIII, 13-14; R. XVI, 16-17); (Df. Br. at 23-24) Despite counsel's statements during closing, he repeatedly objected to the motion *in limine* and included the issue in his post-trial motion. (C. 171; R. X, 8; R. XI, 37-38; R. XIII, 13-14) Thus, in context, defense counsel's statements during closing were an attempt to comply with the court's order and were not a waiver of this argument. (Df. Br. at 29-30)

The Appellate Court failed to rule on Mr. Staake's claim that he was deprived of his right to present his defense because the trial court prohibited argument on causation. *People v. Staake*, 2016 IL App (4th) 140638, ¶¶ 76-80. Although Dr. Day's testimony provided much evidence of Mr. Box's abnormal and unforeseeable actions, Mr. Staake was prevented from arguing those actions were an intervening cause of death. (Df. Br. at 29-31)

In conclusion, the trial court's ruling on the State's motion *in limine* prevented Mr. Staake from presenting the legally viable defense that Mr. Box's actions were an intervening cause of death when he repeatedly attempted to punch his doctor and refused further medical treatment. (Df. Br. at 26-30) The Appellate Court

erred in ruling otherwise and in failing to address that Mr. Staake was foreclosed from arguing causation during closing statements, which prevented him from his right to present a defense. (Df. Br. at 30-31) Thus, if this Court finds there was no speedy trial violation, this Court should grant Mr. Staake a new trial on the charge of second degree murder. See *People v. Newbern*, 219 Ill. App. 3d 333, 354-355 (4th Dist. 1991) (agreeing with the First District Appellate Court that where a second degree murder conviction is reversed on appeal, principles of collateral estoppel preclude the State from retrying the defendant for first degree murder).

## CONCLUSION

For the foregoing reasons and those in the opening brief, Jared M. Staake, respectfully requests that this Court either vacate his conviction because his right to a speedy trial was violated or grant a new trial.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I, Amanda S. Kimmel, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is eighteen pages.

/s/Amanda S. Kimmel
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IN THE

SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Appellate Court of Illinois, No. 4-14-0638. |
| Respondent-Appellee, | ) | There on appeal from the Circuit Court of the Eighth Judicial |
| -vs- | ) | Circuit, Schuyler County, Illinois, No. 13-CF-29. |
| JARED M. STAAKE | ) | Honorable Alesia A. McMillen, |
| Petitioner-Appellant | ) | Judge Presiding. |

# NOTICE AND PROOF OF SERVICE

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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 September 5, 2017, 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 petitioner-appellant in an envelope deposited in a U.S. mail box in Springfield, 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.



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