No. 126120

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF PLAINTIFF-APPELLEE
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NATURE OF THE ACTION

Following a jury trial in the Circuit Court of Rock Island County, defendant Ryan James Deroo was convicted of aggravated driving under the influence (DUI) and aggravated driving while his license was revoked, and sentenced to concurrent prison terms of nine and three years, respectively. R583; A1.[1] Defendant appealed, and the Illinois Appellate Court affirmed. *People v. Deroo*, 2020 IL App (3d) 170163, ¶ 46. Defendant now appeals that judgment. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether 625 ILCS 5/11-501.4, which permits admission of the results of blood tests conducted in the course of emergency medical treatment in DUI cases, is consistent with Illinois Rule of Evidence 803(6), which excludes medical records from admission as business records in criminal cases.

2. Whether any error in admitting defendant's blood test results was harmless where defendant was convicted and sentenced for aggravated DUI for driving under the influence of alcohol, not aggravated DUI for driving with a blood alcohol concentration of 0.08 or more, and evidence apart from the blood test results overwhelming proved that he was driving while under the influence of alcohol.

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[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," to defendant's brief as "Def. Br. __," and to defendant's appendix as "A__."

JURISDICTION

This Court has jurisdiction under Supreme Court Rules 315 and 612(b). On September 30, 2020, this Court allowed defendant's petition for leave to appeal. The circuit court sentenced defendant on March 8, 2017, R583-84, and he filed a notice of appeal that same day, A3. Although the circuit court did not enter its written judgment until March 22, 2017, A1-2, defendant's notice of appeal was timely and effective because there was no discrepancy between the oral pronouncement of sentence and the subsequent written judgment. *Compare* A1-2 *with* R583-84; *see People v. Allen*, 71 Ill. 2d 378, 380-82 (1978).[2]

STATUTE AND COURT RULE INVOLVED

Section 11-501.4 of the Illinois Vehicle Code provides in relevant part:

> **Section 11-501.4. Admissibility of chemical tests of blood, other bodily substance, or urine conducted in the regular course of providing emergency medical treatment.**
>
> (a) Notwithstanding any other provisions of law, the results of blood, other bodily substance, or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood, other bodily substance, or urine conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961 or the Criminal Code of 2012, when each of the following criteria are met:

[2] Although Defendant's appendix includes an amended notice of appeal, A4, that document is not dated, file-stamped, or included in the record on appeal.

> (1) the chemical tests performed upon an individual's blood, other bodily substance, or urine were ordered in the regular course of providing emergency treatment and not at the request of law enforcement authorities;
>
> (2) the chemical tests performed upon an individual's blood, other bodily substance, or urine were performed by the laboratory routinely used by the hospital; and
>
> (3) results of chemical tests performed upon an individual's blood, other bodily substance, or urine are admissible into evidence regardless of the time that the records were prepared.

625 ILCS 5/11-501.4.

At the time of defendant's crimes and trial, Illinois Rule of Evidence 803 provided in relevant part:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> * * *
>
> **(6) Records of Regularly Conducted Activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 901(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, but not including in criminal cases medical records. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Ill. R. Evid 803(6) (adopted Sept. 27, 2010, and eff. Jan. 1, 2011 through Sept. 27, 2018).

STATEMENT OF FACTS

Defendant was charged with aggravated DUI for driving under the influence of alcohol, 625 ILCS 5/11-501(a)(2), (d)(2)(D) (2016); aggravated DUI for driving with a blood alcohol concentration of 0.08 or greater, 625 ILCS 5/11-501(a)(1), (d)(2)(D) (2016); and aggravated driving while his license was revoked, 625 ILCS 5/6-303(d) (2016). C7-9. Because the two DUI charges were aggravated by defendant's four prior DUI convictions, and the charge for driving while his license was revoked was aggravated by his prior conviction for the same offense, *see id.*, the circuit court admitted certified copies of the prior convictions outside the presence of the jury, R455-57, which was told that the charges were two counts of DUI and one count of driving while his license was revoked, R112-13, R117-18; C122.

The evidence at trial showed that defendant drove his grandmother's car after drinking alcohol. R330-34, R339-41. Defendant's grandmother testified that on March 13, 2016, defendant was drinking with his friends in her garage. R330-31, R334, R341. She did not know the friends' names, but recognized them as "local kids." R340. Then defendant got into her car and drove away. R332-33. He was the only person in the car, R333, R339; his friends had all gone by that time, R339-40.

Defendant lost control of his grandmother's car while driving around a curve, and the car left the road, flipped, and crashed upside down in a roadside ditch. R253-59. When the car came to a stop, defendant was hanging out of the driver's side window. R259-61, R345-48. Carrie Olson, a witness to the crash, testified that defendant was the only person in the car. R259-61, R279, R282, R288. She stayed at the scene until the ambulance arrived. R287-88.

When the ambulance arrived, emergency personnel removed defendant from the wreck and loaded him into the ambulance. R344-47, R349. Bruce Retherford, the paramedic who examined defendant in the ambulance, R343-44, R349, testified that defendant's breath smelled strongly of alcohol, R352, R361, and his pupils' reaction to light was consistent with intoxication, R354, R362. In addition, defendant swung between being hostile toward Retherford and treating Retherford like his "best friend." R352. Retherford believed that defendant was intoxicated. R356.

Defendant was transported to the hospital, where he was treated in the emergency room. R350-51. Jennifer Wilkinson, the emergency room nurse on duty when defendant arrived, R368-69, R371, R390, testified that defendant was uncooperative, he swore at hospital staff, and he kept trying to leave. R371-72. He did not make much sense and could not remember where he had been going or where he had been, R374, R376, but he admitted to

Wilkinson that he had been drinking, R374-75, R389. Wilkinson also believed that defendant was intoxicated. R389.

Dr. Douglas Gaither, the emergency room doctor who treated defendant, R429, testified that defendant also admitted to him that defendant had been drinking, R432. Gaither testified that defendant's speech was slurred, which Gaither attributed to alcohol. R431. Gaither found no injuries that would account for defendant's slurred speech, R442, R449; defendant had scrapes on his knees, cuts on his face, and a broken nose, R394, R400, R448. Gaither believed that defendant was under the influence of alcohol based in part on "[h]is slurred speech and his slow reaction time when [Gaither] would ask him questions." R445.

Gaither ordered defendant's blood drawn and subjected to a panel of tests, including a test for alcohol, in the course of providing defendant with emergency medical treatment rather than at the request of law enforcement. R376, R381, R383, R385-86, R404-05, R433-35. Defendant's blood was tested at the laboratory in the hospital, R381, R383, R435-36, which was the laboratory that the hospital routinely used for such testing, R381, R435-36.

Defendant's blood alcohol test result showed a serum alcohol concentration of 247, meaning that after defendant's blood sample was spun in a centrifuge to remove the cells, the remaining liquid contained 247 milligrams of ethanol (alcohol, R407, R433) per deciliter. R438-41. When converted to grams of ethanol per deciliter of whole blood — the statutory

unit of measurement, R466-67, *see* 625 ILCS 5/11-501.2(a)(4) — 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, R466-70.

After Rock Island County Sheriff's Deputy Claire Woodthorp arrived at the hospital, she waited to speak with defendant until medical personnel finished treating his injuries. R300-02. She observed that defendant's speech was very slow and slurred, and he smelled strongly of alcohol. R304. When Woodthrop asked defendant if he knew why he was in the hospital, he answered that it was "[b]ecause [he] totaled the car." *Id.* Woodthorp believed that defendant was under the influence of alcohol. R306. She asked him to consent to provide a blood sample, R308, but he just laughed and refused, *id.* Woodthorp confirmed that she did not direct hospital staff to draw defendant's blood. R310.

Defendant testified, consistent with his theory of defense, that he had not been driving the crashed vehicle. *See* R520 (defense's closing argument that "[w]hat we do know is that the State has proven that [defendant] by his own admission was drinking, and he was under the influence," but "what we don't know and what is in contention is whether he was driving that vehicle while he was under the influence"). Defendant testified that on the day of the crash, his friends came over to his grandmother's garage with someone called "T," whom defendant had never met before. R79-480. T and defendant's friends started drinking liquor in the garage, but defendant abstained. R480-

81. At some point, defendant ran out of cigarettes and made a quick trip to the gas station for more; it was then that his grandmother saw him take her car. R481-82. When he returned, he started drinking with the others. R482, R491. T then asked if he could drive defendant's grandmother's car and defendant agreed. R482-83, R493. T drove while defendant rode the front passenger seat. R483, R485. They finished a bottle of liquor between the two of them while T drove, and defendant became "kind of drunk." R483. Eventually, T lost control of the car and crashed, and defendant awoke in an ambulance. R483-84. He had no idea where T went after the crash. R495.

On cross-examination, defendant testified that his friends did not know T either; they had just encountered him while walking around town that day and brought him to defendant's grandmother's garage. R491. When asked what route he took to the gas station when he went to buy cigarettes, defendant was unable to name a single street. R491-92. Defendant testified that he did not drive when he and T were in the car together because he did not have a license, but defendant admitted that the lack of a license had not mattered to him earlier that day when he drove to buy cigarettes. R493.

The jury found defendant guilty on all counts. R550-52; C138-40. The circuit court merged defendant's conviction under 625 ILCS 5/11-501(a)(1), (d)(2)(D), for aggravated DUI for driving with a blood alcohol concentration of 0.08 or more after four prior DUI convictions, into his conviction under 625 ILCS 5/11-501(a)(2), (d)(2)(D), for aggravated DUI for driving under the

influence of alcohol after four prior DUI convictions. R583; *see* A1. The circuit court then entered judgment on the convictions for aggravated DUI for driving under the influence of alcohol and aggravated driving while license revoked, and sentenced defendant to concurrent prison terms of nine and three years, respectively. R583-84; A1.

Defendant appealed, A3, and the appellate court affirmed. *People v. Deroo*, 2020 IL App (3d) 170163, ¶ 46. A majority of the appellate court held that defendant's blood test results were properly admitted under § 11-501.4. *Id.* ¶ 44. The majority held that section 11-501.4's hearsay exception for blood test results obtained in the course of emergency medical treatment does not conflict with the general rule of Illinois Rule of Evidence 803(6), which excludes medical records from admission as business records in criminal cases. *Id.* ¶ 44.

The dissent would have held that § 11-501.4 irreconcilably conflicts with Rule 803(6). *Id.* ¶¶ 54-57 (Holdridge, J., concurring in part and dissenting in part). Although the dissent acknowledged that the committee commentary to the Illinois Rules of Evidence announced the intent that no existing statutory rule of evidence be invalidated, the dissent found it was error to consider that statement of the drafters' intent when interpreting Rule 803(6). *Id.* ¶ 55.

ARGUMENT

I. Standard of Review

The interpretation of statutes and this Court's rules are questions of law that this Court reviews de novo. *People v. Smith*, 2016 IL 119659, ¶ 15; *People v. Drum*, 194 Ill. 2d 485, 488 (2000). Similarly, whether a statute and rule conflict in violation of the Separation of Powers Clause is a question this Court reviews de novo. *People v. Peterson*, 2017 IL 120331, ¶ 28.

II. Section 11-501.4 Does Not Violate the Separation of Powers Clause of the Illinois Constitution Because It Does Not Irreconcilably Conflict with Illinois Rule of Evidence 803(6).

The Separation of Powers Clause of the Illinois Constitution provides that the "legislative, executive and judicial branches are separate" and that "[n]o branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1. But this clause "is not intended to achieve a complete divorce between the branches of government." *Peterson*, 2017 IL 120331, ¶ 30 (internal quotations removed). As "the branch of government charged with the determination of public policy," *id.*, the General Assembly "has 'concurrent constitutional authority to enact complementary statutes,'" *id.* (quoting *People v. Walker*, 119 Ill. 2d 465, 475 (1988)), which includes "'the power to prescribe new and alter existing rules of evidence or to prescribe methods of proof,'" *People v. Rolfingsmeyer*, 101 Ill. 2d 137, 140 (1984) (quoting *People v. Wells*, 380 Ill. 347, 354 (1942)). Thus, "[a]lthough this [C]ourt is empowered to promulgate rules regarding the admission of evidence at trial, the General Assembly may legislate in this area without

necessarily offending separation of powers." *Peterson*, 2017 IL 120331, ¶ 30. If a statute directly and irreconcilably conflicts with one of this Court's rules, then the rule must prevail, *id.* ¶ 31 (citing *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997)), but this Court seeks to reconcile apparent conflicts whenever possible, *People v. Williams*, 124 Ill. 2d 300, 306 (1988), and indulges a "strong presumption" that statutes challenged under the Separation of Powers Clause are constitutional, *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 39 (2001).

To determine whether section 11-501.4 and Rule 803(6) irreconcilably conflict, the Court must first construe them. *See People v. Minnis*, 2016 IL 119563, ¶ 25 ("A court cannot determine whether a statute reaches too far without first knowing what the statute covers."). This Court construes statutes and rules using the same principles of construction and with the same "primary objective" of "ascertain[ing] and giv[ing] effect to the drafters' intent." *People v. Abdullah*, 2019 IL 123492, ¶ 25. Relevant considerations include "the reason for the rule, 'the problem sought to be remedied, the purposes to be achieved, and the consequences of construing the statute [or rule] one way or another,'" *id.* (quoting and altering *People v. Clark*, 2019 IL 122891, ¶ 20), for the Court presumes that the drafters "'did not intend to produce absurd, inconvenient or unjust results,'" *id.* (quoting *People v. Marker*, 233 Ill. 2d 158, 167 (2009)).

Application of these principles reveals that section 11-501.4 and Rule 803(6) do not irreconcilably conflict. As explained below, Rule 803(6) codified the existing statutory business record exception to the hearsay rule, with which section 11-501.4 had coexisted harmoniously for decades. Because the Court intended that the Illinois Rules of Evidence ("Rules") not invalidate any existing and otherwise valid statutory rules of evidence, Rule 803(6) therefore did not invalidate section 11-501.4 when it codified the statutory business record exception. Moreover, Rule 803(6) does not irreconcilably conflict with section 11-501.4 even if construed as changing existing law rather than codifying it, because the two rules provide different, rather than conflicting, hearsay exceptions.

A. Section 11-501.4 does not conflict with Rule 806(3) because Rule 806(3) codified existing evidentiary law, which permitted admission of blood test results in DUI cases under section 11-501.4.

Defendant argues that section 11-501.4 "attempts to carve out an exception" to Rule 803(6), Def. Br. 13, but section 11-501.4 was enacted over 20 years before the Rules were adopted, *see* Ill. Rev. Stat. 1989, ch. 95½, par. 11-501.4 (added by P.A. 85-992, § 1, eff. Jan. 5, 1988); M.R. 24138 (Sept. 27, 2010), and so the question is not whether section 11-501.4 created an exception to Rule 803(6), but whether the adoption of Rule 803(6) invalidated section 11-501.4. Consideration of the purpose of the Illinois Rules of Evidence, and of Rule 803(6) specifically, reveals that the Court did not

intend to upset decades of settled law governing the admission of blood test results in DUI cases when it adopted Rule 803(6).

This Court adopted the Rules to "codify[] the law of evidence in the state of Illinois." M.R. 24138 (Sept. 27, 2010). At the time, the "Illinois rules of evidence [we]re dispersed throughout case law, statutes, and Illinois Supreme Court rules." Ill. R. Evid., Committee Commentary (adopted Sept. 27, 2010), at 1. By codifying "the most frequently used rules of evidence," the Rules were intended to afford courts and practitioners the benefits of "having all of the basic rules of evidence in one easily accessible, authoritative source." *Id.*

Although the Rules did not codify every statutory rule of evidence, they "[we]re not intended to abrogate or supersede any current statutory rules of evidence," and were intentionally drafted "to avoid in all instances affecting the validity of any existing statutes promulgated by the Illinois legislature." *Id.* The committee that drafted the Rules, whose comments this Court accepted, M.R. 24138 (Sept. 27, 2010), concluded that "[t]here [wa]s no current statutory rule of evidence that [wa]s in conflict with a rule contained in the Illinois Rules of Evidence," with one possible exception not at issue here. Ill. R. Evid. 101, Committee Comments (adopted Sept. 27, 2010).[3]

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[3] In 2015, the Court amended the commentary to Rule 101 to remove language concerning the one possible conflict identified by the committee; the Court left unchanged the statement that "[t]here is no current statutory rule of evidence that is in conflict with a rule contained in the Illinois Rules of evidence." *See* M.R. 24138 (Jan. 6. 2015).

There is no question that section 11-501.4 was in effect and valid when the Rules were adopted. Although this Court had not addressed section 11-501.4, the appellate court consistently held that blood test results are admissible in DUI cases under section 11-501.4. *See*, *e.g.*, *People v. Lach*, 302 Ill. App. 3d 587, 594 (1st Dist. 1998) (holding that "compliance with section 11-501.4 is sufficient in and of itself to establish the admissibility of blood tests"); *People v. Reardon*, 212 Ill. App. 3d 44, 48 (3d Dist. 1991) (explaining that section 11-501.4 "plainly provides that emergency room blood alcohol test results are admissible in evidence" if statutory requirements are met); *see also*, *e.g.*, *People v. Olsen*, 388 Ill. App. 3d 704, 711-12 (2d Dist. 2009) (affirming admission of blood test results under section 11-501.4); *People v. Henderson*, 336 Ill. App. 3d 915, 922 (3d Dist. 2003) (same); *People v. Spencer*, 303 Ill. App. 3d 861, 868 (4th Dist. 1999) (same); *cf. People v. Poncar*, 323 Ill. App. 3d 702, 706 (2d Dist. 2001) ("Only fourth amendment constraints and specific statutory provisions govern the admissibility of blood-alcohol tests in a DUI prosecution."). Therefore, because the Rules were not intended to (and did not) invalidate any otherwise valid statutory rule of evidence in effect at the time, and because section 11-501.4 was in effect and valid when the Rules were adopted, the Rules did not invalidate section 11-501.4. *See People v. Hutchison*, 2013 IL App (1st) 102332, ¶ 24 (holding that section 11-501.4 "survives the enactment of the Illinois Rules of Evidence and is not affected or modified thereby" because the Rules did not invalidate any existing

statutes); *cf. People v. Pitts*, 2016 IL App (1st) 132205, ¶ 73 (explaining that courts "must avoid creating . . . a conflict between the rules of evidence and a statutory rule of evidence," given committee comments that no such conflict existed).

The purpose of Rule 803(6) also confirms the Court's intent not to upset existing law and thereby invalidate section 11-501.4. Rule 803(6) codified 725 ILCS 5/115-5 and Supreme Court Rule 236, which govern the business record exception in criminal and civil cases, respectively. *See* Ill. R. Evid., Committee Commentary (adopted Sept. 27, 2010), at 6-7; *People v. Smith*, 141 Ill. 2d 40, 68 (1990) ("In criminal cases, the business records exception to the rule against hearsay is governed by section 115-5 of the Code of Criminal Procedure of 1963.") (citation omitted). Section 115-5 generally excludes medical records from admission as business records, 725 ILCS 5/115-5(c)(1), yet Illinois courts still recognized that the results of blood tests conducted in the course of emergency medical treatment are admissible under section 11-501.4's separate exception, demonstrating that the two statutory rules did not conflict.[4] Because Rule 803(6) codified this statutory

[4] There are several ways to harmonize section 11-501.4's admission of blood test results in DUI prosecutions with section 115-5's exclusion of medical records from admission under the business record exception. For example, if both statutes are viewed as addressing the admissibility of medical records in criminal cases, then section 11-501.4 is a blood-test-result- and DUI-prosecution-specific exception to section 115-5's general rule governing the business record exception. *See Moore v. Green*, 219 Ill. 2d 470, 480 (2006) ("Where a general statutory provision and a more specific statutory provision relate to the same subject, we will presume that the legislature intended the

business record exception with which section 11-501.4 had coexisted harmoniously for decades, Rule 803(6) should also be read harmoniously with section 11-501.4 to avoid creating unnecessary and unintended conflict.

Because section 11-501.4 was a valid statutory rule of evidence when the Rules were adopted to codify the law of evidence in Illinois, defendant's reliance on *People v. Peterson*, 2017 IL 120331, is misplaced. *Peterson* did not concern the continued validity of an existing and otherwise valid statutory rule of evidence following the adoption of the Rules, but instead the validity of a statutory rule of evidence that was *already invalid* when the Rules were adopted. Because the statutory rule at issue in *Peterson* conflicted with this Court's precedent, it necessarily also conflicted with the Rule codifying that precedent.

As *Peterson* explained, in 2007, "this [C]ourt recognized the common-law doctrine of forfeiture by wrongdoing as the law in Illinois." 2017 IL 120331, ¶ 19 (citing *People v. Stechly*, 225 Ill. 2d 246, 277-78 (2007)). Under this common-law rule, which was later codified in Rule 804(b)(5), a declarant's prior statements are admissible against a defendant upon a showing that (1) the defendant engaged or acquiesced in wrongdoing, and (2) that wrongdoing was intended to, and did, render the declarant unavailable

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more specific provision to govern."). But section 11-501.4 can also be harmonized with the traditional business record exception on the ground that the two are simply different, rather than conflicting, hearsay exceptions that govern the admission of evidence on different bases. *See infra* § II.B.

to testify. *Id.* After the Court decided *Stechly*, the General Assembly enacted 725 ILCS 5/115-10.6 (2008), which precluded admission of prior statements in cases where the unavailable declarant was murdered absent a showing not only that the defendant murdered the declarant with the intent to prevent the declarant from testifying (as was sufficient for admission under the common-law rule), but also that the circumstances of the declarant's statements provide sufficient safeguards of reliability. *Peterson*, 2017 IL 120331, ¶ 33 (citing 725 ILCS 5/115-10.6 (2008)). Thus, section 115-10.6 was invalid from its inception because it eliminated the common-law forfeiture by wrongdoing exception that this Court announced in *Stechly* and replaced it with a more demanding statutory exception. *Id.* ¶¶ 33-34. Indeed, after section 115-10.6 was enacted, this Court reaffirmed that that no reliability showing is required for admission of a statement under the common-law forfeiture by wrongdoing exception, including in cases where the declarant was murdered. *See People v. Hanson*, 238 Ill. 2d 74, 93-99 (2010); *Peterson*, 2017 IL 120331, ¶ 33 (citing *Hanson*, 238 Ill. 2d at 98). Thus, when the Court later adopted the Rules to codify the laws of evidence, the law codified by Rule 804(b)(5) was that which governed at the time of its adoption — the common-law forfeiture by wrongdoing exception — and not the already invalid forfeiture by wrongdoing statute.

Moreover, because section 115-10.6 conflicted with the common-law doctrine codified by Rule 804(b)(5), it necessarily also conflicted with Rule

804(b)(5) itself. But the governing law codified by Rule 803(6) was the statutory rule governing the business records exception in criminal cases, *see* Ill. R. Evid., Committee Comments (adopted Sept. 27, 2010), which had never been held to bar admission of blood test results in DUI cases under section 11-501.4. Therefore, Rule 803(6) also does not bar admission of blood test results in DUI cases under section 11-501.4.

For his part, defendant argues that Rule 803(6) must be construed without regard to the committee comments because the plain language of the rule is clear, Def. Br. 16, but the committee's statements that the Rules codify rather than change existing law are critical to their proper interpretation. Unlike an entirely new rule, a rule codifying or amending existing law cannot be construed in isolation, but must be read in context with the law that it codifies or amends. *See People v. Kelley*, 129 Ill. App. 3d 920, 922 (3d Dist. 1985) (where a statute "did not change but merely codified prior Illinois decisions[,] . . . it is not only appropriate, but necessary, to refer to decisions prior to the enactment of the statute to interpret its scope and purpose"); *see also People v. Burge*, 2021 IL 125642, ¶ 31 ("[W]henever a legislative body enacts a provision, it has in mind previous statutes relating to the same subject matter such that they should all be construed together."); *People v. Thompson*, 2016 IL 118667, ¶ 40 (construing an Illinois rule modeled on a federal rule of evidence by looking to federal precedent interpreting the federal rule); *People v. Villa*, 2011 IL 110777, ¶ 36 ("[T]he judicial

construction of the statute becomes a part of the law, and the legislature is presumed to act with full knowledge of the prevailing case law and the judicial construction of the words in the prior enactment."). Accordingly, this Court should follow its usual practice of considering committee comments when construing its rules and construe Rule 803(6) in light of its purpose as explained in the comments. *See Marker*, 233 Ill. 2d at 176 (considering committee comments to determine whether a new rule was intended to adopt or change previous law); *see also People v. Birge*, 2021 IL 125644, ¶ 28 (considering committee comments when construing rule); *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶¶ 32-33 (same); *People v. Thompson*, 238 Ill. 2d 598, 607 (2010) (same).

Even setting aside the committee comments, there is no reason to believe that the Court adopted Rule 803(6) to upset decades of settled precedent governing the admission of blood test results in DUI cases where doing so would serve no good purpose. *See Marker*, 233 Ill. 2d at 178 (rejecting construction of Supreme Court Rule that would "unsettle a system that has been functioning for the past 30 years without conferring any benefit upon the courts or the public"). Invalidating section 11-501.4 would have little effect beyond the absurd result of encouraging drunk drivers to refuse requests by law enforcement that they submit to blood testing. If the results of blood tests performed in the course of emergency medical treatment were inadmissible in DUI prosecutions, then such refusal would shield drunk

drivers from conviction for driving with a blood alcohol concentration of 0.08 or greater if the incriminating evidence in their blood dissipates before police can get a warrant; in these circumstances, the only evidence of their guilt would be the reliable, but inadmissible, results of the emergency medical blood test. This Court should decline to construe Rule 803(6) as allowing drunk drivers to evade accountability by excluding reliable and otherwise admissible evidence of their guilt. *See* Ill. R. Evid. 102 ("These rules shall be construed to secure . . . the development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.").

Defendant's reliance on *Kunkel v. Walton*, 179 Ill. 2d 519 (1997), *People v. Joseph*, 113 Ill. 2d 36 (1986), and *People v. Cox*, 82 Ill. 2d 268 (1980), is also misplaced because all three cases involved statutes that encroached on areas from which this Court's rules had excluded any legislative action. *Kunkel* addressed a statute authorizing discovery beyond that available under Supreme Court Rule 201, "which specifies that information is obtainable 'as provided in these rules'" and so precludes legislative expansion. *Kunkel*, 179 Ill. 2d at 531. Similarly, *Joseph* held that a statute restricting the authority of chief judges to assign judges to postconviction cases directly conflicted with Supreme Court Rule 21(b), which empowered chief judges to make these assignments "[s]ubject only to the authority of the supreme court." *Joseph*, 113 Ill. 2d at 47-48. And *Cox* held that a statute that changed the standard of review for sentencing challenges and authorized reviewing courts to reduce

sentences from imprisonment to probation conflicted with Supreme Court Rule 615(b)(4), which, as construed by this Court, had established the governing standard of review and denied reviewing courts any authority to reduce sentences of imprisonment to probation. *Cox*, 82 Ill. 2d at 275-76. In contrast, this Court's rules do not exclude the General Assembly from establishing additional hearsay exceptions. On the contrary, Illinois Rule of Evidence 802 expressly permits statutory hearsay exceptions. Ill. R. Evid. 802 ("Hearsay is not admissible except as provided by these rules, provided by other rules prescribed by the Supreme Court, or by statute as provided in Rule 101.").

B. In the alternative, section 11-501.4 does not conflict with Rule 806(3) because the two provisions provide separate, rather than conflicting, hearsay exceptions.

Even if Rule 803(6) were construed as changing rather than codifying existing law, it would not conflict with section 11-501.4. Defendant argues that that section 11-501.4, which provides that the results of blood tests performed in the course of emergency medical treatment are admissible in DUI prosecutions, and Rule 806(3), which excludes medical records from admission in criminal cases as records of regularly conducted activity, conflict "as to the admissibility of medical records in a criminal case." Def. Br. 9. But hearsay exceptions do not conflict just because evidence that is admissible under one is not admissible under another. *See People v. House*, 141 Ill. 2d 323, 381 (1990) (explaining that although evidence was inadmissible under one hearsay exception, whether it was admissible under other hearsay

exceptions "is another matter"); Ill. R. Evid. 802. For example, Rule 803(2) does not conflict with Rule 804(b)(2), even though a statement that is admissible as an excited utterance under the former might be inadmissible as a dying declaration under the latter. *Compare* Ill. R. Evid. 803(2) *with* Ill. R. Evid. 804(b)(2); *see People v. Perkins*, 2018 IL App (1st) 133981, ¶¶ 66, 70 (holding that statements were admissible as excited utterances, even though they were inadmissible as dying declarations). Rather, the fact that evidence is admissible under one hearsay exception and not another simply proves that the exceptions are different, not that they conflict. For hearsay exceptions to conflict, they must govern the admission of evidence on the same basis and impose different requirements for admission on that basis. There is no such conflict between section 11-501.4 and Rule 803(6).

Section 11-501.4 and Rule 803(6) do not conflict because they govern the admission of evidence on fundamentally different bases. Different exceptions to the rule against hearsay generally rest on different presumptions that certain evidence is sufficiently reliable to be admitted regardless of whether it is subject to cross-examination. *See* 5 John H. Wigmore, Evidence § 1420, at 251 (James H. Chadbourn rev. ed. 1974) (rule against hearsay does not bar admission if "the statement offered is free enough from the risk of inaccuracy and untrustworthiness, so that the test of

cross-examination would be a work of supererogation").[5] Some exceptions presume that the declarant's self-interest sufficiently guarantees reliability. *See* Ill. R. Evid. 804(b)(3); *People v. Tenney*, 205 Ill. 2d 411, 433 (2002) (exception for statements against interest presumes "that a person is unlikely to fabricate a statement against his or her own interest"); *see also* Ill. R. Evid. 803(4); 2 McCormick on Evidence § 277 (Robert P. Mosteller, 8th ed. 2020) (exception for statements made for purposes of medical diagnosis or treatment presumes "that the patient believes that the effectiveness of the treatment depends on the accuracy of the information provided to the doctor, which may be term a 'selfish treatment' motivation"). Other exceptions presume that a statement's spontaneity ensures its truthfulness. *See* Ill. R. Evid. 803(2); *People v. Lewis*, 147 Ill. App. 3d 249, 256 (1st Dist. 1986) (excited utterance exception presumes that declarants are unlikely to fabricate spontaneous reactions to startling events); *see also* Ill. R. Evid. 803(3); 2 McCormick on Evidence § 273 (exception for statements of then-existing mental or physical conditions presumes that "[s]pecial reliability is provided by the spontaneous quality of the declarations"). Still other exceptions presume that a record of an event is reliable if created shortly after the event. *See* Ill. R. Evid. 803(5); *Salcik v. Tassone*, 236 Ill. App. 3d

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[5] One hearsay exception that does not rest on a presumption of reliability is the doctrine of forfeiture by wrongdoing, which rests on the equitable proposition that a defendant who wrongfully silences a witness must be prevented "from thwarting the judicial process by taking advantage of his own wrongdoing." *Peterson*, 2017 IL 120331, ¶ 57.

548, 554 (1st Dist. 1992) (recorded recollections exception presumes that records are reliable if "prepared at or near the time of the event while the witness had a clear and accurate memory of it").

The basis for presuming that a business record is reliable and therefore admissible under Rule 803(6) is the regularity and timeliness of the recordkeeping system. *See* Ill. R. Evid. 803(6) (providing that records of events are admissible "if it was the regular practice . . . to make" them and they were "made at or near the time" of the events). The business record exception presumes that "regularly kept records typically have a high degree of accuracy" because "[t]he regularity and continuity of the records are calculated to train the recordkeeper in habits of precision." 2 McCormick on Evidence § 286; *see also id.* § 289 ("A substantial factor" in the presumption of reliability motivating the business record exception "is the promptness with which transactions are recorded.").

In contrast, the basis for presuming that a blood test result is reliable and therefore admissible under section 11-501.4 is the reliability of the result itself, *see* 625 ILCS 5/11-501.4(a)(1), (a)(2), not the timeliness and regularity of the recordkeeping system, *see* Ill. R. Evid. 803(6). Section 11-501.4 conditions admission of a blood test result on a showing that the testing was "ordered in the regular course of providing emergency medical treatment" and "performed by the laboratory routinely used by the hospital," 625 ILCS 5/11-501.4(a)(1), (a)(2), based on the presumption that "if these blood-alcohol

test results are sufficiently trustworthy and reliable for the emergency room physician to use and consider when deciding what treatment is appropriate, then those results are sufficiently trustworthy and reliable to be received into evidence at a later trial," *People v. Hoke*, 213 Ill. App. 3d 263, 270 (4th Dist. 1991).

Section 11-501.4 derives its focus on the reliability of the test results from the statute to which it acts as an exception: section 11-501.2. Section 11-501.2, which generally governs the admission of blood test results in DUI cases, *see* 625 ILCS 5/11-501.2(a), conditions admission on a showing that the testing was performed by a qualified person in compliance with a prescribed standard, *see* 625 ILCS 5/11-501.2(a)(1) (permitting admission of blood test results if "performed according to standards promulgated by the Department of State Police by . . . [an] individual possessing a valid permit issued by that Department for this purpose"). When the General Assembly exempted the results of blood tests performed in the course of emergency medical treatment from the foundation requirements of section 11-501.2, *see* 625 ILCS 5/11-501.4(a) (providing that results of blood tests performed in the course of emergency medical treatment are admissible "[n]otwithstanding any other provision of law" if certain requirements are met), it retained the basis for admission — the reliability of the testing itself, rather than how the test results were recorded — but changed the showing required for admission on that basis. In place of direct evidence that the test was performed pursuant

to a particular standard by a particular person, *see* 625 ILCS 5/11-501.2(a)(1), section 11-501.4 requires a showing that the testing was ordered and performed in the regular course of providing emergency medical treatment, 625 ILCS 5/11-501.4(a)(1), (a)(2), which the General Assembly concluded provides equivalent guarantees of reliability, *Hoke*, 213 Ill. App. 3d at 270.

Like section 11-501.2, *see* 625 ILCS 5/11-501.2(a), section 11-501.4 does not consider any of the matters of recordkeeping that are central to the traditional business record exception, *see* 625 ILCS 5/11-501.4. If blood test results satisfy the reliability requirement of section 11-501.4, then they "are admissible into evidence regardless of the time the records were prepared." 625 ILCS 5/11-501.4(a)(3). And the only regularity requirement under section 11-501.4 is that the testing was ordered for purposes of emergency medical care, without any intervention by law enforcement, 625 ILCS 5/11-501.4(a)(1); no further showing of regularity is required, because section 11-501.4 "contemplates both situations where chemical testing is ordered pursuant to an established protocol or general practice and when the testing is ordered outside of such standard procedures but based on the independent judgment of the defendant's doctor while providing emergency medical treatment," *People v. Beck*, 2017 IL App (4th) 160654, ¶ 87.

For that reason, defendant is mistaken in arguing that the hearsay exceptions of section 11-501.4 and Rule 803(6) irreconcilably conflict because they use the same name but impose different admission requirements. *See*

Def. Br. 8. As an initial matter, the two provisions do not use the same name; Rule 803(6) authorizes admission of records as "records of regularly conducted activity," Ill. R. Evid. 803(6), whereas section 11-501.4 authorizes admission of blood test results under "a business record exception," 625 ILCS 5/11-501.4. Moreover, section 11-501.4's statement that blood test results are admissible in DUI prosecutions "as *a* business record exception" rather than under "the business record exception" reveals the legislative intent that section 11-501.4 create a new hearsay exception rather than alter the existing business record exception. 625 ILCS 5/11-501.4(a) (emphasis added). But even if Rule 803(6) and section 11-501.4 both called their hearsay exceptions "the business record exception," they still would not conflict because the question of whether hearsay exceptions conflict turns on substance, not label. The General Assembly is free to enact new hearsay exceptions and call them whatever it likes, *see Rolfingsmeyer*, 101 Ill. 2d at 140, provided that any new statutory exception does not substantively conflict with this Court's rules or decisions, *see* Ill. R. Evid. 101. Regardless of how section 11-501.4 labels its hearsay exception, that exception is substantively a separate exception from the traditional business record exception codified by Rule 803(6) because the two rely on different justifications for admission. *See Hoke*, 213 Ill. App. 3d at 270 (holding that section 11-501.4 did not conflict with Supreme Court Rule 236, which at that time excluded medical records from admission as business records, because

section 11-501.4 "imposes requirements for admissibility unrelated to a document's admissibility under the business record exception"); *People v. Solis*, 221 Ill. App. 3d 750, 752-53 (1st Dist. 1991) (adopting *Hoke*'s analysis).

This focus on substance is why *Peterson* had no difficulty recognizing the conflict between a statutory hearsay exception called the "[h]earsay exception for intentional murder of a witness" and the common-law forfeiture by wrongdoing exception, even though the two exceptions used different labels. *See Peterson*, 2017 IL 120331, ¶ 17 (quoting 725 ILCS 5/115-10.6 (2008)). The labels were immaterial; what mattered was that the statutory rule narrowed the common-law forfeiture by wrongdoing exception in cases involving murdered declarants, barring evidence that was otherwise admissible under the common-law rule unless the more demanding statutory standard was met. *See id.* ¶¶ 32-33. Similarly, regardless of what one calls them, the hearsay exceptions under section 11-501.4 and Rule 803(6) do not conflict because they govern the admission of evidence on different bases, and so neither limits or interferes with the admission of evidence under the other.

III. Any Error in Admitting Defendant's Blood Test Results Was Harmless.

Any error in admitting defendant's blood test results was harmless because no reasonable probability exists that the jury would have acquitted him of DUI[6] for driving under the influence of alcohol but for the admission of

[6] Although defendant was charged with two counts of aggravated DUI based on his four prior DUI convictions, *see* C7-8; 625 ILCS 5/11-501(d)(2)(D), the prosecution proved the fact of those prior convictions by submitting certified

the blood test results. *See People v. Nevitt*, 135 Ill. 2d 423, 447 (1990) ("The admission of hearsay evidence is harmless error where there is no reasonable probability that the jury would have acquitted the defendant absent the hearsay testimony."). Although the jury necessarily relied on the blood test results to find that defendant drove with a blood alcohol concentration of 0.08 or greater, defendant's conviction for aggravated DUI for driving with a blood alcohol concentration of 0.08 or greater was not before the appellate court because no final judgment of conviction and sentence was ever entered on that count. *See People v. Relerford*, 2017 IL 121094, ¶ 75 (appellate court lacked jurisdiction to decide validity of defendant's unsentenced convictions). Rather, the trial court merged that count into defendant's conviction for aggravated DUI for driving under the influence of alcohol and entered judgment and sentence only on *that* count. R583; A1. Thus, the question is whether there is a reasonable probability that, but for the admission of the blood test results, the jury would have acquitted defendant of DUI for driving while under the influence of alcohol. There is not.

To find defendant of guilty of DUI for driving under the influence of alcohol, the jury had to find beyond a reasonable doubt that defendant (1)

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copies of the convictions outside the presence of the jury, R99-100, R112; *see Apprendi v. New Jersey*, 530 U.S. 466, 491 (2000) (excluding "the fact of a prior conviction" from aggravating facts that must be submitted to the jury). Thus, the jury considered only whether defendant drove while under the influence of alcohol and whether he drove while his blood alcohol concentration was 0.08 or greater. *See* R540, R543-44; C130, C133, C139-40.

"dr[o]ve or [was] in actual physical control" of a car while (2) "under the influence of alcohol." 625 ILCS 5/11-501(a)(2). Defendant's blood test results were irrelevant to whether he was driving the car, and so there is no reasonable probability the jury would not have rejected his story that T — a mysterious stranger whom defendant had never seen before and would never see again — was driving at the time of the crash but for the admission of the blood test results. And the non-blood-test evidence that defendant was under the influence of alcohol while driving his grandmother's car was overwhelming. *See People v. Pulliam*, 176 Ill. 2d 261, 275 (1997) (holding erroneous admission of evidence harmless "[b]ecause the evidence of defendant's guilt was overwhelming"). Defendant's grandmother testified that he was drinking before he left in her car, R330-31, R334, R341; the paramedic who pulled him from the wreck testified that defendant's breath smelled strongly of alcohol and his pupils' reaction to light was consistent with intoxication, R352, R354, R361-62; the emergency room nurse testified that defendant was belligerent, R350-51, R372, could not say where he had been or where he was going, R376, made little sense, R389, and admitted he had been drinking, R374; the emergency room doctor testified that defendant admitted he had been drinking, spoke in a voice slurred from alcohol, and had reactions impaired by alcohol, R431-32, R445; and the sheriff's deputy testified that defendant speech was very slow and slurred and he smelled

strongly of alcohol, R304. And defendant conceded in closing argument that he had been drinking. R520.

In sum, no reasonable probability exists that the jury would have disregarded the overwhelming evidence that defendant was driving while under the influence of alcohol but for the admission of his blood test results.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

March 23, 2021

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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 31 pages.

/s/ Joshua M. Schneider
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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 March 23, 2021, the foregoing **Brief of Plaintiff-Appellee 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 e-mail address to the e-mail address of the person named below:

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

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