No. 130775

IN THE
SUPREME COURT OF ILLINOIS

VILLAGE OF LINCOLNSHIRE,	) Appeal from the Appellate Court of Illinois, N0. 2-23-0255
Plaintiff, Appellee	)
vs.	) Appeal from the Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois
DANIEL OLVERA,	) GENERAL NO: **21 DT 703** **21 TR 23260**
Defendant, Appellant.	) Honorable Bolling W. Haxall, Associate Judge Presiding

BRIEF AND ARGUMENT OF PLAINTIFF-APPELLEE

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STATEMENT OF FACTS

On May 6, 2021, the defendant was arrested and charged with driving under the influence of drugs (DUI), improper lane usage (ILU), possession of cannabis, and reckless conduct, by Thomas J. Beale, a police officer for the Village of Lincolnshire. The charges for DUI and ILU were brought under the Illinois Vehicle Code and the possession of cannabis and reckless conduct charges were brought under the ordinances of the Village of Lincolnshire. All charges were prosecuted by the Village of Lincolnshire's village prosecutor, LaLuzerne & Smith, Ltd.. There were 20 court dates between the arrest date and the trial date on January 9, 2023. At no time did the defendant object to the village prosecutor prosecuting the charges. (R.C. 6-14)

On January 9, 2023, a bench trial commenced in this matter, which concluded on January 20, 2023. The following evidence was adduced at trial:

On May 6, 2021, the defendant was a sophomore at Stevenson High School in Lincolnshire, Illinois. (R. 113) His seventh period class that day was driver's education. (R. 53) When he arrived for his driver's education class that afternoon, he was assigned to be doing a driving portion of the class. (R. 54-55) His driving instructor was Scott Peckler. (R. 54) Mr. Peckler was a contract substitute driver's education teacher who had over 30 years' experience as a driver's education teacher at Zion-Benton High School and Highland Park High School. (R. 51)

Mr. Peckler testified that the driving instruction on that date was to include driving through a local roundabout, which he indicated was towards the end of

the semester's driving requirements for driver's education students at Stevenson High School. (R. 57) Mr. Peckler testified he was to take the defendant and another student out driving during the seventh period, with the defendant being the student who was designated to drive that class. (R. 54-55) He met both students at the driver's education classroom and walked through several hallways to get to the exit where the driver's education cars were parked. (R. 56) It took several minutes to walk through the school. (R. 56) Mr. Peckler noticed that the defendant was hiccupping and asked if he was okay. (R. 56) The defendant indicated he was fine. (R.57) A video that was entered into evidence as Village Exhibit # 2 shows the defendant walking behind Mr. Peckler and the other student on the way from the driver's education classroom to the parking lot. (R. 194)

Once they got into the car, the defendant was having trouble backing out of the parking space and was not checking over his shoulder or watching the backup camera screen in the car. (R.60) The defendant began to drive through the school campus and headed southbound on Stevenson Drive until they had to stop for a red light at Route 22, or Half Day Road. (R. 61) Once the light turned green, Mr. Peckler instructed the defendant to turn left onto Route 22 by entering the inside left lane of the two eastbound traffic lanes. (R. 62) As the defendant began to turn left, he veered into the outside eastbound lane and Mr. Peckler had to grab the steering wheel to guide the car back into the left eastbound lane since there was a car approaching alongside them in the right lane. (R.64) The defendant left his lane of traffic on two or three occasions between Stevenson

Drive and Route 21, or Milwaukee Avenue, and Mr. Peckler had to grab the steering wheel to get the car back into the proper lane. (R. 65)

The defendant proceeded eastbound on Route 22 until he moved the car into the left turn lane at Riverwoods Road. (R. 66) After receiving a left turn arrow, the defendant turned left onto northbound Riverwoods Road towards the roundabout. (R.66) While driving northbound on Riverwoods Road, the defendant was talking to the backseat student and Mr. Peckler reminded him to pay attention to his driving. (R. 67) As the defendant entered the roundabout, he veered to right and almost struck the curb, causing Mr. Peckler to grab the steering wheel to correct the path of the car. (R. 68) After coming out of the roundabout, the defendant headed westbound on Everett Road. (R. 69) As the defendant approached the stop sign at Everett Road and St. Mary's Road, Mr. Peckler had to apply the instructor brake because the defendant was not slowing down in time to stop. (R. 70) The defendant made a right turn onto St. Mary's Road and headed northbound to Route 60. (R. 70) The defendant made a fast stop at the stoplight for Route 60 and Mr. Peckler had to apply the instructor brake again. (R. 71)

The defendant drove eastbound on Route 60 until he made a right turn onto Riverwoods Road near a Costco store. (R.72) The defendant headed southbound on Riverwood Road back towards the roundabout. (R. 72) The defendant drove through the roundabout and then continued to head southbound on Riverwoods Road towards Route 22. (R. 73) The defendant stopped for a red light at Route 22 and as the stoplight turned green, he put his head down. (R. 73)

Mr. Peckler asked the defendant if he was okay, and the defendant said he was tired. (R. 74) As the defendant drove the car westbound on Route 22 back towards Stevenson High School, Mr. Peckler had to grab the steering wheel a few more times because the defendant was veering out of his lane of traffic. (R.74)

The defendant returned to the Stevenson High School campus where he had a difficulty parking the car in a designated parking space. (R. 76) The defendant, the other student, and Mr. Peckler walked back into the school and returned to the driver's education classroom. (R. 76) Mr. Peckler approached Mrs. Bresnan, the driver's education director, and suggested she have the defendant checked out due to his behavior. (R. 76)

Sara Rogers, a student dean at Stevenson High School, testified that on May 6, 2021, she was called down to the driver's education classroom because a student was suspected of being under the influence. (R. 114) She spoke to Courtney Bresnan, the driver's education director, and was informed of what the substitute teacher (Scott Peckler) had relayed to Mrs. Bresnan about his concerns. (R.115) Ms. Rogers later saw the defendant standing in the hallway. (R. 116) She noticed that his speech was slow, he seemed confused, and he wasn't responding quickly to questioning. (R. 116) She had quite a bit of contact with the defendant since he had been one of her assigned students since his freshman year. (R. 116). She had seen him on a daily basis and dealt with him on specific issues 30 to 40 times since he was a student at Stevenson High School. (R. 117) Based on the defendant's response, and her previous knowledge of the

defendant, she decided he needed to be checked by the nurse. (R. 117) As they walked down to the nurse's office, Ms. Rogers noticed that his gait was slow and meandering, and not at the typical pace she had seen him display on other occasions. (R. 119)

After the defendant was seen by the school nurse and medically cleared, Ms. Rogers interviewed him. (R. 122) The defendant told Ms. Rogers that he had been up all night long because he was using marijuana the previous evening and had been caught by his mother. (R. 122) Ms. Rogers again described his speech as slow. (R. 122) Due to the admission of using marijuana the day before, and his current physical condition, Ms. Rogers decided to conduct a student search of the defendant's clothing and belongings with the aid of another dean, David Schoenfisch. (R. 122)

Once Mr. Schoenfisch arrived at the nurse' office, he and Ms. Rogers asked the defendant to empty out his pockets. (R. 99) The defendant removed a wallet from his pants pocket and gave it to Mr. Schoenfisch. (R. 101) Mr. Schoenfisch opened the wallet and found a marijuana cigarette, which he described as rolled up piece of paper that looked like one end had been lit. (R. 101, 124) When the defendant was asked what the item was that was found in his wallet, the defendant replied that it was a marijuana cigarette. (R. 125) Ms. Rogers testified that she had seen marijuana cigarettes in her lifetime, and it looked and smelled like marijuana. (R. 126) At that point, Ms. Rogers called for the Lincolnshire Police Department school resource officer, Thomas Beale, to come to the nurse's office. (R. 127)

Ms. Rogers testified that after Officer Beale arrived, she and the defendant went with Officer Beale to a student dining area inside a temporary tent that had been set up for student use during the COVID pandemic. (R. 131) Once inside the tent, Officer Beale administered field sobriety tests to the defendant. (R. 132) She noticed the defendant was having balance problems and kept falling over. (R. 133) At one point Officer Beale stopped the tests because the defendant was unable to maintain his balance. (R. 133) Officer Beale indicated to Ms. Rogers that he was going to arrest the defendant, based on what he had seen. (R. 134) That was the last time Ms. Rogers saw the defendant that day. (R. 135)

After limited cross examination by the defense counsel, Ms. Rogers was questioned by the trial judge. (R. 136) The following colloquy took place:

Judge: So just to clarify what you just said, so during your questioning of Mr. Olvera, you didn't ask him what specific time he had last used marijuana?

Rogers: No

Judge: Did You ask him if he was still feeling the effects at the time he was meeting with you?

Rogers: Yes, and he said he must be……

Judge: Did he indicate he was feeling, as you put it, the term high last night or at the time that he was talking to you?

Rogers: At the time he was talking to me….

Judge: Okay. Based on everything you had observed and your conversations with Mr. Olvera, did you believe that at that moment he was under the influence of cannabis?

Rogers: Absolutely.

Judge: Is it possible that was just due to his staying up all night, or do you think it was—

Rogers: No, I think he was under the influence.

Judge: Okay. And what's the basis of that?

Rogers: Life experience, job experience.

Judge: I mean, what about him specifically do you think led you to believe that?

Rogers: His response was extremely emotional and uncontrolled and indicative of being under the influence, and he indicated to me that he had been under the influence recently and that he was under the influence.

Judge: But you don't think—and, look—I mean, you have so much experience with kids—

Rogers; Sure.

Judge: --in fact, with Mr. Olvera in particular. You don't think that could be—that emotional response could be because his mom busted him last night? You think it's—

Rogers: No.

Judge: --because he was still under the influence?

Rogers: I think it was because he was still under the influence. (R.137-139)

None of Ms. Rogers' opinions were objected to by the defense counsel. The trial adjourned following Ms. Rogers' testimony and resumed on January 20, 2023.

On January 20, 2023, Officer Thomas Beale testified that he was the school resource officer at Stevenson High School on May 6, 2021. (R. 157) He had been a police officer for 25 years with the Lincolnshire Police Department. (R. 157) Over his career, he had various training in the area of traffic enforcement and DUI detection. (R. 158) He had made over 100 arrests for persons driving under the influence of alcohol. (R. 158) He had also seen people under the influence of drugs over 100 times during his career. (R. 159)

On May 6, 2021, he was called down to the nurse's office, or COVID clinic, by Dean Sara Rogers for a student who might be in possession of drugs or under the influence of drugs. (R. 160) When he arrived at the nurse's office, he saw the defendant sitting with Dean Rogers. (R. 161) She handed him, what she told Officer Beale was the defendant's wallet. (R. 161) He saw a folded cigarette that smelled, based on his training and experience, like marijuana or cannabis. (R. 162) Officer Beale heard the defendant tell Dean Rogers that the item was cannabis and that he had smoked cannabis the night before. (R. 163)

Officer Beale described the defendant's speech as being slurred and he seemed confused. (R.163) The defendant also appeared very tired and lethargic. (R. 164) Based on the report that the defendant had just been driving a car in his driver's education class, Officer Beale went to speak to Courtney Bresnan. (R.

164) After speaking with Ms. Bresnan, he decided to have the defendant perform some field sobriety tests. (R. 166)

Officer Beale, the defendant, and Dean Rogers went to a temporary dining tent set up for students during the COVID pandemic. (R. 166) After inquiring about any injuries or other reasons that he could not do the field sobriety tests, which the defendant answered he didn't have any, Officer Beale began to have the defendant perform field sobriety tests. (R. 168-169) The first test was the Romberg balance test. (R.169) He told the defendant to stand with his arms at his sides, close his eyes, and tilt his head back until he believes 30 seconds had passed. (R. 169) The defendant had difficulty getting into the correct position and grabbed a chair nearby to keep him from losing his balance. (R. 170) Officer Beale noted that the defendant was swaying in a circular motion 3" to 4". (R. 171) Officer Beale described the defendant's balance as poor. (R. 171)

The next test Officer Beale had the defendant perform was a finger to nose test. (R. 171) That test required the defendant to stand with arms extended out to his sides and use the tip of his index finger to touch the tip of his nose when directed by the officer. (R. 172) On the first attempt, the defendant was asked to use his right hand, and he touched the middle of his cheek. (R. 173) On the second attempt he was told to use his left hand, and he touched his left eyeball. (R. 173) On the third attempt, the defendant was asked to use his right hand, and he touched his nostril. (R. 173) Officer Beale noted the defendant's balance was very poor and he stopped the test to prevent the defendant from

falling. (R. 173) Officer Beale advised the defendant that he was being placed under arrest for driving under the influence. (R. 174)

Due to there still being students in the school, Officer Beale did not handcuff the defendant but allowed him to walk through the school to his squad car. (R. 175) While walking with the defendant through the school, Officer Beale noted that the defendant was walking in a serpentine fashion. (R. 175) Once at the squad car, Officer Beale placed the defendant in handcuffs and transported him to the Lincolnshire Police Department. (R.175) Officer Beale requested Officer Barrett Weadick, a Lincolnshire police officer who had more experienced with drugged drivers, to meet him at the police station to perform additional tests on the defendant. (R. 175)

At the Lincolnshire Police Department, Officer Barrett Weadick had the defendant perform additional field sobriety tests which were captured on Village's Exhibit #1, the video from the booking room at the Lincolnshire Police Department. (R. 185) Following the additional field sobriety tests at the police station, the defendant was asked to submit blood and urine samples for testing, which he refused. (R. 176-177) Officer Beale offered the opinion that the defendant was under the influence of cannabis. (R. 177) Officer Weadick offered the opinion that the defendant was under the influence of some type of drug but could not determine the specific category of drugs without conducting a full drug recognition expert (DRE) drug influence evaluation. (R. 186) Neither of these opinions were objected to by the defense counsel.

Following the conclusion of all testimony, Village Exhibit #2, a video compilation of various security cameras at Stevenson High School which showed the defendant, Scott Peckler, and the other student walking from the driver's education classroom to the driver's education cars and driving through the high school campus, was admitted into the evidence and viewed by the trial court. (R. 198) Of note, is that the defendant is walking behind Scott Peckler and is not in his direct view. The video shows the defendant walking and weaving down the hallways, not in a straight line, nearly hitting the walls on several occasions.

Following the argument of counsel, the trial made very detailed findings of fact and found the defendant guilty of all the charges. (R. 213-219) The defendant filed a timely notice of appeal on July 6, 2023. The Appellate Court for the Second District affirmed the trial court in a published opinion on May 10, 2024. *Village of Lincolnshire v. Daniel Olvera*, 2024 IL App (2d) 23025.

ARGUMENT

I.

The Appellate Court correctly held that the defendant forfeited the issue of whether he was properly prosecuted for violations of the Illinois Vehicle Code by the Village of Lincolnshire village prosecutor, pursuant to written permission from the Lake County State's Attorney by not raising the issue at trial or in a post-trial motion.

The defendant asserts that the finding of guilty as to the charge of driving under the influence of drugs (DUI) under 625 ILCS 5/11-501(a)(4) should be reversed because the Village of Lincolnshire village prosecutor did not have the authority to prosecute violations of the Illinois Vehicle Code without written permission from the Lake County State's Attorney, pursuant to 625 ILCS 5/16-102(c). 625 ILCS 5/16-102(c) provides, "The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so is obtained from the State's Attorney." The defendant argues that no such proof was part of the record and therefore the finding of guilty as to the DUI charge should be reversed.

Section 16-102(c) does not require that the letter of authority be filed in any particular case or be made part of the record. Nor does the case law impose a duty on the municipal prosecutor to make the letter of authority a part of the record.

People v. Wiatr, 119 Ill.App.3d 468 (2nd Dist. 1983) is directly on point. In *Wiatr*, the defendant was being prosecuted by the village attorney for the Village of Lake in the Hills for violations of DUI and speeding under the Illinois Vehicle

Code. The Appellate Court for the Second District noted that there was nothing contained in the record indicating whether or not the State's Attorney for McHenry County had given written permission to the village attorney, pursuant to 625 ILCS 5/16-102(c), to prosecute the case. Despite that fact, the Appellate Court noted, "if the authority was, in fact, delegated by the State's Attorney, the statutory requirement has been met, and the village was the proper prosecuting Party." *Wiatr*, page 472. The Court went on to add,

> To require, as urged by defendant, that the municipal attorney offer proof in the record of each case that prosecutorial permission has been given by the State's Attorney appears to be an unreasonable and unnecessary burden to impose on the municipal attorneys and State's Attorneys and would also unduly burden the record keeping responsibilities of the circuit clerks. An analogous argument to that offered by defendant might be to require that the record establish that the prosecutor and trial judge hold their respective offices. *Wiatr*, page 473

The defendant's case had 20 court dates between his arrest date and the trial date, and he never objected to the village prosecutor prosecuting the charges against him. (R.C. 6-14) The defendant acknowledges that the issue was not preserved for appeal, and thus forfeited, but asserts that this Court should consider this issue under the plain error doctrine.

A defendant invoking the plain error rule must demonstrate that a clear or obvious error occurred and that either (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Moon*,

2022 IL 125959, ¶ 20. Under both prongs, a defendant bears the burden of persuasion. The defendant has acknowledged that he is proceeding under the second prong.

The first step under the plain error rule analysis is to determine whether there was a clear or obvious error. Plain-error review is reserved for errors that are clear or obvious based on law that is well-settled at the time of trial. *People v. Rollins*, 2024 IL App (2d) 230372.

The defendant alleges that it was a clear or obvious error that the village prosecutor did not include a copy of its letter of authority from the Lake County State's Attorney's in the trial record. However, the plain language of Section 16-102(c) does not impose an affirmative duty on a municipality to submit, at any time, proof of its authority to prosecute. Likewise, the well-settled case law does not impose a requirement that the municipal prosecutor shall make its letter of authority a part of the record.

The defendant cites *Village of Bull Valley v. Zeinz*, 2014 IL App (2d) 140053, and *People v. Herman*, 2012 IL App (3d) 110420, for case law that establishes the duty of the municipal prosecutor to make its letter of authority a part of the trial record.

The Appellate Court distinguished *Zeinz* from the case at bar because the issue raised by the defendant did not pertain to whether there was a letter of authority from the State's Attorney's Office, but rather whether the violation occurred within the municipal boundaries of the Village of Bull Valley. In *Zeinz*, at the conclusion of the prosecution's case, the defendant moved for a directed

finding based on a violation of Section 16-102(c) that the prosecution had not shown the defendant committed any traffic violations within the municipal limits. When the prosecutor argued that the issue should have been raised in a pretrial motion, the defendant responded that he could not have predicted what the officer would testify as to the location of the violations. After the trial court found the defendant guilty of DUI, the defendant filed a post-trial motion, and the village prosecutor included a copy of its letter of authority from the McHenry County State's Attorney's Office in its response to the defendant's post-trial motion. Since the holding in *Zeinz* did not turn on whether the municipal prosecutor had a letter of authority, the Appellate Court here did not find *Zeinz* to be well-settled law that the municipal prosecutor had to make its letter of authority a part of the trial record.

Similarly, in *Herman*, supra, a Village of Frankfort police officer issued the defendant four tickets, including two for DUI under 625 ILCS 5/11-501, which listed the People of the State of Illinois as the prosecuting authority. Prior to trial the village prosecutor asked leave to amend the tickets to name the Village as the prosecuting authority, which was granted. The village prosecutor made an ink correction on the tickets by striking out People of the State of Illinois and replacing it with the Village as the prosecuting authority. An assistant State's Attorney purported to initial the changes on the face of the tickets. The rest of the tickets continued to allege a violation of the Illinois Vehicle Code and not local ordinances. The Third District Appellate Court held that the amendments did not

comply with Section 16-102(c) and held the village prosecutor did not properly acquire authority from the State's Attorney to prosecute the tickets.

Since the holding in *Herman* was not based on whether there was a letter of authority in the record, the Appellate Court distinguished it from the case at bar. The Court noted that neither *Zeinz* nor *Herman* established well-settled law to conclude that a clear or obvious error had occurred by the village prosecutor's letter of authority not being part of the trial record. The Appellate Court concluded by stating, "Given the plain language of the statute and our holding in *Wiatr*, we find that defendant has not established a clear or obvious error in the Village's failure to put forth evidence of its written permission to prosecute defendant under the Vehicle Code. *Olvera*, ¶68.

Assuming arguendo that the defendant has established a clear or obvious error, the defendant has not established that any alleged error satisfied the second prong of the plain error analysis that this was a structural error that affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Olvera,* ¶57 In determining whether any alleged error is considered structural, the analysis typically begins by looking at errors the United Stated Supreme Court as identified as structural. "The structural errors identified by the Supreme Court include a complete denial of counsel, denial of self-representation at trial, trial before a biased judge, denial of a public trial, racial discrimination in the selection of a grand jury, and a defective reasonable doubt instruction." *Moon*, supra. ¶ 29

In *Moon*, the jury was not sworn after the jury was impaneled. The defendant did not raise the issue at trial, but did raise it in it a post-trial motion. The trial court acknowledged the error in not administering an oath to the jury but denied the post-trial motion because it was not a reversible error. The Appellate Court for the First District affirmed the trial court and held that the issue was waived by the defendant and the error did not constitute plain error.

In reviewing the First District's decision, this Court went through a detailed and historical analysis of the importance of the jury's oath in insuring that the defendant is tried by an impartial jury. In finding that the failure to administer the oath to the jury was a structural error, this Court noted: "When we consider the essential purpose of the jury oath along with its long and storied history, it does not require much additional analysis to reach the conclusion that failure to administer a trial oath to the jury at any time prior to the jury rendering its verdict constitutes structural error. This error affects the framework within which the trial proceeds, rather than being merely an error in the trial process itself. *The jury oath is more than a mere formality*." Moon, ¶62 (emphasis added)

In his brief, the defendant argues that the delegation of prosecutorial authority, likewise, is not a mere formality and rises to the same level of structural error created by not swearing in a jury. The Appellate Court noted in response to this argument, "defendant does not explain how the absence from the record of written permission to prosecute is comparable to any of the categories of structural error. See *Moon*, 2022 IL 125959, ¶¶ 26-30. He merely suggests that '[a] conviction which results from an unauthorized prosecution is an affront to the

integrity of the judicial process.' This conclusory argument is insufficient to carry his burden of persuasion." *Olvera,* ¶69

In finding that the Village's failure to submit evidence that it had written permission to prosecute did not rise to the level of structural error, the Appellate Court in the case at bar cited *Village of Glen Ellyn v. Podkul*, 2024 IL App (3d) 220420-U. In *Podkul*, there was no letter of authority from the DuPage County State's Attorney's Office allowing the municipal prosecutor to prosecute DUIs in the trial record. The defendant raised the issue for the first time on appeal. The *Podkul* Court held,

> Even assuming arguendo that the trial court's entry of judgment in this case absent proof of the Village's prosecutorial authority was error, it did not rise to the level of a structural error that threatened the fairness or reliability of the trial. The defendant was represented by counsel and had a full opportunity to challenge the charges against her. She does not allege that the trial court or the jury was biased or that the framework in which the trial was conducted rendered the proceedings fundamentally unfair or unreliable. She does not claim that she was prevented from mounting an adequate defense, putting on evidence, cross-examining the State's witnesses, or presenting arguments during closing. She does not claim that the jury instructions incorrectly stated the law. She merely argues that the Village lacked the statutory authority to prosecute her. In sum, she argues that the prosecution was brought by the wrong party, not that the proceedings themselves were fundamentally unfair or unreliable. ¶20

In *People v. Woodall*, 333 Ill. App. 3d 1146, 1159 (5th Dist. 2002) the Appellate Court enunciated, "Any defect in an attorney's appointment process or in his or her authority to represent the State's interests on a given matter is not fatal to the circuit court's power to render a judgment. The right to be prosecuted

by someone with proper prosecutorial authority is a personal privilege that may be waived if not timely asserted in the circuit court."

The Appellate Court properly held that the defendant forfeited the issue of whether he was prosecuted by the Village of Lincolnshire village prosecutor where there was no letter of authority from the Lake County State's Attorney in the trial record. The Appellate Court further correctly held that the failure to include the letter of authority in the record was not a clear or obvious error under the plain error analysis. Even if the failure to include the letter of authority in the record was a clear or obvious error, the defendant has failed to carry his burden that any alleged error was a structural error which warranted reversal of the trial court's finding of guilty.

II.

The Appellate Court properly held Village proved the defendant was guilty beyond a reasonable doubt that he was operating a motor vehicle under the influence of cannabis that rendered him incapable of driving safely.

When considering whether the Village proved the defendant guilty beyond a reasonable doubt, the question to resolve is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) A criminal conviction will be overturned on a challenge to the sufficiency of the evidence only where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Golden*, 2021 IL App (2d) 200207.

The defendant was charged with violating Section11-501(a)(4) of the Illinois Vehicle Code. *625 ILCS 5/11-501(a)(4)* Section11-501(a)(4) provides as follows: A person shall not drive or be in actual physical control of any vehicle within this State while under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving. Thus, to prove the defendant guilty, the Village was required to prove beyond a reasonable doubt that (1) he was operating a motor vehicle and (2) while operating a motor vehicle he was under the influence of a drug to a degree that rendered him incapable of safely driving.

The Village's evidence of the defendant's driving came entirely from the testimony of Scott Peckler, who was a contract driver's education teacher at Stevenson High School in Lincolnshire, Illinois. (R. 50-94) On May 6, 2021, he

was the driving instructor for defendant's driver's education class. Mr. Peckler gave detailed testimony about how the defendant was driving during 40 minutes of driving during his driver's education class. He noticed numerous instances of bad driving by the defendant.

Once they got into the driver's education car in the Stevenson High School parking lot, the defendant was having trouble backing out of the parking space and was not checking over his shoulder or watching the backup camera screen in the car. (R.60) The defendant proceeded down Stevenson Drive and had to stop for a red light at Route 22, or Half Day Road. (R. 61) Once the light turned green, Mr. Peckler instructed the defendant to turn left onto Route 22 by entering the inside left lane of the two eastbound traffic lanes. (R. 62) As the defendant began to turn left, he veered into the outside eastbound lane and Mr. Peckler had to grab the steering wheel to guide the car back into the left eastbound lane since there was a car approaching alongside them in the right lane. (R.64) The defendant left his lane of traffic on two or three occasions between Stevenson Drive and Route 21, or Milwaukee Avenue, and Mr. Peckler had to grab the steering wheel to get the car back into the proper lane. (R. 65)

While driving northbound on Riverwoods Road, the defendant was talking to the backseat student, and Mr. Peckler reminded him to pay attention to his driving. (R. 67) Part of the driving course that day involved navigating a traffic roundabout on Riverwoods Road. (R. 57) As the defendant entered the roundabout, he veered to right and almost struck the curb, causing Mr. Peckler to grab the steering wheel to correct the path of the car. (R. 68) After coming out of

the roundabout, the defendant headed westbound on Everett Road. (R. 69) As the defendant approached the stop sign at Everett Road and St. Mary's Road, Mr. Peckler had to apply the instructor brake because the defendant was not slowing down int time to stop. (R. 70) The defendant made a right turn onto St. Mary's Road and headed northbound to Route 60. (R. 70) The defendant made a fast stop and Mr. Peckler had to apply the instructor brake again. (R. 71)

The driving route took the defendant back through the roundabout. The defendant drove through the roundabout and then continued to head southbound on Riverwoods Road towards Route 22. (R. 73) The defendant stopped for a red light at Route 22 and as the stoplight turned green, he put his head down. (R. 73) Mr. Peckler asked the defendant if he was okay, and the defendant said he was tired. (R. 74) As the defendant drove the car westbound on Route 22 back towards Stevenson High School, Mr. Peckler had to grab the steering wheel a few more times because the defendant was veering out of his lane of traffic. (R.74)

The defendant returned to the Stevenson High School campus where the defendant had difficulty parking the car in a designated parking space. (R. 76) After they returned to the driver's education classroom, Mr. Peckler approached Mrs. Bresnan, the driver's education director, and suggested she have the defendant checked out due to his behavior. (R. 76) Mr. Peckler was concerned that something was wrong with the defendant based on his driving and behavior. (R. 89)

Mr. Peckler was cross examined extensively on whether the defendant's driving was due to his lack of driving experience or some other issue. While he acknowledged that some of the defendant's driving was due to inexperience, he became more concerned that something else was going on the longer they drove. He couldn't pinpoint what was wrong but was concerned enough to report the defendant's driving behavior to the driver's education director, Courtney Bresnan. (R. 76)

Three other witnesses testified to the defendant's physical condition upon returning to Stevenson High School following his driving class. Sara Rogers testified she was the defendant's dean. She had quite a bit of contact with the defendant since he had been one of her assigned students since his freshman year. (R. 116). She had seen him on a daily basis and dealt with him on specific issues 30 to 40 times since he was a student at Stevenson High School. (R. 117) Upon seeing the defendant after he completed his driving class, she noticed that his speech was slow, he seemed confused, and he wasn't responding quickly to questioning. (R. 116) She decided he needed to be checked by the nurse. (R. 117) As they walked down to the nurse's office, Ms. Rogers noticed that his gait was slow and meandering, and not at the typical pace she had seen him display on other occasions. (R. 119)

After the defendant was seen by the school nurse and medically cleared, Ms. Rogers interviewed him. (R. 122) The defendant told Ms. Rogers that he had been up all night long because he was using marijuana the previous evening and had been caught by his mother. (R. 122) A student safety search of the defendant

and his belonging revealed a marijuana cigarette in the defendant's wallet. (R. 101, 124) When the defendant was asked what the item was that was found in his wallet, the defendant replied that it was a marijuana cigarette. (R. 125) Ms. Rogers testified that she had seen marijuana cigarettes in her lifetime, and it looked and smelled like marijuana. (R. 126)

At that point, Ms. Rogers called for the Lincolnshire Police Department school resource officer, Thomas Beale, to come to the nurse's office. (R. 127) Officer Beale later administered field sobriety tests to the defendant in the presence of Ms. Rogers. (R. 132) She noticed the defendant was having balance problems and kept falling over. (R. 133) At one point Officer Beale stopped the tests because the defendant was unable to maintain his balance. (R. 133) Officer Beale indicated to Ms. Rogers that he was going to arrest the defendant, based on what he had seen. (R. 134)

Of significance of Ms. Rogers' testimony was her examination by the trial judge. (R. 136)

Judge: So just to clarify what you just said, so during your questioning of Mr. Olvera, you didn't ask him what specific time he had last used marijuana?

Rogers: No

Judge: Did You ask him if he was still feeling the effects at the time he was meeting with you?

Rogers: Yes, and he said he must be……

Judge: Did he indicate he was feeling, as you put it, the term high last night or at the time that he was talking to you?

Rogers: At the time he was talking to me….

Judge: Okay. Based on everything you had observed and your conversations with Mr. Olvera, did you believe that at that moment he was under the influence of cannabis?

Rogers: Absolutely.

Judge: Is it possible that was just due to his staying up all night, or do you think it was—

Rogers: No, I think he was under the influence.

Judge: Okay. And what's the basis of that?

Rogers: Life experience, job experience.

Judge: I mean, what about him specifically do you think led you to believe that?

Rogers: His response was extremely emotional and uncontrolled and indicative of being under the influence, and he indicated to me that he had been under the influence recently and that he was under the influence.

Judge: But you don't think—and, look—I mean, you have so much experience with kids—

Rogers; Sure.

Judge: --in fact, with Mr. Olvera in particular. You don't think that could be—that emotional response could be because his mom busted him last night? You think it's—

Rogers: No.

Judge: --because he was still under the influence?

Rogers: I think it was because he was still under the influence. (R.137-139)

None of Ms. Rogers' opinions were objected to by the defense counsel.

Ms. Rogers was rather adamant that the defendant's behavior was attributable to the fact that he was under the influence of cannabis, as opposed to fatigue or nerves. She had more previous contact with the defendant than any other witness who offered an opinion as to whether or not he was under the influence of cannabis. She based this opinion on her previous contact with the defendant over almost two years as his dean, his admission to being under the influence of cannabis, and the physical manifestations that the defendant was displaying (slow and confused speech, his slow and meandering gait, and his poor balance on the field sobriety tests Officer Beale administered).

Officer Beale also described the defendant's speech as being slurred and he seemed confused. (R.163) The defendant also appeared very tired and lethargic. (R. 164) Officer Beale described the defendant's poor performance on the field sobriety tests done at Stevenson High School. He noted the defendant was swaying 3" to 4" in a circular motion on the Romberg balance test. (R. 171) On the finger to nose test the defendant never touched the tip of his nose, hitting

his cheek, nostril, and eyeball. (R. 171-172) Officer Beale stopped that test early because of fear the defendant would fall. (R. 173) After advising the defendant he was going to be arrested, he walked with the defendant through the school to get to his squad car. Officer Beale noted that the defendant was walking in a serpentine fashion. (R. 175) Officer Beale offered the opinion that the defendant was under the influence of cannabis. (R. 177) This opinion was based on 26 years of experience as a police officer where he had been involved in over 100 DUI arrests and had seen over 100 people under the influence of cannabis, as well as his observations of how the defendant was acting that day.

At the Lincolnshire Police Department, Officer Barrett Weadick had the defendant perform additional field sobriety tests which were captured on Village's Exhibit #1, the video from the booking room at the Lincolnshire Police Department. (R. 185) Officer Weadick had more experience than Officer Beale in the area of determining whether drivers are under the influence of drugs. Officer Weadick had the defendant perform some of the same field sobriety tests as Officer Beale did, plus some additional tests. Officer Weadick offered the opinion that the defendant was under the influence of some type of drug but could not determine the specific category of drugs without conducting a full drug recognition expert (DRE) drug influence evaluation. (R. 186)

The defendant cites *People v. Workman*, 312 Ill.App.3d 305 (2nd Dist. 2000) for the proposition that in order to prove a defendant guilty of being under the influence of drugs, the prosecution must present expert witness testimony that the witness believes the defendant is under the influence of drugs. This is

contrasted with a layperson's ability to offer an opinion someone is under the influence of alcohol because such observations are within the competence of all adults of normal experience. The Appellate Court in *Workman*, supra, cited *People v. Jacquith*, 129 Ill.App.3d 107 (1st Dist.1984), *People v. Bitterman*, 142 Ill.App.3d 1062 (1st Dist. 1986), and *People v. Vanzandt*, 287 Ill.App.3d 836 (5th Dist. 1997).

In *Jacquith*, supra, the defendant was charged with driving under the influence of alcohol and drugs. Neither police officer had any experience with narcotics users and the defendant denied consuming alcohol or drugs. The Appellate Court reversed the defendant's conviction for driving under the influence of alcohol and drugs.

In *Bitterman*, supra, the defendant was charged with driving under the influence of alcohol and drugs. The defendant admitted drinking and had marijuana in his possession when stopped by the police officer. The defendant later admitted to smoking marijuana and being under the influence of marijuana. The officer testified that the defendant was under the influence of alcohol. The Appellate Court held that the officer's opinion, combined with the defendant's admissions, was sufficient to sustain his conviction.

In *Vanzandt*, supra, the defendant was charged with driving under the influence of alcohol and drugs, i.e., insulin. The defendant admitted to taking insulin but never admitted to be under the influence of the insulin. The officer testified that the defendant was under the influence of alcohol. He offered no opinion as to whether the defendant was under the influence of insulin. The

Appellate Court reversed the defendant's conviction for driving under the influence of alcohol and drugs.

The *Workman* Court noted,

> The cases we have discussed illustrate that, in a case involving a charge of driving under the influence of a drug or combination of drugs, when there is no competent evidence by a qualified witness regarding the nature and effect of the drug alleged to have been ingested and the defendant has not admitted to taking the drug and being under the influence, this lack of competent testimony may create a reasonable doubt of the defendant's guilt, absent other sufficiently incriminating evidence. (Emphasis added) *Workman*, 726 N.E.2d at 763

Thus, *Workman* appears to stand for the proposition that if all three of those conditions exist, then reasonable doubt may be created.

The Appellate Court in the case at bar distinguished *Workman* and *Vanzandt* because in this case the defendant admitted smoking cannabis and still being under the influence of cannabis at the time he was speaking with Sara Rogers. *Olvera*, ¶84 The Appellate Court further noted that unlike the officers in *Workman* and *Vanzandt*, the officers here had extensive experience in dealing with people under the influence of cannabis.

In the case at bar, the defendant admitted to smoking cannabis on the day before he was driving. (R. 122) He admitted to Sara Rogers that he was still under the influence of the cannabis when she spoke to him upon his return from driving in his driver's education class. (R. 138-139) A defendant's admissions can provide direct evidence of intoxication to sustain a conviction. *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 110 In addition, the defendant's admission to being under the influence of cannabis was corroborated by the

accounts of the defendant's physical condition from three witnesses with varying degrees of experience in dealing with people under the influence of cannabis, Sara Roger, Officer Beale, and Officer Weadick.

Sara Rogers, who knew defendant "well," testified that defendant's speech was slow and his words were "slurry." She noted the defendant was confused and couldn't respond quickly to questioning. She also observed that he was "slow at walking". She described his walking as "just slow, meandering, not moving at a typical pace that he had in previous experience." (R. 116-118)

Officer Beale also noted the defendant seemed confused and he couldn't remember some of the questions that were being asked. The defendant appeared very tired, lethargic, and his speech was slurred. (R. 163-164) Officer Beale testified at length about the difficulty the defendant had in performing the field sobriety tests. (R.167-173) He noted that, during the Romberg balance test, defendant had difficulty placing his feet in the correct position. He also had difficulty keeping his eyes closed and would stop the test each time prior to 30 seconds. In addition, he testified the defendant was swaying "in a circular pattern," about three to four inches in all directions. On the finger-to-nose test, the defendant never touched the tip of his nose, hitting instead his cheek, eyeball, and nostril. Officer Beale testified that he had to stop the test because he feared defendant might fall. He further testified that as they were walking to the squad car the defendant was not walking normal but rather in a "serpentine" fashion. (R. 175)

Officer Weadick testified about the defendant's performance of field sobriety tests at the police station which were depicted on a video from the booking room which the trial observed as Village Exhibit #1. (R. 185-186)

Sara Rogers, Officer Beale, and Officer Weadick all offered the opinion that the defendant was under the influence of cannabis. None of these opinions were objected to by the defendant.

The trial judge made detailed findings about the defendant's demeanor and behavior, before, during, and after driving the driver's education car. Of particular note was Village Exhibit #2, which showed a compilation of the security cameras at Stevenson High School along the route the defendant walked from his driver's education classroom to the driver's education cars in the parking lot. The defendant could not walk straight and was practically bouncing off the walls. Of further significance was the fact that the defendant was walking behind Scott Peckler and he was not aware of this unusual behavior.

After viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Therefore, the trial court's finding the defendant guilty of driving under the influence of drugs, and the Appellate Court's holding affirming the trial court, should be affirmed

CONCLUSION

For all of the reasons set forth above, the plaintiff-appellee, Village of Lincolnshire, prays that this court affirm the Appellate Court for the Second District's holding that the trial court properly found the defendant guilty of driving under the influence of drugs beyond a reasonable doubt.

Respectfully submitted,

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No. 130775

IN THE
SUPREME COURT OF ILLINOIS

VILLAGE OF LINCOLNSHIRE,	) Appeal from the Appellate Court of Illinois, N0. 2-23-0255
Plaintiff, Appellee	)
vs.	) Appeal from the Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois
DANIEL OLVERA,	) GENERAL NO: **21 DT 703** **21 TR 23260**
Defendant, Appellant.	) Honorable Bolling W. Haxall, Associate Judge Presiding

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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 or words contained in 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 32 pages.

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IN THE
SUPREME COURT OF ILLINOIS

VILLAGE OF LINCOLNSHIRE,	)	Appeal from the Appellate Court
	)	of Illinois, 2-23-0255
Plaintiff, Appellee,	)	
	)	There on appeal from the Circuit Court
vs.	)	of the Nineteenth Judicial Circuit, Lake
	)	County, Illinois
	)	General No. 21 DT 703 and 21 TR 23260
DANIEL OLVERA,	)	
	)	Honorable Bolling Haxall,
Defendant, Appellant.	)	Associate 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 January 21, 2025, the Brief and Argument of Plaintiff-Appellee 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 Waukegan, Illinois, with proper postage prepaid.

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