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CYNTHIA A. GRANT
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No. 130344

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Second Judicial
Plaintiff-Appellant,	)	District, No. 2-23-0067
	)	
	)	There on Appeal from the
	)	Circuit Court of the Twenty-Third
v.	)	Judicial Circuit, Kendall County,
	)	Illinois, No. 18-CF-395
	)	
	)	
KRYSTLE L. HOFFMAN,	)	The Honorable
	)	Robert P. Pilmer,
Defendant-Appellee.	)	Judge Presiding.

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

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ORAL ARGUMENT REQUESTED

ARGUMENT

The People's opening brief established that, read as a whole and in the context of other relevant statutes and the legislative history, 730 ILCS 5/5-4-1(c-1.5)'s reference to offenses that "involve the use or possession of drugs" describes lower-level, nonviolent crimes predicated on drug use and possession, and not greater offenses like delivery or drug-induced homicide. Defendant's argument that the word "involves" must be read expansively requires looking at that word in isolation and ignoring all context and history, contrary to established rules of statutory construction. This Court should reject it.

A. Subsection (c-1.5)'s plain language, read as a whole and in context, unambiguously shows that the subsection applies only to lower-level, nonviolent offenses, and not drug-induced homicide.

Defendant argues that an offense "involv[ing]" drug possession is any offense that "includes" the conduct of drug possession, and thus extends to offenses like drug-induced homicide that require delivery, because delivery "necessarily entails possession." Def. Br. 15, 19-20.[1] Defendant contends that only this construction is consistent with the plain meaning of "involves," which she argues is "'to include.'" *Id.* at 15, 16, 20 (quoting *United States v. Arnaout*, 431 F.3d 994, 1001 (7th Cir. 2005)).

[1] "Peo. Br. __" and "Def. Br. __" refer to the People's opening brief and defendant's brief, respectively.

But "[i]t is a fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Corbett v. Cnty. of Lake*, 2017 IL 121536, ¶ 27 (cleaned up). Moreover, "[t]he word 'involve' . . . is susceptible to many meanings" — including "to have within or as part of itself" or "to relate closely" — and the involvement to which a statute refers depends on context. *See Boim v. Quranic Literacy Inst. & Holy Land Found. for Relief & Dev.*, 291 F.3d 1000, 1009 (7th Cir. 2002) (cleaned up) (collecting dictionary definitions of "involve" and considering statute's structure, context, and legislative history to determine meaning of word); *see also, e.g.*, *United States v. Watkins*, 940 F.3d 152, 164 (2d Cir. 2019) ("The word 'involves' is susceptible to more than one interpretation.").

Nor do the cases defendant cites that broadly construed statutes containing the word "involves" as referring to offenses that require specified criminal conduct, Def. Br. 17-19, say that this is the only meaning the word can accommodate. For example, *Kawashima v. Holder*, 565 U.S. 478 (2012), held that a statute referencing offenses that "involve" fraud or deceit meant offenses "that necessarily entail fraudulent or deceitful conduct," and not merely crimes with fraud or deceit as "formal elements," but did not suggest that "necessarily entail" is the only meaning of "involves" or that context cannot show that the word was used in a narrower sense. *See id.* at 483-84. To the contrary, the opinion spent several pages carefully considering and

addressing arguments that neighboring statutory language and sentencing guidelines showed that a broad reading was inconsistent with Congress's intent. *See id.* at 485-90. Similarly, *Shular v. United States*, 589 U.S. 154 (2020), held that a federal sentencing enhancement for defendants with prior convictions for state offenses "involving manufacturing, distribution," and other "serious drug offenses" referred broadly to offenses that require specified conduct, but did not reach that conclusion based solely on the word "involving"; the Court also considered and relied on neighboring statutory language. *See id.* at 161-63. Indeed, *Shular* acknowledged that the Court had previously construed a statute referencing offenses "involving" specified conduct more narrowly based on different context. *See id.* at 162-63 (distinguishing *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 409 (2003)). Thus, the word "involves" can accommodate different meanings, and understanding which was intended requires considering the statute as a whole.

That the meaning of the word "involves" varies depending on context is not to say that subsection (c-1.5) is ambiguous, or subject to multiple reasonable interpretations. "Ambiguity is a creature not of definitional possibilities but of statutory context," and multiple dictionary definitions of a term do not make a statute ambiguous when, as here, only one definition "makes sense within the context of" the statute as a whole. *Slepicka v. Ill. Dep't of Pub. Health*, 2014 IL 116927, ¶¶ 14, 20 (cleaned up)

The context here makes clear that subsection (c-1.5)'s reference to an "offense [that] involves the use or possession of drugs" should be read narrowly to encompass only crimes that relate closely, Involve, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/involve, to drug use or possession. Reading the word "involves" expansively, as defendant urges, would violate the General Assembly's clear intent to include only "use" or "possession" offenses, and thereby to exclude other, non-listed offenses like "delivery." Such a reading violates the interpretive maxim of *expressio unius est exclusio alterius* (*i.e.*, the expression of one thing implies the exclusion of others). "This rule is based on logic and common sense, as it expresses the learning of common experience that when people say one thing they do not mean something else." *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17 (cleaned up). The rule also is closely linked to the statutory language: "[w]hen a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation." *In re C.C.*, 2011 IL 111795, ¶ 34. And it applies even where the statutory language is "plain and unambiguous." *People v. O' Connell*, 227 Ill. 2d 31, 37 (2007); *C.C.*, 2011 IL 111795, ¶¶ 33-34; *but see People v. Grant*, 2022 IL 126824, ¶ 42 (finding canon inapposite where "the legislative intent [was] clear from the plain language of the statute.")

When subsection (c-1.5)'s language is read as a whole, and in context, it is clear that an offense that "involves" drug possession refers to the specific offenses closely related to and based on that conduct, and not offenses based on more serious conduct — such as delivery. As the People's opening brief explained, the General Assembly treats drug crimes that entail delivery as distinct from, and more serious than, crimes that entail mere possession, by placing delivery offenses and simple possession offenses in different sections of statutes defining those drug crimes and assigning stricter penalties to delivery offenses. Peo. Br. 14-15. "In construing the provisions of a statute it is not only proper, but often necessary, to consider the provisions of other statutes relating to the same subject matter for the purpose of determining legislative intent." *Grant*, 2022 IL 126824, ¶ 25 (cleaned up). Considering the related statutes that define drug crimes, it stands to reason that if the legislature intended to reference offenses that entail the distinct and more serious criminal conduct of delivery, it would have included "delivery" among the list of offenses to which subsection (c-1.5) applies. By instead adopting a list that included *only* use and possession offenses, the General Assembly expressed its intent that only those offenses, and not delivery offenses, should be eligible for reduced sentences. Indeed, as the People also explained, Peo. Br. 13-14, when the legislature wants to apply a sentencing reform to a possession offense *and* a greater offense that includes possession, it refers to both, *see* 730 ILCS 5/5-6-3.8 (eff. July 1, 2021, P.A. 101-652) (referring to

"possession of a controlled substance" and "possession with intent to deliver.").

Subsection (c-1.5)'s neighboring language describing the other eligible offenses — retail theft and driving on a revoked license due to unpaid financial obligations — is further evidence of the legislative intent to make lower-level, nonviolent crimes like those, and not homicide, eligible for reduced sentencing. As such, the neighboring words principle (sometimes called *noscitur a sociis*), *Corbett*, 2017 IL 121536, ¶ 32, also supports the People's construction. Indeed, this canon has been used to narrowly construe language that normally has broad implications when it is read in isolation, such as the word "any." *See, e.g.*, *id.* ¶¶ 32-33 (applying canon to list of terms starting with and modified by "any" and summarizing other cases doing so).

Defendant argues that the neighboring words principle "provides no guidance because" the "subsection specifically relates to 'an offense that requires a mandatory minimum sentence of imprisonment,'" which, she contends, neither retail theft nor driving on a revoked license due to unpaid financial obligations do. Def. Br. 21-22 (quoting 725 ILCS 5/5-4-1(c-1.5)). Defendant is incorrect. Both of those other offenses *can* require mandatory minimum prison terms from which subsection (c-1.5) allows courts to deviate. Retail theft is sometimes a felony, 720 ILCS 5/16-25(f)(1)-(3), and felony retail theft has mandatory minimum prison terms, *e.g.,* 730 ILCS 5/5-4.5-45(a) ("The sentence of imprisonment [for a Class 4 felony] shall be a determinate

sentence of not less than one year and not more than 3 years"). To be sure, felony retail theft is usually probationable. *Id.* § 5-4.5-15(a)(1), (a)(4), (b) (authorized dispositions for felonies); *e.g.*, *id.* § 5/5-4.5-45(d) (probation term of up to 30 months for Class 4 felony); *see also id.* § 5/5-5-3(b) (listing nonprobationable offenses). But it is still "an offense that requires a mandatory minimum sentence of imprisonment" because if the court determines that probation is inappropriate, it cannot impose a prison term shorter than the mandatory minimum. Thus, subsection (c-1.5) allows additional discretion when sentencing felony retail theft by allowing a court to impose "a lesser term of imprisonment," *id.* § 5/5-4-1(c-1.5), if it finds that sentence more just and appropriate than either probation or years in prison.

Driving on a revoked license due to unpaid financial obligations can also carry a mandatory minimum prison term. A defendant who drives on a license suspended due to certain unpaid financial obligations, such as unpaid tolls, *see* 625 ILCS § 5/6-306.8(a), is guilty of a Class A misdemeanor, *see id.* § 5/6-303(a), and, for a third or subsequent offense, is subject to "a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court," *id.* § 5/6-303(d-1).

Thus, retail theft and driving on a revoked license due to unpaid financial obligations can both carry mandatory minimum terms of imprisonment from which subsection (c-1.5) allows courts to deviate. Defendant's argument that the neighboring words canon is inapposite

because those other offenses do not carry mandatory minimum sentences is thus unavailing. Indeed, if defendant were correct, subsection (c-1.5)'s reference to retail theft and driving on a revoked license due to unpaid financial obligations would have no meaning at all. *See, e.g.*, *People v. Gutman*, 2011 IL 110338, ¶ 12 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous.").

The People's interpretation of "involv[ing] the use or possession of drugs" is also appropriate because defendant's interpretation creates absurd and unintended results. As the People explained, defendant's construction, under which an offense "involves" drug possession if it entails that conduct, encompasses not only drug-induced homicide but also several other serious offenses against persons, including drug-related forms of sexual assault. Peo Br. 18-19 (citing, *e.g.*, 720 ILCS 5/11-1.30(a)(7)). Significantly, defendant does not argue that any of the serious, drug-related crimes the People identified do not "involve" drug possession under her interpretation of subsection (c-1.5), *see* Def. Br. 23-24, nor could she, because every one of those offenses necessarily entails drug possession, Peo. Br. 19 (listing statutes). To conclude that the General Assembly intended to include offenses like those among the "variety of offenses eligible for reduced sentencing," *id.* at 17, when the other offenses it made eligible were retail theft and driving on a revoked license, would be absurd. Construing subsection (c-1.5) as applying

to drug-related violent crimes when it clearly excludes all other violent crimes would also create arbitrary results, such as by making a defendant convicted of criminal sexual assault that was *aggravated* because he delivered a drug to the victim, 720 ILCS § 5/11-1.30(a)(7), eligible for reduced sentencing when the legislature did not extend that grace even to defendants convicted of the *non-aggravated* form of the same crime, *id.* § 5/11-1.20; *see* Peo. Br. 19.

Defendant argues that her construction does not create absurd results because subsection (c-1.5)'s other requirements for imposing a reduced sentence — that the court find that the defendant does not pose a public safety risk and that the interests of justice require imposing a lesser sentence — will prevent "violent criminals . . . [from] roam[ing] the streets, unencumbered by penal restraints." Def. Br. 12, 24-25. Thus, defendant suggests, the subsection's first requirement should be construed broadly because the second and third requirements will sufficiently limit judicial discretion. *Id.* But the General Assembly did not believe they would. Had the legislature believed that subsection (c-1.5)'s other requirements could be relied upon to protect the community by preventing courts from imposing improperly low sentences on defendants convicted of serious or violent offenses, it would not have made the subsection's first requirement so restrictive as to prevent the law from applying to defendants convicted of such offenses. Indeed, even under defendant's interpretation, the vast

majority of serious, violent offenses are categorically ineligible for reduced sentencing. Defendant suggests that the General Assembly made an exception to its policy of excluding violent crimes for drug-related violent crimes, but there is no principled reason it would have done so.

In sum, the text of subsection (c-1.5), considered as a whole and in context with related statutory language, clearly shows that the General Assembly intended only to make lower-level, nonviolent offenses predicated and on, and closely related to, drug "use" or "possession" eligible for reduced sentencing.

B. The legislative history further shows that subsection (c-1.5) applies only to low-level, nonviolent crimes.

If the Court finds subsection (c-1.5) ambiguous, the legislative history eliminates any possible doubt that the People's interpretation is correct. As the People explained, the subsection was the culmination of a series of amendments that substantially reduced the number of serious and violent crimes eligible for reduced sentencing. Peo. Br. 24-25. Defendant's interpretation thwarts that legislative intent by adding crimes that the subsection was amended to exclude, as well as crimes, such as drug-related sex offenses, that were excluded from every version of the bill, even the original, much broader one. *See* House Bill 1587 (as introduced), 101st Ill. Gen. Assem., filed Jan. 30, 2019, at 1, 6-8 (making sex offenses ineligible).

Defendant includes several lengthy quotations from legislators about why relaxing mandatory minimum sentences was desirable, but the quoted

statements do not address which offenses were intended to be eligible. Def. Br. 31-34; *see, e.g.*, 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 175 (statement of Rep. Harper) (law would allow "smart sentences for individuals who are convicted of a[n]" unspecified "crime but do not pose a threat to public safety"); *id.* at 179-80 (statement of Rep. Connor) (law would allow courts "to impose something other than that mandatory minimum and get the person" convicted of an unspecified crime "back to functioning in society as quickly as possible"); 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 16-17, 19 (statement of Senator Sims) (explaining that law would "tear down the problems that we have . . . because of mandatory minimum sentences" and discussing subsection (c-1.5)'s other requirements, but not which offenses are eligible). These generalized policy statements say nothing about the meaning of subsection (c-1.5)'s language limiting its application to certain offenses, so they cannot aid the Court in interpreting that language.

Nor do the legislators' statements addressing which offenses would be exempted from mandatory sentencing support defendant's construction. As defendant notes, Def. Br. 31-32, Representative Bryant argued against House Bill 1587 on the ground that the bill would apply to serious, violent offenses, including drug-induced homicide. 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 175-76 (statement of Rep. Bryant). But Bryant's stated concern does not support defendant's interpretation because, as the People

noted, Peo. Br. 25-26, but defendant does not mention, Def. Br. 31-32, the bill's sponsor explained that Bryant's concern arose from a "misunderstanding" because the bill had been amended to "only refer" to the crimes listed in the enacted version of subsection (c-1.5), *see* 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 176 (statement of Rep. Harper).[2] Given this clarification, the legislators who voted for the bill did not believe that it would apply to crimes like defendant's because, as its sponsor assured, it had been amended to prevent that.

Defendant also argues that multiple "legislators" and "[l]awmakers recognized that the phrase 'involves the use or possession of drugs'" could apply broadly to serious offenses, Def. Br. 35, but only one legislator said as much. Senator McClure argued that this phrase is ambiguous and might cause courts to apply subsection (c-1.5) to violent offenses, and therefore that the Senate should reject the final version of House Bill 1587, 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 17-19, which it then did, *id.* at

[2] Indeed, contrary to defendant's suggestion, Def. Br. 31-32, 35, Representative Bryant's statements do not even suggest that she believed that the version of subsection (c-1.5) that was enacted would apply to drug-induced homicide. Under the first and second amended versions of House Bill 1587, drug-induced homicide was eligible for reduced sentencing because it did not fall into any category that either bill made ineligible. *See* Peo. Br. 24-25 (summarizing earlier bills). When Bryant suggested that the bill applied to drug-induced homicide, she apparently believed that the House was voting on one of those prior versions because she also stated that the bill would apply to offenses, such as solicitation of murder and burglary, that do not "involve" drug use or possession even under defendant's interpretation. *See* 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 175-76.

20. Contrary to defendant's suggestion, this action by the Senate in 2019 does not suggest that the General Assembly intended to relax sentences for serious, violent offenses when both legislative houses later passed subsection (c-1.5) in 2021. Even if legislators who voted in favor of the subsection recalled McClure's statements from a year and a half earlier, it would not follow that they intended for the subsection to apply to violent crimes merely because an opponent had once argued that it could.

Indeed, the House sponsor of Public Act 101-652, which enacted subsection (c-1.5), characterized it as "provid[ing] for more judicial discretion for *lower level, non-violent offenses*." 101st Ill. Gen. Assem., House Proceedings, Jan. 13, 2021, at 6-7 (statement of Rep. Slaughter) (emphasis added). Defendant implies that Representative Slaughter may have been referring to a different provision, Def. Br. 37, but that is incorrect: this statement was clearly a reference to subsection (c-1.5), as Representative Slaughter made it while describing the sentencing reforms added by Senate Amendment Two, *see* 101st Ill. Gen. Assem., House Proceedings, Jan. 13, 2021, at 6-7, which added subsection (c-1.5), *see* Second Senate Amendment to House Bill 3653, Ill. 101st Ill. Gen. Assem., filed Jan. 13, 2021, at 604-05. Defendant observes, correctly, that Slaughter's statement was "the only comment made since 2019 regarding the subsection." Def. Br. 37. Accordingly, it carries significant weight in clarifying the intent of the legislators who enacted the bill in 2021.

For these reasons, the legislative history confirms that the General Assembly intended for subsection (c-1.5) to apply only to lower level, non-violent offenses, and not to more serious offenses like drug-induced homicide.

C. The rule of lenity does not apply.

Finally, contrary to defendant's argument, the rule of lenity is inapplicable. Def. Br. 40-41. That rule "'applies only to statutes containing grievous ambiguities'" that leave courts "'unable to do more than merely guess the legislature's intent.'" *In re Jarquan B.*, 2017 IL 121483, ¶ 36 (quoting *People v. Fiveash*, 2015 IL 117669, ¶ 34); *see also, e.g.*, *Pugin v. Garland*, 599 U.S. 600, 610 (2023) (rule "applies only if after seizing everything from which aid can be derived, there remains grievous ambiguity") (cleaned up). Further, "[t]he rule of lenity does not require this court to construe a statute rigidly and circumvent the legislature's intent," which "is paramount, and all other rules of statutory construction are subordinate to it." *People v. Garcia*, 241 Ill. 2d 416, 427 (2011) (cleaned up); *accord People v. Williams,* 2016 IL 118375, ¶ 15.

Here, even if the Court finds that subsection (c-1.5) is ambiguous, it is not "grievously" so. As explained above, established canons of construction demonstrate that the General Assembly intended to allow reduced sentencing for the lower level, nonviolent offenses to which the subsection actually refers, and not to other, more serious crimes such as delivery or drug-induced homicide. And, as also explained, the legislative history eliminates any doubt

that the General Assembly did not intend for subsection (c-1.5) to apply to serious, violent offenses that the subsection's language was amended to exclude.

CONCLUSION

This Court should hold that subsection (c-1.5) does not apply to defendant's offense of drug-induced homicide, reverse the appellate court's contrary judgment, and reinstate defendant's mandatory minimum six-year prison sentence.

January 21, 2025

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, and the certificate of service, is 15 pages.

/s/ Aaron M. Williams
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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 January 21, 2025, the foregoing **Reply Brief of Plaintiff-Appellant 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 served the person below at the registered email address:

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