No. 125954

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | On Appeal from the Appellate |
| | ) | Court of Illinois, First Judicial |
| Plaintiff-Appellee, | ) | District, No. 1-17-0803. |
| | ) | |
| v. | ) | There on Appeal from the Circuit |
| | ) | Court of Cook County, Illinois, |
| | ) | No. 16 CR 4639. |
| | ) | |
| DAVID CARTER, | ) | The Honorable |
| | ) | Arthur F. Hill, Jr., |
| Defendant-Appellant. | ) | Judge Presiding. |

**BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS**

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## NATURE OF THE CASE

The Circuit Court of Cook County convicted defendant David Carter of armed habitual criminal (AHC) (in violation of 720 ILCS 5/24-1.7); unlawful use or possession of a weapon by a felon (in violation of 720 ILCS 5/24-1.1(a)); and aggravated unlawful use of a weapon (in violation of 720 ILCS 5/24-1.6(a)(1)). R46; C85.[1] The Illinois Appellate Court, First District, affirmed. *People v. Carter*, 2019 IL App (1st) 170803. Defendant appeals from that judgment. No question is raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether the investigatory stop that led to defendant's arrest was supported by reasonable suspicion.

2. Whether sufficient proof supports defendant's conviction for armed habitual criminal.

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On September 30, 2020, this Court allowed defendant's petition for leave to appeal. *People v. Carter*, 154 N.E.3d 810 (Ill. 2020) (Table).

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[1] Citations to the common law record, the report of proceedings, the supplemental report of proceedings, and defendant's brief appear as "C__," "R__," "Sup. R.__," and "AT Br. __," respectively.



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## STATEMENT OF FACTS

At 11:36 p.m. on March 9, 2016, Chicago police officer Robert Luzadder and his partner Lee Anthony Brown received a dispatch from the Office of Emergency Management and Communication (OEMC). Sup. R. 8, 11, 18.[2] OEMC informed Luzadder that an anonymous informant phoned and reported that a white male wearing a black hoodie was "swinging" at two white females, had a gun, and was walking with the two females at the intersection of 33rd and Wallace streets in South Chicago. *Id.* at 12-13.[3] Luzadder arrived at the intersection between two and three minutes later, but he did not see the described individuals. *Id.* at 13, 16.

Shortly thereafter, the anonymous informant phoned OEMC again, and reported that the individuals had moved to 3100 South Lowe Street, approximately two blocks north of 33rd and Wallace. *Id.* Luzadder arrived at the new location minutes later, and observed a man who matched the informant's description (defendant) walking in the south alley. *Id.* at 13-14. As defendant walked, Luzadder observed him holding the right side of his waistband. *Id.* at 14. Luzadder, who had seen "hundreds" of individuals carry firearms in their clothing over his twenty-two years as a police officer,

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[2] OEMC "provides citizens of Chicago with prompt and reliable 911 service for police, fire and emergency medical services and coordinates major emergency response." *Emergency Management and Communications*, https://www.chicago.gov/city/en/depts/oem.html (last visited April 6, 2021).
[3] Although the caller remained anonymous, the caller's phone number was recorded by OEMC. Sup. R. 12.



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believed that defendant was attempting to conceal a gun. *Id.* at 14-15. Accordingly, Luzadder approached defendant and told him to place his hands on the squad car. *Id.* at 15. Defendant complied, and Luzadder performed a pat-down of defendant's outer clothing. *Id.* Luzadder felt what he believed was a handgun, lifted up defendant's shirt, found a firearm,[4] and placed defendant in custody. *Id.* at 15-16. As Luzadder removed the gun from defendant's waistband, defendant told Luzadder that he was a member of the 2-6 gang, carried the gun for protection, and was on parole. R37-38.

On March 29, 2016, the People charged defendant with one count of AHC, alleging that he "knowingly possessed a firearm, after having been convicted of the offense of armed robbery, under case number, 10-CF-367, and the offense of aggravated battery, under case number 09-CF-2251," as well as four counts of unlawful use or possession of a weapon by a felon and four counts of aggravated unlawful use of a weapon. C30-38. Defendant filed a motion to quash his arrest and suppress evidence, alleging that the investigatory stop that resulted in his arrest violated the Fourth Amendment. C62-65. After the circuit court heard testimony and argument on the motion, and Luzadder testified to the events that led to defendant's arrest, Sup. R. 7-20, the court denied defendant's motion to suppress, Sup. R. 27.

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[4] The firearm was a five-shot revolver that contained one live round of ammunition. R36.



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At defendant's subsequent bench trial, the People dismissed two of the unlawful use or possession of a weapon by a felon counts, and the parties stipulated to Luzadder's testimony from the suppression hearing. R33-34. Luzadder also provided brief, additional testimony. R34-39. The People admitted two exhibits into evidence: a certified copy of defendant's 2010 armed robbery conviction, R39; E3-4, and a certified copy of defendant's 2009 aggravated battery conviction, R39-40; E5-6. The parties also stipulated that defendant did not have a valid firearm owner's identification card. R40.

After closing arguments, the trial court convicted defendant on all remaining counts: one count of AHC, two counts of unlawful use or possession of a weapon by a felon, and four counts of aggravated unlawful use of a weapon. R45-46; C29-38.

Defendant then moved for a new trial and argued that the court erred in denying his motion to quash arrest. C75-77. The court denied his motion. R54. At sentencing, the court noted that defendant's unlawful use or possession of a weapon by a felon and aggravated unlawful use of a weapon convictions merged into the AHC conviction, and sentenced him to nine years in prison. R70.

On appeal, defendant first argued that the trial court erroneously denied his motion to quash because "the loaded handgun that formed the basis for his arrest and conviction 'was obtained as a result of [his] unlawful detention by Officer Robert Luzadder, who based the seizure on an



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uncorroborated anonymous tip.'" *People v. Carter*, 2019 IL App (1st) 170803, ¶ 16. The appellate court rejected this argument, holding that "because Officer Luzadder engaged in corroboration of the assertion of illegality provided by the tipster and possessed reasonable suspicion that defendant was engaged in criminal activity," the stop was lawful. *Id.* ¶ 26.

Defendant also argued that his AHC conviction rested on insufficient evidence because the State "failed to establish that he had previously been convicted of two qualifying predicate offenses." *Id.* ¶ 28. Defendant conceded that his armed robbery conviction was a qualifying predicate offense, but argued that the State failed to prove that the circumstances of his 2009 aggravated battery conviction made it a "forcible felony," and thus failed to prove this conviction was also a predicate offense. *Id.* In support, defendant attached the 2009 aggravated battery indictment as an appendix to his brief, which showed that his aggravated battery conviction was based on a "stabbing." *Id.* ¶ 41.

The appellate court rejected defendant's sufficiency argument. The court noted that including the indictment as an appendix to defendant's brief was an improper method of supplementing the record on appeal, and thus it declined to take judicial notice of the indictment. *Id.* ¶ 45. The court also noted that "the aggravating factor or factors underlying defendant's aggravated battery conviction were not specified in the certified copy of conviction presented to the circuit court," and that "[t]he certified copy of



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conviction presented by the State simply showed that defendant pled guilty to the offense of aggravated battery." *Id.* ¶ 40. Ultimately, the court viewed the evidence in a light most favorable to the prosecution, explaining that "defense counsel did not challenge the State's contention at trial that his aggravated battery conviction satisfied the. . . predicate offense requirement." *Id.* ¶ 45. Given the "lack of evidence in the record to substantiate defendant's claim that his aggravated battery conviction did not, in fact, satisfy the AHC statute's predicate offense requirement," the court "necessarily reject[e]d defendant's sufficiency of the evidence claim." *Id.*

## ARGUMENT

### I. The Circuit Court Properly Denied Defendant's Motion to Suppress Evidence Because Officer Luzadder's Stop Was Supported by Reasonable Suspicion.

This Court should reject defendant's argument that the circuit court erred in denying his motion to suppress because Officer Luzadder's stop was supported by reasonable suspicion and therefore did not violate the Fourth Amendment. *See* AT Br. 26-40. Because defendant does not challenge the circuit court's factual findings, this Court reviews *de novo* "the legal effect of those facts." *People v. Close*, 238 Ill. 2d 497, 504 (2010); *see also People v. Timmsen*, 2016 IL 118181, ¶ 11 (this Court reviews "*de novo* the circuit court's ultimate legal conclusion as to whether suppression is warranted") (citing *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006)).



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Whether Luzadder's actions complied with the Fourth Amendment is governed by *Terry v. Ohio*, 392 U.S. 1 (1968). *Terry* held that "a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to, commit a crime." *Close*, 238 Ill. 2d at 505 (citing *Terry*, 392 U.S. at 22; *People v. Gherna*, 203 Ill. 2d 165, 177 (2003); and *People v. Thomas*, 198 Ill. 2d 103, 109 (2001)).[5] To determine whether a stop was based on reasonable suspicion, this Court asks: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry*, 392 U.S. at 21-22 (citations omitted). In answering this question, the Court must look at "'the totality of the circumstances—the whole picture,'" *Timmsen*, 2016 IL 118181, ¶ 9 (citing *United States v. Sokolow*, 490 U.S. 1, 8 (1989)), evaluating all of the facts available to the officer and giving "due weight . . . to the specific reasonable inferences which he is entitled to draw from the facts in light of

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[5] *Terry* further established that an officer may "conduct a pat-down search" if the officer believes the person is "armed and presently dangerous." *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001) (citations omitted). Though often closely related, "[w]hether an investigatory stop is valid is a separate question from whether a search for weapons is valid." *People v. Flowers*, 179 Ill. 2d 257, 263 (1997). Here, defendant challenges only the reasonableness of Luzadder's investigatory stop. *See generally* AT Br. 26-40. Thus, this Court need only consider whether Luzadder had reasonable suspicion that defendant had committed or was about to commit a crime. *See Flowers*, 179 Ill. 2d at 263 (considering only whether a protective search was valid where defendant did not argue that the investigatory stop was also invalid); *People v. Johnson*, 2019 IL App (1st) 161104, ¶ 13 (where defendant "challenges the validity of both his stop and his search, we will consider these two issues separately").



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his experience," *Sorenson*, 196 Ill. 2d at 433 (citing *Terry*, 392 U.S. at 27); *see also Close*, 238 Ill. 2d at 515 (noting that "all surrounding circumstances are relevant"). Ultimately, because reasonable suspicion "'does not deal with hard certainties, but with probabilities,'" *Sokolow*, 490 U.S. at 8 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)), "[t]he concept of reasonable suspicion . . . is not 'readily, or even usefully, reduced to a neat set of legal rules,'" *id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). Thus, reasonableness should not be "interpreted . . . by technical legal rules but by factual and practical commonsense considerations." *People v. Adams*, 131 Ill. 2d 387, 396–97 (1989) (citing *People v. Tisler*, 103 Ill. 2d 226, 236-37 (1984)).

Considering the totality of the circumstances here, Officer Luzadder's investigatory stop was supported by reasonable suspicion. The anonymous tip received by Luzadder was provided through the 911 system by an informant with first-hand and contemporaneous knowledge of defendant's actions. Further, the informant described defendant's physical description and location, and Luzadder arrived just minutes after the tip was provided and was able to corroborate not only the informant's description of defendant but also the informant's report that defendant carried a gun. Taken together, and giving "due weight . . . to the specific reasonable inferences" made by Luzadder, the stop was reasonable. *Sorenson*, 196 Ill. 2d at 433 (citing *Terry*, 392 U.S. at 27).



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The Supreme Court has long held that citizen tips carrying sufficient "indicia of reliability" may form the basis of a constitutionally permissible investigatory stop. *Adams v. Williams*, 407 U.S. 143, 147 (1972). This includes anonymous tips: as the Court explained in *Navarette v. California*, 572 U.S. 393 (2014), an anonymous tip provided "under appropriate circumstances . . . can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.'" *Id.* at 397 (quoting *Alabama v. White*, 496 U.S. 325, 327 (1990)). Because reasonable suspicion is determined on a case-by-case basis, no single set of "circumstances" makes an anonymous tip reliable. *See id.* at 404 (noting that "there is more than one way to demonstrate a particularized and objective basis for suspecting the particular person stopped of criminal activity") (internal quotations omitted). Nevertheless, courts evaluating the propriety of a stop based on an anonymous tip have highlighted relevant aspects of a tip that support the stop's legality, such as the "inclusion of details in the tip," *People v. Lampitok*, 207 Ill. 2d 231, 257 (2003) (citation omitted); whether the police are able to corroborate the tip, *id*. at 258; the informant's first-hand knowledge of the events described, *Navarette*, 572 U.S. at 399; the contemporaneousness of the tip and the officer's observations, *People v. Rollins*, 382 Ill. App. 3d 833, 839 (4th Dist. 2008); and the informant's use of the 911 system, *Navarette*, 572 U.S. at 400.



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First and foremost is the accuracy of the information provided by the informant and whether that information is independently corroborated by police. *See White*, 496 U.S. at 330 ("Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability[.]"); *Lampitok*, 207 Ill. 2d at 258 ("[D]eficiency or uncertainty in the reliability of the informant can be compensated for by a strong level of detail and corroboration of the content of the tip.").

Here, the informant reported that a white male in a black hoodie was walking with two females at a particular location, had a gun, and was "swinging" at the females. Sup. R. 12. Minutes later, the informant called back and reported that the same man was now walking at a different location two blocks away. Sup. R. 13. When Luzadder arrived at the new location, he saw defendant, who matched the informant's description of a white male wearing a black hoodie. Sup. R. 14-15. Thus, the informant provided accurate information regarding the physical description and location of defendant.

In addition, Luzadder observed defendant walking with his hand on his waistband, which he knew from his experience as a police officer is a sign that defendant might have been trying to conceal a firearm. Thus, Luzadder independently corroborated the informant's report that defendant was carrying a firearm. *See People v. Richardson*, 2017 IL App (1st) 130203-B, ¶¶ 6, 27 (officer's belief that an individual was carrying a gun because he was



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"hiding something in his waistband" was a "'reasonable inference[] in light of' his experience") (citing *Terry*, 392 U.S. at 27); *State v. Privott*, 999 A.2d 415, 422 (N.J. 2010) (same); *United States v. Goddard*, 491 F.3d 457, 462 (D.C. Cir. 2007) (officer's observation that individual was holding the right side of his waistband like he was holding a gun supported officer's reasonable suspicion); *State v. Murray*, 213 A.3d 571, 579 (Del. 2019) (stating that "behavior that was indicative of the possession of a deadly weapon" provides support for reasonable suspicion). This corroboration provided additional confirmation of the informant's reliability. *See Lampitok*, 207 Ill. 2d at 257 ("corroboration of the tip through observation by officers" supports a finding of reasonable suspicion); *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 15 ("A tip providing predictive information and readily observable details will be deemed more reliable if these details are confirmed or corroborated by the police.") (citing *People v. Allen*, 409 Ill. App. 3d 1058, 1072 (4th Dist. 2011)).

Moreover, as noted above, the specific information provided by an informant and the corroboration of that information by the officer's first-hand observations are not the only relevant factors that courts consider in analyzing whether an anonymous tip provided reasonable suspicion. Courts also look at the circumstances surrounding the tip and what those circumstances indicate about the reliability of the informant. For instance, informants who were either victims or first-hand witnesses to the alleged criminal activity are considered more reliable. In *Navarette*, for example, an



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individual called 911 and reported a possible drunk driver, providing police with the make, model, and license plate number of the driver's vehicle. 572 U.S. at 399. The Supreme Court explained that the details provided indicated that the caller had "eyewitness knowledge of the alleged dangerous driving," and that such a "basis of knowledge lends significant support to the tip's reliability." *Id.*; *see also Gates*, 462 U.S. at 234 (that the event was observed firsthand entitled the tip "to greater weight than might otherwise be the case"); *People v. Jackson*, 348 Ill. App. 3d 719, 730 (1st Dist. 2004) ("In evaluating the reliability of a third-party's information, we may give greater weight to information provided by an eyewitness or victim of the crime."). And this is true even when an informant does not explicitly claim first-hand knowledge, as long as "the tip had sufficient detail to permit the reasonable inference that the anonymous caller actually witnessed what she described." *People v. Rollins*, 382 Ill. App. 3d 833, 839 (4th Dist. 2008); *see also People v. Shafer*, 372 Ill. App. 3d 1044, 1049 (4th Dist. 2007) ("[A] strong inference that a person is a direct witness to the offense is more indicative of reliability.").

Here, the informant provided information from which one can reasonably infer first-hand knowledge. The informant's initial call described defendant, provided his location, informed OEMC that he had a gun, and noted that he was "swinging" at two females. Sup. R. 12. This information suggested that the informant witnessed defendant assault the two females. Minutes later, the informant provided OEMC with new information, that



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defendant had moved to a second location, two blocks away from the first. Sup. R. 13. The fact that the informant knew defendant's precise movements further suggested that the informant was watching the events unfold. Thus, the informant's status as an eyewitness reinforced the reliability of the information provided.

Additionally, tips provided contemporaneously with the described criminal activity have "long been treated as especially reliable," because courts "generally credit the proposition that statements about an event and made soon after perceiving that event are especially trustworthy because 'substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation.'" *Navarette*, 572 U.S. at 399-400 (citation omitted); *see also Lampitok*, 207 Ill. 2d at 257 (noting that "little passage of time between receiving tip and acting upon it by officers" supports "a finding of reasonable suspicion") (citing *United States v. Payne*, 181 F.3d 781, 790 (6th Cir. 1999)). As in *Navarette*, the informant here called police immediately after witnessing what appeared to be an assault, and then again after seeing defendant change locations. Sup. R. 12-13. Thus, it is unlikely that the informant had sufficient time to make a "deliberate or conscious misrepresentation." *Navarette*, 572 U.S. at 400. That Luzadder stopped defendant within minutes of receiving the informant's report further weighed in favor of its reliability. *See Rollins*, 382 Ill. App. 3d at 839 (holding that a



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stop made minutes after receipt of an eyewitness tip was reliable because "[o]nly a short time passed between the tip and the stop in question").

Finally, the informant's use of the 911 system is "[a]nother indicator of veracity." *Navarette*, 572 U.S. at 400. Because modern technology allows emergency response systems to trace and record 911 calls, even an anonymous tipster places himself at risk of being identified. *See id.* (noting that federal regulations require "cellular carriers to relay the caller's phone number to 911 dispatchers" and that "carriers have been required to identify the caller's geographic location with increasing specificity" since 2001); *see also Beal v. Beller*, 847 F.3d 897, 905 (7th Cir. 2017) (although an informant "might appear to be anonymous, there are features of the 911 system that permit a later identification").[6] And because a 911 caller risks identification, the caller risks prosecution in the event that he or she files a false report. *See Thornton*, 2020 IL App (1st) 170753, ¶ 33 (720 ILCS 5/26-1 makes it a crime to report a false complaint via 911). Thus, contrary to defendant's suggestion, AT Br. 33, "a reasonable officer could conclude that a false tipster would think twice before using such a system." *Navarette*, 572 U.S. at 400; *accord Rollins*, 382 Ill. App. 3d at 837 (tip that comes through the 911 system has greater reliability) (citing *Shafer*, 372 Ill. App. 3d at 1050-51). Here,

[6] Defendant cites several articles to argue that modern technology allows an anonymous caller to evade identification, *see* AT Br. 33; however, none address calls made to 911 systems and instead discuss calls between individuals.



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Luzadder knew both that the informant provided the report through the 911 system and that OEMC had the informant's phone number. Sup. R. at 12. This was yet another indicia supporting the informant's reliability.

Defendant attacks the reliability of the informant's tip first by questioning the accuracy of the informant's description. Defendant points out that Luzadder did not witness him with two females, and argues that this "undermined" the informant's reliability. AT Br. 36. But courts look at the entirety of the information provided, and the fact that "not every detail mentioned by the tipster was verified" does not necessarily undermine his or her reliability where significant other aspects *were* corroborated. *White*, 496 U.S. at 331; *see also United States v. Garner*, 416 F.3d 1208, 1215 (10th Cir. 2005) ("To establish reasonable suspicion, not every detail of an anonymous tip must be verified."). Luzadder corroborated the location and description of defendant, as well as the allegation that defendant carried a gun. That the females — who presumably wished to get away from their assailant — were no longer present when Luzadder found defendant does not undermine the accuracy of the informant's description of defendant. Defendant also points to a number of hypothetical details that could have been, but were not, provided by the informant. AT Br. 34-35. But this Court looks not at the information that *could* have been provided, but at the information that was, in fact, provided. Indeed, "[a] tipster need not deliver an ironclad case to the



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authorities on the proverbial silver platter" in order to be considered reliable. *United States v. Taylor*, 162 F.3d 12, 20 (1st Cir. 1998) (citations omitted).

Next, defendant argues that the fact that he was holding his waistband did not necessarily mean he was carrying a gun or otherwise engaged in wrongdoing. AT Br. 37-38. But courts have consistently acknowledged that "*Terry* accepts the risk that officers may stop innocent people," *Illinois v. Wardlow*, 528 U.S. 119, 126 (2000), and that "innocent behavior frequently provides the necessary reasonable suspicion for a *Terry* stop," *Timmsen*, 2016 IL 118181, ¶ 44; *see also People v. Colyar*, 2013 IL 111835, ¶ 70 ("[I]nnocent conduct may nonetheless create reasonable suspicion that criminal activity is afoot."). In fact, *Terry* itself concerned a stop based entirely on a series of innocent acts. 392 U.S. at 22. Thus, the fact that certain questionable conduct might ultimately prove innocent does not undermine an officer's reasonable suspicion; on the contrary, the ambiguity of the conduct justifies the investigatory stop. *See Timmsen*, 2016 IL 118181, ¶ 44 ("[w]here possibly innocent conduct also suggests criminal activity . . . an investigative stop is justified to resolve the ambiguity"). In any event, Luzadder did not stop defendant merely because Luzadder witnessed defendant holding his waistband. Luzadder stopped defendant because Luzadder had information that a white male in a black hoodie was carrying a firearm and had recently assaulted two females, *and* defendant matched the assailant's description and appeared to be concealing a firearm.



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The fact that Luzadder was able to corroborate a key aspect of the tip supports the overall reliability of the informant's tip.

Finally, given the totality of the circumstances here, defendant's argument that "all the police had to go on in this case was the bare report of an unknown, unaccountable informant" is incorrect. AT Br. 35 (citing *Florida v. J.L.*, 529 U.S. 266, 271 (2000)). Defendant's reliance on *J.L.* is similarly misplaced. The tip in *J.L.* contained almost none of the additional indicia of reliability found here. There, an anonymous caller reported "that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. "Sometime after the police received the tip—the record does not say how long—two officers were instructed to respond," and found three young black males, one of whom was wearing a plaid shirt. *Id.* The officers performed an investigatory stop, *id.* at 269, which the Supreme Court ruled unconstitutional because the tip "lacked the moderate indicia of reliability" necessary to justify the stop. *Id.* at 271.

Thus, in *J.L.*, the only information known to the officers at the time of the stop was that the young man generally matched the physical description provided. By contrast, Luzadder was able to independently corroborate the informant's report that defendant carried a gun, and, in addition, the report was contemporaneously provided by an eyewitness to the alleged offense through the 911 system. These are all indicia of reliability not present in *J.L.* *See Navarette*, 572 U.S. at 399-400 (distinguishing *J.L.* on the grounds that



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there was "no basis for concluding that the tipster had actually seen" the criminal activity, or that the tip "was contemporaneous with the observation of criminal activity or made under the stress of excitement caused by a startling event"). The present circumstances are not fairly compared to the "bare-bones" information known to the officers in *J.L. Id.* at 398.

For similar reasons, *People v. Holmes*, 2019 IL App (1st) 160987, *People v. Rhinehart*, 2011 IL App (1st) 100683, and *People v. Carlson*, 313 Ill. App. 3d 447 (1st Dist. 2000), all cited by defendant, AT Br. 35, are distinguishable. In *Holmes*, a sergeant relayed a tip from a park security guard to two Chicago police officers that a 5-and-a-half-foot tall black man wearing a purple shirt and black jeans had a gun and was somewhere in a crowd of 1200 people. 2019 IL App (1st) 160987, ¶ 7. The officers did not know when or how the tip had been provided or whether the informant witnessed the man carrying the gun, and they did not independently corroborate the informant's report upon finding the described individual. *Id.* ¶¶ 32, 36. In *Rhinehart*, an "unidentified citizen" flagged down an officer, "informed him that a black male wearing a white shirt and yellow pants had a gun, and provided him with the man's location." 2011 IL App (1st) 100683, ¶ 3. The officer, upon finding the man, did not corroborate the tip in any way before conducting an investigatory stop. *Id.* ¶ 14 (noting that the officer "could have relied on his observations of defendant's behavior to justify the *Terry* stop if he had seen defendant attempt to conceal an object"). Similarly,



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in *Carlson*, the officers were unable to independently corroborate the allegation that the suspect had a firearm before they stopped him. 313 Ill. App. 3d at 447.

Here, given the corroborated information provided by the informant, the informant's first-hand and contemporaneous description of the defendant and the events witnessed, the fact that Luzadder found defendant within minutes of the informant's tip, and the informant's use of the 911 system, this tip carried sufficient "indicia of reliability," and Luzadder's stop was reasonable "in light of the specific content of the tip coupled with [his] experiences and observations." *Ledesma*, 206 Ill. 2d at 592. Accordingly, this Court should affirm the appellate court's holding that the investigatory stop that led to defendant's arrest complied with the Fourth Amendment.

## II. Because Insufficient Evidence Supports Defendant's Conviction of Armed Habitual Criminal, that Conviction Should Be Reversed.

The AHC statute provides that it is a Class X felony to possess a firearm after having been convicted two or more times of a qualifying predicate felony. 720 ILCS 5/24-1.7. A qualifying felony is one either specifically enumerated in section 24-1.7, or "a forcible felony as defined in Section 2-8 of this Code." *Id.* Here, the People charged defendant with AHC for possessing a firearm "after having been convicted of the offense of armed robbery, under case number, 10-CF-367, and the offense of aggravated battery, under case number 09-CF-2251." C30. Because neither offense is



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specifically enumerated in the AHC statute, *see generally* 720 ILCS 5/24-1.7(a)(2)-(3), both qualify as predicate offenses only if they constitute a "forcible felony as defined in Section 2-8." *Id.* Thus, the People had to prove that both of defendant's prior felonies were forcible felonies. *People v. Brown*, 2017 IL App (1st) 150146, ¶ 17 ("To sustain a conviction for the offense of armed habitual criminal, the State must prove the defendant's prior convictions as well as his present conduct beyond a reasonable doubt."). Defendant acknowledges that armed robbery is a forcible felony. AT Br. 12. Thus, the only question presented is whether his aggravated battery conviction also qualifies as a forcible felony.

Section 2-8, in pertinent part, defines a forcible felony as "aggravated battery resulting in great bodily harm or permanent disability or disfigurement." 720 ILCS 5/2-8 (emphasis added). As this definition indicates, only aggravated batteries that result in "great bodily harm or permanent disability or disfigurement" qualify. *Id.*; *see also People v. Smith*, 2016 IL App (1st) 140496, ¶ 11 (aggravated batteries "not based on great bodily harm or permanent disability or disfigurement" do not fall "within the statutory definition of a forcible felony"); *People v. Crosby*, 2017 IL App (1st) 121645, ¶ 13 (same). Thus, for defendant's aggravated battery conviction to qualify as a forcible felony (and a predicate for the AHC conviction), the People were required to show that in the course of the aggravated battery, he caused "great bodily harm or permanent disability or disfigurement." 720



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ILCS 5/2-8. At trial, the People introduced into evidence a certified copy of defendant's aggravated battery conviction in case number 09-CF-2251. E5-6. The certified copy included no details about the aggravated battery, the People introduced no additional evidence regarding the aggravated battery, and no details regarding the battery appear in the trial record. Thus, the proof did not establish that defendant's aggravated battery conviction constituted a forcible felony and, accordingly, that the conviction qualified as a predicate felony under the AHC statute.

*People v. Ephraim*, 2018 IL App (1st) 161009, is instructive. There, defendant challenged his AHC conviction that was predicated, in part, on a prior conviction for aggravated battery to a peace officer. *Id.* ¶ 8. Aggravated battery to a peace officer is not an enumerated offense under the AHC, and therefore qualifies as a predicate offense only if it constitutes a forcible felony. *Id.* ¶ 12. And, as in this case, aggravated battery to a peace officer would qualify as a forcible felony only if the battery resulted in "great bodily harm or permanent disability or disfigurement." *Id.* ¶ 14. At trial in *Ephraim*, the People introduced the certified copy of the defendant's conviction for aggravated battery to a peace officer, but did not present evidence regarding the nature of the crime. *Id.* ("[T]here is nothing in the record that shows . . . that defendant's prior conviction . . . resulted in 'great bodily harm or permanent disability or disfigurement' to a peace officer."). Accordingly, the appellate court reversed the defendant's AHC conviction



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"because the prosecution did not prove beyond a reasonable doubt that defendant's prior conviction" was "an enumerated offense in the forcible felony definition." *Id.*

As in *Ephraim*, the People's proof here did not include any evidence that defendant's aggravated battery resulted in great bodily harm, permanent disability, or disfigurement. Thus, defendant's conviction for AHC should be reversed. Because the circuit court merged defendant's remaining convictions into his AHC conviction, this Court should remand for resentencing on defendant's unlawful use or possession of a weapon by a felon and aggravated unlawful use of a weapon convictions.

## CONCLUSION

This Court should affirm the judgment of the appellate court with respect to defendant's Fourth Amendment claim, reverse defendant's conviction for armed habitual criminal, and remand to the circuit court for resentencing on defendant's remaining convictions.

April 16, 2021

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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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages.

s/Mitchell J. Ness
Mitchell J. Ness

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**PROOF OF SERVICE**

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 16, 2021, the **Brief of Respondent-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 provided notice to the following registered email addresses:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

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