No. 122202

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the Sixth Judicial Circuit,
Plaintiff-Appellant,	)	Douglas County, Illinois
	)	
v.	)	No. 16 CF 101
	)	
JOHN W. PLANK,	)	The Honorable
	)	Richard L. Broch,
Defendant-Appellee.	)	Chief Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE ACTION

Defendant John W. Plank was charged with driving a motor vehicle while his license was revoked, in violation of 625 ILCS 5/6-303(a). C2.[1] The motor vehicle in question was a bicycle powered by a gasoline motor. *See* R9. Under the Illinois Vehicle Code, a "low-speed gas bicycle" is not a "motor vehicle." 625 ILCS 5/1-146. Defendant moved to dismiss the charge, arguing that the Code's definition of "low-speed gas bicycle," 625 ILCS 5/1-140.15, is unconstitutionally vague. C14-17. The circuit court granted the motion and declared 625 ILCS 5/1-140.15 unconstitutionally vague on its face in violation of the Due Process Clauses of the United States and Illinois Constitutions. C51 (A1), C83-84 (A5-6); A11-12. This is a direct appeal of the circuit court's judgment, which was not based on a jury verdict. No issue is raised concerning the sufficiency of the charging instrument.

ISSUES PRESENTED FOR REVIEW

The Vehicle Code defines a "low-speed gas bicycle" as "[a] 2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour." 625 ILCS 5/1-140.15.

The issues presented for review are:

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[1] The common law record is cited as "C__"; the report of proceedings is cited as "R__"; and this brief's appendix is cited as "A__."

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1. Whether the statutory definition's maximum-speed component satisfies due process because it gives a person of ordinary intelligence, even if he does not weigh 170 pounds, a reasonable opportunity to determine whether a motorized bicycle is a "low-speed gas bicycle" and provides a clear and objective standard for enforcing the law.

2. Whether the statutory definition as a whole is facially constitutional, even if the maximum-speed component is vague as applied to persons who do not weigh 170 pounds, because any such vagueness does not extend to all of the definition's applications.

JURISDICTION

Because the circuit court declared a statute unconstitutional, this Court's jurisdiction lies under Supreme Court Rule 603. The circuit court made an oral ruling on January 10, 2017, declaring 625 ILCS 5/1-140.15 unconstitutional and dismissing the sole charge against defendant. C51 (A1); R25-27 (A2-4). The People filed a motion to reconsider on February 2, 2017, C53, that the circuit court denied on March 21, 2017, C83-84 (A5-6); R34-37 (A7-10). The People filed a timely notice of appeal on April 13, 2017. C86 (A13).

STATUTORY PROVISION INVOLVED

Section 1-140.15 of the Illinois Vehicle Code defines "Low-speed gas bicycle" as:

> A 2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved

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> level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour.

625 ILCS 5/1-140.15.

STATEMENT OF FACTS

In August 2016, a police officer observed defendant riding a motorized bicycle and clocked his speed, over a flat stretch of road, at 26 miles per hour. R7, 9-10.[2] The bicycle was powered by a gasoline motor that the officer described as "a weed-eater motor," R9, but a photograph of the bicycle suggests a more sophisticated design, *see* C30. There is no evidence in the record about the horsepower of the motor. Nor is there evidence of whether the bicycle's pedals were fully operable, although the officer testified that he did not see defendant pedaling. R11.[3] After the officer pulled defendant over, defendant admitted, and the officer confirmed, that defendant's driver's license was revoked. R9-10. Defendant's driver's license listed his weight as 170 pounds. R9.

The People charged defendant with driving a motor vehicle while his license was revoked, in violation of 625 ILCS 5/6-303(a). C2. That strict

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[2] Because the circuit court dismissed the case before trial and without conducting an evidentiary hearing on defendant's motion to dismiss, the factual record is sparse. Unless otherwise noted, the facts discussed here are taken from the officer's testimony at the preliminary hearing.

[3] The record is also silent as to whether defendant purchased the motorized bicycle pre-assembled or assembled it himself. Commercially available motors and installation kits are common. *See, e.g.*, Golden Eagle Bike Engines, Info About Our Bicycle Motor Kits, at http://www.bikeengines.com/info (last visited Sept. 25, 2017).

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liability offense has two elements: "(1) the act of driving a motor vehicle on the highways of this State, and (2) the fact of the revocation of the driver's license." *People v. Jackson*, 2013 IL 113986, ¶ 16 (internal quotation marks omitted); *see also People v. Stevens*, 125 Ill. App. 3d 854, 855 (3d Dist. 1984).[4] The offense is generally a Class A misdemeanor, but defendant's charge was elevated to a Class 4 felony, with a minimum term of 180 days of imprisonment, because he has three prior convictions for driving while his license was revoked, and the current offense and the three prior offenses were committed while his driver's license was revoked for driving under the influence of alcohol or drugs or for a related offense. C2 (citing 625 ILCS 5/6-303(d-3)).

Under the Vehicle Code, the term "motor vehicle" includes "[e]very vehicle which is self-propelled . . . except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles." 625 ILCS 5/1-146. A "low-speed gas bicycle," in turn, is defined as "[a] 2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface,

[4] A "highway" consists of "[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or located on public school property." 625 ILCS 5/1-126. There is no dispute here that defendant was driving his motorized bicycle on a "highway," so defined.

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when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour." 625 ILCS 5/1-140.15.[5]

Defendant moved to dismiss the charge of driving a motor vehicle while his license was revoked, arguing that the Vehicle Code's definition of "low-speed gas bicycle" is unconstitutionally vague on its face and as applied to him. *See* C14-17. According to defendant, the statutory language provides "no way for a person[ ] of ordinary intelligence to ascertain how fast they could travel on a low[-]speed gas bicycle . . . if they weigh anywhere above or below 170 pounds" and "makes it impossible for law enforcement to determine whether someone is in compliance with the law." C16.[6]

In an oral ruling, the circuit court granted defendant's motion to dismiss and declared the statutory definition of "low-speed gas bicycle" unconstitutionally vague, characterizing it as "one of the strangest pieces of legislation" the court had seen. R25 (A2). The court identified two aspects of

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[5] This definition was modeled after the federal Consumer Product Safety Act's definition of "low-speed electric bicycle." *See* 15 U.S.C. § 2085(b). Until recently, the Vehicle Code's definition of "low-speed electric bicycle" explicitly adopted the federal definition. *See* 625 ILCS 5/1-140.10 (2016). However, effective January 1, 2018, the General Assembly has adopted a new definition of "low-speed electric bicycle." *See* 2017 Ill. Legis. Serv. P.A. 100-209 (S.B. 396) (West). The Code's definition of "low-speed gas bicycle" has not been altered.

[6] Relying on an Illinois Department of Corrections record prepared on his discharge from custody in 2014, which listed his weight as 155 pounds, defendant alleged that he did not weigh 170 pounds when he was pulled over on the motorized bicycle in August 2016. C16. Defendant later conceded, however, that the weight listed on that record, like the weight listed on his 2011-issued driver's license, was self-reported. R19.

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the statutory definition that, in its view, imbued the provision with "a lot of vagueness." R26 (A3). First, the court noted that the statutory definition uses the term "paved level surface," rather than "substantially level surface," even though, as the court saw it, "there is [no] such . . . thing as a completely level surface." *Id.*

Second, and seemingly more critical to the court's analysis, was the statutory definition's reference to "an individual weighing 170 pounds." *Id.* The court seemed to interpret that reference as requiring proof that a person riding a motorized bicycle weighed 170 pounds in order to determine whether that person could legally operate the bicycle on a public road without a driver's license. *See id.* ("[It] [t]alks about an individual weighing 170 pounds in order to determine whether or not they were violating the law."). Indeed, the court opined that a police officer "would have to have a scale in their squad car in order to weigh the individual as soon as they pulled them over." *Id.*

The court thus concluded that the statutory definition "fails to provide individuals of ordinary intelligence [a] reasonable opportunity to understand what conduct the law prohibits" and "does not provide reasonable standards to law enforcement in order to ensure against . . . arbitrary and discriminating enforcement." R26-27 (A3-4). Although the court's reasoning suggested that it had found the statutory definition facially unconstitutional, rather than merely unconstitutional as applied to defendant, the court did

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not make that finding, or many of the other findings required by Supreme Court Rule 18, explicitly.

The People's motion to reconsider argued that the court had misconstrued the plain meaning of the statutory definition and, in particular, its focus on the maximum speed that a motorized bicycle is capable of attaining while ridden by a 170-pound person. C55-57. As the People explained, under section 1-140.15, a motorized bicycle either is or is not a "low-speed gas bicycle," based on the bicycle's objectively ascertainable capabilities under statutorily defined conditions, and without regard to the speed at which, or by whom, it is being operated on any particular occasion. C56. Properly construed, the People argued, the statutory definition of "low-speed gas bicycle" employs an objective standard that calls for no subjective judgments by citizens or law enforcement and thus is not unconstitutionally vague. C61.

The People also argued that the circuit court erred in construing the term "paved level surface" to mean "completely level surface," rather than "substantially level surface," where the latter construction is reasonably possible, and that, in any event, the statutory definition would provide a clear and objective standard for determining whether a motorized bicycle is a "low-speed gas bicycle" even if it did refer to a "completely level surface." C60-61.

In the alternative, the People argued that section 1-140.15 could "not be held facially unconstitutional 'unless it is incapable of *any* valid

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application.'" C62 (quoting *People v. Einoder*, 209 Ill. 2d 443, 451 (2004) (emphasis in original)). Because defendant's own argument seemed to concede that the statutory language is valid in at least one application, that is, as applied to persons weighing 170 pounds, the People argued that facial invalidation was inappropriate. C62. And because the court had made no findings of fact, the People argued that an as-applied challenge to the statute was premature. *Id.*

Finally, the People requested that, if the court did not reconsider its conclusion that the statutory definition was unconstitutional, it make the findings required by Supreme Court Rule 18. C63.

In another oral ruling, the circuit court denied the People's motion to reconsider. R34-37 (A7-10). The court rejected the People's contention that the statutory definition of "low-speed gas bicycle" applies without regard to the weight of any particular driver, *see* R35 (A8) ("Then my question is, why is [the reference to a 170-pound person] in the statute? What happens if you weigh less than 170 pounds[?] What happens if you weigh more than 170 pounds[?] It really doesn't indicate."), and reiterated its view that a police officer "would almost have to have a scale in his car and have the individual step on a scale in order to see if he weighs 170 pounds" before determining whether the person's motorized bicycle is a "low-speed gas bicycle," R36 (A9). In addition, the court suggested, for the first time, that the statutory definition's horsepower component also was vague, because "a person would

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not be able . . . when looking at a motor bike at a glance . . . to determine . . . whether [its motor is] less than one horsepower." R35 (A8). The court made several of the findings required by Rule 18, but it again failed to specify whether it had found the statutory definition unconstitutional on its face or only as applied. R36-37 (A9-10).

After this appeal was docketed, this Court remanded the case to the circuit court for the limited purpose of making and recording findings in compliance with Rule 18. Pursuant to that order, the circuit court entered a written order making the findings required by Rule 18. *See* A11-12. Among other things, the circuit court's order specified that it had found section 1-140.15 facially unconstitutional. A11.

STANDARD OF REVIEW

"[T]he question of whether a statute is unconstitutional is a question of law, which this court reviews *de novo*." *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011). Because "[a]ll statutes carry a strong presumption of constitutionality," *People v. Mosley*, 2015 IL 115872, ¶ 22, a defendant who challenges the constitutionality of a statute bears "the heavy burden" of "clearly establish[ing]" its invalidity, *People v. Rizzo*, 2016 IL 118599, ¶ 23 (internal quotation marks omitted). Courts, in turn, have "a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity." *Id.*

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ARGUMENT

The circuit court's judgment declaring the statutory definition of "low-speed gas bicycle" unconstitutionally vague on its face should be reversed for two reasons.

First, the statutory definition's maximum-speed component is not impermissibly vague. At the outset, the circuit court appeared to accept defendant's contention that the language of that component makes it impossible for a person who does not weigh 170 pounds to determine how fast he may legally travel on a "low-speed gas bicycle." But this argument confuses two distinct sections of the Vehicle Code related to "low-speed gas bicycles." Section 1-140.15 is a statutory definition, not a speed-limit law. It provides a standard for determining whether a motorized bicycle *is* a "low-speed gas bicycle" and thus *not* a "motor vehicle." But it says nothing about how fast one may operate a "low-speed gas bicycle" on a public road. That answer is supplied by section 11-1516, which provides that no person, no matter his weight, may operate a "low-speed gas bicycle" on a public road at a speed greater than twenty miles per hour.

Section 1-140.15, in contrast, defines whether a motorized bicycle is a "low-speed gas bicycle," and it does so by focusing on, among other things, the maximum speed that the motorized bicycle is capable of attaining when operated under defined conditions, namely, on a paved level surface, powered solely by its motor, and under a 170-pound load. Far from being vague, this

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standard is exceedingly precise: it provides a yes-or-no answer to the question of whether any particular motorized bicycle is a "low-speed gas bicycle," and that answer will always be the same, regardless of who happens to be riding the bicycle on any particular occasion.

The circuit court seemed troubled by the possibility that, due to the maximum-speed component's precision, a person who does not weigh 170 pounds would not be able to immediately determine whether his motorized bicycle qualifies as a "low-speed gas bicycle." But striking down a statute on that basis turns the void-for-vagueness doctrine on its head. A statute is not vague merely because it requires a person to investigate or inquire before he can determine whether its clearly defined, objective standard applies to him. Nothing in the record suggests that defendant ever attempted to determine the maximum speed that his motorized bicycle was capable of attaining under the statutorily defined conditions, let alone that any such attempt would have been futile. Because the maximum-speed component gives a person of ordinary intelligence, regardless of his own weight, a reasonable opportunity to determine whether a motorized bicycle qualifies as a "low-speed gas bicycle," and provides an objective standard for those who must enforce the law, it is not unconstitutionally vague.

Second, the circuit court's determination that the maximum-speed component is impermissibly vague as applied to persons who do not weigh 170 pounds, even if correct, does not establish that the statutory definition is

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vague in all of its applications, a necessary requirement for facial invalidation of a statute on vagueness grounds. Indeed, there is no question that the statutory definition is not unconstitutionally vague as applied to persons who *do* weigh 170 pounds. Nor is it unconstitutionally vague as applied to motorized bicycles that lack fully operable pedals or have motors of one horsepower or more.

Defendant can thus prevail on his vagueness challenge only by demonstrating that the statutory definition is vague as applied to him, because a person whose own conduct is clearly proscribed by a statute may not complain that the statute is vague as applied to the conduct of others. But there is no basis in the record for concluding that the maximum-speed component is vague as applied to defendant, because the circuit court made no finding that defendant did not weigh 170 pounds, or that his vehicle was not traveling 26 miles per hour, on a paved level surface, unassisted by pedaling, when he was pulled over. Likewise, because the circuit court made no finding that the pedals on defendant's motorized bicycle were fully operable, or that its motor was less than one horsepower, there is no basis for holding the statutory definition as a whole unconstitutionally vague as applied to defendant, regardless of how much he weighs or how fast he was traveling.

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I. The Maximum-Speed Component of the Statutory Definition of "Low-Speed Gas Bicycle" Is Not Unconstitutionally Vague.

A criminal statute is void for vagueness under the due process clauses of the United States and Illinois Constitutions only if its language is so unclear or indefinite that it fails to give a person of "ordinary intelligence a reasonable opportunity to know what is prohibited," *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972), or if it is "so standardless that it authorizes or encourages seriously discriminatory enforcement," *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010) (internal quotation marks omitted); *see also Bartlow v. Costigan*, 2014 IL 115512, ¶¶ 38-40 (applying same standard under federal and state constitutions); *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 291 (2003) (same). Put differently, a law "is unconstitutionally vague, and therefore violative of due process, when it lacks terms susceptible of objective measurement," such that "persons of common intelligence must necessarily guess at its meaning and differ as to its application." *People ex rel. Ryan v. World Church of the Creator*, 198 Ill. 2d 115, 124 (2001) (internal quotation marks omitted).

"[T]he first step in a vagueness inquiry is to examine the plain language" of the statute. *Wilson v. Cnty. of Cook*, 2012 IL 112026, ¶ 24. Section 1-140.15 of the Vehicle Code defines a "low-speed gas bicycle" as "[a] 2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170

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pounds, is less than 20 miles per hour." 625 ILCS 5/1-140.15. The circuit court held that this definition is unconstitutionally vague because its final component (the "maximum-speed component") does not provide a clear standard for determining whether a motorized bicycle operated by a person who does not weigh 170 pounds meets the definition. This holding misconstrues the nature and plain meaning of section 1-140.15 and misapplies the void-for-vagueness doctrine.

The circuit court appeared to accept defendant's contention that the maximum-speed component provides "no way" for a person who does not "weigh[ ] exactly 170 pounds" to "ascertain how fast [he] could travel on a low[-]speed gas bicycle." C16; *see also* R26 (A3), R35 (A8). But section 1-140.15 is not a speed-limit law. It does not tell anyone, regardless of whether he weighs 170 pounds, how fast he may travel on a "low-speed gas bicycle." Section 11-1516 of the Vehicle Code does that, and it applies to all people regardless of how much they weigh: "A person may not operate a . . . low-speed gas bicycle at a speed greater than 20 miles per hour upon any highway, street, or roadway." 625 ILCS 5/11-1516(b).

Section 1-140.15 is addressed to a distinct question: how to determine whether a motorized bicycle *is* a "low-speed gas bicycle" and thus *not* a "motor vehicle." *See* 625 ILCS 5/1-146 (excluding "low-speed gas bicycles" from definition of "motor vehicle"). That matters because if a motorized bicycle is a "low-speed gas bicycle" and therefore not a "motor vehicle," it is not subject to

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the requirements of the Vehicle Code applicable to motor vehicles, including, as relevant here, the requirement that a person operating a motor vehicle on a public road have a valid driver's license. *See* 625 ILCS 5/6-303(a). To make this determination, section 1-140.15 focuses on, among other things, the maximum speed that a motorized bicycle is capable of attaining when operated under defined conditions, namely, on a paved level surface, powered solely by its motor (that is, without assistance from the pedals), and under the load of a 170-pound rider.[7] If the maximum speed that a motorized bicycle is capable of attaining under those conditions is less than 20 miles per hour, and the statutory definition's other criteria are met, then the bicycle is a "low-speed gas bicycle" and therefore not a "motor vehicle." This objective standard provides a clear, yes-or-no answer to the question of whether any particular motorized bicycle is a "low-speed gas bicycle," and that answer will be the same no matter who happens to be riding the motorized bicycle on any particular occasion.[8]

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[7] As the National Highway Traffic Safety Administration explained when discussing the federal Consumer Product Safety Act's definition of "low-speed electric bicycle," upon which the General Assembly modeled our Vehicle Code's definition of "low-speed gas bicycle," *see supra* n. 5, "the speed of a low-powered, two-wheeled vehicle may vary considerably depending on the weight of the driver," making "specific[ity] as to the meaning of maximum speed capability" necessary "to provide a clear interpretation." 70 Fed. Reg. 34812 (2005).

[8] For this reason, there is no force to the circuit court's suggestion that an officer must weigh a person whom he observes operating a motorized bicycle in order to determine whether that vehicle is a "low-speed gas bicycle." *See* R26 (A3), R36 (A9). Indeed, the circuit court itself, at the

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Properly construed in this manner, the statutory definition's maximum-speed component is not unconstitutionally vague. Quite the contrary: it gives a person of "ordinary intelligence a reasonable opportunity" to determine whether a motorized bicycle qualifies as a "low-speed gas bicycle" and provides an "explicit standard[ ]" for police and courts to apply that leaves no room for "subjective or discriminatory enforcement." *Grayned*, 408 U.S. at 108, 113; *see also Humanitarian Law Project*, 561 U.S. at 18 (criminal statute is unconstitutionally vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement") (internal quotation marks omitted). Indeed, the standard is not only "susceptible of objective measurement," *World Church of the Creator*, 198 Ill. 2d at 124 (internal quotation marks omitted), it demands it.

The maximum-speed component is thus unlike the types of statutory standards that the United States Supreme Court has previously declared to be vague, such as those that "tied criminal culpability to whether the defendant's conduct was 'annoying' or 'indecent,'" or punished "'vagrants,'"

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preliminary hearing, found that the officer's observations supplied probable cause to believe that defendant's motorized bicycle was not a "low-speed gas bicycle," and that defendant had therefore illegally operated a motor vehicle while his driver's license was revoked. *See* R14. Of course, at trial, the People will be required to prove these facts beyond a reasonable doubt. *See People v. Grandadam*, 2015 IL App (3d) 150111, ¶ 17 (holding that "the State presented no evidence from which a reasonable trier of fact could conclude beyond a reasonable doubt that defendant's gas-powered bicycle met the statutory definition of a 'motor vehicle'").

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defined to include, among other things, "'rogues' and 'vagabonds,'" *Humanitarian Law Project*, 561 U.S. at 20 (internal quotation marks omitted), or required persons to provide "'credible and reliable' identification" when requested by law enforcement, *Kolender v. Lawson*, 461 U.S. 352, 353-54 (1983) — all standards that called for "wholly subjective judgments." *Humanitarian Law Project*, 561 U.S. at 20 (internal quotation marks omitted); *see also Kolender*, 461 U.S. at 358 (because the law "contain[ed] no standard for determining what a suspect has to do in order to satisfy the requirement to provide a 'credible and reliable' identification," it "vest[ed] virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute"). In contrast, whether a motorized bicycle satisfies the statutory definition of "low-speed gas bicycle" is "a true-or-false determination, not a subjective judgment such as whether conduct is 'annoying' or 'indecent.'" *United States v. Williams*, 553 U.S. 285, 306 (2008).

The circuit court's true concern seemed to be not that the standard embodied in the maximum-speed component is subjective, but that its precision makes it too difficult for a person who does not weigh 170 pounds to determine whether a motorized bicycle qualifies as a "low-speed gas bicycle." In essence, the circuit court flipped the void-for-vagueness doctrine on its head and declared the maximum-speed component "void for preciseness." *Burg v. Mun. Court*, 673 P.3d 732, 740 (Cal. 1983) (internal quotation marks omitted). *Burg* explains the basic error at the heart of the circuit court's

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approach. There, a defendant lodged a vagueness challenge to a California statute that prohibited a person from operating a motor vehicle with a blood-alcohol content above a certain threshold. *Id.* at 733-34. Although the statute "could not be more precise as a standard for law enforcement," the defendant argued that it was unconstitutionally vague "because it is impossible for ordinary persons actually to know when their blood alcohol reaches the proscribed point." *Id.* at 740. The California Supreme Court swiftly rejected the contention, noting that no court had "interpreted the notice requirement so strictly." *Id.* "Fair notice," the Court held, "requires only that a violation be described with a reasonable degree of certainty . . . so that ordinary people can understand what conduct is prohibited." *Id.* at 741 (internal quotation marks and citations omitted). To have accepted the defendant's novel vagueness theory "would [have] render[ed] the void-for-vagueness doctrine internally inconsistent," pitting "the notice requirement" against "the need to provide precise standards for law enforcement." *Id.* at 740. The same is true here.

As the United States Supreme Court has explained, "[w]hat renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is." *Williams*, 553 U.S. at 306. The facts that must be established to bring a motorized bicycle within the scope of the statutory definition of "low-speed gas bicycle" are not at all

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indeterminate. And the fact that a person may not be able to *immediately* determine whether a motorized bicycle is a "low-speed gas bicycle," without conducting any investigation or making any inquiries, does not render the statutory standard itself unconstitutionally vague. What matters is that the statutory language is sufficiently clear and objective that it gives a person of ordinary intelligence a "*reasonable opportunity*" to determine the legal status of a motorized bicycle. *Grayned*, 408 U.S. at 108 (emphasis added).

This Court recognized as much in *Bartlow*, where a construction contractor alleged that the "highly detailed and specific" statutory standard for determining whether an individual performing services for a construction-related business was an employee or an independent contractor was unconstitutionally vague because it "require[d] [contractors] to obtain, prior to any hiring decisions, financial and scheduling information about potential subcontractors that [wa]s in [the] exclusive control of the subcontractor." 2014 IL 115152, at ¶¶ 45, 49. This Court rejected the challenge because even if the requirement to obtain information in the control of others "prove[d] inconvenient for construction contractors, it d[id] not render [the statute] unconstitutionally vague on its face." *Id.* at ¶ 49; *cf. United States v. Vasarajs*, 908 F.2d 443, 449 (9th Cir. 1990) ("the void-for-vagueness doctrine appears to be satisfied if the words of a statute 'suggest [ ] the need to seek legal advice and if the statute's meaning might reasonably be determined

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through such advice'") (quoting 1 W. LaFave & A. Scott, *Substantive Criminal Law* § 2.3 (1986)).

Statutes that punish the sale of drugs or the possession of weapons within a certain distance of a school, which courts "have consistently found . . . not to be unconstitutionally vague," *Commonwealth v. Taylor*, 596 N.E.2d 333, 336 (Mass. 1992), provide another example of this principle. *See, e.g.*, *United States v. Agilar*, 779 F.2d 123, 126 (2d Cir. 1985) (finding "no force" to argument "that the 1,000-foot demarcation line is not sufficiently ascertainable by the average person"); *Lopez v. Spencer*, 961 F. Supp. 332, 335 (D. Mass. 1997) (rejecting vagueness challenge based on contention "that the average person . . . has no practical ability to determine whether any given location is within 1,000 feet of school property").

Indeed, in *State v. Coria*, 839 P.2d 890, 893, 896-97 (Wash. 1992), the Washington Supreme Court rejected a vagueness challenge to a statute that enhanced the penalty for a drug-related offense when the offense was "committed within 1,000 feet of a school bus route stop," even though, because most such stops were not marked, "the defendants could not have immediately determined, simply by looking around during a drug sale, that they were nearby a school bus route stop." The court noted that "information regarding the locations of the stops was available through such means as observing the gathering of schoolchildren waiting for their school buses, or contacting local schools or the director of transportation for the school

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district." *Id.* at 897. And while "[i]t may be unrealistic . . . to expect drug dealers to take these steps," the court found that fact "irrelevant to the question whether the statute is unconstitutionally vague." *Id.* The court held that the defendants' "failure to have been aware of the law and to have taken action to protect themselves against the enhanced penalty for their criminal conduct is no basis for declaring the statute unconstitutionally vague." *Id.*

Likewise, defendant's failure either to have been aware of the standard for determining whether a motorized bicycle qualifies as a "low-speed gas bicycle" or to have taken steps to determine whether his motorized bicycle satisfied the standard is no reason to declare the standard itself unconstitutionally vague. A person who wishes to operate a motorized bicycle on a public road, despite the revocation of his driver's license, bears the burden of "insur[ing] that his actions do not fall outside the legal limits." *United States v. Powell*, 423 U.S. 87, 92 (1975). The State has validly made the operation of a motor vehicle without a license a strict liability offense in the "interest of protecting persons and property who might be injured by the driving of disqualified persons." *People v. Stevens*, 125 Ill. App. 3d 854, 857 (3d Dist. 1984); *see also Santos v. Dist. of Columbia*, 940 A.2d 113, 117 (D.C. Ct. App. 2007) (the offense of "[o]perating a motor vehicle without a permit . . . is part of a modern regulatory framework that places the onus on

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motorists to obtain and maintain permits so as to protect the public from unqualified drivers").

Yet there is no evidence in the record that defendant made any attempt to ascertain whether his motorized bicycle qualified as a "low-speed gas bicycle" — such as by contacting the manufacturer of the motor or the distributor of the installation kit, or consulting a mechanic, or testing the bicycle while loaded with additional weight to simulate a 170-pound rider — before he decided to operate it on a public road despite the revocation of his driver's license. Nor is there evidence suggesting that such attempts (or others) would have been futile. Because the maximum-speed component's clear and objective standard gave defendant "a reasonable opportunity" to determine the legal status of his motorized bicycle, and because it "contains no broad invitation to subjective or discriminatory enforcement," it satisfies due process. *Grayned*, 408 U.S. at 108, 113.

Finally, the circuit court also suggested that the maximum-speed component's reference to a "paved level surface" is unconstitutionally vague because "there is [no] such . . . thing as a completely level surface." R26 (A3). But the statutory language does not say "completely level surface." The circuit court thus improperly "strain[ed] to inject doubt as to the meaning of [the statutory language] where no doubt would be felt by the normal reader," *Powell*, 423 U.S. at 93, rather than "constru[ing] [the] statute so as to affirm its constitutionality, if reasonably possible," *People v. Dinelli*, 217 Ill. 2d 387,

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397 (2005); *see also People v. Rizzo*, 2016 IL 118599, ¶ 23 ("Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity."). Here, at the very least, it is reasonably possible to construe the statutory language to mean "a substantially level paved surface," rather than "a completely level paved surface," and therefore that is the construction that this Court should adopt if it is necessary to sustain the statutory definition's constitutionality.

Regardless, even if the Court were to construe the term "paved level surface" to mean "completely level paved surface," it would not render the statutory definition vague. For the same reasons discussed above, the statutory language still would provide a clear and objective standard for determining whether a motorized bicycle meets the definition of "low-speed gas bicycle." And even if that standard might result in problems of proof, that would not render the statutory language vague. *See Williams*, 553 U.S. at 306 (although "it may be difficult in some cases to determine whether [a statute's] clear requirements have been met," that "problem . . . is addressed, not by the doctrine of vagueness, but by the requirement of proof beyond a reasonable doubt").

In sum, the maximum-speed component of section 1-140.15 provides a clear and objective standard for determining whether a motorized bicycle qualifies as a "low-speed gas bicycle." It defines such a device by its objectively ascertainable capabilities under clearly defined conditions. In

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doing so, it gives persons of ordinary intelligence a reasonable opportunity to determine whether a motorized bicycle is a "low-speed gas bicycle," and it provides an explicit standard for police and courts to apply that leaves no room for arbitrary or discriminatory enforcement. *Grayned*, 408 U.S. at 108, 113; *Humanitarian Law Project*, 561 U.S. at 18. Accordingly, this Court should reverse the circuit court's judgment declaring section 1-140.15 unconstitutionally vague.

II. The Statutory Definition Is Not Unconstitutionally Vague on Its Face Because It Is Not Vague in All of Its Applications.

Even if the circuit court were correct in concluding that the maximum-speed component is impermissibly vague as applied to persons who do not weigh 170 pounds, that conclusion would not render the maximum-speed component, let alone the statutory definition as a whole, unconstitutionally vague on its face.

Facial challenges to statutes "are the most difficult challenges to mount," and facial vagueness challenges are no exception. *People v. Greco*, 204 Ill. 2d 400, 407 (2003). A statute that does not implicate First Amendment rights may be declared unconstitutionally vague on its face only if it "is impermissibly vague in *all* of its applications." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982) (emphasis added); *accord People v. Einoder*, 209 Ill. 2d 443, 451 (2004); *People v. Izzo*, 195 Ill. 2d 109, 112 (2001). That means that "vagueness challenges to statutes which do not involve First Amendment freedoms must be examined

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in light of the facts of the case at hand," *United States v. Mazurie*, 419 U.S. 544, 550 (1975), because a defendant "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others," *Vill. of Hoffman Estates*, 455 U.S. at 495; *see also Einoder*, 209 Ill. 2d at 451-52; *Greco*, 204 Ill. 2d at 416; *Izzo*, 195 Ill. 2d at 112-13.

As before, we must start with the plain language of the statutory provision. *See Wilson v. Cnty. of Cook*, 2012 IL 112026, at ¶ 24. The Vehicle Code defines a "low-speed gas bicycle" as "[a] 2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour." 625 ILCS 5/1-140.15. In other words, a bicycle with a gasoline-powered motor must satisfy each of the following four conditions to be deemed a "low-speed gas bicycle." It must have (1) two or three wheels, (2) fully operable pedals, (3) a motor of less than one horsepower, and (4) a maximum speed of less than 20 miles per hour when operated by a 170-pound person, on a paved level surface, using only the motor for power.

The circuit court declared the statutory definition facially unconstitutional after concluding that the maximum-speed component is impermissibly vague as applied to persons who do not weigh 170 pounds. As discussed above, the circuit court's decision is premised on a mistaken

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understanding of the statutory language and a misapplication of the void-for-vagueness doctrine, and it should be reversed for that reason. But the circuit court's declaration of facial invalidity is flawed for an even more fundamental reason: even if the definition's maximum-speed component were impermissibly vague as applied to persons who do not weigh 170 pounds, that vagueness does not permeate all of the definition's applications.

Because the statutory definition of "low-speed gas bicycle" does not implicate the First Amendment, it will survive a facial vagueness challenge so long as it is capable of "*any* valid application." *Izzo*, 195 Ill. 2d at 112 (emphasis added). Under this test, defendant's facial vagueness challenge plainly fails. Indeed, it is "not difficult to imagine" circumstances under which the definition of "low-speed gas bicycle" could be applied without a hint of vagueness, even assuming that the circuit court were correct that the definition's maximum-speed component is vague as applied to persons who do not weigh 170 pounds. *Id*.

The most obvious example, of course, is applying the statutory definition to a motorized bicycle operated by a person who does weigh 170 pounds. There is no question that the maximum-speed component gives a person of ordinary intelligence who weighs 170 pounds a reasonable opportunity to determine whether a motorized bicycle is a "low-speed gas bicycle," as defendant appeared to concede below. *See* C16 ("This statutory definition explains in excruciating detail what is acceptable for a person that

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weighs exactly 170 pounds."). Likewise, in cases where a motorized bicycle is operated by a person who weighs 170 pounds, the maximum-speed component provides a clear and objective standard for police and courts to apply that leaves no room for arbitrary or discriminatory enforcement.

Moreover, the relevant question is not only whether the maximum-speed component is vague in all of its applications, but whether the statutory definition as a whole is, because a motorized bicycle qualifies as a "low-speed gas bicycle" only if it satisfies *all* of the statutory definition's criteria. That means that a motorized bicycle that lacks fully operable pedals, or that has a motor of one horsepower or more, is not a "low-speed gas bicycle" even if it satisfies the statutory definition's maximum-speed component. Thus, the statutory definition as a whole will be unconstitutionally vague in all of its applications only if all of its components are vague.

However, none of the definition's non-speed-related components is even arguably vague. The circuit court suggested that the horsepower component is impermissibly vague because "a person would not be able . . . when looking at a motor bike *at a glance* . . . to determine . . . whether [its motor is] less than one horsepower." R35 (A8) (emphasis added). But statutory language is impermissibly vague when it fails to provide a person of ordinary intelligence "a *reasonable opportunity to know* what is prohibited." *Grayned*, 408 U.S. at 108 (emphasis added). As discussed above, *see supra* pp. 19-21, a statute is not vague merely because a person must investigate or inquire

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before he can determine whether facts exist that bring his conduct within the reach of a clearly defined, objective standard. Whether a motor exceeds a certain horsepower threshold is "susceptible of objective measurement," *World Church of the Creator*, 198 Ill. 2d at 124 (internal quotation marks omitted), and calls for no "wholly subjective judgments," *Humanitarian Law Project*, 561 U.S. at 20. It is thus not unconstitutionally vague.

Nor is the statutory requirement that a motorized bicycle have "fully operable pedals" in order to qualify as a "low-speed gas bicycle" unconstitutionally vague. To be sure, the phrase "fully operable pedals" is not "mathematical[ly] certain[ ]," but the void-for-vagueness doctrine has never required such precision. *Grayned*, 408 U.S. at 110. What the doctrine requires is that "a regulation not be vague, indefinite or uncertain," not that it "be more specific than is possible under the circumstances." *Izzo*, 195 Ill. 2d at 114. Because persons of ordinary intelligence are not "left to speculate," *People v. Law*, 202 Ill. 2d 578, 583 (2002), as to whether a motorized bicycle's pedals are fully operable, and because applying that statutory phrase "does not require . . . untethered, subjective judgments," *Humanitarian Law Project*, 561 U.S. at 21, this component of the statutory definition also is not impermissibly vague.

Accordingly, even if the circuit court were correct that the statutory definition's maximum-speed component is vague as applied to persons who do not weigh 170 pounds, its facial invalidation of the statutory definition

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should be reversed because the definition is not vague in all of its applications.

That means that defendant can prevail on his vagueness challenge only by demonstrating that it is vague as applied to him, because a person whose own conduct is clearly proscribed by a statute may not complain that the statute is vague as applied to the conduct of others. *See Vill. of Hoffman Estates*, 455 U.S. at 495; *Einoder*, 209 Ill. 2d at 451-52; *Greco*, 204 Ill. 2d at 416; *Izzo*, 195 Ill. 2d at 112-13. But no determination that the statutory definition is unconstitutionally vague as applied to defendant can be made on this record because the circuit court heard no evidence and made no factual findings. *See Rizzo*, 2016 IL 118599, at ¶ 26 ("A court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact.") (internal quotation marks omitted).

Suppose, for instance, that defendant weighed 170 pounds when he was pulled over, as indicated on his driver's license; and that, as the officer testified at the preliminary hearing, he was traveling 26 miles per hour, on a flat stretch of road, without using his bicycle's pedals. *See* R7, 9-10. As applied to those facts, an as-applied vagueness challenge to the maximum-speed component in particular, let alone the statutory definition in general, surely would fail. Similarly, if the evidence shows that defendant's motorized bicycle lacked fully operable pedals, or had a motor of one horsepower or

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more, then the bicycle would fall outside the definition of "low-speed gas bicycle" regardless of how much defendant weighed or how fast he was traveling, and any possible vagueness in the definition's maximum-speed component would be immaterial to him. In either instance, the statutory definition of "low-speed gas bicycle" would not be vague as applied to "the facts of the case at hand," *Mazurie*, 419 U.S. at 550, and defendant's vagueness challenge would fail.

CONCLUSION

This Court should reverse the judgment of the circuit court and remand for further proceedings.

September 25, 2017

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) 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 thirty pages.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General

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APPENDIX

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BE IT REMEMBERED that thereafter, to-wit; on the 10th day of January, A.D. 2017, the same being one of the regular Judicial days of the Circuit Court last aforesaid, Court convened, with the following officers present:

Honorable Richard L. Broch, Circuit Judge

Honorable Kate Watson, Douglas County State's Attorney

Honorable Fred Galey, Douglas County Sheriff

Honorable Julie Mills, Douglas County Circuit Clerk

and the following among other proceedings was had and entered of record therein in words and figures following, viz:--

----

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
*Plaintiff-Appellant)
)
vs.) Case No: 2016-CF-101
) (#122202)
JOHN W. PLANK,)
)
*Defendant/Appellee.)

David Deschler, Asst. State's Atty. present for the People.
Francis L. Thomas present on behalf of the Defendant.
Cause called for hearing on Defendant's Motion to Dismiss. Arguments heard. Defendant's Motion to Dismiss allowed. Motion by People to dismiss. No objection by Defendant. Motion allowed. Defendant's cash bond heretofore posted, after first deducting Clerk's fee, to be refunded to Defendant. Case closed. Cause stricken. Jury trial allotment of January 17, 2017, vacated.

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1 elaborate testing to determine if you are breaking a law is
2 exactly my point. And so, I don't think it's up to Mr. Plank to
3 do this test. I do think it's interesting that's how the state
4 views that we need to know if they violated it or not. So it
5 would be interesting to find out if that happens at trial, and if
6 there was such a test. But if not, if the State doesn't want to
7 have to go to that expense or trouble, shouldn't the statute be
8 clear.

9 And if the Legislature does want there to be some spectrum
10 or continuum, then they need to say that. It's not up for every-
11 body, rider a, b, c, and e to be out there performing tests and
12 trying to interpret it, you know, and talking with several diff-
13 erent people that give their interpretation. It needs to be
14 clear, not vague.

15 THE COURT: Show, arguments of counsel heard. Show,
16 the Court has reviewed the Defendant's Motion to Dismiss, along
17 with the exhibits attached thereto.

18 Counsel, this has to be one of the strangest pieces of
19 legislation that I have read. If all we are dealing with is the
20 bike and the nature of the bike, then there would have been no
21 indication in the statute that an operator would have to have
22 weighed 170 pounds and then determine whether or not the bike
23 ridden by that individual was travelling less than 20 miles an
24 hour.

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1 The Court thinks that there is a lot of vagueness with
2 regard to this statute. It talks about---it doesn't talk about
3 a substantially level surface. It talks about a paved level sur-
4 face. I don't think there is such a thing as a completely level
5 surface. Talks about an individual weighing 170 pounds in order
6 to determine whether or not they were violating the law.

7 I believe that Ms. Thomas had argued at the time of the
8 Preliminary Hearing, which is only a probable cause hearing, was
9 that in order to properly arrest someone for this offense that
10 the police officer would have to have a scale in their squad car
11 in order to weigh the individual as soon as they pulled them over.

12 I don't think that we can look at just a weight on this
13 listed on a driver's license. There's probably less than 10 per-
14 cent of the population who has the same weight as is contained on
15 their driver's license. They may have more. They may have less,
16 and normally that would not be a problem, except for the statute
17 specifically says 170 pounds.

18 Again, I don't know what the Legislators were thinking
19 at the time that they drafted this, but the Court finds that the
20 law fails to provide individuals of ordinary intelligence of
21 reasonable opportunity to understand what conduct the law prohibits,
22 so that they may act accordingly.

23 Further, the Court finds that the law does not provide
24 reasonable standards to law enforcement in order to ensure against

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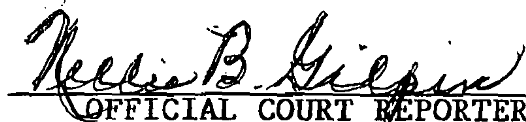
1 authorizing or even encouraging arbitrary and discriminating
2 enforcement of this particular section of the statute. This is
3 not the fault of the State's Attorney's Office. You can only
4 prosecute according to the law that you are given and in the
5 Court's mind, this law as written is so vague that neither the
6 individual who is charged with the offense nor the arresting
7 officer, would be able to fully understand its nature.
8 Show, based thereon the Court is going to allow the
9 Defendant's Motion to Dismiss.
10 Show, with regard to 16-CF-101, any cash bond the
11 Defendant has heretofore posted, after deduction of Clerk's
12 statutory fee to be refunded to Defendant.
13 Jury trial allotment of Janaury 17, 2017 is vacated.
14
15 WHICH WERE ALL THE PROCEEDINGS
HAD THIS DATE IN THE CASE
16

17 OFFICIAL COURT REPORTER
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BE IT REMEMBERED that thereafter, to-wit; on the 21st day of March, A.D. 2017, the same being one of the regular Judicial days of the Circuit Court last aforesaid, Court convened, with the following officers present:

Honorable Richard L. Broch, Circuit Judge

Honorable Kate Watson, Douglas County State's Attorney

Honorable Fred Galey, Douglas County Sheriff

Honorable Julie Mills, Douglas County Circuit Clerk

and the following among other proceedings was had and entered of record therein in words and figures following, viz:--

----

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
*Plaintiff-Appellant	)	
	)	
vs.	)	Case No: 2016-CF-101
	)	(#122202)
JOHN W. PLANK,	)	
	)	
*Defendant/Appellee.	)	

Asst. Attorney General, Eric Levin, appears on behalf of People. Asst. State's Attorney, David Deschler, present for the People. Defendant present accompanied by Francis Thomas, his attorney. Cause called for hearing on State's Motion to Reconsider and Defendant's Response to People's Motion to Reconsider. Arguments heard. Court denies the State's Motion to Reconsider. Court is not going to give a written opinion. The court is going to give an oral statement which is to be transcribed upon the request of the State. That portion of the statute which the court is declaring unconstitutional is Chapter 625 ILCS 5/1-140.15. The court is determining its decision that that portion of the statute is vague because it fails to provide a person of ordinary intelligence fair notice of

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what is prohibited or is so standardized that it authorizes or encourages seriously discriminatory enforcement and that that section of the statute lacks terms susceptible of objective measurement such that a person of common intelligence must necessarily guess at its meaning and differ as to its application. Further, the court finds that the statute relied upon in this case is being held unconstitutional because it cannot reasonably be construed in a manner that would preserve its validity. The court finds that the finding of unconstitutionality is necessary to the decision or judgment rendered in that such decision or judgment cannot rest upon an alternative ground. The court is not going to address paragraph 5 regarding Rule 19 in that the State is already a party to this action and now the Attorney General's Office has become a party to the action.

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1 a judgment that this person is not fit to operate a motor vehicle
2 on the public roadways. Now before that person can actually take
3 a motorized bicycle onto the public roadways and drive it, they
4 should determine whether or not that conduct is legal under the
5 law. And the law here provides an objective standard for them to
6 make that determination.

7 THE COURT: Thank you, counsel.

8 Show, arguments of counsel heard.

9 A couple of things here counsel, and when I first read
10 the Motion to Reconsider, of course the Court took into considerat-
11 ion your analogy of the sale of drugs within a thousand feet of a
12 school. I do think we have a difference here, especially when we
13 are looking at the definition through case laws as to what uncon-
14 stitionally vague means. When someone is about to sell drugs and
15 they look and they see that they are close to a school, they may
16 not know whether it's 800 feet, 1000 feet, they know it's a school.
17 They can tell by looking that it's a school. They know that they're
18 going to sell drugs and so you would think that a person in such a
19 situation would at least have a major hint that they are close to a
20 school.

21 In your Motion to Reconsider you indicate that the offense
22 of Driving While License Revoked is very simple. It has two ele-
23 ments, the act of driving a motor vehicle on a highway in the state
24 and the fact that the driver's license of the person operating the

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1 motor vehicle was revoked. You are right. That is simple. That's
2 not our problem in this case. Our case gets into the definition of
3 what is a motor vehicle, and that is where I think we get into the
4 issue of vagueness.
5 You indicate in your Motion somewhat that the issues of
6 the weight, which is mentioned, which is 170 pounds, is really not
7 that important. Then my question is, why is it in the statute?
8 What happens if you weigh less than 170 pounds. What happens if
9 you weigh more than 170 pounds. It really doesn't indicate.
10 The definition of unconstitutionally vague is that a
11 statute fails to provide a person of ordinary intelligence fair
12 notice of what is prohibited or is so standardless that it author-
13 izes or encourages seriously discriminatory enforcement and it's a
14 law that lacks terms susceptible of objective measurement, such
15 that a person with common intelligence must necessarily guess at
16 its meaning in difference to its application.
17 Going back to your analogy with regard to a school build-
18 ing. Again, a person should be able to recognize right off the
19 bat that they are close to a school. But a person would not be
20 able, in the Court's estimation, when looking at a motor bike at a
21 glance, in order to determine number one, whether it's less than
22 one horsepower. Number two, that its maximum speed on a paved level
23 surface when powered solely by such motor, while ridden by an
24 operator who weighs 170 pounds is less than 20 miles an hour.

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1 A person is not going to be able to even understand that.

2 You've indicated those matters can be addressed either
3 before trial or after trial. Well, I don't see anywhere in the
4 definition of unconstitutionally vague where it wants a matter to
5 get that far. That it wants to have to wait until a trial has
6 been held in order to go back and question whether or not the law
7 is vague.

8 The Court can recollect the testimony of the Officer who
9 testified in this case, and he was struggling from the witness
10 stand, when asked how he knew that the Defendant weighed 170
11 pounds, he had to indicate that he got it off of a driver's license
12 that was fairly old. So, if that's what he's going to proceed with,
13 then I think that it is fair to assume that in order for an Officer
14 to be able to fairly know if he's arresting an individual properly
15 for this offense. The Officer would almost have to have a scale in
16 his car and have the individual step on a scale in order to see if
17 he weighs 170. And then if so, what's going through the Officer's
18 mind as to whether that actually constitutes a motor vehicle under
19 the definition of the statute.

20 Show, that the Court is going to deny the State's Motion
21 for Reconsideration in this case.

22 What the Court is going to do, the Court is not going to
23 give a written Opinion. I would almost say that the Court's first
24 order in the case would be sufficient, but I want to make sure

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1 counsel, as you have indicated that it is sufficient, so that it is
2 not kicked back after some portion of time.
3 So, the Court is going to give an oral statement which is
4 to be transcribed upon the request of the State.
5 Show, that portion of the statute which the Court is de-
6 claring unconstitutional is Chapter 625, ILCS 5/1-140.15. The
7 Court is determining its decision, that portion of the statute is
8 vague because it fails to provide a person of ordinary intelligence
9 fair notice of what is prohibited or is so standardized that it
10 authorizes or encourages seriously discriminatory enforcement and
11 that that section of the statute lacks terms susceptible of object-
12 ive measurement, such that a person of common intelligence must
13 necessarily guess at its meaning and differ as to its application.
14 Show further that the Court finds that the statute relied
15 upon in this case is being held unconstitutional because it cannot
16 reasonably be construed in a manner that would preserve its validity.
17 Next, that the Court finds that the finding of unconstitut-
18 ionality is necessary to the decision or judgment rendered and that
19 such decision or judgment cannot rest upon an alternative ground.
20 The Court is not going to address paragraph five, regarding
21 Rule 19, in that the State is already a party to this action, and
22 now the Attorney General's Office has become a party to the action.
23 Anything else at this time, counsel?
24 MR. LEVIN: No, Your Honor.

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JUN 19 2017

CLERK OF THE CIRCUIT COURT
DOUGLAS COUNTY, ILLINOIS

IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
DOUGLAS COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
v.) No. 16-CF-101
JOHN W. PLANK,)
Defendant.)

ORDER

In compliance with the May 30, 2017 order of the Illinois Supreme Court remanding this matter for the limited purpose of making and recording findings in compliance with Supreme Court Rule 18, the Court hereby states that it has found section 1-140.15 of the Illinois Vehicle Code, 625 ILCS 5/1-140.15, unconstitutional and sets forth the following grounds for that finding:

(1) The Court finds that section 1-140.15 is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause of Article 1, section 2 of the Illinois Constitution, because it fails to provide a person of ordinary intelligence fair notice of what it prohibits and is so standardless that it authorizes or encourages seriously discriminatory enforcement;

(2) The Court holds that section 1-140.15 is unconstitutional on its face;

(3) Section 1-140.15 cannot reasonably be construed in a manner that would preserve its validity;

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(4) The finding that section 1-140.15 is unconstitutional is necessary to the Court's decision granting defendant's motion to dismiss, and that decision cannot rest upon an alternative ground; and

(5) The notice required by Supreme Court Rule 19 was served on the Attorney General and State's Attorney, who were given adequate time and opportunity under the circumstances to defend the constitutionality of section 1-140.15.

6-19-17

Date

Judge

Prepared By:

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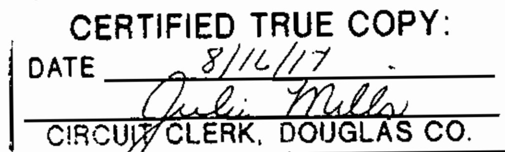
Counsel for Plaintiff
People of the State of Illinois



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APR 13 2017

CLERK OF THE CIRCUIT COURT
DOUGLAS COUNTY, ILLINOIS

IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
DOUGLAS COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JOHN W. PLANK, Defendant-Appellee.	)	No. 2016-CF-101

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below.

(1) Court to which appeal is taken:

Supreme Court of Illinois, pursuant to Illinois Supreme Court Rule 302(a)(1).

(2) Name of appellant and address to which notices shall be sent:

Kate Watson
Douglas County State's Attorney
401 South Center Street
Tuscola, Illinois 61953
kate.watson@douglascountyil.com

(3) Name and address of appellant's attorney on appeal:

Eric M. Levin
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
elevin@atg.state.il.us

(4) Date of judgment or orders:

January 10, 2017 (order declaring statute unconstitutional and dismissing charge)
March 21, 2017 (order denying motion to reconsider)

(5) Offense of which convicted: Not applicable (see number 7).

(6) Sentence: Not applicable (see number 7).

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(7) If appeal is not from a conviction, nature of order appealed from:

Order declaring a state statute unconstitutional.

Defendant was charged with one count of driving a motor vehicle while his license was revoked, in violation of 625 ILCS 5/6-303(a). The Illinois Vehicle Code's definition of "motor vehicle" includes an exception for "low-speed gas bicycles." *See* 625 ILCS 5/1-146. The definition of "low-speed gas bicycle" is codified at 625 ILCS 5/1-140.15. The circuit court dismissed the criminal charge against defendant after declaring 625 ILCS 5/1-140.15 unconstitutionally vague.

(8) A transcript of the March 21, 2017 hearing on the People's Motion to Reconsider is attached as Exhibit A. The circuit court's oral findings made in compliance with Rule 18 are found at pages 10-11.

April 13, 2017

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

KATE WATSON
State's Attorney

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By:
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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 September 25, 2017, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my email address to the email addresses of the persons named below:

J. Steven Beckett
Beckett & Webber, P.C.
508 South Broadway
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Sidney, Illinois 61877
francisthomas800@gmail.com

Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General
elevin@atg.state.il.us

E-FILED
9/25/2017 11:53 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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