No. 128170

IN THE
SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. OLIVER J. HUTT, Defendant-Appellant.	) On Appeal From the Appellate Court) of Illinois, Fourth Judicial District,) Nos. 4-19-0142 and 4-19-0271)) There on Appeal from the Circuit) Court of the Eighth Judicial Circuit,) Adams County, Illinois) Nos. 17-CF-405 and 17-DT-51)) The Honorable) Robert K. Adrian,) Judge Presiding.

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

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a bench trial, defendant Oliver Hutt was convicted of obstructing justice and driving while under the influence of alcohol (DUI), and the trial court sentenced him to terms of probation. 4-19-0142 C52; C53.[1] The appellate court affirmed. *People v. Hutt*, 2022 IL App (4th) 190142. Defendant appeals from that judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant invited any error in holding a bench trial in his DUI case, and whether, in any event, he knowingly waived his right to a jury trial, and trial counsel was not ineffective in communicating defendant's preference for a bench trial to the court.

2. Whether the plain meaning of "conceal" in 720 ILSC 5/31-4(a)(1) includes refusing to allow medical professionals police to draw blood and collect urine pursuant to a warrant.

3. Whether the People presented sufficient evidence that defendant concealed his blood and urine in violation of 720 ILSC 5/31-4(a)(1).

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[1] In accordance with defendant's opening brief, citations to the common law record and report of proceedings appear as "C__" and "R__" and refer to defendant's DUI case, No. 4-19-0271. Record citations to defendant's obstruction case appear as "4-19-0142 C__" and "4-19-0142 R__." Citations to the People's exhibits and defendant's brief appear as "Peo. Exh.__" and "Def. Br. __," respectively.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On May 25, 2022, this Court allowed defendant's petition for leave to appeal.

STATEMENT OF FACTS

In May 2017, the People charged defendant with obstruction of justice in violation of 720 ILCS 5/31-4(a)(1), DUI in violation of 625 ILCS 5/11-501(a)(2), leaving the scene of an accident, and improper lane usage. The crimes were charged under four separate case numbers.[2] All charges stemmed from defendant's conduct on May 20, 2017, when he was arrested after crashing his vehicle. R16-20. At the time of his arrest on these DUI-related cases, defendant was on bond from a separate 2016 criminal case in which he was charged with resisting a peace officer and criminal damage to property. 4-19-0142 R56.[3]

Pretrial Proceedings

On July 14, 2017, the trial court called all four of defendant's DUI-related cases for a preliminary hearing. R16. After finding probable cause, the court arraigned defendant, informing him about the sentencing consequences of his obstruction charge and his constitutional rights during the trial process. R27-29. Defendant entered a not-guilty plea and asked the

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[2] Defendant's obstruction of justice case number was 17-CF-405, 4-19-0142 C9; his DUI case number was 17-DT-51, C8; and his leaving the scene of an accident and improper lane usage case numbers were 17-TR-2415 and 17-TR-2416, respectively, R7.

[3] These charges were encompassed in case number 16-CF-752.

court to set "this matter" on the jury docket. R30. The court did so and noted that "the [DUI case] and the traffic cases are also set along with this [obstruction] case for that September jury docket." R31.

On September 29, 2017, the court once again called all four of defendant's 2017 DUI-related cases, as well as his 2016 case for resisting a peace officer. R46. Defense counsel informed the court that he was ready to proceed to trial in all five cases. R47. The court then informed defendant that "your cases remain set for jury trial October the 10th," and that the People would begin with the resisting case, then proceed to the DUI-related charges. R48.

On October 10, 2017, the trial court called "several cases involving [defendant]," but explicitly identified only defendant's 2017 obstruction and 2016 resisting cases. 4-19-0142 R76. Defense counsel again announced that he was ready for trial. *Id.* An extensive discussion then took place regarding plea negotiations and, following a recess, defense counsel informed the court that defendant wished to accept the People's offer to plead guilty in exchange for a sentence that included no prison time. R86-88. In furtherance of that agreement, defense counsel "prepared a jury waiver" for the cases. 4-19-0142 R89. The trial court then admonished defendant about his right to a jury trial, 4-19-0142 R89-90, defense counsel tendered the jury waiver, and the court announced that defendant "knowingly and voluntarily waived his right to a jury trial" in the resisting and obstruction cases. 4-19-0142 R91. The

signed waiver, which listed only the resisting and obstruction case numbers in its caption, also indicated that defendant was waiving his right to a jury trial in those cases. 4-19-0142 C37. The written order entered by the trial court stated that defendant waived his right to a jury trial and listed all five cases. 4-19-0142 C36.

At the next court date, October 25, 2017, the court called all five cases for status. R52. Defense counsel informed the court that defendant had "waived his right to a jury trial," but that he was not ready for trial because defendant was insisting that counsel file certain motions. *Id.* Defense counsel then informed the court that the plea deal previously discussed was still available but that defendant did not want to accept it. R53. At that point, the court asked defendant directly if he was "going to accept the . . . plea, or are you going to ask that it be set for bench trial." *Id.* In response, defendant answered that — while he originally wanted a jury trial — he "waived [his] jury trial" because he did not want his wife to testify against him. *Id.* The court then informed defendant that "we're going to set these cases for a bench trial." R55.

On December 21, 2017, the court again called all five cases, and stated that "we were set today for a bench trial." R59. The People informed the court that a police officer who had been subpoenaed by both sides was unavailable and asked the court to postpone the trial. R59-60. In response, defense counsel told the court that, despite the witness's unavailability,

defendant desired to "move forward with trial today" and that defendant "had no issue moving forward without that officer." R60. Over defendant's objection, the court continued trial. *Id.*

Defendant was convicted of resisting a peace officer at a bench trial. R77.[4] On June 26, 2018, the remaining four cases were called. The trial court began by informing defendant that [w]e are set today for a bench trial on all of these cases." R84. Defense counsel indicated that he was ready for a bench trial, *id.*, and all four cases were then tried together.

Trial on 2017 charges

Quincy police officer Zach Bemis testified that he responded to the scene of a car crash on May 20, 2017. R113-14, R117. Defendant refused to perform field sobriety tests, to submit to a breath alcohol test, and to provide a blood or urine sample. R119. Police arrested defendant for DUI and transported him to a local hospital. Bemis obtained a search warrant for defendant's blood and urine, which commanded Bemis to search defendant's body and seize "[b]lood and urine for the presence of alcohol." *Id.*; Peo. Exh. 1.

At the hospital, Bemis informed defendant that he had a search warrant for defendant's blood and urine. R120. Defendant responded that he "didn't know if he wanted to give" samples, R124, and "needed time to think

[4] The record contains little information about the resolution of the resisting case, including when the bench trial took place.

about it," and then began talking with the hospital staff, R120. Bemis interpreted defendant's response as a refusal to submit to the warrant. R121. Bemis did not inform defendant that refusal to comply with the warrant would expose defendant to additional criminal charges. *Id.*

Bemis also testified that he could not seize defendant's blood and urine against defendant's wishes without physically restraining him, and that police took defendant to the hospital so that trained medical professionals could take defendant's blood and urine samples, had defendant allowed it. R126-28. Bemis explained that it is the policy of the Quincy Police Department policy, in executing similar search warrants, to

> explain to the arrestee that a search warrant has been signed for their blood and for their urine and they need to provide that. We do that with the medical staff there. If they agree to that, then the medical staff will do the blood draw and provide the cup for the urinalysis. And if they refuse to do that, we don't force them. We don't hold them down or anything like that. We just basically leave the scene and go back to headquarters.

R130. In further explaining why police do not "forcibly take" blood and urine samples, Bemis explained that doing so would place police and hospital staff at risk of injury. R130-31.

Quincy police officer Robert McGee testified that he transported defendant to the hospital while Bemis obtained a search warrant. R136-37. McGee further testified that, in his presence, Bemis told defendant about the search warrant and asked defendant if he would provide a blood and urine sample, to which defendant said no. R141. Subsequently, the medical

professional asked him to provide a sample, and defendant in response asked her about his bond. R143. And, finally, MgGee himself asked defendant if he would provide a sample, and defendant again deflected. R142-43.

The trial court found defendant guilty of all four charges, R157-160, and sentenced him to 24 months of probation for obstruction of justice and the traffic offenses, 4-19-0142 C52, and 12 months of probation for DUI, C53. Defendant did not file a posttrial motion.

On appeal, and as relevant here, defendant argued that "(1) the trial court improperly denied defendant a jury trial [in his DUI case] because defendant did not waive that right, (2) trial counsel was ineffective for misrepresenting that defendant waived a jury trial, [and] (3) the evidence was not sufficient to find defendant guilty of obstruction of justice beyond a reasonable doubt." *People v. Hutt*, 2022 IL App (4th) 190142, ¶ 37.

The appellate court affirmed. It held that defendant had acquiesced to proceeding via the bench trial and was therefore barred from claiming that it was held in error. *Id.* ¶¶ 42-44. And it concluded that defendant's conduct in refusing to provide samples in compliance with the search warrant violated the obstruction of justice statute, 720 ILCS 5/31-4(a)(1), which prohibits the concealment of physical evidence. The appellate court explained that defendant's refusal to provide samples constituted concealment because a "refusal to submit to a blood draw with knowledge of a valid search warrant for the same" meets the "definition of 'conceal,'" *id.* ¶ 62, and that the

evidence at trial showed that "defendant clearly refused to submit to the blood draw when asked," *id*. ¶ 64.

STANDARDS OF REVIEW

Whether the trial court erred in conducting a bench trial presents a purely legal question that this Court reviews de novo. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004).

Whether an individual's refusal to provide his blood and urine constitutes "concealment" as defined in the obstruction of justice statute presents a question of statutory interpretation that is reviewed de novo. *People v. Donoho*, 204 Ill. 2d 159, 172 (2003) (citing *Paris v. Feder,* 179 Ill. 2d 173, 177 (1997)).

In assessing whether the People presented sufficient evidence that defendant concealed his blood and urine from police, this Court must view the evidence in the light most favorable to the People and determine if any rational trier of fact could have found that the People proved the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 318-19 (1979); *People v. Murray,* 2019 IL 123289, ¶ 19.

ARGUMENT

I. The Record Demonstrates that Defendant Waived His Right to a Jury Trial in the DUI Case, and that Defendant's Attorney was Not Ineffective for Representing to the Court that Defendant Desired a Bench Trial.

Defendant's claim that the trial court erred in holding a bench trial in his DUI case because he did not knowingly and understandingly waive his right to a jury trial, Def. Br. 15-21, is both procedurally barred and meritless. And, because defendant's claim of error is unfounded, his attorney was not ineffective.

A. Defendant's Argument that the Trial Court Erred is Forfeited and Meritless, or Defendant is Barred From Raising it Here Because He Invited Any Error.

Defendant first argues that he did not waive his right to a jury trial for his DUI case and that the trial court therefore denied him this fundamental right when it held a bench trial on the DUI charge. Def. Br. 15-21. But because defendant did not raise this issue in a post-trial motion, it is forfeited. *See People v. Bannister*, 232 Ill. 2d 52, 65 (2008) ("Both a trial objection and a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial.") (internal quotations omitted). Under Illinois's "plain error" doctrine, this Court may "review unpreserved error when a clear and obvious error occurs" and "that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Id.* "Whether a defendant's fundamental right to a jury trial has been violated is a matter that may be

considered under the plain error rule." *People v. Bracey*, 213 Ill. 2d 265, 270 (2004). In assessing whether to apply the plain-error rule, though, this Court first considers "whether error occurred at all." *Bannister*, 232 Ill. 2d at 65.

Here, the trial court did not err when it held a bench trial in defendant's DUI case for the simple reason that defendant waived his right to a jury trial. "A defendant may, of course, waive the right to a jury trial." *Bracey*, 213 Ill. 2d at 269. For a valid jury waiver, a trial court must ensure that it is "knowingly and understandingly made." *Id.*; *see also* 725 ILCS 5/103-6 ("Every person . . . shall have the right to a trial by jury unless (i) understandingly waived by defendant in open court."). Whether a waiver is knowingly and understandingly made "cannot be determined by application of a precise formula, but rather turns on the particular facts and circumstances of each case." *Bracey*, 213 Ill. 2d at 269; *see also People v. Hernandez*, 409 Ill. App. 3d 294, 297 (2d. Dist. 2011) (explaining that a "trial court is not required to provide a defendant with any particular admonishment or information" for the defendant's jury-trial waiver to be valid). For instance, a written and signed waiver "is one means by which a defendant's intent may be established," *id.*, but a written waiver is not required, "'so long as the defendant's waiver was made understandingly,'" *People v. Scott*, 186 Ill. 2d 283, 285 (1999) (quoting *People v. Tooles*, 177 Ill. 2d 462, 468 (1997)). Ultimately, "the pivotal knowledge that the defendant must understand — with its attendant consequences — is that the facts of

the case will be determined by a judge and not a jury." *Bannister*, 232 Ill. 2d at 69.

Here, the totality of the circumstances demonstrates that defendant knowingly and understandingly waived his right to a jury trial in his DUI case, both through his own statements and through his acquiescence to his attorney's representations.

First, at the October 10, 2017, hearing, the trial court called defendant's 2017 obstruction and 2016 resisting cases, and when defendant indicated a desire to accept a plea deal, the court admonished defendant about the consequences of giving up his right to a jury trial. 4-19-0142 R88-89.[5] Defense counsel prepared a written jury waiver that listed only his obstruction and resisting cases, and the trial court announced that defendant "knowingly and voluntarily waived his right to a jury trial." 4-19-0142 R91.

At the next court date, on October 25, 2017, at which the court called *all* of defendant's cases by number, defense counsel informed the court that defendant had "waived his right to a jury trial." R52. Defendant confirmed as much when the court asked defendant directly if he was "going to accept the . . . plea, or are you going to ask that it be set for bench trial," and defendant responded that, while he originally wanted a jury trial, he "waived [his] jury trial" because he did not want his wife to testify against him. *Id*.

[5] Defendant does not suggest that the admonishments insufficiently informed him about the right he was forgoing.

The court then informed defendant that "you've waived your right to a jury trial . . . we're going to set these cases for a bench trial," R55, and neither defendant nor his counsel objected.

Next, on December 21, 2017, the trial court again called all five cases and noted that they were set for a bench trial. R59. Neither defense counsel nor defendant objected to the court's understanding, and instead defense counsel told the court that defendant was ready for trial and in fact desired to "move forward with trial today." R59-60.

Finally, on June 26, 2018, the court called all of defendant's DUI-related cases and informed defendant that "[w]e are set today for a bench trial on all of these cases," and defense counsel stated that he was prepared for trial. R84. Defendant did not object, and the trial court conducted a bench trial that covered all of the 2017 charges. *Id.*

Considering the entirety of the representations made to the court by defendant and defense counsel, and their lack of objections to the court's scheduling pronouncements, defendant made clear that he intended that all his DUI-related cases be tried together before the court and not a jury. *People v. Frey*, 103 Ill. 2d 327 (1984), is instructive. There, Frey was initially charged with two counts of reckless homicide. *Id.* at 329. Months before trial, the trial court entered an order noting that "the defendant's attorney indicates the defendant will waive a jury trial in this case," and in ensuing pretrial hearings, defense counsel continued to express the desire for a bench

trial. *Id*. at 329-30. Subsequently, the People amended Frey's charges to include a charge of DUI. *Id*. at 330. After the charges were amended, neither Frey nor his attorney affirmatively waived the right to a jury trial for the DUI charge; instead, like this case, the "matter of a bench trial was discussed" in Frey's presence, and Frey never objected. *Id*. And on the morning of trial, the court called all three cases and informed Frey that "these causes were set today for purposes of bench trial and the issues presented by all three counts." *Id.* at 331. Defense counsel expressed readiness for trial, and a bench trial was held. *Id*.

This Court held that, although Frey did not expressly waive his jury trial right as it pertained to the DUI charge, Frey nonetheless knowingly and understandingly waived that right. First, the Court cited *People v. Sailor*, 43 Ill. 2d 256 (1969), and explained that a "jury waiver[] made by defense counsel in defendant's presence where defendant gave no indication of any objection to the court hearing the case" is constitutionally valid. *Frey*, 103 Ill. 2d at 332 (additional citations omitted). The Court then reviewed the record and found that Frey had waived his jury trial right in the DUI case because (1) the court set the case for a bench trial without objection after the DUI charge was added; (2) defense counsel stipulated to the use of evidence from one trial in the other; (3) Frey "was aware of his right to a jury trial and was present at some point prior to trial when the jury waiver was discussed"; and (4) Frey silently acquiesced "in the judge's statement . . . on the day of trial

that all counts were set for bench trial." *Id*. at 333. Thus, the totality of the circumstances led to the conclusion that "the jury waiver was made with defendant's knowledge and consent." *Id.* Indeed, this Court noted that to hold otherwise would "give credence to what could be described as a fraud upon the court," as it would allow a defendant "'to gamble on the outcome before the judge without a jury and then if dissatisfied make a belated demand for a jury.'" *Id*. (quoting *People v. Novotny*, 41 Ill. 2d 401, 409 (1968)).

Equally instructive are cases in which this Court found that a defendant did *not* knowingly and understandingly waive the right to a jury trial. In *Bracey*, for instance, Bracey executed a valid jury waiver before a bench trial was conducted. The trial court vacated its judgment after trial and automatically scheduled the case for a second bench trial without inquiring of Bracey or defense counsel whether they desired a second bench trial. 213 Ill. 2d at 268. This Court held that Bracey did not knowingly waive his jury trial right in the second trial because the waiver before the first trial was "no longer of any effect" and, although Bracey did not object at the start of the second bench trial, there were no affirmative statements by defense counsel "in defendant's presence indicating that defendant was electing, once again, to give up his right to trial by jury." *Id*. at 273. This Court held the same in *Scott*, finding that a written jury waiver, signed outside of court and filed outside of Scott's presence, was insufficient by itself

to show that he waived his jury trial right knowingly and understandingly where Scott "was never present in open court when a jury waiver was discussed." 186 Ill. 2d at 285. Crucial to *Bracey* and *Scott*, then, was the fact that the defendant was present during pre-trial discussions at which defense counsel indicated the defendant's desire for a bench trial.

Applying these cases here, defendant knowingly and understandingly waived his right to a jury trial in the DUI case. As in *Frey*, defendant was admonished about his right to a jury trial, 4-19-0142 R89-90; he failed to object during pre-trial proceedings when the court informed him that "we're going to set these cases for a bench trial," R55; he repeatedly failed to object when his attorney informed the court that he desired a bench trial, R52, R84; and he failed to object on the morning of trial when explicitly informed that all of his cases were set for bench trial, R84. Further, and in addition to the circumstances found sufficient in *Frey*, defendant himself told the court that he had "waived [his] jury trial" — and even provided an explanation for his waiver — at the October 25, 2017, status hearing at which all the DUI-related cases were discussed. R53. Thus, defendant not only failed to object when the court set the DUI case for a bench trial, he — through his own representations and those of his counsel — affirmatively informed the court that he wanted a bench trial. Defendant's actions thus demonstrate that he knowingly and understandingly waived his right to a jury trial in the DUI case.

Defendant asserts that he did not make a valid waiver, arguing that the trial court "failed in its duty" to ensure a knowing and understanding waiver. Def. Br. 18. For support, defendant cites *People v. Sebag*, 110 Ill. App. 3d 821 (2d Dist. 1982), for the proposition that the court's failure to admonish him about his jury trial right specifically with respect to his DUI case was error. First and foremost, defendant *was* admonished about his right to a jury trial at the October 10, 2017, hearing during which he waived his jury trial right in his obstruction and resisting cases. 4-19-0142 R89-90. It is true that the court referenced only those two cases prior to the admonition, but defendant cannot credibly argue that he was unaware of the right to a jury trial or the consequences of forgoing one. Moreover, this Court has refused to require a specific admonition for a jury waiver to be valid, noting that "[w]e have not required that the record affirmatively establish that the court advised defendant of his right to a jury trial and elicited his waiver of that right . . . nor that the court or counsel advised defendant of the consequences of the waiver." *Frey*, 103 Ill 2d at 332 (citations omitted); *see also Bracey*, 213 Ill. 2d at 270 ("For a waiver to be effective, the court need not impart to defendant any set admonition or advice."). Thus, a jury waiver can be valid even where a court provides *no* admonition, if the totality of the circumstances demonstrates that the waiver was knowingly and understandingly made.

Relatedly, defendant further argues that none of the pre-trial statements made by his attorney or himself demonstrated a knowing and understanding waiver of his right to a jury in his DUI case. Def. Br. 20-21. But defendant's argument relies on a strained reading of isolated statements and neglects to consider the totality of the circumstances. As demonstrated above, the court, counsel, and defendant — after the October 10, 2017 status hearing — consistently referred to all of defendant's 2017 cases together and consistently stated that they were all scheduled for a bench trial and that defendant, in fact, desired a bench trial. *See supra* pp. 11-12. Faced with these statements, defendant never corrected the court or defense counsel and continued to hold his silence when the court, on the day of trial, called all four cases for a bench trial. To now suggest that he secretly wanted a jury trial for one of the four cases called that day would be to, in the words of this Court, "give credence to what could be described as a fraud upon the court," as it would allow defendant "'to gamble on the outcome before the judge without a jury and then if dissatisfied make a belated demand for a jury.'" *Frey*, 103 Ill. 2d at 333 (quoting *Novotny*, 41 Ill. 2d at 409).

In any event, even if this Court were to find that defendant did not waive his right to a jury trial for the DUI case, defendant would be barred from raising that argument because, as the appellate court concluded, defendant invited the error. *Hutt*, 2022 IL App (4th) 190142, ¶¶ 42-43. "[U]under the doctrine of invited error, an accused may not request to

proceed in one manner and then later contend on appeal that the course of action was in error.'" *People v. Harvey*, 211 Ill. 2d 368, 385 (2004) (quoting *People v. Carter*, 208 Ill. 2d 309, 319 (2003) (further citations omitted)). "To permit a defendant to use the exact ruling or action procured in the trial court as a vehicle for reversal on appeal 'would offend all notions of fair play' . . . and 'encourage defendants to become duplicitous.'" *Id.* (citations omitted).

Here, as recounted above, defense counsel repeatedly requested that all four cases be set on the bench calendar, noting that defendant had waived his right to a jury. R52, R60. Then, on the morning of the bench trial, defense counsel confirmed that he was ready to proceed and treated all of the cases as a single unit, without suggesting that the DUI case should be tried separately before a jury. R84. Defendant is bound by counsel's statements to the court, as this Court held in *Sailor*, 43 Ill. 2d 256 (1969). There, the Court rejected Sailor's argument that the trial court improperly conducted a bench trial, explaining that "[t]he record reveals that defendant's counsel, in her presence and without objection on her part, expressly advised the court that the plea was 'not guilty' and that a jury was waived." 43 Ill. 2d at 260. Explaining that "[a]n accused ordinarily speaks and acts through his attorney, who stands in the role of agent," this Court held that, because Sailor permitted her attorney to waive jury trial "in her presence and without objection," she acquiesced in and was therefore bound by the waiver. *Id.* The

same is true here. Defense counsel asked for and agreed to a bench trial. And where a defendant invites an error, he cannot obtain a reversal, even if the error would otherwise amount to plain error. *See People v. Holloway*, 2019 IL App (2d) 170551, ¶ 44 ("[i]nvited error differs from mere forfeiture" and "precludes plain-error analysis"); *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 79 ("invited errors are not subject to plain-error review"); *see also People v. Patrick*, 233 Ill. 2d 62, 77 (2009) (declining to address plain-error argument where error was invited).

B. Defense Counsel was not Ineffective in Effectuating Defendant's Desire for a Bench Trial.

Defendant's related argument, that his counsel was ineffective because counsel allegedly misrepresented to the court that defendant desired a bench trial in his DUI case, Def. Br. 22-23, is meritless for much the same reason. To demonstrate ineffective assistance of counsel in this context, defendant must show that (1) his counsel's performance fell below an objective standard of reasonableness; and (2) "there exists a reasonable likelihood that the defendant would not have waived his jury right in the absence of the alleged error." *People v. Maxwell*, 148 Ill. 2d 116, 142-43 (1992).

Here, defendant cannot satisfy either prong for, as argued above, the record demonstrates that he waived his right to a jury trial through his own representations to the court and through his acquiescence to his attorney's representations. Because he waived his right, there is no merit to his arguments that (1) his attorney misrepresented the existence of a jury waiver

to the court or (2) that defendant would not have waived his right absent his attorney's misrepresentations. Def. Br. 22-23.

II. Defendant's Refusal to Allow Police to Draw his Blood and Urine Constituted "Concealment" under the Obstruction of Justice Statute.

This Court should affirm defendant's conviction for obstruction of justice. First, the refusal to provide blood and urine in response to a valid search warrant constitutes an effort to "conceal" that evidence, in violation of 720 ILSC 5/31-4(a)(1). Second, the People presented sufficient evidence that defendant obstructed justice by refusing to provide his blood and urine.

A. The Term "Conceal" in 720 ILSC 5/31-4(a)(1) Includes a Refusal to Provide Evidence.

Under 720 ILCS 5/31-4(a)(1), a person obstructs justice when, "with the intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly . . . conceals . . . physical evidence." In addition, this Court's recent decisions interpreting the obstruction of justice statute make clear that, to constitute obstruction, a defendant's obstructive act must have "materially impeded the administration of justice." *People v. Casler*, 2020 IL 125117, ¶ 53; *People v. Comage*, 241 Ill. 2d 139, 150 (2011) (defendant conceals evidence "if, in doing so, the defendant actually interferes with the administration of justice*, i.e.,* materially impedes the police officers' investigation"). Thus, as construed by this Court, the crime has three elements: (1) concealing physical evidence; (2) with the intent to prevent the

apprehension or obstruct the prosecution or defense of a person; and (3) the concealment "materially impedes" the administration of justice.

Defendant first argues that his conduct did not constitute "concealment." Def. Br. 24-30. Whether concealment is defined to include a refusal to provide evidence in response to a search warrant presents a question of statutory interpretation that this Court reviews de novo. *People v. Donoho*, 204 Ill. 2d 159, 172 (2003) (citing *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997)). "The cardinal rule of statutory construction is to ascertain and give effect to the true intent of the legislature," and "[t]he best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Paris*, 179 Ill. 2d at 177. "When the language of a statute is clear and unambiguous, it must be applied without resort to other aids of construction." *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332 (2008) (citing *Murray v. Chicago Youth Ctr.*, 224 Ill. 2d 213, 235 (2007)).

Here, applying the plain language of the statute, defendant concealed his blood and urine and the information they contained about defendant's consumption of alcohol. This Court has already noted that the word "conceal" has two meanings:

> The first definition states: "1: to prevent disclosure or recognition of: avoid revelation of: refrain from revealing: withhold knowledge of: draw attention from: treat so as to be unnoticed . . ." The second definition states: "2: to place out of sight: withdraw from being observed: shield from vision or notice."

Comage, 241 Ill. 2d at 144 (quoting Webster's Third New International Dictionary 469 (1961)).

As the appellate court explained, the second definition is inapplicable, as defendant did not take action to hide otherwise visible blood and urine. *Hutt*, 2022 IL App (4th) 190142, ¶ 62. But defendant's conduct falls squarely within the first definition, and therefore constitutes concealment. Here, defendant refused to allow a medical professional to draw his blood and urine, despite being told that a warrant had issued for both. Defendant's refusal is analogous to numerous examples of "concealing" provided in *Comage*, because in refusing to allow the blood and urine collection, he "prevent[ed] disclosure or recognition of," "avoid[ed] revelation of," and refrain[ed] from revealing" his blood and urine. *Comage*, 241 Ill. 2d at 144. Undoubtedly, then, defendant's refusal served to conceal his blood and urine as this Court has defined the word conceal.

Further, defendant's conduct was precisely the type of conduct that the legislature sought to discourage in enacting the obstruction of justice statute. As this Court has explained, the statute seeks to discourage "attempt[s] to interfere with the administration of the courts, the judicial system, or law enforcement agencies," and "impeding or obstructing those who seek justice in a court or those who have duties or powers of administering justice in courts." *Comage*, 241 Ill. 2d at 149. And that is precisely what defendant accomplished here. Knowing that he was being investigated for DUI and

that his blood and urine contained evidence of that crime, defendant successfully impeded Officer Bemis's ability to gather crucial evidence and defied the trial court's presumptively valid search warrant.[6] Just as when an individual lies about their identity to evade recognition, *see generally In re Q.P.*, 2015 IL 118569, or destroys evidence to avoid its discovery and use at trial, *see generally People v. Smith*, 337 Ill. App. 3d 819, 825 (4th Dist. 2003), defendant here acted with the intent to impede his prosecution for DUI, which is precisely the action the obstruction of justice statute is aimed at preventing.

Finally, holding that a defendant obstructs justice when he or she refuses to provide blood and urine in response to a warrant serves the public interest in ensuring that evidence is collected in a safe manner. In the typical case, when an individual submits to a blood draw conducted by qualified medical professionals, there is little risk to either the individual or the medical professionals drawing the sample. *See Schmerber v. California*, 384 U.S. 757, 771 (1966) (noting that a routine blood draw is a safe procedure when conducted "in a hospital environment according to accepted medical practices").

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[6] Notably, because defendant refused a breath test and refused to provide his blood and urine, the People were forced to rely exclusively on circumstantial evidence of defendant's impairment. R158-59 (trial court explaining that the evidence supporting its finding of guilt was based on eyewitness accounts). Thus, defendant successfully hindered the People from presenting reliable, scientific evidence of his alcohol level.

However a blood draw conducted by force — although legally permissible, *see, e.g.*, *People v. Eubanks*, 2019 IL 123525 — implicates significant concerns for both the individual and the medical professionals drawing the sample. A blood draw is "'an invasion of bodily integrity' that 'implicate[s] an individual's most personal and deep-rooted expectations of privacy.'" *Id.*, ¶ 118 (Theis, J., dissenting) (quoting *Missouri v. McNeely*, 569 U.S. 141, 148 (2013)). To draw a sample by force therefore constitutes a deprivation of bodily integrity. Further, a forced blood draw carries a risk of injury and would therefore "invite an unjustified element of personal risk of infection and pain" to the individual, *Schmerber*, 384 U.S. at 771, and carries with it the added risk to the health and safety of police and the medical professionals involved, should the individual require restraint, R131; *see also Eubanks*, 2019 IL 123525, ¶ 19 (explaining steps necessary to force a blood draw).

Thus, when an individual refuses to provide blood and urine, police are forced to choose between drawing a sample against the individual's will and at risk to the health and safety of all involved or, alternatively, declining to collect valuable evidence. Naturally, police often decide against a forcible blood draw. R130 (Office Bemis explaining that Quincy has a departmental policy against forced blood draws). In doing so, though, police lose the ability to obtain "highly effective" evidence. *See Schmerber*, 384 U.S. at 771 ("Extraction of blood samples for testing is a highly effective means of

determining the degree to which a person is under the influence of alcohol."). Consequently, an individual who knows that his blood and urine will reveal scientific evidence of his intoxication may decide that it is in his best interest to refuse the blood draw, or at least delay it until such time that he believes that the blood alcohol content has likely sufficiently dissipated. Surely such an outcome must be discouraged, and applying the obstruction of justice statute would do just that. *Hutt*, 2022 IL App (4th) 190142, ¶ 67 ("[T]he coercive force of a potential felony conviction is almost certainly preferable to the coercive force of physical restraint.").

Defendant, in arguing that his actions did not constitute concealment, argues that the first definition of "conceal," *i.e.* "to prevent disclosure or recognition of: avoid revelation of: refrain from revealing: withhold knowledge of: draw attention from: treat so as to be unnoticed," *Comage*, 241 Ill. 2d at 144, is inapplicable here because it applies only to the concealment of "information, facts, or feelings," Def. Br. 26, and not physical evidence. But no such limitation is supported by the plain meaning of the word conceal as this Court has defined it. Rather than relying on this Court's definition, defendant's argument relies on two different definitions, Def. Br. 25-27, mentioned by the dissenting Justice below. This Court has not distinguished the two definitions it provided to limit one to physical evidence and one to information. Nor should it.

Regardless, even if defendant's argument were plausible, and the first definition of conceal referred only to information, it would still cover defendant's conduct. Unlike some physical evidence, such as a gun, drugs, or clothing, which are seized by police as direct evidence, police seek blood and urine when investigating a DUI for the information the blood and urine contain. That is, the blood and urine are not admitted at trial, but instead tested to determine an individual's blood-alcohol content, which evidence is relevant and admissible at trial. Thus, and as the dissent below noted, there would be no reason for defendant to have refused to provide his blood and urine *unless* he was attempting to hide information about his alcohol level. *Hutt*, 2022 IL App (4th) 190142, ¶ 83 (Cavanagh, J., dissenting) (noting that defendant did not care whether "anyone saw his blood," but that "he did not want his blood to be taken to the laboratory and chemically analyzed").

Finally, defendant's reliance on *People v. Elsperman*, 219 Ill. App. 3d 83 (4th Dist. 1991), is misplaced. Elsperman was charged with obstruction of justice after he ran from police, and the People's theory was that — in hiding from police — Elsperman "conceal[ed] the physical evidence of his person" in that he "destroy[ed] the physical characteristics of alcohol on his breath, the color of his skin and eyes, his manner of walking, and the slurring of his speech." *Id.* at 84. The appellate court rejected the People's theory, holding that one's entire person could not be considered "physical evidence" under the obstruction of justice statute. *Id.* at 85. Thus, the issue was not that

Elsperman's actions did not constitute concealment, but that his person was not physical evidence as is required by the obstruction of justice statute. But there is no debate that a person's blood and urine, like a person's hair, nails, or fingerprints, constitute physical evidence, *see People v. Watson*, 214 Ill. 2d 271, 283-88 (2005) (repeatedly referring to a person's blood as physical evidence), and thus are capable of being concealed. Thus, *Elsperman* is inapplicable.

B. The People Presented Sufficient Evidence that Defendant Concealed Evidence.

Defendant alternatively argues that the People presented insufficient evidence that he concealed his blood and urine because the People failed to show that he clearly refused to provide his blood and urine. Def. Br. 30-32. As noted above, obstruction of justice has three elements: (1) the concealment of physical evidence; (2) with the intent to prevent the apprehension or obstruct the prosecution or defense of a person; and (3) the concealment "materially impedes" the administration of justice. In arguing that he did not clearly refuse to provide his blood and urine, defendant challenges the sufficiency of the evidence only as to the first element.

In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the People and determine if any rational trier of fact could have found that the People proved the elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 318-19; *People v. Murray*, 2019 IL 123289, ¶ 19. It is well-established that the testimony of a

single witness, if credible, is sufficient to convict, *People v. Gray*, 2017 IL 120958, ¶ 36, and that the trier of fact, not the reviewing court, is the ultimate arbiter of issues regarding witness credibility and the weight of the evidence, *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Ultimately, "[w]here the finding of the defendant's guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt." *Gray*, 2017 IL 120958, ¶ 36.[7]

Here, Officer Bemis testified that he secured a warrant that commanded him to search defendant's body and seize "[b]lood and urine for the presence of alcohol," R119; Peo. Exh. 1, and that Bemis informed defendant of the warrant. In response, defendant stated that he "didn't know if he wanted to give" his blood and urine but "needed time to think about it." R120, 124. Bemis testified that he considered defendant's response to be a refusal to provide the blood and urine. R121. Officer McGee likewise testified that Bemis "asked [defendant] if he was going to give a blood sample and urine sample," and that defendant said "no," R141, and that McGee himself asked defendant to provide a sample and defendant refused, R142-43.

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[7] As below, defendant asserts that this Court should review his sufficiency challenge de novo because — he argues — he is not contesting the facts. Def. Br. 24. But as the appellate court aptly explained, *Hutt*, 2022 IL App (4th) 190142, ¶¶ 51-54, that defendant concedes the accuracy of the testimony does not mean that he does not contest the facts, where he argues that the trial court's inferences from that testimony were improper.

Given the clear testimony that both officers asked defendant to provide blood and urine and that defendant's response was to delay, deflect, and deny the officers' requests, there was sufficient evidence that defendant refused to provide his blood and urine and therefore concealed them from the officers.

For his part, defendant argues that there was insufficiently clear evidence that he verbally refused to submit his blood and urine. But defendant is wrong, factually and legally. First, there was clear evidence that defendant verbally refused to comply with the officers' requests. As noted, McGee testified that Bemis "asked [defendant] if he was going to give a blood sample and urine sample," and that defendant said "no." R141. Defendant argues that "the passive voice in McGee's testimony" makes it unclear who asked defendant to provide the blood and urine, and that it might have been the medical professional on hand. Def. Br. 30. Not so. McGee's testimony could not be clearer that defendant was responding to Bemis:

> A. Officer Bemis just told him that he had a signed search warrant. Showed it to him. I believe he provided him with a copy of it. Read over it with him and asked him if he was going to give a blood sample and urine sample.
>
> Q. And at that point, what did Mr. Hutt say, if anything?
>
> A. He said no.

R141.

After that question and response, McGee was asked if defendant "said anything to anyone else," and at that point McGee explained that "there was

a lot of back and forth between [defendant] and the phlebotomist," before discussing what the back and forth contained. R141. It is clear that McGee referenced two separate discussions in response to two separate questions.

Second, defendant seems to assert that only a verbal refusal would suffice as evidence that he concealed his blood and urine. But, as the appellate court explained, the trier of fact was entitled to consider the totality of defendant's actions and words to determine whether defendant refused to provide his blood and urine. *Hutt*, 2022 IL App (4th) 190142, ¶ 63 ("The trial court could have inferred that defendant's subsequent attempts to change the subject or ignore the question constituted a knowing refusal to submit to the warrant under the circumstances."); *id*. ¶ 64 ("[T]he trial court was entitled to resolve the discrepancies in favor of the State and to conclude that, whatever the specific form of communication, defendant clearly refused to submit to the blood draw when asked."). Indeed, defendant's assertion that only a verbal refusal would constitute obstruction would lead to an absurd result: an individual could evade a conviction for obstructing justice merely by avoiding an explicit denial of the officer's request. The fact remains that defendant was asked to submit to a blood draw and to provide his urine, and instead of doing so, deflected and delayed until, ultimately, the officers decided that he never would. Viewing the evidence in a light most favorable to the People, this Court must affirm defendant's conviction.

Finally, defendant's argument that the warrant did not compel him to take any action, and therefore he did not disobey the warrant and obstruct justice, Def. Br. 31-32, misunderstands the purpose of a warrant. A warrant does not serve to inform an individual that he or she is required to follow lawful commands; a warrant serves to give police the legal authority to take certain action. *People v. York*, 29 Ill. 2d 68, 72 (1963) ("The purpose of the [search] warrant is to authorize the officer to conduct the search[.]"). Indeed, under Illinois law, warrants "shall be directed for execution to all peace officers of the State," 725 ILSC 5/108-5, and "shall command the person directed to execute the same to search the place or person particularly described in the warrant and to seize the instruments, articles or things particularly described in the warrant," 725 ILSC 5/108-7. That is precisely how this warrant was worded, *see* C39 (warrant directed "To All Law Enforcement Officers," and commanding them to search defendant and seize his blood and urine), and therefore gave police the legal authority to search defendant. Contrary to defendant's assertion that the warrant here was a "notable departure" from a typical warrant, Def. Br. 31-32, this warrant followed Illinois's requirements by commanding that police search defendant.[8]

[8] Notably, defendant has never contested the warrant's legal sufficiency. *Hutt*, 2022 IL App (4th) 190142, ¶ 60,

Defendant's argument also misunderstands the crime of obstruction of justice. Defendant suggests that did not obstruct justice because he "was under no *judicial* direction to do anything." Def. Br. 32 (emphasis added). But obstruction of justice only requires that a person materially impede "the apprehension or obstruct the prosecution or defense of any person," 720 ILSC 5/31-4, not that an individual disobey a court order. Here, the officers made clear to defendant that he was required to provide his blood and urine. Yet defendant refused, and in doing so impeded his own prosecution.

CONCLUSION

This Court should affirm the appellate court's judgment.

December 12, 2022

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 32 pages.

s/Mitchell J. Ness
Mitchell J. Ness

PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 12, 2022, the **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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

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