No. 122388

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Third District,
Plaintiff-Appellant,	)	No. 3-16-0025
	)	
	)	There on Appeal from the Circuit
	)	Court of the Twelfth Judicial
v.	)	Circuit, Will County, Illinois,
	)	Nos. 15-DT-1284, 15-TR-72055
	)	& 15-TR-72056
	)	
AHMET GOCMEN,	)	The Honorable
	)	Carmen Goodman,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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ARGUMENT

As explained in the People's opening brief, whether the circuit court properly rescinded defendant's summary suspension depends upon whether the arresting officer, Officer Beaty, had probable cause to believe that defendant had been driving under the influence of drugs at the time of his arrest. *See* St. Br. 1, 7-9.[1] Defendant, like the appellate court majority, relies heavily on Beaty's lack of training and experience in detecting drug use, going so far as to assert that a non-expert is categorically unable to develop probable cause that a suspect is under the influence of drugs. To be sure, such expertise can be useful in discerning which particular symptoms or behavior can be caused by a particular drug or in recognizing, for example, illicit drugs or drug paraphernalia. But Beaty's lack of expertise did not require rescission of suspension, for any of three independent reasons: (1) concluding that defendant was probably under the influence of drugs here did not involve interpreting the circumstances through the lens of any particular expertise; (2) no expertise should be required at the probable cause stage, even if opinion testimony at trial may be offered only by expert witnesses; and (3) expertise should not be required at the probable cause stage because laypersons should also be permitted to opine on drug intoxication at trial. Here, the combination of defendant's unusual behavior and symptoms and the many indicia of illicit drug use justified his arrest for DUI drugs.

[1] Consistent with the opening brief, "C_" refers to the common law record; "R_" refers to the report of proceedings; "IC_" refers to the impounded common law record; "SC_" refers to the supplemental common law record; "St. Br." refers to the State's opening brief and "A_" refers to its appendix; and "Def. Br." refers to defendant-appellee's brief and "AE_" refers to its appendix.

The Appellate Court Wrongly Discounted the Indicia of Illicit Drug Use, Unduly Relied upon Defendant's Statement that He Was a Diabetic, and Erroneously Cited the Officer's Lack of Training or Experience in Recognizing the Effects of Drugs.

In challenging his arrest, defendant demands that the arresting officer have a level of certainty that defendant committed a crime that goes far beyond the probable cause standard. In applying the probable cause standard, courts recognize that police officers, not "legal technicians," make the initial determination and that probable cause is a relatively low standard: it does not require that the belief the suspect committed a crime be more likely true than false. *People v. Wear*, 229 Ill. 2d 545, 564 (2008) (internal quotation marks omitted); *see also Maryland v. Pringle*, 540 U.S. 366, 371 (2003). Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity"; it "is not a high bar." *District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018). In deciding whether there is probable cause to arrest, officers may rely upon reasonable inferences drawn from the circumstances involved. *Id.* (citing *Pringle*, 540 U.S. at 372).

Relatedly, an officer need not rule out every other possible alternative — including innocent explanations — to have probable cause to believe that criminal activity has occurred. *See Pennsylvania v. Dunlap*, 129 S. Ct. 448, 448-49 (2008) (Roberts, C.J., joined by Kennedy, J., dissenting from denial of cert.) ("[A]n officer is not required to eliminate all innocent explanations for a suspicious set of facts to have probable cause to make an arrest."); *see also United States v. Sidwell*, 440 F.3d 865, 869 (7th Cir. 2006) ("[p]robable cause

requires only a probability or substantial chance that evidence may be found; it does not, by contrast, require absolute certainty.").

Here, Officer Beaty had probable cause to arrest defendant because the totality of the circumstances, including reasonable inferences drawn from those circumstances, would lead a reasonably cautious person — even one without training or experience in detection of drug use — to believe that defendant probably drove while under the influence of drugs. *See People v. Wear*, 229 Ill. 2d 545, 560, 563-64 (2008).

A. A Reasonably Cautious Person Would Believe that Defendant Probably Was Under the Influence of Drugs Based Solely on Four Indicia of Illicit Drug Use.

1. The majority erroneously discounted the physical evidence of defendant's illicit drug use.

As explained in the People's opening brief, St. Br. 10-16, the appellate majority erred by discounting four pieces of evidence indicating defendant's use of illicit drugs, including (1) a baggie containing a brown, granular substance found inside defendant's wallet in his vehicle's center console, R26-27; (2) on the front passenger seat, half of a metal beverage can with interior burn marks and a residue on the exterior that field-tested positive for cocaine, C5; R24-25, 31-33; (3) also on the front passenger seat, an uncapped and used syringe, C5; R25; and (4) a fresh "track mark" on defendant's arm, R29. Each of these four pieces of evidence was relevant to the probable cause inquiry and the majority erred by discounting or minimizing them. *See* St. Br. 10-16.

First, that the People's opening brief cited cases that involved drug possession or drug distribution offenses rather than DUI drugs, Def. Br. 25-26

(introduction), 26-28 (baggie), 33-36 (syringe and track marks), is a distinction without a difference. The presence of suspected drugs and drug paraphernalia is relevant to a determination of whether an arrest for any drug-related offense was justified, including for DUI drugs. *See, e.g., Commonwealth v. March*, 154 A.3d 803, 805-06, 810 (Pa. Super. Ct. 2017) (citing presence in vehicle of wax paper bags, cut-off prescription bottle with suspected heroin residue, and hypodermic needle as "evidence of the use of controlled substances" when finding probable cause to arrest for DUI drugs); *State v. Underwood*, 661 S.E.2d 529, 530-32 (Ga. 2008) (citing crack pipe in glove box among evidence providing probable cause to arrest for DUI). Unsurprisingly, defendant provides no authority for the notion that the presence of drugs or drug paraphernalia in a vehicle is *not* relevant when analyzing whether there was probable cause to arrest for DUI drugs.

To say that each of these four pieces of evidence is relevant to the probable cause determination, St. Br. 10-16, is not to say that each piece, alone, provided Beaty with probable cause to believe defendant committed DUI drugs. But the totality of the circumstances test precludes the sort of "divide and conquer" analysis defendant employs here, attempting to pick off each factor in isolation from the others. *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002). Thus, defendant's seriatim objections that each piece, by itself, is insufficient to provide probable cause, Def. Br. 28 (baggie), 28-30 (burnt can with drug residue), 33 (heading regarding syringe and track mark), miss the mark. So too do defendant's arguments that the cases cited in the opening brief are unhelpful given the presence of additional distinguishing circumstances. *Id.* at 26-27, 28-

30, 32-33, 34-36. Defendant misconstrues both the State's argument and the probable cause standard.

Moreover, defendant fails to justify the majority's decision to exclude the baggie and burnt can from the probable cause calculus. The majority and defendant cite no authority in support of their claim that the baggie is entitled to *no* evidentiary weight because the substance contained in it was not identified at the rescission hearing. A3-4; Def. Br. 26, 28. The relevant question is whether Beaty reasonably considered the baggie containing the brown, granular substance as one circumstance (among many) contributing to his belief that defendant probably was under the influence of drugs at the time of arrest, *see* St. Br. 10-11, and this Court's precedent has long held that the presence of suspected drugs is a factor supporting an officer's decision to arrest a defendant for a drug-related offense, *People v. Davis*, 33 Ill. 2d 134, 137, 138 (1965).

Defendant asserts that the majority correctly discounted the burnt can because the appellate briefing mischaracterized Beaty's testimony about the field test on the can's residue and the meaning of its positive result (i.e., whether it indicated the presence of cocaine or opiates). Def. Br. 31;[2] *see also* A3, ¶ 14. As explained in the People's opening brief, although Beaty's testimony reflected that he either misunderstood which illicit drug was identified by the positive test result or misspoke when testifying, this did not vitiate the undeniable relevance of such a positive test result to whether there was probable cause to arrest. St. Br.

[2] According to this Court's clerk's office, defendant did not file a certified copy of the (sole) appellate court brief pursuant to Rule 318(c), so it is outside the record of the case. Moreover, defendant's citation to page 37 of the appellate court brief, Def. Br. 31, is apparently in error, given that the brief is only 25 pages long.

12-13. Similarly, any misstatement in the appellate court brief did not exclude the evidence from consideration as a relevant factor in the probable cause determination.

Finally, defendant faults the People's reliance on a police report (C5) and a paramedic report (IC6-7) that he claims were not introduced into evidence at the rescission hearing. Def. Br. 36-39. The record does not explicitly confirm that they were admitted into evidence at the hearing, but they were certified by the circuit court clerk as part of the record for this case. In any event, with one exception, the complained-of references were either de minimis or cumulative of record evidence from the rescission hearing. *See Pyse v. Byrd*, 115 Ill. App. 3d 1003, 1008 (3d Dist. 1983). The police report was cited once in the statement of facts for the point that witnesses told Beaty that defendant "was passed out," St. Br. 3; that merely narrative fact was not later relied upon in the People's argument and is cumulative of Beaty's testimony at the rescission hearing that he observed defendant to be in and out of consciousness, R24. Other citations to these documents were similarly cumulative because they were almost always accompanied by citations to hearing testimony. *See* St. Br. 3-5, 10, 13, 16-18, 33.

The sole exception — a citation to the paramedic's representation that the track mark on defendant's arm was consistent with "IV drug abuse," St. Br. 16 — was provided for the same reason as were the citations to *People v. Nere* and the administrative code, St. Br. 15-16, that defendant also criticizes, Def. Br. 38: to counter the lower courts' speculative statements that the track mark and syringe were also consistent with defendant being a diabetic. A3 (quoting circuit court). The lower courts had no evidentiary basis to conclude that the syringe and track

mark were potentially related to defendant's diabetes because defendant introduced no evidence that he was diabetic — the only evidence on that point was Beaty's testimony that defendant told him he was a diabetic, R27 — or that the syringe and track mark were related to treatment of diabetes. The State cannot be faulted for not developing a record to counter a point on which defendant provided no evidence at the rescission hearing and about which the lower courts improperly speculated despite defendant's glaring omission.

Thus, defendant fails to effectively rebut the People's argument that the majority erred by minimizing or discounting these four pieces of evidence of illicit drug use as relevant in determining whether, in light of the totality of the circumstances, Beaty reasonably concluded that defendant probably was under the influence of drugs when arrested.

2. These four indicia of illicit drug use provided probable cause to believe that defendant was under the influence of drugs.

Defendant contends that the drug evidence is insufficient to establish probable cause because there was no evidence that defendant ingested or was impaired by drugs, and that Beaty's investigation was inadequate due to its allegedly cursory nature and his lack of expertise in drug detection. Def. Br. 21-36. Defendant's criticisms are misplaced.

In determining whether there is probable cause to arrest, police officers may rely upon reasonable inferences made in light of the totality of the circumstances. *Wesby*, 138 S. Ct. at 586 (internal quotation marks omitted) (citing *Pringle*, 540 U.S. at 372). Such reasonable inferences include "common-sense conclusions about human behavior." *Id.* (citing *Illinois v. Gates*, 462 U.S.

213, 231 (1983)). For example, in *Wesby*, the Supreme Court considered whether officers had probable cause to arrest twenty-one partygoers for disorderly conduct given that the owner had not given the host permission to be in the house or hold a bachelor party there. 138 S. Ct. at 582, 584. In finding probable cause, the Court acknowledged multiple common-sense inferences that the officers were entitled to make in support of the conclusion that the partygoers *knew* that they were entering the home without the owner's permission, including that most homeowners do not live in near-empty houses and most homeowners do not invite people over to use a room as a strip club, to have sex in their bedroom, to smoke marijuana inside, and to leave their floors filthy. *Id.* at 586-87.

Defendant wrongly asserts that there was no evidence that he had ingested and become impaired by drugs. Similar to *Wesby*, the circumstances raised a reasonable inference that defendant was under the influence of drugs at the time of his arrest. First, defendant's behavior and symptoms demonstrated that he was impaired. Most people are not drifting in and out of consciousness, struggling to respond to verbal commands, sweating and lethargic, confused about their location, with a high heart rate and pinpoint pupils at 11 a.m. while in the driver's seat of a running vehicle that is half on and half off of a roadway. *See* R22, 24-25, 27, 31. A reasonable person, even if non-expert, would infer that the person was impaired; either he was having a medical problem or he was intoxicated.

Second, a reasonable interpretation of the evidence at the scene suggested that defendant's impairment was caused by drug use. In deciding what probably

occurred, Beaty could reasonably infer that the cause of defendant's unusual behavior and symptoms was probably drug intoxication given the four indicia of illicit drug use — some of which suggested recent use — found in defendant's vehicle or on his person. Beaty did not need to employ any special experience or training to recognize these items as evidence of recent, illicit drug use. It was a positive field test (in whose application Beaty *was* trained) — and not recognizing drug residue from prior experience in drug cases — that confirmed that the burnt can was connected to drug use. R24-25, 31-33. Even an untrained person could reasonably suspect that a baggie containing a granular substance might be illicit drugs, especially when found with other nearby evidence of illicit drug use. Paramedics informed Beaty that the "track mark" on defendant's arm was "fresh." R29. And a common-sense understanding of human behavior confirms that people do not typically leave a used, uncapped syringe on the front passenger seat of their vehicle for long periods, supporting a reasonable inference that the syringe had been recently used. Thus, the used syringe, fresh track mark, and the confirmed and suspected drugs and drug paraphernalia nearby supported a reasonable inference that defendant had recently ingested drugs. *See, e.g., State v. Meanor*, 863 S.W.2d 884, 887-88 (Mo. 1993) (en banc) (suspect's intoxication while driving "clearly inferable" from circumstantial evidence, including discovery in vehicle of baggie of marijuana, pipe with marijuana residue, smell of burnt marijuana, and suspect's behavior and symptoms); *see also People v. McPeak*, 399 Ill. App. 3d 799, 803 (2d Dist. 2010) (presence of drug paraphernalia "may be" circumstantial evidence that defendant "recently consumed the substance at issue").

That there were *several* indicia of drug use nearby or on defendant's person, and that there was no evidence in the car (such as insulin) even suggesting that the syringe and track mark were instead connected to innocent behavior (treating diabetes) strengthened the reasonableness of the inference of drug intoxication and reduced any potential significance of Beaty's lack of experience and training in identifying drug intoxication. *See People v. Jackson*, 331 Ill. App. 3d 158, 164-65 (4th Dist. 2002) (given presence of several factors indicative of drug use, question of whether probable cause existed to believe vehicle contained further contraband "becomes a commonsense decision and not a decision hinged on specialized training or knowledge").

Beaty needed no particular training or experience to interpret the circumstances. The particular intoxicant need not be identified at the probable cause stage, *see, e.g., People v. Ciborowski*, 2016 IL App (1st) 143352, ¶¶ 2, 82 (noting officer had probable cause to arrest for DUI drugs even though he did not have "particularized knowledge of the specific chemical causing defendant's intoxication"), so Beaty did not have to discern which particular drug could cause defendant's symptoms. Nor was Beaty required to definitively eliminate diabetes as the cause of defendant's symptoms, because an officer is not required to eliminate all possible innocent explanations. *See Wesby*, 138 S. Ct. at 586 (probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity"). Thus, the totality of the circumstances here provided a sufficient basis for even an untrained officer to reasonably conclude that defendant probably was under the influence of drugs at the time of his arrest.

Defendant's repeated theme faulting Beaty for failing to take additional investigative steps, Def. Br. 23-25, 31, 33, is a red herring. Whether one could imagine other types of relevant evidence that, if obtained, might have strengthened the case that criminal activity probably occurred is not the question. *See, e.g., Commonwealth v. Clagon*, 987 N.E.2d 554, 557-58 (Mass. 2013) (regardless of whether missing information would strengthen search warrant application, question remains whether its contents demonstrate probable cause to believe that evidence would be found on premises). Instead, the question is whether a reasonable person would believe that a crime probably occurred under the totality of the known circumstances. *Wear*, 229 Ill. 2d at 560, 563-64.

Accordingly, this Court should reverse because there was probable cause to believe that defendant drove while under the influence of drugs, even to the eye of an arresting officer lacking specialized training and experience in drug use detection. The majority was wrong to find otherwise.

B. Even if the Four Indicia of Illicit Drug Use Alone Were Insufficient, that Evidence Plus Defendant's Physical Symptoms Established Probable Cause.

In the alternative, this Court should reverse even upon concluding that the issue of training and experience in detecting drug use cannot be totally removed from the probable cause analysis because it necessarily involves the interpretation of defendant's physical symptoms and behavior. Expertise in identifying drug intoxication either should not be required at the probable cause stage, or should not be required at all.

1. A police officer need not have the training or experience to qualify as an expert witness to have probable cause to believe that a person is under the influence of drugs.

Citing *People v. Shelton*, the majority deemed Officer Beaty an unreliable evaluator of whether there was probable cause to conclude that defendant was under the influence of drugs due to his lack of training and experience in recognizing drug use, A3-4, and defendant echoes this categorical condemnation of Beaty's ability, *see, e.g.,* Def. Br. 11 ("only sufficient training will enable an officer to know what inferences and deductions are proper to make given a certain set of facts"). But the majority's reliance on *Shelton* was misplaced, for that case held instead that expert, but not lay, opinion testimony on drug intoxication is permissible at a criminal trial. 303 Ill. App. 3d at 925. This Court should not extend *Shelton* to the probable cause context and deem officers who do not qualify as expert witnesses per se unable to form probable cause for an arrest.

The arresting officer's experience and training are plainly *relevant* to a probable cause determination involving a suspected drug-related offense and may increase the accuracy of inferences made from circumstances presented. Def. Br. 8-13. But both the majority and defendant extend this settled point of law beyond the breaking point when they argue that Beaty was *incapable* of forming probable cause to arrest defendant because he lacked expert-level training and experience. A3-4; Def. Br. 11, 13.

Defendant only weakly disputes the People's argument that *Shelton* should not be extended to probable cause determinations. *See* St. Br. 19-25. First, defendant concedes, as he must, that the probable cause standard requires

neither perfection nor sufficient evidence to convict. Def. Br. 6, 12. Second, defendant does not discuss, much less refute, the many cases cited in which probable cause to arrest for a drug-related offense was upheld even where the key officer's or tipster's expertise was not mentioned. *See* St. Br. 22-24. And defendant does not discuss, much less refute, the several cases affirming probable cause to arrest for analogous crimes that require specialized evidence or expert testimony at trial that was not available to the arresting officer. *See* St. Br. 24.

Third, defendant does not directly confront the policy considerations that weigh against requiring such officer expertise at the probable cause stage. As for the obvious difficulty in determining how much training is sufficient, St. Br. 25, defendant dodges the point by noting that this particular officer could not qualify as an expert. Def. Br. 13. And rather than acknowledging the resource constraints that hamper law enforcement agencies from providing extensive training in recognizing drug intoxication to all patrol officers, St. Br. 25, defendant merely notes that there are increasing numbers of drug recognition experts (DREs) in Illinois, Def. Br. 25. Even accepting that there are at least 72 certified DREs in 52 law enforcement agencies statewide, AE16,[3] this statistic

[3] While the opening brief attached two extra-record documents in the appendix, A16-24, the brief also provided a basis for this Court taking judicial notice of those documents in footnotes 11 and 12 on the table of contents to the appendix page. Defendant includes five extra-record documents in his appendix. One is a different excerpt from a document excerpted in the opening brief, AE7-10, so judicial notice of it, too, appears appropriate. But because defendant makes no argument that the Court should take judicial notice of the remaining extra-record documents, AE1-6, 11-16, this Court should disregard them. *See, e.g., Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009) (when brief relies on extra-record matters, reviewing court may strike brief or disregard inappropriate material). In the event that this Court nonetheless considers the documents, their substance is also briefly refuted here.

demonstrates that the majority of Illinois's law enforcement agencies do not have a single DRE on staff. Thus, the idea that officers at every scene with a DUI drug suspect could promptly consult with a DRE (or other extensively trained or experienced officer) is, at best, unrealistic. Instead, defendant's statistic demonstrates how often DUI drug arrests would be invalidated if the rule espoused by the majority and defendant — categorically invalidating DUI drug arrests by non-expert officers — were allowed to stand. The majority's extension of *Shelton* was ill-advised and should be disavowed.

2. A witness need not be an expert to opine on whether a person was under the influence of drugs.

Indeed, this Court should disapprove *Shelton* entirely and permit lay opinion testimony on drug intoxication, even at criminal trials. As explained, drug intoxication or use within the meaning of the DUI statute is much like two other topics about which lay opinion testimony has long been allowed: alcohol intoxication and mental illness. *See* St. Br. 25-33.

Shelton was poorly reasoned. As detailed in the opening brief, *Shelton* cites only *People v. Jacquith*, 129 Ill. App. 3d 107 (1st Dist. 1984), for two principles: (1) a police officer needs training and experience in detection of drug use to be qualified to give opinion testimony on drug intoxication; and (2) the effects of drug use are not commonly known so that training and experience are necessary to understand them. St. Br. 27 (citing *Shelton*, 303 Ill. App. 3d at 925). But *Jacquith* held only that the sole evidence presented — testimony by two police officers who had limited training and experience about detection of drug use — was insufficient to prove defendant guilty beyond a reasonable doubt of

committing a DUI while under the influence of drugs because they could not qualify as experts. 129 Ill. App. 3d at 114-15.

That *Jacquith* found the non-expert testimony insufficient to prove beyond a reasonable doubt that the defendant had driven under the influence of drugs does not establish a rule prohibiting lay opinion testimony about drug intoxication. *See Meanor*, 863 S.W.2d at 888 (noting that *Jacquith* failed to distinguish between admission of evidence of intoxication and sufficiency of evidence of intoxication); c*f. People v. Banks*, 17 Ill. App. 3d 746, 754 (1st Dist. 1974) (noting that lay witness may provide opinion testimony on person's mental capacity and that trial court in first instance determines whether that testimony was sufficient to demonstrate person's sanity). Stated another way, *Jacquith* found only that officer opinion testimony on drug intoxication is stronger if the officer has more extensive training or experience; to the extent that such a statement purports to address whether lay witnesses can provide opinion testimony on drug intoxication at all, it is nothing more than dicta. *See* St. Br. 27-28.

Like *Jacquith*, the other cases defendant cites here addressed only sufficiency claims. Def. Br. 14-15 (citing *People v. Bitterman*, 142 Ill. App. 3d 1062, 1064-65 (1st Dist. 1986); *People v. Vanzandt*, 287 Ill. App. 3d 836, 845 (5th Dist. 1997); *People v. Workman*, 312 Ill. App. 3d 305, 309-12 (2d Dist. 2000); *People v. Foltz*, 403 Ill. App. 3d 419, 423-26 (5th Dist. 2010)). Thus, defendant errs in claiming that these cases illustrate that Illinois courts have long required officers to be qualified as experts before they can opine at a criminal trial that a driver was intoxicated by drugs. Def. Br. 14-15. These dicta from a handful of

appellate court cases are a shaky foundation on which to base a rule that lay opinion testimony on drug intoxication is per se inadmissible.

As detailed in the opening brief, this Court should disapprove *Shelton* and allow lay opinion testimony on drug intoxication because drug intoxication is sufficiently similar to two other topics on which lay opinion testimony is allowed: alcohol intoxication and mental capacity. St. Br. 28-33. Roughly the same percentage of adults either have recently had a mental illness, recently ingested alcohol, or recently ingested illicit or prescription drugs. *Id*. at 28-30. There also is a loose correlation in the percentages of adults estimated to have recently ingested alcohol or drugs in a manner that, if they also drove, would violate the DUI statute. *Id*.

The prevalence of illicit and prescription drug use demonstrates that the average person — and not only those with scientific, technical, or specialized knowledge — has roughly the same experience concerning drug intoxication as concerning alcohol intoxication and mental illness or incapacity. *See People v. Cloutier*, 156 Ill. 2d 483, 501 (1993) (opinion testimony on subject should be limited to expert testimony only if beyond experience of average juror); Ill. R. Evid. 701 & 702 (distinguishing between expert and lay opinion testimony). Thus, drawing on personal experience, a layperson could testify to her opinion that the suspect had ingested drugs by describing the symptoms or behaviors observed and tying the observations to prior experiences concerning drug use. And just as a layperson can develop an informed basis to suspect someone is drunk but cannot tell whether his blood-alcohol content surpasses the legal limit of .08, or can have reason to perceive a mental illness in another without

precisely being able to diagnose a particular mental illness, so too can a layperson can form a basis to believe that another is impaired by drugs, even if he does not necessarily know which drug or what amount of the drug was used.

Defendant's contrary arguments miss the mark. The People argue only that lay opinion testimony on drug intoxication should be *admissible*, not that lay opinion testimony alone is *sufficient* to prove such intoxication or ingestion beyond a reasonable doubt. Thus, defendant's observation that the mental illness or incapacity cases cited in the opening brief involved additional evidence, sometimes including expert testimony, Def. Br. 19-21, in no way rebuts the argument.

In criticizing the data, defendant points out that the drug use cited may not involve "drug abuse." Def. Br. 16-18. But that observation does not advance defendant's argument, for there need not be drug abuse for there to be a potential DUI drug offense; a DUI drug violation can involve ingestion of any amount of certain controlled substances, intoxicating compounds, or methamphetamine, a qualifying amount of cannabis, and drugs (including prescription drugs) that alone or in combination with alcohol rendered the offender incapable of driving safely. 625 ILCS 5/11-501(a). Stated another way, even a first-time user can be convicted of DUI drugs. Thus, this Court should disapprove *Shelton* and permit lay opinion testimony on drug intoxication.

And either because *Shelton* does not extend to the probable cause context or because it is disapproved entirely, this Court should decline to endorse the appellate majority's view that non-experts can *never* develop probable cause to believe that a suspect is under the influence of drugs.

3. The four indicia of drug use, plus defendant's physical symptoms, provided probable cause to believe that defendant was under the influence of drugs.

Upon disavowing the erroneous, *Shelton*-inspired premise that a non-expert can never form probable cause to believe that a person is under the influence of drugs, this Court should conclude that the many indicia of defendant's recent illicit drug use coupled with his physical symptoms and behavior provided probable cause to believe that defendant was under the influence of drugs at the time of his arrest. *See, e.g., Commonwealth v. March*, 154 A.3d 803, 810-11 (Pa. Super. Ct. 2017) (finding probable cause to arrest for DUI after vehicle accident where defendant found unresponsive and pale, and police recovered hypodermic needle and bags containing powder that field-tested positive for heroin in vehicle).

CONCLUSION

For these reasons and those set forth in their opening brief, the People of the State of Illinois respectfully ask this Court to reverse the Third District's judgment affirming the circuit court's order granting defendant's petition to rescind summary suspension.

May 3, 2018

Respectfully submitted,

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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 containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 19 pages.

/s/ Leah M. Bendik
LEAH M. BENDIK
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PROOF OF FILING AND SERVICE

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 May 3, 2018, the **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served by transmitting a copy from my email address to the email addresses of the persons named below:

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

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