No. 128871

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- SANTANA GRAYER, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-21-0808. There on appeal from the Circuit Court of Cook County, Illinois, No. 20 CR 10002. Honorable Vincent M. Gaughan, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

The State failed to prove beyond a reasonable doubt that Santana Grayer committed attempt vehicular hijacking, where Grayer, a voluntarily intoxicated Lyft passenger trying to get home from a social gathering, did not have the specific intent to commit the underlying offense.

A. Standard of Review

The parties agree as to the standard of review for issues involving the sufficiency of the evidence. (Def. Br. 16; St. Br. 6). However, Grayer disagrees with the State's assertion that this appeal involves a question of statutory interpretation, which requires *de novo* review, as Grayer only raised a sufficiency of the evidence argument and does not seek any statutory relief under section 6-3 of the Criminal Code.

B. The State's burden of proving specific intent in attempt offenses

The parties agree that Grayer was charged with a specific intent offense, attempt vehicular hijacking, and that the State was required to prove that Grayer (1) specifically intended to commit a vehicular hijacking and (2) committed an act that constituted a substantial step toward the commission of a vehicular hijacking. (Def. Br. 16-17, 27; St. Br. 8). 720 ILCS 5/8-4(a), 18-3(a).

C. The 2002 amendment to section 6-3, concerning affirmative defenses, did not change the State's burden of proving the required mental state in specific intent offenses.

The State dedicates a significant portion of its brief arguing that "under the unambiguous language of section 6-3, [Grayer's] intoxicated state cannot relieve him of criminal liability for [his] conduct 'unless such condition [wa]s involuntarily produced[.]'" (St. Br. 12, quoting 720 ILCS 5/6-3). However, the State fails to recognize that section 6-3 does not apply to this case as Grayer neither raised voluntary intoxication as an affirmative defense at trial nor did he seek relief under section 6-3 on appeal. Rather, Grayer argued below that due to the undisputed

fact that Grayer was a drunk Lyft passenger who thought he was being driven in the wrong direction and the fact that he did not commit an act that constituted a substantial step toward the commission of a vehicular hijacking, the State failed to prove that Grayer specifically intended to hijack his Lyft driver's car. (R. 80-83; A.C. Def. Br. 14-23,[1] citing to *People v. Slabon*, 2018 IL App (1st) 150149, ¶ 33 for the proposition that while voluntary intoxication is not an affirmative defense in Illinois, evidence of voluntary intoxication may be relevant to specific intent offenses). Indeed, it was the State, not Grayer, who first cited to section 6-3 in its appellate court brief, arguing that Grayer's state of voluntary intoxication was irrelevant to the question of intent because, following the 2002 amendment to section 6-3, voluntary intoxication was no longer relevant to specific intent offenses. (A.C. St. Br. 14-16). The appellate court majority agreed with the State, finding that under current law, a defendant's voluntary intoxication is not relevant to specific intent and that "*Slabon* misstates the law on voluntary intoxication as it stands today." *People v. Grayer*, 2022 IL App (1st) 210808, ¶¶ 39-41.

To be clear, the only reason section 6-3 is relevant to this appeal is because the legislative history of section 6-3 directly rebuts the appellate court's conclusion that due to the 2002 amendment, Grayer's voluntary intoxication is not relevant to the element of specific intent. *Id.* The legislative history of section 6-3 decidedly shows that by passing the 2002 amendment, the legislature only intended to remove voluntary intoxication as an affirmative defense, and the amendment had no impact on the relevance of such evidence at trials for specific intent offenses. (Def. Br. 19-22, reviewing the legislative history of the 2002 amendment). Accordingly, the State's contention that this appeal requires a statutory interpretation analysis

[1] Pursuant to Illinois Supreme Court Rule 318(c), Grayer has requested that the First District Appellate Court file the e-filed, stamped copies of the appellate court briefs with this Court because it is important for this Court to know the contentions of the parties in the appellate court.

of section 6-3 is erroneous as this Court need only apply sections 8-4 (defining attempt), 18-3 (defining vehicular hijacking), and 4-4 (defining intent) to determine if the State failed to prove that Grayer specifically intended to hijack his Lyft driver's car. 720 ILCS 5/4-4, 8-4(a), 18-3(a).

The State concedes that the 2002 amendment to section 6-3 did not change the prosecution's evidentiary burden of proving specific intent in attempt offenses under section 8-4. (St. Br. 12). However, the State contends that following the 2002 amendment to section 6-3, a defendant's state of voluntary intoxication is no longer relevant to the element of specific intent. (St. Br. 11-18). Without citing to any case law, the State claims that "there is no merit to defendant's argument that section 6-3 governs only intoxication as an affirmative defense, and not to negate intent . . . because this Court has already held that there is no distinction between raising voluntary intoxication as an affirmative defense and raising it to challenge the sufficiency of the [State's] evidence of specific intent." (St. Br. 15-16). The State's contention is baseless as Grayer is unaware of any decision from this Court reaching such a holding.

Citing to *People v. Free*, 94 Ill. 2d 378, 407-08 (1983), the State asserts that "in 1983, this Court held that voluntary intoxication 'may be used to negate the existence of the mental state which is an element of the crime,' and that such defense is 'governed by section 6-3.'" (St. Br. 16). The State's reliance on *Free* is misplaced because *Free* only involved voluntary intoxication as an *affirmative defense* and does not stand for the proposition that voluntary intoxication, when used to challenge the sufficiency of the State's evidence of specific intent, is governed by section 6-3. *Free*, 94 Ill. 2d at 407-08. The question in *Free* was whether the trial court should have instructed the jury on both insanity (under section 6-2), and voluntary intoxication or drugged condition (under section 6-3), where the defendant argued at trial that he was legally insane due to toxic psychosis caused by the defendant's

voluntarily intoxicated or drugged condition. *Id.* at 403. The trial court declined the defense's request for both instructions and only instructed the jury on voluntary intoxication. *Id.* at 408. This Court held that the trial court did not err in declining to instruct the jury on insanity because "toxic psychosis induced by voluntary intoxication on drugs, alcohol or both is not a 'mental disease or mental defect' which amounts to legal insanity under our statute." *Id.* at 406. Accordingly, this Court found that under these circumstances, the defendant's voluntary toxic psychosis defense was governed by section 6-3, not section 6-2. *Id.* at 407-08. Therefore, despite the State's contention, this Court did not hold in *Free* that voluntary intoxication, when raised as a sufficiency of the evidence argument, is governed by section 6-3.

Additionally, the State cites to *Reece*, *Camp*, and *Stillman* for the premise that "the affirmative defense of voluntary intoxication was generally understood as being synonymous with undermining the sufficiency of the [State's] proof of *mens rea*." (St. Br. 16). However, in both *People v. Reece*, 228 Ill. App. 3d 390, 394 (5th Dist. 1992) and *People v. Camp*, 201 Ill. App. 3d 330, 334 (1st Dist. 1990), the question was whether the trial court erred in denying the defendant's request to instruct the jury on voluntary intoxication. And, in *People v. Stillman*, 61 Ill. App. 3d 446, 448-49 (4th Dist. 1978), the question was whether the trial court erred in denying the defendant's motion to withdraw his guilty plea on the basis that there was an inadequate factual basis as to the defendant's mental state due to his voluntary intoxication at the time of the offense. Thus, the appellate court did not hold in these cases that voluntary intoxication as an affirmative defense and voluntary intoxication as a sufficiency of the evidence argument were synonymous, as the question did not arise.

As discussed in Grayer's opening brief, the distinction is entirely procedural. (Def. Br. 18-22). Before the legislature designated voluntary intoxication as an

affirmative defense in 1961, historically, Illinois courts recognized that a defendant's voluntary intoxication could be used to challenge the sufficiency of the State's evidence of specific intent. (Def. Br. 17-18). Designating voluntary intoxication as an affirmative defense did not change this common law rule, but rather, it placed additional procedural requirements and burdens on both the defense and the State. (Def. Br. 18-21). *See* Ill. S. Ct. Rule 413(d) (defendants must provide written notice of affirmative defenses); 720 ILCS 5/3-2(a) (defendants must present some evidence at trial to support an affirmative defense, unless the State presents evidence concerning the affirmative defense in its case-in-chief); 720 ILCS 5/3-2(b) (if the defense meets its initial burden of presenting some evidence of an affirmative defense, then the State bears the added burden of disproving the affirmative defense beyond a reasonable doubt, in addition to the elements of the offense).

The State contends that the 2002 amendment to section 6-3 must have eliminated the relevance of a defendant's voluntary intoxication to *mens rea* because otherwise the amendment would have been meaningless. (St. Br. 14). This simply is not true. By removing voluntary intoxication as an affirmative defense, defendants no longer have to provide notice of the defense prior to trial as it would be included in a reasonable doubt defense, and, the State no longer carries the *additional burden* of disproving voluntary intoxication. *See* Ill. S. Ct. Rule 413(d); 720 ILCS 5/3-2(b). Thus, the State's argument fails.

In arguing that the 2002 amendment to section 6-3 eliminated voluntary intoxication as an affirmative defense and as a reasonable doubt argument, the State overlooks the fact that section 6-3 is contained in Article 6 of the Criminal Code, which pertains only to affirmative defenses. 720 ILCS 5/6-4 ("[a] defense based upon any of the provisions of Article 6 is an affirmative defense"). While the 2002 amendment eliminated voluntary intoxication as an affirmative defense under Article 6, the amendment had no effect on Article 4, which governs and

defines the required mental states for criminal offenses, 720 ILCS 5/4-3, or the attempt statute, which is found in Article 8, 720 ILCS 5/8-4(a). Therefore, the 2002 amendment did not alter a defendant's ability to use evidence of voluntary intoxication to challenge the sufficiency of the State's evidence of specific intent.

The State claims that *People v. Slabon*, 2018 IL App (1st) 150149 was wrongly decided due to the court's reference to *People v. Cunningham*, 123 Ill. App. 2d 190 (1st Dist. 1970). (St. Br. 17). The State's position, like the appellate court's reasoning below, is flawed. *Grayer*, 2022 IL App (1st) 210808, ¶ 41. In *Slabon*, the court concluded that although voluntary intoxication had been omitted as an affirmative defense under section 6-3, a defendant's voluntary intoxication was still relevant to specific intent offenses. *Slabon*, 2018 IL App (1st) 150149, ¶ 33, *pet. for leave to appeal denied*, No. 124031 (Nov. 28, 2018). In reaching this conclusion, the court explained that apart from the statutory affirmative defense of voluntary intoxication, "[c]ourts have long recognized that 'where voluntary intoxication is so extreme as to suspend entirely the power of reasoning,' a defendant is incapable of forming a specific intent or malice." *Id.* (citing *Cunningham*, 123 Ill. App. 2d at 209 and cases cited therein). The State contends that "the passage that [the *Slabon* court] quotes from *Cunningham* was explaining the pre-2002 version of section 6-3's affirmative defense[,]" and thus "*Cunningham*'s explanation of the law prior to the 2002 amendment is no longer accurate . . . ." (St. Br. 17). The State misapprehends the *Slabon* court's reference to *Cunningham*.

The *Slabon* court cited *Cunningham* **and the cases cited therein** to demonstrate that a defendant's ability to challenge evidence of specific intent with evidence of a defendant's voluntary intoxication is rooted in Illinois common law, not section 6-3. Accordingly, the *Slabon* court cited to the following passage in *Cunningham*:

> In a line of cases in this jurisdiction beginning apparently with *People v. Cochran*, 313 Ill. 508, 145 N.E. 207 (1924), and continuing through

> *People v. Tanthorey*, 404 Ill. 520, 89 N.E.2d 403 (1950); *People v. Brown*, 415 Ill. 23, 112 N.E.2d 122 (1953); *People v. Strader*, 23 Ill.2d 13, 177 N.E.2d 126 (1961); and *People v. Hicks*, 35 Ill.2d 390, 220 N.E.2d 461 (1966), reviewing courts have held that where voluntary intoxication is so extreme as to suspend entirely the power of reasoning, the defendant cannot be convicted of murder since he is incapable, due to his voluntary drunkenness, of forming an intent to kill.

Cunningham, 123 Ill. App. 2d at 209. The cases cited in *Cunningham* all involve the common law defense of voluntary intoxication as a means to negate *mens rea* and do no involve section 6-3. Thus, *Slabon* court's citation to *Cunningham* and the cases cited therein was not only proper, but it supported the court's conclusion that the 2002 amendment to section 6-3 did not eliminate this common law rule.

Notably, in Section III of the State's brief, the State acknowledges that before voluntary intoxication was designated as an affirmative defense in section 6-3, Illinois courts had held that while voluntarily intoxication was not generally a legal excuse for a crime, for specific intent offenses, a defendant may be so voluntarily intoxicated that a defendant may be incapable of forming such intent. (St. Br. 18-19, citing to *Cochran*, 313 Ill. at 518 and *Bruen v. People*, 206 Ill 417, 426-27 (1903)). Thus, the State tacitly concedes that a defendant's ability to challenge the State's evidence of specific intent with evidence of a defendant's voluntary intoxication is not based in section 6-3, but in common law.

Furthermore, while the State cites to the pattern jury instructions for attempt and vehicular hijacking, the State neglects to address the pattern jury instructions concerning voluntary intoxication. (St. Br. 7). Indeed, this Court's jury instructions committee agrees that the 2002 amendment to section 6-3 did not change the relevance of a defendant's voluntary intoxication in trials for specific intent offenses as the current pattern jury instructions recognize that a defendant's voluntary intoxication may render him "incapable of forming a specific intent[.]" Illinois Pattern Jury Instructions, Criminal, Nos. 24-25.02 and 24-25.02A (approved July 29, 2016) (hereinafter IPI Criminal Nos. 24-25.02 and 24-25.02A). Following the

2002 amendment, the committee reviewed the pattern jury instructions concerning voluntary intoxication and recognized that "Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense." *See* IPI Criminal Nos. 24-25.02 and 24-25.02A, Committee Note (approved July 29, 2016). Notably, the committee concluded that the instructions did **not** need to be changed, demonstrating that it determined that 2002 amendment to section 6-3 had no impact on the relevance of a defendant's voluntary intoxication at trials for specific intent offenses. *Compare* IPI Criminal Nos. 24-25.02 and 24-25.02A (current version) *with* Illinois Pattern Jury Instructions, Criminal, Nos. 24-25.02 and 24-25.02A (4th ed. 2000).

Furthermore, the State contends that Grayer's reference to the legislative history of section 6-3 is "unavailing" because the language of section 6-3 is clear and unambiguous. (St. Br. 16). While the State is correct that courts should only look to aids of statutory construction, such as legislative history, when the text of a statute is ambiguous, the State's argument is misleading because Grayer never raised an affirmative defense pursuant to section 6-3. As a result, this appeal does not require this Court to interpret the text of section 6-3.

Instead, Grayer points to the legislative history of section 6-3 because it rebuts the appellate court majority's conclusion that due to the 2002 amendment of section 6-3, defendants can no longer assert voluntary intoxication as a means to negate specific intent. (Def. Br. 19-21). *Grayer*, 2022 IL App (1st) 210808, ¶¶ 39-41. The legislative history demonstrates that by passing the 2002 amendment, the legislature only intended to eliminate voluntary intoxication as an affirmative defense and that a defendant's voluntary intoxication would still be a relevant factor in determining if the State met its burden of proving the required mental state at trials for specific intent offenses. (Def. Br. 20-21, reviewing legislative debate concerning the 2002 amendment).

The State maintains that Grayer's reference to the legislative history of the 2002 amendment is unpersuasive because "'[l]egislative intent speaks to the will of the legislature as a collective body, rather than the will of individual legislators" (quoting *Morel v. Coronet Insurance Co.*, 117 Ill. 2d 18, 24 (1987)) and "courts generally give statements by individual legislators in a floor debate little weight when searching for the intent of the entire legislative body," for "[s]uch statements by themselves do not affirmatively establish the intent of the legislature" (quoting *People v. R.L.*, 158 Ill. 2d 432, 441 (1994)). (St. Br. 12-13). But, this Court's decision in *Morel* supports Grayer's argument the statements made during legislative debates may be used to ascertain legislative intent, and, *R.L.* is distinguishable.

In *Morel*, this Court found that statements made during legislative debates help to reveal the legislative intent behind a statute when viewed in the context of the entire debate. 117 Ill. 2d at 24. There, the statements at issue were affidavits from legislators explaining the meaning of the public act that amended the statute being interpreted. *Id.* The affidavits were written over four years after the amendment had passed. *Id.* In holding that the legislators' affidavits "d[id] not constitute meaningful evidence of legislative intent[,]" this Court distinguished the legislators' affidavits from debate on the General Assembly floor. *Id.* at 24-25. This Court acknowledged that while statements made during legislative debates may be used to ascertain legislative intent, "[s]tatements of individual legislators made outside the context of legislative debates . . . are immune from the verbal interplay and the presentation of countervailing ideas inherent in the debate process[,]" and thus "reflect only the viewpoints of those individuals, not necessarily the intent of the legislature as a whole when the bill was debated and passed." *Id.* Therefore, *Morel* supports that statements made on the General Assembly floor during debate on the 2002 amendment to section 6-3 can be used to ascertain the legislature's intent.

Furthermore, *R.L.* is distinguishable. In holding that a statute requiring the automatic transfer of cases of 15- and 16-year-old minors charged with a drug offense within 1,000 feet of public housing property did not violate equal protection laws, this Court declined to conclude that isolated statements during senate debate demonstrated the legislature's discriminatory intent in enacting a statute when viewed in the full context of the debate. 158 Ill. 2d at 435, 442-43. The defendants argued that "the legislature at least partly intended to racially discriminate in enacting" the statute because the vast majority of public housing residents are people of color and the disparate impact on nonwhite minors was foreseeable. *Id.* at 440-41. During a one-year period, every minor transferred to adult court under the statute had been a minor of color. *Id.* at 440. The defendant pointed to statements made on the senate floor regarding the racial composition of public housing residents, asserting that the legislature's failure to address the foreseeable racial disparate impact demonstrated the legislature's discriminatory intent in enacting the statute. *Id.* at 441. This Court disagreed with the defendant's reasoning, explaining that while statements made during legislative debate may assist in ascertaining legislative intent "when examined in the context of the debate in its entirety[,]" these statements alone were insufficient to establish an inference of discriminatory intent. *Id.* at 442-43 (quoting *Morel*, 117 Ill. 2d at 24).

Unlike in *R.L.*, Grayer cites to more than isolated statements of senators, and Grayer welcomes this Court to consider the statements of individual senators in the context of the entire debate concerning the 2002 amendment. *See* 92d Ill. Gen. Assem., Senate Proceedings, Mar. 20, 2001, at 27-29; 92d Ill. Gen. Assem., House Proceedings, May 10, 2001, at 8; *see also Morel*, 117 Ill. 2d at 24. Grayer's case also differs from *R.L.* because there is no need to infer the legislature's intent in passing the 2002 amendment. Here, the senate's debate on the amendment directly addresses the fact that the legislature only intended to eliminate voluntary

intoxication as an affirmative defense and that the amendment would not change a defendant's ability to use evidence of voluntary intoxication to rebut evidence of intent. *See* 92d Ill. Gen. Assem., Senate Proceedings, Mar. 20, 2001, at 27-29; 92d Ill. Gen. Assem., House Proceedings, May 10, 2001, at 8; *see also People v. Blair*, 2013 IL 114122, ¶ 37 (finding that a senator's statements during senate debate clearly demonstrated the legislature's intent in passing a public act).

The State also attempts to discount Senator Hawkinson's statements during senate debate. The State claims that "[t]he Senator's statements made clear that he believed the amendment would not affect the relevance of voluntary intoxication with respect to any possible *mens rea*, 'whether it be willfulness, intentionalness, knowledge, recklessness, and so forth'" and asserts that "the Senator was not accurately describing the pre-1961 common law rule, for voluntary intoxication was only relevant to general intent crimes between 1961 to 2001, when it was explicitly included in section 6-3." (St. Br. 14). But, the State misconstrues Senator Hawkinson's statements, and the State's argument is based on its own misunderstanding of the history of voluntary intoxication defenses in Illinois.

First, the State mischaracterizes Senator Hawkinson's statement by taking it out context, only quoting half of the senator's sentence. The senator's complete statement provided: "Every criminal offense has an underlying mental state, whether it be willfulness, intentionalness, knowledge, recklessness, and so forth." 92d Ill. Gen. Assem., Senate Proceedings, Mar. 20, 2001, at 27. This was an accurate statement of law as the senator was explaining that every criminal offense has a required mental state. *See* 720 ILCS 5/4-3 (to be found guilty of a criminal offense, other than a strict liability offense, the State must prove that the defendant acted with the required mental state). This overview of the law was relevant because the senator went on to explain that the 2002 amendment would only remove voluntary intoxication as a "separate *affirmative defense"* and that "nothing in

this legislation would, in any way, affect the ability to introduce any evidence, including evidence of voluntary intoxication, which might go to negate the required mental state for any individual criminal offense." 92d Ill. Gen. Assem., Senate Proceedings, Mar. 20, 2001, at 27 (emphasis added). Second, Senator Hawkinson was correct that the 2002 amendment would not change the law concerning a defendant's ability to introduce evidence of voluntary intoxication to negate a required mental state as section 6-3 only governed voluntary intoxication as an affirmative defense, and the amendment did not alter the State's burden to prove the requisite mental state for a criminal offense. *See* 720 ILCS 5/4-3.

Lastly, in an attempt to discredit Senator Hawkinson's statements, the State incorrectly asserts that the senator was not accurately describing the pre-1961 common law rule because "voluntary intoxication was only relevant to general intent crimes between 1961 to 2001, when it was explicitly included in section 6-3." (St. Br. 14). A defendant's voluntary intoxication was not a defense to general intent offenses from 1961 to 2001. After voluntary intoxication was designated as an affirmative defense in the Criminal Code of 1961,[2] Illinois courts determined that even though the 1961 statute did not specify which mental states could be negated by a defendant's intoxicated state, involuntary intoxication was not a defense to charges where the mental state involved was recklessness or willfulness. *See e.g. People v. Olson*, 60 Ill. App. 3d 535 (4th Dist. 1978) (voluntary intoxication is not a defense to involuntary manslaughter, which only requires that a defendant act recklessly); *People v. Arndt*, 50 Ill. 2d 390, 394 (1972) (same); *see also* IPI Criminal No. 24-25.02, Committee Note (approved July 29, 2016) (explaining that under this version of the statute, voluntary intoxication was not a defense to offenses

[2] The Criminal Code of 1961 provided that an intoxicated person was "criminally responsible for conduct unless such condition . . . : (a) Negatives the existence of a mental state which is an element of the offense . . . ." Ill. Rev. Stat. 1961, ch. 38, § 6-3.

that only required reckless or willful mental states). Then, in 1988, the legislature amended subsection (a) of 6-3, providing that a voluntarily intoxicated person is criminally responsible for conduct unless such condition "[i]s so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense[.]" Public Act 85-670 (eff. Jan. 1, 1988) (amending 720 ILCS 5/6-3, formally Ill. Rev. Stat. 1991, ch. 38, ¶ 6-3). Critically, this Court's jury instructions committee subsequently recognized that the 1988 amendment changed the definition of a voluntarily intoxicated or drug condition, making it only a defense "to crimes with an element of specific intent." *See* Illinois Pattern Jury Instructions, Criminal, No. 24-25.02, Committee Note (4th ed. 2000). This version of the statute remained in effect until the 2002 amendment became effective. Public Act 92-466 (eff. Jan. 1, 2002) (amending 720 ILCS 5/6-3). Thus, the State's assertion that voluntary intoxication was relevant to general intent offenses between 1961 and 2001 is inaccurate. (St. Br. 14).

Finally, the State asserts that Senator Jacobs' statements regarding the 2002 amendment being a response to a Rock Island County case supports that the legislature intended to remove a defendant's ability to use evidence of voluntary intoxication as a means to negate specific intent. (St. Br. 15). But, the State neglects to consider Senator Jacobs' statement in the full context of the debate. *See Morel*, 117 Ill. 2d at 24. Based on the senate's full discussion of the Rock Island County case, the defendant in that case raised voluntary intoxication as an affirmative defense and a jury acquitted the defendant of attempt criminal sexual abuse. 92d Ill. Gen. Assem., Senate Proceedings, Mar. 20, 2001, at 27-29 (statements of Senators Jacobs, Hawkinson, and Geo-Karis). Senator Hawkinson stated: "Personally, this is the first time I've seen this defense successful in all my years of observing the criminal justice system, and I think we should avoid that confusion, with the understanding that we have put forward here that we're not attempting to, in

any way, undermine the -- the burden on the prosecution to prove mental state." *Id.* at 28. Senator Hawkinson further explained that there were two reasons for removing voluntary intoxication as an affirmative defense: (1) "to avoid confusion" and (2) "to avoid any jury instruction or the like which might suggest to the jury that there's a special defense for intoxication, apart from the negating of the appropriate mental state." *Id.* And, when a senator asked why the amendment was necessary if a defendant could still argue the State's evidence of a required mental state was insufficient due to a defendant's voluntary intoxication, Senator Jacobs explained that the difference was in the burden of proof. *Id.*; *see* 720 ILCS 5/3-2(b) (when a defendant raises an affirmative defense, the State bears the additional burden of disproving the affirmative defenses beyond a reasonable doubt).

Contrary to the State's suggestion, the senate debate supports that the legislature believed that designating voluntary intoxication as an affirmative defense contributed to the Rock Island County defendant's acquittal as it may have suggested that it was a "special defense," when, at its core, it really is a sufficiency of the evidence argument. Thus, by passing the 2002 amendment, the legislature sought to avoid any confusion by removing its designation as an affirmative defense, while preserving a defendant's ability to negate specific intent with evidence of voluntary intoxication.

Therefore, as recognized by Illinois courts long before voluntary intoxication was ever designated as an affirmative defense, this Court should conclude that a defendant's voluntary intoxication remains relevant to the element of intent in specific intent offenses. Accordingly, with respect to Grayer's case, this Court should find that Grayer's voluntarily intoxicated state is relevant to the question of whether the State failed to prove specific intent for the charged inchoate offense.

D. Here, considering Grayer's voluntary intoxication, the State failed to prove beyond a reasonable doubt that Grayer had the specific intent to hijack his Lyft driver's car, where the evidence merely established that Grayer was an intoxicated Lyft passenger who trying to get home safely.

The State claims that because Grayer expressly indicated his intent to take Ong's car— "specifically demanding that Ong give him control of the car[,]"—this Court does not need to consider the circumstances surrounding the incident when reviewing the sufficiency of the evidence of specific intent. (St. Br. 8-9). This argument lacks merit as the State misconstrues the trial evidence. Ong never testified that Grayer "demanded" that Ong give him control of the car. Rather, Ong testified that while he was driving, Grayer said that they were going in the wrong direction and that Grayer told Ong that he "wanted" to drive the car himself. (R. 39-40, 54-56). Ong also testified that Grayer "asked" to drive the car. (R. 41). In fact, the trial court cautioned the prosecutor, Ms. Guzman, not to use the word "demand" because Ong had not testified to that effect. The following exchange occurred during Ong's direct examination:

> [ONG:] Yeah. He -- He told me that we are going in the wrong direction and that he wants to drive the car himself.
>
> [MS. GUZMAN:] So he demanded to drive the car himself?
>
> THE COURT: I'm sorry. State, where did he say -- Madam Court Reporter, read back where he said the witness said he demanded.
>
> [MS. GUZMAN]: Your Honor, I'll withdraw the word demand. I apologize.
>
> THE COURT: All right. Don't put any words in people's mouths. Okay?
>
> All right. Proceed.
>
> ***
>
> [MS. GUZMAN:] He said that he wanted to drive the car himself?
>
> [ONG:] He said that he wanted to drive the car himself.

(R. 40). As a result, contrary to the State's assertion, the trial evidence does not

support that Grayer demanded to drive Ong's car or that Grayer explicitly expressed an intent to take Ong's car. Instead, Ong's testimony only shows that Grayer drunkenly believed that he was being driven in the wrong direction and that he *asked* Ong to drive the car and that he *wanted* to drive the car. (R. 39-41, 54-56). Since Grayer never expressed an intent to steal Ong's car, Grayer's conduct and the surrounding circumstances of this incident are critical to this Court's determination of whether the State's evidence of specific intent was insufficient.

The State also contends that Grayer's drunken belief that his Lyft driver was driving in the wrong direction is irrelevant to the question of specific intent. (St. Br. 9). As discussed above, the context in which Grayer asked to drive Ong's car is crucial to this Court's assessment of whether this question was indicative of an intent to steal the car. At trial, the State's own evidence established that Grayer was highly intoxicated, someone ordered a Lyft to take Grayer home because he was unable to get home on his own, and Grayer believed Ong was driving in the wrong direction, even though Ong told him that he was following the GPS directions in the Lyft app. (R. 37-39, 53-56). As Ong continued driving, Grayer became upset. (R. 41). Grayer pulled on Ong's shirt sleeve, asked Ong multiple times if he could drive the car, and threatened to kill Ong. (R. 40-42, 58-59). Ong testified that he pulled into the gas station because he was concerned about driving safely and feared for his life. (R. 43, 63). But, notably, Ong never testified that Grayer threatened to steal his car or that he thought Grayer was trying to steal his car. *See Grayer*, 2022 IL App (1st) 210808, ¶ 61 (Gordon, J., dissenting) (Justice Gordon found that Grayer "may have been guilty of assault and battery but not the attempted hijacking of a motor vehicle."). And, Ong never testified that Grayer ever reached for Ong's car keys or otherwise attempted to take control of the car while Ong was driving, which is when the State alleged the attempt vehicular hijacking occurred. (C. 11). Therefore, under these circumstances, the State failed

to prove beyond a reasonable doubt that Grayer acted with the specific intent to hijack the Lyft car when he pulled on the Ong's shirt sleeve and drunkenly threatened to kill Ong. Even in the light most favorable to the State, in this context, the State's evidence of specific intent was so unreasonable, improbable, and unsatisfactory that it creates reasonable doubt of Grayer's guilt. *See People v. Smith*, 185 Ill. 2d 532, 541 (1999).

With respect to the surveillance video from the gas station, the State concedes that the video does not show whether Grayer reached for the ignition or something else in front of him when he was in the driver's seat of Ong's car. (St. Br. 10). Yet, the State contends that even if Grayer could have been reaching for something other than the ignition, the trial court was free to draw the inference that Grayer was attempting to take the car by using the house keys found in the car and that "for purposes of this Court's sufficiency review, it *must* draw that inference in the [State's] favor." (St. Br. 10) (emphasis in original). But, the State fails to address *People v. Radojcic*, 2013 IL 114197, ¶ 34, where this Court held that unlike a trial court's findings based on live testimony, which is afforded to great deference on review, when a trial court's findings are based on evidence that is not live testimony, such as video evidence, the trial court does not occupy a position superior to the appellate courts in evaluating such evidence. *See also People v. Dixon*, 2015 IL App (1st) 133303, ¶ 20; *People v. Shaw*, 2015 IL App (1st) 123157, ¶ 29. Pursuant to *Radojcic*, when reviewing the surveillance video from the gas station, this Court may assess the video without giving any deference to the trial court's findings concerning the video evidence.

Furthermore, the State claims that Grayer was not so intoxicated as to be incapable of forming the specific intent to take Ong's car. (St. Br. 18-20). The State emphasizes that Grayer walked to Ong's car without assistance and that he understood the purpose of the Lyft ride was to take him home. (St. Br. 19).

The State also generally asserts that Grayer's actions inside the car and later at the gas station do not suggest that Grayer's level of intoxication suspended his ability to reason. (St. Br. 19). The State fails to address Ong's testimony and the video footage from the gas station, which both support that Grayer was highly intoxicated. (R. 53-54, 65; St. Ex. 1). Ong testified that Grayer was so drunk that he was moving from side to side when he first got into the car and that Grayer was incapable of running due to his level of intoxication. (R. 53-54, 65). The surveillance video from the gas station corroborates Ong's testimony, showing Grayer swaying from side to side and stumbling while walking. (St. Ex. 1, 2050 at 00:20-00:40, 01:40-01:50). Finally, the video shows that Grayer appeared to fall asleep inside the car and was woken up by the police. (St. Ex. 1, 3840 at 00:00-02:21 and 5730 at 00:00-00:10; R. 85).

In Grayer's opening brief, he argued that his irrational belief that he should have been allowed to drive Ong's car and his exasperated assertion that he was going to kill Ong because Ong would not let him drive the Lyft car were probative of Grayer's level of intoxication. (Def. Br. 30). The State attempts to discount this argument, suggesting the argument "rests on the implicit assumption that a person would not intentionally do something criminal" and "[t]he fact that [Grayer] was not entitled to take Ong's car does not mean that he was incapable of intending to take it illegally." (St. Br. 19-20). The State misses the point. Grayer emphasized the unreasonableness of these statements merely to show how drunk he was. The context in which these statements were made supports that Grayer's intoxication suspended his ability to reason as it would have been ridiculous for Ong to allow a visibly drunk Lyft passenger to drive his car in the middle of a Lyft ride. Therefore, these irrational and hyperbolic statements demonstrate that Grayer was so drunk that it suspended his ability to reason.

Moreover, the State incorrectly asserts that Grayer does not dispute the

sufficiency of the evidence of the substantial step element. (St. Br. 8). Specifically, the State claims that Grayer cannot dispute this element because "the evidence showed that defendant repeatedly grabbed Ong and threatened him while trying to seize control of the car, and then tried to start the car after Ong fled." (St. Br. 8). To be sure, Grayer has never conceded that the prosecution's evidence of a substantial step was sufficient, neither in his opening brief nor in the proceedings below, and he completely disagrees with the State's assertion that Grayer was trying to seize control of the car and tried to start Ong's car after Ong got out of the car. (Def. Br. 40) A substantial step is any act committed by the defendant that puts him in "dangerous proximity to success." *People v. Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 43 (citing *People v. Terrell*, 99 Ill. 2d 427, 434 (1984)). Here, the State alleged that Grayer's act of pulling on Ong's sleeve and telling Ong that he was going to kill him constituted a substantial step toward hijacking Ong's car. (C. 11). But, the trial evidence does not support that Grayer was ever in dangerous proximity to successfully stealing Ong's car. Grayer never reached for Ong's car keys or attempted to take control of the car while Ong was driving; Grayer never threatened to steal Ong's car; and Ong never testified that he thought Grayer was trying to take his car. Indeed, the fact that Grayer was never in dangerous proximity to committing a vehicular hijacking further supports that Grayer did not intend to hijack Ong's car.

Finally, the State neglects to address the fact that Grayer's actions at the gas station were not reflective of a person who had just attempted to commit a vehicular hijacking. (Dr. Br. 30-31). Grayer did not act in a manner consistent with consciousness of guilt. The surveillance video shows that after Ong pulled over at the gas station and went inside the store, Grayer appeared to be waiting for Ong to finish the Lyft ride, even leaning on the outside of the car with his arms crossed. (St. Ex. 1, 2050 at 2:00-2:11). Then, after waiting outside of the car for

almost 20 minutes, Grayer got into the driver's seat, fully reclined the seat to lie down, and appeared to fall asleep. (St. Ex. 1, 3840 at 00:00-02:21 and 5730 at 00:00-00:10; R. 85). Moreover, when the police arrived, almost 40 minutes after Ong had pulled into the gas station, Grayer was still in this reclined position. (St. Ex. 1, 5730 at 00:00-00:10). And, Grayer did not try to run or evade the police. (St. Ex. 1, 5730 at 00:00-00:10). It defies logic that a person who attempted to hijack a car would remain at the crime scene and then fall asleep inside the car he just attempted to steal. Accordingly, the State's evidence of specific intent was so unreasonable, improbable, and unsatisfactory that it creates reasonable doubt of Grayer's guilt.

In sum, given the unique facts and circumstances of this case, including the State's own evidence showing that Grayer was highly intoxicated, the State failed to prove beyond a reasonable doubt that Grayer specifically intended to hijack his Lyft driver's car.

CONCLUSION

For the foregoing reasons, Santana Grayer, defendant-appellant, respectfully requests that this Court reverse his conviction for attempt vehicular hijacking.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

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IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- SANTANA GRAYER, Defendant-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 1-21-0808. There on appeal from the Circuit Court of Cook County, Illinois , No. 20 CR 10002. Honorable Vincent M. Gaughan, 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 August 10, 2023, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Piper Jones
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