No. 130775

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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ARGUMENT

I. Pursuant to 625 ILCS 5/16-102(c), municipal attorneys must establish on the record that they have obtained written permission from the State's Attorney to prosecute a violation of the Illinois Vehicle Code, and the failure to do so constitutes second-prong plain error.

Daniel Olvera argued in his opening brief that a municipality must demonstrate on the record it has obtained written permission to prosecute violations of the Illinois Vehicle Code, and since the initiation of prosecution establishes the framework for the proceeding, failure to show written permission constitutes second-prong plain error. In its brief, the Village of Lincolnshire raises two arguments in response. Initially, it asserts that neither the statute in question, 625 ILCS 5/16-102(c), nor the case law impose such a requirement. As a result, it argued, plain error did not occur. Next, it posits that, even if it had a duty to present proof of written permission to prosecute, the failure to do so does not constitute second-prong plain error.

The Village in its brief contends the statute "does not require that the letter of authority be filed in any particular case or be made part of the record." (Village Br. at 12) Such an argument contradicts the rules of statutory interpretation. When determining the meaning of a statute, courts are charged with ascertaining and giving effect to the intent of the legislature. *People v. Lloyd*, 2013 IL 113510, ¶ 25. This is best accomplished by giving the statutory language its "plain and ordinary meaning." *People v. Clark*, 2024 IL 130364, ¶ 15. "Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Casler*, 2020 IL 125117, ¶ 24. Had the legislature

intended prosecutorial power to be casually delegated, it would not have specified the manner in which permission be granted. Instead, it required a municipality to obtain *written* permission to commence prosecution of a state law. The Village's interpretation renders superfluous the phrase "written permission." (Def. Br. at 14)

Additionally, the Village relies on *People v. Wiatr*, 119 Ill. App. 3d 468 (2d Dist. 1983), which it claims is "directly on point." (Village Br. at 12-13) The Village quotes the portion of the opinion which bemoans the "unreasonable and unnecessary burden" that would befall prosecutors and clerks should it be held that the record must contain proof of written permission, and which further states, "An analogous argument to that offered by the defendant might be to require that the record establish that the prosecutor and trial judge hold their respective offices." (Village Br. at 13) (quoting *Wiatr*, 119 Ill. App. 3d at 474).

Daniel Olvera established in his opening brief that modern technology has eradicated any of the record-keeping concerns imagined by the *Wiatr* Court over 40 years ago. (Def. Br. at 19) Requiring proof of written permission to prosecute is no more burdensome than requiring attorneys to file appearances or routine discovery motions. (Def. Br. at 19-20) The "analogous argument" set forth in *Wiatr* and quoted by the Village is similarly unpersuasive. No statute mandates that prosecutors or judges obtain written permission demonstrating they hold their respective offices. It is, however, statutorily mandated under 625 ILCS 5/16-102(c), that municipal attorneys obtain a written grant of authority to prosecute state

vehicle code violations.

The more recent cases of *Village of Bull Valley v. Zeinz*, 2014 IL App (2d) 140053, and *People v. Herman*, 2012 IL App (3d) 110420, represent the better-reasoned law regarding a municipal attorney's duty under 625 ILCS 5/16-102(c). Echoing the Appellate Court's decision here, the Village disputed the applicability of *Zeinz* because the holding in that case "did not turn on whether the municipal prosecutor had a letter of authority." (Village Br. at 15) Daniel, acknowledging that *Zeinz* is not precisely on point, argued in his opening brief that a case need not be identical in order to be instructive. (Def. Br. at 16) The *Zeinz* Court's focus on the first requirement of the statute – that the offense occur within the municipality – did not diminish the necessity of the second enumerated requirement that a municipal attorney obtain written permission from the State's Attorney to prosecute state vehicle code violations.

Contrary to the argument by the Village, which mirrored that made by the Second District in its ruling, *Herman* is particularly relevant. The Village argued, "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." (Village Br. at 16) To be clear, the Second District stated, "At issue in *Herman* was the sufficiency of the claimed grant of permission to prosecute." *Olvera*, 2024 IL App (2d) 230225, ¶ 67. As Daniel stated in his opening brief, "If an insufficient effort to demonstrate authority can be the basis for reversal, then *no* effort at all must also be a basis for reversal." (Def. Br. at 18)

The Village next argues that, even if its failure to provide proof of written permission to prosecute does constitute plain and obvious error, it is not second-prong structural error. (Village Br. at 16) It asserts that Daniel has not shown how the Village's failure compares to currently recognized categories of structural error. (Village Br. at 17) Then, quoting from the Second District's ruling in this case, the Village dismisses as "conclusory" Daniel's contention that the failure to provide written proof is an "affront to the integrity of the judicial process." (Village Br. at 17-18)

The Village's arguments ignore the principle that this Court "may determine that an error is structural as a matter of state law regardless of whether it is deemed a structural error under federal law." *People v. Moon*, 2022 IL 125959, ¶ 30. Moreover, it disregards the historical overview set forth in Daniel's brief which provides the requisite context and justification for finding second-prong plain error in this case. (Def. Br. at 22-24)

In *Moon,* this Court considered the "essential purpose of the jury oath along with its long and storied history" to conclude that failure to administer a trial oath to the jury before it renders its verdict constitutes structural error. *Moon*, 2022 IL 125959, ¶ 62. Similarly, the "long and storied history" of the role of an elected State's Attorney demonstrates that it is structural error for a municipal attorney to prosecute a defendant for violation of a state traffic law without providing written proof of permission to do so. The *Moon* Court stated, "Depriving a defendant of a sworn jury deprives that defendant of a basic protection afforded at common law that is specifically designed to ensure that the jury is impartial." 2022 IL 125959, ¶ 64. Likewise, when a

defendant is prosecuted by an entity which, for all intents and purposes, has no authority to do so based on the lack of proof of written permission, that defendant is deprived of the basic protection of being charged by the elected official entrusted with the power to exercise discretion as a "minister of justice." *People ex rel. Hoyne v. Newcomer*, 284 Ill. 315, 324 (1918). (Def. Br. at 23)

The Village recites an excerpt from *Village of Glen Ellyn v. Podkul*, 2024 IL App (3d) 220420-U, a case cited by the *Olvera* Court. *Olvera*, 2024 IL App (2d) 230255, ¶ 69. The *Podkul* Court determined the Village attorney's failure to provide written proof of authority to prosecute did not rise to the level of structural error, "[e]ven assuming *arguendo*" that the failure was error. *Podkul*, 2024 IL App (3d) 220420-U, ¶ 20. It cited a laundry list of claims the defendant did not argue, such as being unable to mount an adequate defense, put on evidence, cross-examine, or present closing arguments. *Id*. The court concluded, "In sum, [the defendant] argues that the prosecution was brought by the wrong party, not that the proceedings themselves were fundamentally unfair or unreliable." *Id*.

In contrast, Daniel *is* arguing that the proceedings themselves were fundamentally unfair. A hallmark of structural error is the inability to assess the effect of the error. *Moon*, 2022 IL 125959, ¶ 66. It is difficult to quantify or delineate the harm caused by the Village's failure to demonstrate written proof of its authority to prosecute but that should not excuse the error. The prosecutor initiates the proceedings, chooses the charges, and makes other discretionary decisions such as whether to offer a plea deal. Voters elected a

State's Attorney to make those determinations, so when an attorney working on behalf of a municipality rather than the People steps into that role, the framework of the proceedings is fundamentally altered. Because of those variables, this issue precludes review under the first prong of plain error, which is triggered when "the evidence is so closely balanced that the error threatened to tip the scales of justice against the defendant." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). As the above-mentioned considerations would mostly occur off the record, it would be seemingly impossible for a defendant to show that the lack of written permission tipped the scales of justice against him and thus avail himself of first-prong plain error review.

Finally, as the Second District did in its ruling here, the Village in its brief cites *People v. Woodall*, 333 Ill. App. 3d 1146, 1159 (5th Dist. 2002), for the premise that a "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 the proper prosecutorial authority is a personal privilege that may be waived if not timely asserted in the circuit court." (Village Br. at 18-19) That excerpt is not as pertinent as the Second District and the Village suggest it is. *Woodall,* a burglary and murder case, is distinguishable, as it addresses issues not relevant to the matter at hand.

Woodall involves interpretation of 55 ILCS 5/3-9008, which relates to the appointment of an attorney to perform the duties of a State's Attorney. *Woodall*, 333 Ill. App. 3d at 1150. Daniel's case, however, involves 55 ILCS

5/3-9005, which addresses the powers and duties of the State's Attorney, and its intersection with 625 ILCS 5/16-102(c). Significantly, the prosecution in *Woodall* was initiated by the State's Attorney. *Woodall*, 333 Ill. App. 3d at 1147. In Daniel's case, it began with a Village-issued citation charging him with a violation of the state vehicle code. The Lake County State's Attorney never had any involvement in the case.

In *Woodall*, through the execution of two documents the court later found to be illegitimate, prosecutorial authority was relinquished to lawyers who work for the State's Attorneys Appellate Prosecutor's Office. *Id*., at 1147-48. The defendant's attorneys never questioned the authority of the prosecutors. *Woodall*, 333 Ill. App. 3d at 1155. The Fifth District determined the attorneys' inaction forfeited the defendant's right to relief. *Id*. However, the court then discussed whether the judgment was void and considered subject matter and personal jurisdiction issues. It was within that discussion that the above-quoted regarding "a defect in an attorney's appointment process," was derived. Here, it has already been acknowledged that Daniel waived this issue by not raising it below, which is why he argues it should be considered under the plain-error doctrine.

Unlike in *Woodall*, Daniel has not challenged whether his conviction was void based on jurisdictional problems. Rather, the question here is whether the Village's failure to provide written proof of authority to prosecute constitutes second-prong plain error. Because it fundamentally impacts the framework of the trial, Daniel's conviction for driving under the influence constitutes structural error and must be reversed.

II. The lower courts erred in finding Daniel Olvera, a 16-year-old driver's education student, committed DUI, where the only witness to testify about his driving was an experienced instructor who never even suggested Daniel was incapable of driving safely.

Daniel Olvera was charged under 625 ILCS 5/11-501(a)(4)(2021). To prove a charge under this section, "the State must establish that the defendant (1) drove or was in actual physical control of a vehicle (2) while under the influence of any drug or combination of drugs (3) to a degree that rendered him incapable of safely driving." *People v. Lenz*, 2019 IL App (2d) 180124, ¶ 101. This case focuses on the third element. In his opening brief, Daniel asserted, "the issue here is whether a driving instructor's 'concerns' about a nervous student's behavior is sufficient to prove beyond a reasonable doubt that the student was *incapable* of driving safely." He posited that, even assuming, *arguendo*, he was under the influence, "the record belies the conclusion that Daniel was under the influence *to a degree that rendered him incapable of driving safely*." (Def. Br. at 27)

The Village's brief fails to address this issue. Pursuant to Illinois Supreme Court Rule 341(h)(7), which provides that "points not argued are forfeited," this Court should determine the Village forfeited its response to this argument. See *Vancura v. Katris*, 238 Ill. 2d 352, 372-73 (2010) ("We note that although Rule 341(h)(7) applies on its face only to appellants' briefs before the appellate court, it also applies to appellees' briefs through Rule 341(I) and to briefs before this court through Rule 315 . . . Rule 341 nonetheless requires that the appellee provide adequate argument and citation to authority for any such relief"). If this Court determines that the Village's brief complies with Supreme Court Rules, this Court should reject

the Village's argument.

Much of the Village's argument on this issue is a recitation of the testimony about Daniel's driving and his subsequent encounters with Dean Sara Rogers, and Officers Beale and Weadick. (Village Br. at 20-27) The Village then asserts that Daniel cited *People v. Workman*, 312 Ill. App. 3d 305 (2d 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 testimony that the witness believes the defendant is under the influence of drugs." (Village Br. at 27) It subsequently discusses several cases cited within *Workman* relating to opinion testimony about impairment. (Village Br. at 28) However, not once in his brief did Daniel even mention *Workman,* and the testimony of Rogers, Beale, and Weadick has little relevance to the specific issue before this Court.

At best, the Village's failure to address the issue at hand indicates it has conflated evidence of impairment with evidence of a defendant's ability to drive safely, just as the Second District did in its opinion. *Village of Lincolnshire v. Olvera*, 2024 IL App (2d) 230255, ¶ 88. Daniel was a 16-year-old new driver who was described by his experienced driving instructor as being very nervous. (R. 71) Daniel admitted he was tired from staying up late the night before. (R. 73) During his practice drive, he veered out of his lane, and, at various times his instructor had to grab the wheel or press the instructor's brake. Those mistakes, however, never caused such concern that the instructor ordered Daniel to stop driving.

The following excerpt, provided in Daniel's opening brief, bears repeating here because it is determinative to the issue of whether he was

incapable of driving safely. Defense counsel asked the following questions, and the instructor answered as follows:

> Q: Okay. Is it fair that you -- well, let me put it this way. One of your responsibilities is making sure the kids are safe, correct?
>
> A: Yes.
>
> Q: And it's fair to say – I can argue to Judge Haxall that you would not – you're not going to let these kids be put in danger, correct?
>
> A: No.
>
> Q: And the minute Daniel gets into that car, it's fair to say that you had no doubt as to any -- any danger to the Juvenile No. 2 or even Daniel, correct?
>
> A: (No response.)
>
> Q: I mean, if you think a kid might be high, you're not going to put him in a car?
>
> A: Of course not. Of course not.
>
> Q: Of course.
>
> A: Right. I mean, there was some behavior that was indicated that – you know, a little foolish whatever, *but nothing that I would say I'm going to keep him out of the car.*
>
> (R. 84-85) (Emphasis added.)

Where the instructor, who had more than 30 years experience teaching teenagers to drive, found no reason to abort the practice drive based on safety concerns, no rational trier of fact could have found Daniel was incapable of driving safely. *People v. Martin*, 2011 IL 109102, ¶ 15 ("In reviewing the sufficiency of the evidence in a criminal case, our inquiry is whether any rational trier of fact could have found the essential elements of the offense

beyond a reasonable doubt"). Thus, the Village failed to prove all elements of the offense beyond a reasonable doubt. As a result, this Court should reverse Daniel's conviction for driving under the influence.

CONCLUSION

For the foregoing reasons, Daniel Olvera, defendant-appellant, respectfully requests that this Court reverse the judgments of the lower courts.

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 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 12 pages.

/s/Ann Fick
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No. 130775

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VILLAGE OF LINCOLNSHIRE, Plaintiff-Appellee, -vs- DANIEL OLVERA, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-23-0255. There on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, No. 21 DT 703, 21 TR 23260. Honorable Bolling W. Haxall, 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 February 18, 2025, 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 Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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