No. 127678

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-19-0129
Plaintiff-Appellee,	)	
	)	There on Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County Nos. 16 DT 1132, 16 TR 60437 & 16 TR 60438
v.	)	
	)	
MATTISON J. GALARZA,	)	The Honorable Theodore Jarz,
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Defendant Mattison Galarza was charged with two counts of driving under the influence of alcohol (DUI), failure to reduce speed to avoid a collision, and operating an uninsured motor vehicle. Following a stipulated bench trial, the circuit court found defendant guilty of all charges. Defendant appeals from the Illinois Appellate Court's judgment, which affirmed his DUI and failure to reduce speed convictions, but reversed his conviction for operating an uninsured vehicle. No question is raised regarding the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Whether the evidence was sufficient to prove defendant guilty of failure to reduce speed to avoid a collision.

2. Whether defendant's stipulated bench trial — where defendant asserted as his defense that the People's evidence did not establish his guilt on any of the charges — was not the equivalent of a guilty plea, and, accordingly, Rule 402 admonishments were not required.

STATEMENT OF FACTS

Following a single-car collision on August 27, 2016 in Wilmington, Illinois, Will County Sheriff's Police cited defendant for two counts of DUI, operating an uninsured motor vehicle, and failure to reduce speed to avoid a collision. C6, 8 (Case No. 16-DT-1132); C5 (Case No. 16-TR-60437); C5 (Case

No. 16-TR-60438).[1] The parties agreed to proceed via a stipulated bench trial, in which the trial court would be presented with reports from the first responders and render a verdict based on that evidence. R76-78.

Reports prepared by paramedics from the Wilmington Fire Protection District show that they arrived at the scene of a car crash near the intersection of Hamilton and Roberts Streets in Wilmington just after 5:00 a.m. on August 27. SEC19, 23-24. The car had apparently crashed "into a tree head on," and its airbags had deployed. SEC24. Defendant was out of the car and sitting on the ground. *Id.* He was unable to stand and told paramedics that he had "aggravated" a prior knee injury when getting out of the car. *Id.* He refused to go to the hospital. *Id.*

Jordan Taylor was sitting in the car's driver's seat. SEC21. The report indicates it was "unknown" whether she had been wearing a seatbelt. *Id.* She told the paramedics "that her boyfriend was driving and jerked the wheel hitting the tree." *Id.* The paramedics noted the odor of alcohol on Taylor's breath. *Id.* She refused medical treatment. *Id.*

A report prepared by Officer Ryan Albin of the Will County Sheriff's Police shows that Albin and Officer James Reilly arrived at the scene after the paramedics. SEC17. The police report identifies the location of the

[1] Citations to "C," "R," "SEC," "Def. Br.," and "A," refer to the common law record, report of proceedings, secured common law record, defendant's brief, and defendant's appendix, respectively. Unless noted by parenthetical, all record citations refer to the record for Case No. 16-DT-1132.

collision as the intersection of Hamilton Street and Lakewood Drive in Wilmington. SEC14. When they arrived, the officers saw a gray Chevrolet Cruze "with heavy front end damage against a tree" on the west side of Lakewood Drive, facing south. SEC17. The paramedics were already treating defendant and Taylor. *Id.*

Taylor gave police her name but otherwise refused to cooperate. *Id.* Defendant told police that he and Taylor had been out drinking and that he (defendant) had been driving. *Id.* Defendant's breath smelled of alcohol; he had "blood shot/glassy eyes," slurred his speech, and had difficulty answering questions. *Id.* Inside the car, police found defendant's "cell phone wedged in the driver's seat" and an empty liquor bottle on the passenger-side floor. *Id.*

Defendant consented to a field sobriety test but was unable to complete much of the testing because he could not stand, purportedly because of the knee injury. *Id.* Defendant failed the horizontal gaze nystagmus test, and a portable breath test registered a blood alcohol content (BAC) of .203. *Id.*

The officers placed defendant under arrest. *Id.* After being observed at the Will County Adult Detention Facility, defendant provided a breath sample just before 6:30 a.m., showing a BAC of .182. *Id.* The police issued defendant the citations. SEC18.

The trial court was also provided with documents showing that the Chevrolet Cruze was registered to defendant. SEC11-13.

Defense counsel argued to the court that "our main position is that [defendant] was not the driver of the vehicle." R84. Counsel conceded that the car was registered to defendant and that both defendant and Taylor told first responders that defendant had been driving. R84-85. But, counsel argued, the statements were unreliable. *Id.* Taylor had an incentive to shift the blame to defendant. *Id.* And defendant, who was seriously injured and intoxicated, "wasn't in the right state of mind to make the admissions," such that the court should not give them any weight. R85.

Rather, counsel argued, the "unbiased" evidence indicated that Taylor had been the driver. R84-85. When the paramedics arrived at the scene, Taylor was sitting in the driver's seat, and defendant was out of the car, sitting on the ground. *Id*. Counsel contended it was unlikely that defendant in a "drunken [and] injured state got up and switched seats with [ ] Taylor." *Id.*

After taking the case under advisement and reviewing the records, the trial court found defendant guilty on all counts. R91-93; C74.

Defendant filed a motion to reconsider or for a new trial. C63-67. The motion asked the court to reconsider its verdict because the fact that Taylor, and not defendant, was found in the driver's seat, "suggest[s] that [defendant] was a *passenger* in the vehicle." C64 (emphasis in original). In support, defendant cited *People v. Foster*, 138 Ill. App. 3d 44 (3d Dist. 1985), in which the appellate court reversed a DUI conviction following a stipulated

bench trial because the evidence was insufficient to prove that the defendant had been the driver. C65. In the alternative, defendant asked the court to reopen the proofs to permit defendant and the paramedic to testify. C66.

In arguing the motion, counsel asked the court to reconsider its verdict, emphasizing again that Taylor had been in the driver's seat when the paramedics arrived. R117-18. Counsel argued that the People failed to meet their burden because "there is no testimony to state how Miss Taylor got into the driver's seat." *Id.* The trial court denied the motion. R118-19.

The trial court sentenced defendant to 24 months of conditional discharge, 17 days in jail, and 240 hours of community service. C74.

Defendant appealed, arguing that (1) the People failed to present sufficient evidence to support the convictions for operating an uninsured motor vehicle and failing to reduce speed to avoid a collision, and (2) the circuit court committed plain error by failing to admonish defendant pursuant to Illinois Supreme Court Rule 402, because the stipulated bench trial was tantamount to a guilty plea with respect to the DUI convictions. A20-21. The appellate court reversed the conviction for operating an uninsured motor vehicle and affirmed the remaining convictions. A23-27.

STANDARDS OF REVIEW

To resolve a challenge to the sufficiency of the evidence, this Court determines whether, "after viewing the evidence in the light most favorable to the prosecution" and drawing "[a]ll reasonable inferences from the evidence. . . in favor of the prosecution," "any rational trier of fact could have

found the essential elements of the offense beyond a reasonable doubt." *People v. Hardman*, 2017 IL 121453, ¶ 37 (quotations omitted).

A claim that the trial court failed to comply with Rule 402 would ordinarily be reviewed de novo. *People v. Snyder*, 2011 IL 111382, ¶¶ 20-21. But under the plain error doctrine (which defendant concedes applies here, Def. Br. 16), defendant must prove that a "clear or obvious" error occurred, and (1) the evidence of guilt was closely balanced, or (b) the error was so serious that it undermined the fairness of the proceedings. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009).

ARGUMENT

I. The Evidence Sufficed to Prove that Defendant Failed to Reduce Speed to Avoid Crashing his Vehicle into a Tree.

The appellate court correctly held that the evidence was sufficient to support defendant's conviction for failure to reduce speed to avoid a collision. A24-25. In considering a sufficiency challenge, this Court employs the familiar standard established by *Jackson v. Virginia*, 443 U.S. 307 (1979), asking whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Gonzalez*, 239 Ill. 2d 471, 478 (2011). All reasonable inferences from the evidence must be drawn in the People's favor, *id.*, with the same standard applying regardless of whether the evidence is direct or circumstantial, *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). In a bench trial, the judge, as factfinder, is the ultimate arbiter of issues of credibility or weight of the evidence. *People v. Jackson*, 232 Ill. 2d

246, 280-81 (2009). "This Court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Hardman*, 2017 IL 121453, ¶ 37 (internal quotations omitted).

Section 11-601(a) prohibits driving a vehicle "at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property." 625 ILCS 5/11-601(a). The statute requires drivers "to decrease their speed when approaching any sort of special hazard," regardless of any established speed limit. *Watkins v. Schmitt*, 172 Ill. 2d 193, 209 (1996); *see also People v. Sturgess*, 364 Ill. App. 3d 107, 116 (1st Dist. 2006) ("[T]he State must adduce evidence that the defendant drove carelessly and that he or she failed to reduce speed to avoid colliding with persons or property. . . . [T]he offense can be committed regardless of the speed of the defendant's vehicle or the relevant speed limit.").

A rational factfinder could conclude that the People's evidence proved beyond a reasonable doubt that defendant violated § 11-601(a). Defendant told paramedics that he had been driving, and his cell phone was found wedged in the driver's seat. SEC17. Taylor told paramedics that defendant had been driving, when he "jerked the wheel hitting the tree." SEC21. BAC testing revealed that defendant had been intoxicated. SEC17. And circumstantial evidence suggests the collision occurred at a high rate of speed

because defendant's car sustained "heavy front end damage," defendant injured his knee, and the airbags deployed. SEC17, 21.

As the appellate court observed, a factfinder could rationally infer that defendant had been driving recklessly because the evidence showed that he was driving while impaired and "jerked" the steering wheel without apparent explanation. A24. And the fact that the evidence shows that defendant's car struck the tree while traveling at a high rate of speed establishes that defendant failed to reduce his speed sufficiently (if at all) to avoid colliding with the tree. A25. *See also People v. Schumann*, 120 Ill. App. 3d 518, 526 (2d Dist. 1983) (evidence that vehicle rear-ended another driver with great force sufficient to prove violation of § 11-601(a)).

Defendant argues that the mere fact of a collision and defendant's intoxication is insufficient to prove careless driving, citing *People v. Brant*, 82 Ill. App. 3d 847 (4th Dist. 1980). Def. Br. 11-12. But *Brant* was decided before this Court made clear in a series of cases, beginning with *People v. Bryant*, 113 Ill. 2d 497 (1986), that the same burden of proof applies regardless of whether a defendant's guilt is established through circumstantial or direct evidence and that the People's evidence need not "exclude every reasonable theory of innocence." *Id.* at 511; *see also People v. Pintos*, 113 Ill. 2d 286, 291 (1989) (collecting cases). *Brant* is not persuasive because it employed the pre-*Bryant* sufficiency standard. 82 Ill. App. 3d at 850 ("[A] criminal conviction cannot be upheld if the circumstantial evidence

relied upon to convict gives rise to any reasonable hypothesis under which defendant could be innocent of the crime charged."). In any event, as an appellate court decision, *Brant* is not controlling, and it is easily distinguished. There, the evidence showed that in the middle of the night, Brant's motorcycle struck a car that was illegally parked in the roadway and partially obscured by trees. 82 Ill. App. 3d at 851-52. Thus, the evidence supported the inference that the collision resulted from road conditions — an illegally parked car, obscured by trees, in the dark — rather than Brant's reckless driving. *Id.* Here, no evidence was presented of any road conditions that could explain defendant's collision. Moreover, there was no evidence that Brant drove recklessly, *id.*; whereas, evidence in this case demonstrated that defendant drove at a high rate of speed (as shown by the damage to the car, defendant's knee injury, and the deployment of air bags) and "jerked the wheel" immediately before the collision, SEC21.

Defendant's reliance on *People v. Sampson*, 130 Ill. App. 3d 438 (4th Dist. 1985), which was also decided before *Bryant*, is similarly misplaced. Sampson was convicted of violating § 11-601(a) at a stipulated bench trial in which the only evidence was that his car was found "off the road resting against a telephone pole," he appeared to be intoxicated, and he admitted to police that he "lost control of the vehicle." 130 Ill. App. 3d at 440. Although the facts of *Sampson* are in some ways similar to the situation here, the case is distinguishable because here, unlike *Sampson*, the People presented

evidence that defendant drove recklessly by travelling at a high rate of speed and jerking the wheel. *Sampson* was also wrongly decided and its reasoning unpersuasive for the reasons already discussed: contrary to the appellate court's reasoning in *Sampson*, a factfinder can reasonably infer careless driving and failure to reduce speed from evidence of a single-car collision involving an intoxicated driver that cannot be explained by any known road condition.

Defendant complains that the People did not introduce additional evidence about the road conditions at the scene of the collision. Def. Br. 9-10. But although it is *possible* that some road condition (and not defendant's carelessness) caused the collision in this case, "the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332 (2000). Neither defendant nor Taylor has ever suggested that a road condition contributed to the collision. And the stipulated evidence showing that defendant was driving at a high rate of speed while intoxicated and jerked the steering wheel points to defendant's recklessness as the cause. Accordingly, the evidence was sufficient to prove a violation of § 11-601(a), and this Court should affirm defendant's conviction for failure to reduce speed to avoid a collision.

II. The Circuit Court Did Not Commit Plain Error By Omitting Rule 402 Admonishments.

The Court should also reject defendant's argument that the circuit court was required to provide Rule 402 admonishments. As defendant concedes, he forfeited this argument by failing to object below, and the argument can only be reviewed under the narrow exception for plain errors. Def. Br. 16. Although this Court has suggested that failure to provide Rule 402 admonishments could rise to the level of second-prong plain error, *People v. Fuller*, 205 Ill. 2d 308, 322-23 (2002), defendant must first establish that a "clear" or "obvious" error occurred, *In re M.W.*, 232 Ill. 2d 408, 431 (2009). An error is not clear or obvious unless it is "controlled by clear precedent." *People v. Givens*, 237 Ill. 2d 311, 326, 329 (2010); *cf. United States v. Olano*, 507 U.S. 725, 734 (1993) (A reviewing court "cannot correct an error pursuant to [the federal plain error rule] unless the error is clear under current law."). Defendant bears the burden of persuasion under the plain error test. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Defendant cannot demonstrate any error here, let alone an error controlled by clear precedent, because the stipulated trial in this case was not the equivalent of a guilty plea.

Rule 402 requires the trial court to provide certain admonishments — about the nature of the charges, the possible sentences, the right to plead not guilty, and the various trial rights — before it "accept[s] a plea of guilty or a stipulation that the evidence is sufficient to convict." Ill. S. Ct. R. 402(a). This Court has repeatedly held that Rule 402 does not apply when the

defendant pleads *not* guilty and his attorney, as a matter of strategy, decides to stipulate to some or all of the People's evidence, except in two limited circumstances: when (1) "the State's entire case is to be presented by stipulation and the defendant does not present or preserve a defense"; or (2) "the stipulation includes a statement that the evidence is sufficient to convict the defendant." *People v. Campbell*, 208 Ill. 2d 203, 218 (2003); *accord People v. Clendenin*, 238 Ill. 2d 302, 322 (2010); *People v. Rowell*, 229 Ill. 2d 82, 102 (2008); *People v. Phillips*, 217 Ill. 2d 270, 288 (2005).

As the appellate court correctly held, A26-27, Rule 402 admonishments were not required in this case, because neither circumstance was present. Defendant concedes that he did not stipulate to the sufficiency of the evidence. Def. Br. 17 n.2. And defendant presented a defense — he argued that the People's evidence was insufficient to prove him guilty of any of the charges because he was not the driver. R84-85.

Failing to bring himself under either established exception to the general rule that Rule 402 admonishments are unnecessary when a defendant pleads not guilty, defendant asks this court to expand the exceptions and to require Rule 402 admonishments when a defendant does not "put forth a meaningful attempt to challenge the State's evidence." Def. Br. 15. Defendant argues that his attorney did not make such a "meaningful attempt" because he "stipulated to all of the facts that comprised the State's

case-in-chief." Def. Br. 16-17. This Court should reject defendant's invitation for four reasons.

First, this Court has repeatedly rejected invitations to expand the number of circumstances in which Rule 402 admonishments are required. *See Clendenin*, 238 Ill. 2d at 322 (reaffirming *Campbell*'s rule that "a stipulation is tantamount to a guilty plea . . . in *only* two instances") (emphasis in original); *Rowell*, 229 Ill. 2d at 101-02 (same); *Phillips*, 217 Ill. 2d at 283 (*Campbell* "attached no other restrictions to defense counsel's authority to stipulate to the admission of evidence."). And for good reason. Although a defendant has a personal right to decide, in consultation with counsel, whether to plead guilty, if he decides to plead *not* guilty — as defendant did here — it is trial counsel, not defendant, who "has the right to make the ultimate decision with respect to matters of tactics and strategy," including what evidence to present at trial. *Clendenin*, 238 Ill. 2d at 319. Counsel may make a strategic decision to stipulate to certain evidence — or even all of the evidence — if defendant does not object. *Id.* Rule 402 admonishments would serve no purpose where, as here, defendant stands on his right to plead not guilty and counsel presents a defense at trial. *Id.*

Second, even if this Court were inclined to consider defendant's proposed rule — to require admonishments whenever a defendant makes no "meaningful attempt" to challenge the People's evidence — in some future case where the issue is properly preserved, it should not do so here where

defendant concedes forfeiture. Because the Rule 402 issue is reviewed only for plain error, defendant cannot argue for a change in the law because such a change is necessarily not "controlled by clear precedent." *Givens*, 237 Ill. 2d at 326, 329; *cf. United States v. Frady*, 456 U.S. 152, 163 (1982) (federal plain error rule applies only to "error so 'plain' the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's timely assistance in detecting it").

Defendant acknowledges that he is asking the Court to overrule appellate court precedent holding that for purposes of determining whether Rule 402 admonishments were required, a defendant preserves a defense by arguing that the People's evidence is insufficient. Def. Br. 20 (citing *People v. Foote*, 389 Ill. App. 3d 888 (2d Dist. 2009)). This alone precludes a finding of clear or obvious error. Moreover, *People v. Russ*, 31 Ill. App. 3d 385 (1st Dist. 1975), on which defendant relies, Def. Br. 17-19, in fact supports the People's position. The *Russ* court held that by challenging the sufficiency of the People's evidence at a stipulated bench trial, Russ *did* present a defense. 31 Ill. App. 3d at 393. Accordingly, the appellate court held, Russ's stipulated bench trial was *not* tantamount to a guilty plea, and Rule 402 admonishments were not required. *Id.*

Ignoring this holding, defendant focuses on dicta from *Russ*, in which the court posited that admonishments might be required in circumstances in which a defendant professes his innocence but, in reality, "has interposed no

genuine defense." Def. Br. 17-18 (citing *Russ*, 31 Ill. App. 3d at 389). But the *Russ* court went on to survey the then-existing case law and conclude that a "purported defense" is not genuine only if "defense counsel either expressly or tacitly admitted [it] amounted to no defense." *Russ*, 31 Ill. App. 3d at 391. In other words, the *Russ* court held that a stipulation is equivalent to a guilty plea only where defense counsel expressly admits that there is no defense — by stipulating that the evidence is sufficient to prove guilt — or tacitly admits there is no defense — by completely failing to present one.

In this case, defense counsel made no express or tacit admission of defendant's guilt. Instead, he vigorously argued at trial and in post-trial motions that the People's evidence was insufficient because it failed to show that defendant, rather than Taylor, was driving the car. Accordingly, *Russ* provides no support for defendant's argument.

Third, defendant's proposed rule is unworkable and will only sow confusion. Defendant does not explain how a court should identify a non-"meaningful" defense, although he alternately describes such defenses as non-"viable" or "frivolous." Def. Br. 15. A circuit court can determine that a defendant's sufficiency-of-evidence argument is not "meaningful" only *after* hearing all of the evidence. So as a practical matter, under defendant's proposal, Rule 402 admonishments would be provided only after the defendant had already agreed to stipulate to the People's evidence, the evidence has been presented to the court, and the court has considered (and

perhaps reached a decision about) the ultimate question of defendant's guilt, by which point, the admonishments are of no value.

Fourth, defendant's argument fails even under his proposed new rule because his counsel presented a meaningful defense. Even though defense counsel stipulated to the People's evidence, he did not stipulate to all of the facts necessary to establish defendant's guilt. Counsel conceded, of course, that both defendant and Taylor made statements identifying defendant as the driver. But throughout the trial and post-trial proceedings, counsel argued that those statements were unreliable. In other words, counsel stipulated to the fact that the statements were made, but not to the truth of the statements. Instead, counsel argued that other evidence — including the fact that Taylor was found sitting in the driver's seat after a serious collision — should lead the circuit court to infer that Taylor had been driving.

Moreover, in defendant's post-trial motion, counsel cited *People v. Foster* in support of the sufficiency-of-the-evidence argument. C65. The evidence at Foster's stipulated bench trial showed that police arrived at the scene of a single-car collision to find Foster in the passenger seat and another man in the driver's seat. *Foster*, 138 Ill. App. 3d at 45-46. Foster told police that he had been the driver, and testing showed that his BAC exceeded the legal limit. *Id.* The appellate court reversed Foster's DUI conviction, holding that because "no independent evidence was offered to corroborate the defendant's initial admission of driving," "this element of the *corpus delicti*

was not proved beyond a reasonable doubt." *Id.* at 47. While *Foster* (another pre-*Bryant* case) is clearly distinguishable — because the People's evidence here was not limited to defendant's admission but included Taylor's statement that defendant was the driver and evidence that defendant's cell phone was wedged in the driver's seat, and the vehicle was registered to defendant — in citing *Foster* and in arguing that defendant was not the driver, it cannot be said that defense counsel failed to present a defense.

In sum, Rule 402 admonishments were not required here because defendant pleaded not guilty and presented a defense at his stipulated bench trial. Defendant's proposal to expand the circumstances in which Rule 402 admonishments are required runs headlong into this Court's longstanding precedents. The circuit court made no clear or obvious error by omitting admonishments where existing case law expressly held that Rule 402 did not apply. And even under defendant's proposed rule, he cannot prevail because his attorney presented a meaningful defense.

CONCLUSION

This Court should affirm the judgment of the appellate court.

September 1, 2022

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 18 pages.

/s/ Jason F. Krigel
Jason F. Krigel
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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 September 1, 2022, the foregoing **Brief of Plaintiff-Appellee 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 will serve a copy on the following parties at the email addresses below:

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