

No. 126120

IN THE

## SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 3-17-0163.
	)	
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 16-CF-229.
-vs-	)	
	)	
RYAN JAMES DEROO,	)	Honorable Frank R. Fuhr,
	)	Judge Presiding.
Defendant-Appellant.	)	

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**REPLY BRIEF FOR DEFENDANT-APPELLANT**

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E-FILED  
4/7/2021 12:12 PM  
Carolyn Taft Grosboll  
SUPREME COURT CLERK

**ARGUMENT**

**THE THIRD DISTRICT APPELLATE COURT ERRED IN AFFIRMING THE CIRCUIT COURT'S ADMISSION INTO EVIDENCE OF DEFENDANT'S HOSPITAL BLOOD TEST RESULTS. DEFENDANT'S MEDICAL RECORDS SHOULD NOT HAVE BEEN ADMITTED AS A BUSINESS RECORD PURSUANT TO ILLINOIS RULE OF EVIDENCE 803(6).**

- I. This Court should disregard the State's position in it's brief that it is the intent of Defendant in this instance to allow drunk drivers to evade accountability excluding reliable and otherwise admissible evidence of their guilt.**

As an initial matter in reply, defendant reaffirms his position that the matter before this Court involves the issue of the Separation of Powers Clause of the Illinois Constitution. Ill. Const. 1970, art. II, § 1. At issue is not whether the appellate court majority properly affirmed the trial court's ruling that the trial court exercised its discretion to exclude evidence, but whether the appellate majority erred by misinterpreting the law by not excluding the evidence.

In this case, defendant asks this Court to review the appellate court majority's decision which affirmed the trial court's ruling that admitted defendant's hospital blood test results. It is defendant's position in this instance that the decision to admit defendant's hospital blood test results depends upon proper interpretation of Illinois Rule of Evidence 803(6). Taking this analysis to its next step, defendant asks this Court to determine whether Rule 803(6) conflicts with section 11-501.4 of the Vehicle Code (625 ILCS 5/11-501.4 (West 2016)) as to the admissibility of medical records in criminal cases as hearsay under the business records exception.

The State goes to great length to assert that it is defendant's intent in this instance to ask this Court to construe Rule 803(6) as "allowing drunk drivers to evade accountability by excluding reliable and otherwise admissible evidence of their guilt." (State's Brief at 20). The State's assertion is a misguided attempt by the State to deflect away from the true importance and purpose of this case. Again, as previously stated in this reply, the issue before this Court is whether Rule 803(6) conflicts with Section 625 ILCS 5/11-501.4 of the Motor Vehicle Code. The question before this Court remains whether Defendant's hospital blood draw was properly admitted as a matter of law pursuant to Illinois Rule of Evidence 803(6) as a business record exception to the hearsay rule in a criminal case. Defendant disagrees with all inference by the State that defendant is seeking to "avoid accountability" in this instance.

Defendant is justly seeking to have Rule 803(6) interpreted to restrict the admissibility of his hospital records as a business record exception to the hearsay rule in a criminal case as set forth in the rule. Indeed, the State could attempt to get these records into evidence by calling the proper witnesses to testify if they so chose. However, the State chose to have defendant's hospital medical records submitted as a business record pursuant to a hearsay exception. Illinois Rule of Evidence 803(6) says defendant's medical records can not be admitted as a business records exception in a criminal case. Defendant requests that this Court disregard the State's argument in it's brief that defendant is merely trying to "evade accountability by excluding reliable and otherwise admissible evidence of their guilt."

Certainly, the intent of the defendant is for this Court to conclude that Rule 803(6) clearly states that medical records in criminal cases can not be admitted *under the business records exception* to the hearsay rule. Rule 803(6) conflicts with 625 ILCS 5/11-501.4

as to admission of medical records as a business records exception to the hearsay rule. That this Court's rule should prevail when there is such a conflict was established by this Court in *People v. Peterson*, 2017 IL 120331.

**II. Section 11-501.4 Irreconcilably Conflicts with Illinois Rule of Evidence 803(6) and Therefore Does Violate the Separation of Powers Clause of the Illinois Constitution.**

Contrary to the State's argument, Section 11-501.4 of the Motor Vehicle Code Conflicts with Illinois Rule of Evidence 803 (6) and therefore does violate the Separation of Powers Clause of the Illinois Constitution.

Defendant in his opening brief relies upon this Court's opinion in *People v. Peterson*, 2017 IL 120331. This Court in *Peterson* opined, "Where an irreconcilable conflict exists between a legislative enactment and a rule of this court on a matter within this court's authority, the rule will prevail." *Peterson*, 2017 IL 120331, ¶ 31. The State, citing *Peterson*, when describing the Separation of Powers Clause, states in its brief as follows, "But this clause is not intended to achieve a complete divorce between the branches of government" (State's brief at 10; citing *Peterson*, 2017 IL 120331, ¶ 30). Significantly, this Court went on to state further in *Peterson*, "notwithstanding this overlap between the judicial and legislative branches, this court retains primary constitutional authority over court procedure." *Peterson*, 2017 IL 120331, ¶ 31 (citing *Kunkel v. Walton*, 179 Ill.2d 519, 528 (1997)). Notwithstanding the State's citation to *Peterson*, defendant strongly maintains that *Peterson* stands for the premise that when a rule of this Court and a state statute conflict regarding a matter of court procedure, the court rule shall prevail.

Supreme Court Rules are to be construed in the same manner as statutes, *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002). If the language of a supreme court rule is clear

and unambiguous, we must apply the language used without resort to any further aids of construction. *In Re Estate of Rennick*, 181 Ill. 2d 395, 404-405 (1998). Defendant in this matter relies on the dissent in this case authored by Justice Holdridge. Justice Holdridge opined, “Rule 803(6) creates an exception to the hearsay rule for certain business records ‘except for medical records in criminal cases.’” *People v. Deroo*, 2020 IL App (3d) 170163, ¶ 54 (Holdridge, J., concurring in part and dissenting in part). Thus as the majority acknowledges, the plain language of Rule 803 (6) prohibits the use of business exception to admit medical records in criminal cases.” Justice Holdridge further states, “Section 11-501.4 of the Vehicle Code, by contrast, authorizes the admission of lab results of hospital blood tests in certain criminal DUI prosecutions, subject to certain foundational requirements. By their plain terms, the statute and the rule are in direct conflict.” *Deroo*, 2020 IL App (3d) 170163, ¶ 54 (Holdridge, J., concurring in part and dissenting in part).

As previously set forth before this Court, defendant believes that Rule 803(6) clearly and without ambiguity prohibits the admissions of medical records as a business records exception in criminal cases. Since there is no ambiguity, the commentary notes as set forth by the State in its brief can not be binding.

The State in its brief discusses Illinois Rules of Evidenced Committee comments adopted September 27, 2010. The State in its brief states, “Although the Rules did not codify every statutory rule of evidence, they were not intended to abrogate or supercede any current statutory rules of evidence.” (State’s brief at 13). Again, defendant relies on Justice Holdridge’s analysis on whether committee comments are binding. Justice Holdridge states, “ committee statements are not binding and they may be considered as persuasive authority on when the rule’s meaning is not clear from the language of

the rule itself. *Deroo*, 2020 IL App (3d) 170163, ¶ 53 (Holdridge, J., concurring in part and dissenting in part).

The State argues in its brief that Rule 803 (6) codified the business record exception with which section 11-501.4 had coexisted harmoniously for decades. The State contends Rule 803(6) should also be read harmoniously with section 11.501.4 to avoid creating unnecessary and undivided conflict (State’s brief at 15-16). This argument by the State of “harmonious coexistence” between Rule 803(6) and section 11.501.4 must be rejected by this Court. As previously set forth in this reply, Rule 803(6) unambiguously states that medical records in a criminal case can not be admitted as a business records exception to the hearsay rule. Since the rule is not ambiguous, committee commentary is not binding on this Court’s analysis. However, defendant asked this Court to take an additional approach to the State’s “harmonious coexistence” analysis. If the State’s argument was taken on its face, that would imply that there can never be changes whatsoever.

The Appellate Court First District recently discussed the separation of powers argument in the decision of *People v. Jodon Collins*, 2020 IL App. (1st) 181746. *Collins* involved an offense in the City of Chicago. Defendant (Collins) was found guilty by a Cook County jury of unlawful possession of a weapon and being an armed habitual criminal. Police officers arrested defendant after a foot chase. The foot chase was partially caught on body camera video. The trial court admitted the video over repeated objections by defendant’s counsel that the audio included inadmissible hearsay statements from a Chicago police officer. *Collins*, 2020 Ill App. (1st) 181746, ¶ 1.

The Appellate Court in *Collins* discusses the Law Enforcement Officer-Worn Body Camera Act (hereafter the ACT) (50 ILCS 706/10-1 *et seq.* (West 2016)). The ACT provides that recordings may be used as evidence in any administrative, judicial,

or disciplinary proceeding.” *Id.* § 10-30. The ACT allows the recordings without any expressed limitation. *Collins*, 2020 IL App. (1st) 181746, ¶ 21. Using the analysis this Court used in *People v. Peterson*, 2017 IL 120331, the Appellate Court First District reversed the jury’s guilty verdict. The Appellate Court reasoned that even though the ACT said videos can be used at hearings without limitation, court rules regarding hearsay should govern the admission of the video to the jury. The Appellate Court in *Collins* ruled that the court rule on hearsay will prevail over the legislative ACT. *Collins*, 2020 Ill App. (1st) 181746, ¶¶ 20-30. The Appellate Court in *Collins* reversed and remanded the jury’s verdict of guilty. *Id.*, ¶ 43.

In discussing *Collins*, defendant in this instance is asking this Court to take notice that there hundreds if not thousands of gun violations in the City of Chicago each year. Chicago police have been wearing body cam video devices for years. The language in the ACT as to use of recordings without expressed limitation co-existed with the rules of evidence governing hearsay for years. However, the co-existence in *Collins* did not prevent the Appellate Court, First District, from using the separation of powers argument set forth in *Peterson* to reverse a jury verdict of guilty. When a court rule conflicts with a legislative statute, the rule should prevail. Defendant requests that the Court use the same analysis the Appellate Court used in *Collins* and this Court used in *Peterson*. Simply put, the court rule should prevail under the separation of powers clause of the Illinois Constitution.

### **III. Any Error Admitting Defendant’s Blood Test Results was not harmless.**

Finally, the State in its brief argues that any error which may have been made in admitting defendant’s blood test results was harmless (State’s brief at 28-31). This argument must be rejected by this Court.

On harmless error review, the question is not what the jury could have done, but should have done. We must determine whether the erroneous admission of hearsay evidence was “the weight that tipped the scales against the defendant.” *People v. Parmly*, 117 Ill.2d 386, 396 (1987) (internal quotes omitted).

The record is clear and un-rebutted that the State went to great efforts at trial to ensure the blood draw results were admitted pursuant to 11-501.4 of the Motor Vehicle Code. To establish a business record, the State at the time of trial called the following witnesses: nurse Jennifer Wilkinson (R376-89), Dr. Douglas Gaither (R 409-54), Sheriff’s deputy Clare Woodthorp (R289-321), nurse Kathleen McChesney (R328-408), and John Wetstein, from the Illinois State Police Division of Forensic Services (R461-472).

As the State conceded in its brief, Dr, Gaither’s testimony established that when defendant’s blood sample was spun in a centrifuge to remove the cells, the remaining liquid contained 247 milligrams of ethanol alcohol per deciliter. When converted to grams of ethanol per deciliter of whole blood - the statutory unit of measurement - defendant’s 247 serum alcohol concentration was equal to a blood alcohol concentration of 0.209, more than twice the legal limit of 0.08. (State’s brief at 6-7).

Certainly, this Court cannot conclude that the admission of a blood test result of 0.209 was harmless by beyond a reasonable doubt. The defendant’s grandmother’s testimony that she observed defendant drinking alcohol (State’s brief at 4). Her testimony may have been minimally sufficient, but that is all. At the end of the day, the State relies mostly on the testimony of defendant’s grandmother to convict. Her statement of seeing defendant consume alcohol is insufficient to meet the State’s burden to establish harmlessness beyond a reasonable doubt.



**CONCLUSION**

For the foregoing reasons, defendant respectfully requests that this Court reverse defendant's conviction for aggravated driving under the influence and remand this cause for further proceedings.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 8 pages.

/s/Terry D. Slaw  
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Of Counsel

No. 126120

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Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 16-CF-229.
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	)	
RYAN JAMES DEROO,	)	Honorable Frank R. Fuhr,
Defendant-Appellant.	)	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 April 7, 2021, 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 Ottawa, 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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