No. 130775

IN THE

SUPREME COURT OF ILLINOIS

VILLAGE OF LINCOLNSHIRE, Plaintiff-Appellee, -vs- DANIEL OLVERA, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 2-23-0255. There on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, No. 21 DT 703, 21 TR 23260. Honorable Bolling W. Haxall, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

After a bench trial, Daniel Olvera was found guilty of driving under the influence and improper traffic lane usage and was sentenced to 12 months' court supervision.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

(1) Whether the Village of Lincolnshire's failure to provide evidence of written permission to prosecute a violation of the Illinois Vehicle Code, obtained from the State's Attorney, constitutes second-prong plain error.

(2) Whether the State proved beyond a reasonable doubt that Daniel Olvera, a driver's education student, was incapable of driving safely under the statute for driving under the influence where his experienced driving instructor voiced only a general concern about Daniel's behavior and did not think it was necessary "to keep him out of the car."

STATUTES INVOLVED

55 ILCS 5/3-9005(a)(1) (2021)

(a) The duty of each State's Attorney shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for the county, in which the people of the State or county may be concerned.

625 ILCS 5/16-102(c) (2021)

[***]

(c) The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so is obtained from the State's Attorney.

625 ILCS 5/11-501(a)(4) (2021)

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

[***]

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

STATEMENT OF FACTS

On May 6, 2021, Daniel Olvera, a sophomore at Stevenson High School, was arrested for driving under the influence following completion of a practice drive during his driver's education class. The Village of Lincolnshire charged him with violating the Illinois Vehicle Code under 625 ILCS 5/11-601(a)(4).[1] (C. 15) Nothing in the record indicated the State's Attorney, pursuant to 625 ILCS 5/16-102(c)(2021), granted the Village written permission to prosecute violations of the Illinois Vehicle Code.

The evidence at trial established that, during seventh period, Daniel went on a practice drive as part of his driver's education curriculum. (R. 53-54) His instructor that day, Scott Peckler, had retired five years earlier after 30 years of teaching driver's education and special education. (R. 51) Daniel, Peckler, and a female student walked from the classroom through several corridors to get to the parking lot. (R. 55, 82) Daniel was hiccupping. Peckler asked Daniel if he was okay because, in Peckler's experience, many students are nervous before they drive. Daniel said he was fine. (R. 56) A compilation video of Daniel walking down the hallways before and after his practice drive was entered into evidence. (Prosecution Ex. #2)

Peckler testified that, prior to driving with a student, he is provided information detailing the student's driving experience to that point. (R. 56). He could not recall how many times Daniel had driven before that day. (R. 57)

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[1] The charging instrument is confusing, stating the violation was pursuant to "ILCS" and cited "10-1-2-11-501(a)(4)." Underneath that, it stated "Chapter 10-1 Act 2 Section 11-501(a)(4)". Regardless, Daniel does not dispute he was charged pursuant to 625 ILCS 5/16-102(c).

Daniel had "a little difficulty" backing the car out of the parking space, so Peckler helped him. Peckler said students generally are very afraid of backing up because they do not have that skill. (R. 60) He had to remind Daniel to check the backup camera and look over his shoulder to make sure there were no oncoming cars or pedestrians. (R. 60-61)

As Daniel drove toward the exit of the high school, he seemed "fine, no issues whatsoever," Peckler testified. He "didn't notice any irregularities whatsoever" as they approached the red light at the intersection of Stevenson Drive and Highway 22. (R. 61)

When the light turned green, Daniel turned left onto Highway 22, as instructed. (R. 63-64) He started to veer into the outside lane, so Peckler grabbed the wheel because a car was preparing to make a right turn into that lane. (R. 64) Driving on Highway 22, Daniel veered left and right in the lane, which Peckler believed was due to nervousness. (R. 64-65) Peckler thought he grabbed the wheel several times to put Daniel straight in the lane. (R. 65) As they continued down the road on the way to practice driving in a roundabout, Peckler noticed Daniel talking to the back passenger. (R. 66-67) He told Daniel to concentrate on driving. (R. 67)

When Daniel started driving in the roundabout, he veered toward the curb twice and Peckler had to grab the wheel to put the car back on the street. (R. 68) After exiting the roundabout, they approached a stop sign. (R. 69-70) Peckler used the brake on the passenger's side of the car because Daniel was not going to come to a complete stop. (R. 70) They turned right and approached a stoplight. Peckler again used the brake because "it was a fast stop." (R. 70-71)

At trial, the village attorney asked Peckler if there was anything unusual about Daniel's driving at that point, based on Peckler's experience with new drivers. Peckler said, "it appeared to me [Daniel] was very nervous while he was driving." (R. 71) They approached another roundabout. (R. 72) Daniel "still [had] a little difficulty weaving left and right," but Peckler did not have to grab the wheel. Peckler added, "[Daniel] maybe got a little better at it, but it was a little erratic to get through there." (R. 73)

At a red light, Peckler saw Daniel's head "go down." He asked if Daniel was okay. Daniel said he had been tired and had not slept. (R. 73) Daniel then turned right "a little erratically." (R. 74) He continued to talk to the backseat passenger. Peckler directed Daniel back to the task at hand and grabbed the wheel several times. "I – you know, I just felt that it could have been nerves. I don't know," Peckler testified. (R. 74)

After completing the practice drive, Daniel drove back to school. (R. 75, 86) He had "a little bit" of difficulty parking the car, so Peckler helped him straighten the car in the spot. (R. 75) When they returned to the classroom, Peckler spoke to the director of the driver's education program. Regarding Daniel's behavior, he told the director, "'there's something going on here, I think you should check this out.'" (R. 76)

On cross-examination, Peckler said he would not put students in danger, and if he thought a student was high, he would not let that student drive. (R. 84-85) Specifically as it applied to Daniel, Peckler testified, "I mean, there was some behavior that was indicated – you know, a little foolish whatever, but nothing that I would say I'm going to keep him out of the car." (R. 85) He was asked if he noticed anything unusual about Daniel's speech

while Daniel was talking to the other student in the car. Peckler answered, "Honestly, there was a little slur at that point in time. I didn't – you know, again that could have been fatigue. I don't know." (R. 87)

On redirect-examination, the village attorney asked if Daniel's driving improved or worsened throughout the drive. Peckler said, "My concerns towards the end increased. . . There was something wrong here. I could not pinpoint it – . . . but there was something to a degree – " (R. 89)

Sara Rogers was Daniel's assigned dean and responded to a report from the driver's education department that a student was suspected of driving under the influence. (R. 113, 114) Rogers, who had frequent contact with Daniel, said she noticed his speech was slow, he was confused, and he was not responding quickly to questioning. (R. 114, 116) She took him to see the nurse, who reported to Rogers that Daniel was "really nervous, really upset, worried, and slow in his speech still[.]" (R. 120-121)

Rogers interviewed Daniel. (R. 122) He told her his mother caught him smoking marijuana the night before, and he could not sleep because he "was worried and sad because [he] had made [his] mom sad." (R. 122, 136) Rogers did not know what time he had been caught and did not ask him when he last used marijuana. (R. 136-137)

During a "student safety search," Rogers and another dean found a skinny, white rolled cigarette in the folds of Daniel's wallet. (R. 124) Rogers said Daniel told her it was a marijuana cigarette. (R. 125) "Knowing that a law had been broken," she called the school resource officer, T.J. Beale. (R. 126, 157) Rogers gave Beale the wallet and cigarette and told him she suspected Daniel was "under the influence and certainly in the possession of

marijuana." (R. 127)

Beale conducted two field sobriety tests on a surface that was flat and free of debris. (R. 129-132, 168) He testified Daniel had difficulty keeping his balance and was swaying. Beale arrested Daniel for driving under the influence of drugs. (R. 174)

The trial court asked Rogers if she had asked Daniel whether he was still feeling the effects of the marijuana at the time he met with her. Rogers answered, "Yes, and he said that he must be." (R. 137) The court asked, "Did he indicate he was feeling, as you put it, the term high last night or at the time that he was talking to you?" (R. 137-138) Rogers said, "At the time he was talking to me." When asked whether Daniel said anything about the physical effects, Rogers said, "Exhaustion and emotional effect. He was worried. He was scared." Based on everything she saw and heard from Daniel, Rogers "absolutely" believed he was under the influence of cannabis and that his behavior was not simply an "emotional response . . . because his mom busted him last night," as the judge suggested. (R. 138-139)

After the trial court concluded its inquiry, the parties asked Rogers follow-up questions. Rogers refreshed her memory with an email she wrote after the incident. She then testified that Daniel told her his mother caught him smoking marijuana, and he stayed up until 3 a.m., "because he was under the influence and worried and disappointed at disappointing his mother." (R. 142) In the email, Rogers wrote that Daniel denied recent drug use but admitted to smoking marijuana the night before. (R. 143) She also wrote that Daniel "exhibited normal physical behavior with some slow speech" following the search of his wallet. (R. 144)

Officer Barrett Weadick, who was more experienced than Beale in DUI enforcement with drugs, met Beale and Daniel at the Lincolnshire Police Department. (R. 174-175, 181) Weadick conducted six additional field sobriety tests in the booking room, which were recorded and entered into evidence. (R. 175-176) He testified that the tests "absolutely indicated impairment." (R. 192) No evidence was presented as to the effects of cannabis on the body or how it can affect a person the day after ingestion.

The trial court found Daniel was "under the influence of cannabis to a degree which rendered him incapable of safely driving." (R. 217) It noted he did very well overall on the sobriety tests administered at the station, adding, "what seems to make sense to me is by the time he was at the police station, the effects of the cannabis to a certain degree had dissipated." (R. 213, 217) It acknowledged the argument that his poor driving could be due to the fact he was a novice driver, but said the poor driving could also be due to the fact Daniel was under the influence of cannabis. "[I]t is also possible that the same amount of cannabis could affect different drivers differently based on their relative experience," the court stated. (R. 214)

The court noted that the video showed Daniel walking "all over the hallways. He is stumbling back and forth." (R. 215) It also found Rogers's testimony significant. She knew Daniel and determined his behavior was concerning. When asked whether she thought his behavior could be due to fatigue, she said no. (R. 216-217)

The judge stated:

> But when I view Mr. Olvera walking through those hallways and one of the officers today said something that something just wasn't right and that's – that's what

> I observed. There's something about Mr. Olvera that wasn't right. And while I do believe fatigue and emotion could have played some part in that, I believe cannabis also did and did so to a degree which rendered Mr. Olvera incapable of safely driving. (R. 218)

The judge placed Daniel on 12 months' supervised supervision for the DUI charge. (R. 244) Defense counsel did not file a motion for new trial or motion to reconsider the sentence.

On appeal, Daniel argued the proceedings failed to comply with Illinois statutes because the Village of Lincolnshire prosecuted him under the Vehicle Code without establishing it had obtained written permission to do so from the Lake County State's Attorney. Because defense counsel did not raise the issue at trial, Daniel argued this constituted second-prong plain error. *Village of Lincolnshire v. Olvera*, 2024 IL App (2d) 230255, ¶¶ 1, 54. He also argued the State failed to prove beyond a reasonable doubt that he was under the influence to a degree that rendered him incapable of driving safely. The Second District affirmed. 2024 IL App (2d) 230255, ¶ 1.

As to the first issue, the appellate court found that the plain language of 625 ILCS 5/16-102(c) "does not impose an affirmative duty on a municipality to submit, at any time, proof of its authority to prosecute." 2024 IL App (2d) 230255, ¶ 60. Daniel cited *Village of Bull Valley v. Zeinz*, 2014 IL App (2d) 140053, and *People v. Herman*, 2012 IL App (3d) 110420, to support his argument that the judgment should be reversed due to Lincolnshire's failure to demonstrate it had been granted authority to prosecute. The Second District stated, "neither case constitutes well-settled law establishing that reversal is warranted because the Village failed to enter into the record evidence of its written permission to prosecute DUI (cannabis) in this case."

2024 IL App (2d) 230255, ¶ 67. The appellate court also found that, even if error had occurred, Daniel did not establish it constituted second-prong error akin to structural error. *Id*., ¶ 69.

Regarding the second issue, the appellate court found that, considering the evidence in the light most favorable to the prosecution, "a reasonable factfinder could find beyond a reasonable doubt that defendant was under the influence of cannabis." 2024 IL App (2d) 230255, ¶ 87. It cited Daniel's admissions, the witnesses's observations of his physical condition, the experience of the officers, and the videos as evidence that supported the trial court's ruling that he was under the influence. *Id*., ¶¶ 77-80, 84-86. The appellate court also found the evidence sufficiently proved beyond a reasonable doubt that Daniel was incapable of driving safely. *Id*., ¶ 88. This finding relied on Peckler's testimony about Daniel's driving, such as the fact that Peckler "had to grab the wheel" and use the instructor's brake. *Id*.

ARGUMENT

I. Pursuant to 625 ILCS 5/16-102(c), municipal attorneys must establish on the record that they have obtained written permission from the State's Attorney to prosecute a violation of the Illinois Vehicle Code, and the failure to do so constitutes second-prong plain error.

This Court has long recognized a State's Attorney's duty to equitably administer justice, stating in 1927 that "[t]he state's attorney is the representative of all the people, including a defendant, and his official oath requires him to safeguard the constitutional rights of the defendant the same as those of any other citizen." *People v. Sweetin*, 325 Ill. 245, 248 (1927). As such, the State's Attorney is the official vested with the power and discretion to bring criminal charges and prosecute cases within a county. 55 ILCS 5/3-9005(a)(1)(2021) (a duty of a State's Attorney is "[t]o commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for the county in which the people of the State or county may be concerned"). The legislature carved out a narrow exception to this rule which allows a municipal attorney to prosecute certain violations of the Illinois Vehicle Code "if written permission to do so is obtained from the State's Attorney." 625 ILCS 5/16-102(c) (2021); *City of Urbana v. Burgess*, 40 Ill. App. 3d 244, 244-45 (4th Dist. 1976); see also 625 ILCS 25/7 (2021) (permitting a municipal attorney to prosecute a violation of the Child Passenger Protection Act if the violation occurs within the municipality and "written permission to do so is obtained from the State's Attorney").

In this case, the record contains no such written permission, nor was the existence of such permission ever referenced verbally during the proceedings. Without evidence of written permission, for all intents and

purposes, the Village of Lincolnshire usurped the duties of the State's Attorney by prosecuting Daniel Olvera for driving under the influence pursuant to 625 ILCS 5/11-501(a)(4) (2021). Thus, the proceedings failed to comply with the statute establishing the duties of the State's Attorney, 55 ILCS 5/3-9005(a)(1) (2021), and with the provision of the Vehicle Code limiting the circumstances under which a municipality, through its municipal attorney, can prosecute a violation of the Illinois Vehicle Code. 625 ILCS 5/16-102(c) (2021). As a result, the judgment here must be reversed. *People v. Koetzle*, 40 Ill. App. 3d 577, 579-80 (1976) (reversing a judgment because "the City of Harrisburg was not a proper party plaintiff and had no authority to prosecute the defendant" pursuant to Section 16-102 of the Illinois Vehicle Code).

Admittedly, Daniel forfeited this issue by not raising it in the trial court; however, the failure to provide evidence of written permission constitutes plain error under the second prong of the doctrine. Whether second-prong plain error occurred is reviewed under the *de novo* standard of review. *People v. Johnson*, 2024 IL 130191, ¶ 51.

The plain error doctrine is a "'narrow exception to forfeiture principles designed to protect the defendant's rights and the reputation of the judicial process.'" *Johnson,* 2024 IL 130191, ¶ 42 (quoting *People v. Moon*, 2022 IL 125959, ¶ 21). Plain error review is warranted if the error is clear and obvious and either: (1) the evidence was so closely balanced that the error threatened to tip the scales of justice against the defendant; or (2) the error was so serious that it affected the fairness of the defendant's trial and cast doubt on the integrity of the judicial proceedings. *People v. Piatkowski*, 225 Ill.2d 551, 565

(2007). The second prong applies to the case at hand.

Clear or obvious error exists.

The initial step in plain-error review is to determine whether an error occurred in the first place. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). This Court has not previously addressed whether error occurs when a municipality prosecutes a violation of the Illinois Vehicle Code without providing evidence of written permission to do so from the State's Attorney.

In the appellate court, Daniel argued that *Village of Bull Valley v. Zeinz*, 2014 IL App (2d) 140053, and *People v. Herman*, 2012 IL App (3d) 110420, supported his contention that a clear or obvious error occurred. In its opinion, the Second District stated that "neither case constitutes well-settled law establishing that reversal is warranted here because the Village failed to enter into the record evidence of its written permission to prosecute DUI (cannabis) in this case." *Village of Lincolnshire v. Olvera*, 2024 IL App (2d) 230255, ¶ 67. Instead, the appellate court relied on its earlier decision in *People v. Wiatr*, 119 Ill. App. 3d 468 (2d Dist. 1983), as well as the "plain language of the statute," to conclude no clear or obvious error occurred. *Olvera*, 2024 IL App (2d) 230255, ¶ 68. For the reasons set forth below, this Court should overrule *Wiatr* and conclude, in accordance with *Zeinz* and *Herman*, that the Village of Lincolnshire bore the responsibility of providing evidence in the trial court that it possessed written permission from the State's Attorney to prosecute violations of the Illinois Vehicle Code, and its failure to do so constituted clear and obvious error.

To determine whether a clear or obvious error occurred, it is necessary to consider the plain language of the statute. See *People v. Eppinger*, 2013 IL

114121, ¶¶ 20, 21 (a determination of whether a clear and obvious statutory violation occurred "devolve[d] into an issue of statutory construction"). The statute at issue here provides:

> (c) The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so is obtained from the State's Attorney. 625 ILCS 5/16-102 (c) (2021).

When determining the meaning of a statute, courts are charged with ascertaining and giving effect to the intent of the legislature. *People v. Lloyd*, 2013 IL 113510, ¶ 25. "The best means of accomplishing this objective is through the statutory language itself, given its plain and ordinary meaning." *People v. Clark*, 2024 IL 130364, ¶ 15. When the statute is clear and unambiguous, it will be applied as written without resorting to aids of statutory construction. *People v. Davidson*, 2023 IL 127538, ¶ 14. This Court "view[s] the statute as a whole, construing words and phrases in connection with other relevant statutory provisions rather than in isolation, while giving each word, clause, and sentence of a statute a reasonable meaning, if possible, and not rendering any term superfluous." *People v. Fair*, 2024 IL 128373, ¶ 61.

The statute here specifies the permission from the State's Attorney must be *written*. Had the legislature intended this power to prosecute to be more casually delegated, it would not have specified "*written* permission." *People v. Casler*, 2020 IL 125117, ¶ 24 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous"). For example, the statute could have been phrased to

require only verbal permission, or it could have simply required general "permission" without specifying the manner in which it be given. The requirement that the permission be written speaks to the legislature's intent that this delegation of authority be transparent and easily verified. Operating on the mere assumption that prosecutorial authority has been granted runs afoul of this intent.

In its opinion, the Second District seemingly sanctions such assumptions, asserting "the plain language of this provision does not impose an affirmative duty on a municipality to submit, at any time, proof of its authority to prosecute." *Village of Lincolnshire v. Olvera*, 2024 IL App (2d) 230255, ¶ 60. To support that contention, the appellate court attempted to distinguish *Zeinz* and *Herman*, dismissing both as not "well-settled law establishing that reversal is warranted here because the Village failed to enter into the record evidence of its written permission to prosecute DUI (cannabis) in this case." *Olvera*, 2024 IL App (2d) 230255, ¶ 67.

In *Zeinz*, the Second District emphasized that both requirements of the statute were necessary in order to sustain a state DUI conviction obtained by a municipal attorney. The appellate court stated, "Section 16-102(c) unambiguously forbids a municipality from prosecuting a violation of the Vehicle Code unless (1) the violation occurs within the municipality's corporate limits *and* (2) the State's Attorney has provided written permission. Otherwise, the State's Attorney '*shall*' prosecute *all* violations.'" (Emphasis in original.) *Zeinz*, 2014 IL App (2d) 140053, ¶ 16. It held, "Under the case law, a municipality relying on a grant of authority to prosecute offenses under the code must establish that it has satisfied section 16-102(c)." *Id.*, ¶ 22.

Daniel acknowledges that *Zeinz* is not precisely on point, as the question in that case was whether the DUI occurred within the village limits thus giving the municipal attorney the ability to prosecute. *Village of Bull Valley v. Zeinz*, 2014 IL App (2d) 140053, ¶ 13. For that reason, the Second District found *Zeinz* "readily distinguishable" since, here, there is no question that at least part of the alleged offense occurred within the Village of Lincolnshire. *Olvera,* 2024 IL App (2d) 230255, ¶ 67. However, the fact that a case is not a replica of the matter at hand does not eliminate its applicability. See *People v. Fuller*, 205 Ill. 2d 308, 345 (2002) (finding a case not "directly on point" but instructive nonetheless).

Although *Zeinz* focused on the statute's first requirement, its holdings apply equally to the second one. If a village must establish the offense occurred within its corporate limits, it follows that it must also establish it received written permission to prosecute. Nothing in the statute suggests that one requirement outweighs the other.

The use of the connector "and" "between two statutory elements generally indicates that both of the elements must be satisfied in order to comply with the statute." *County of DuPage v. Illinois Labor Relations Bd.*, 231 Ill. 2d 593, 606 (2008). Although "and" has, at times, been construed to mean "or," that construction is "appropriate only in situations where the literal reading of the statute is at variance with the legislative intent." *People ex rel. Dept. of Registration & Ed. v. D. R. G., Inc.*, 62 Ill. 2d 401, 405 (1976). In this case, ascribing the word "and" its usual meaning effectuates the legislature's intent to grant municipalities prosecutorial authority only under certain circumstances.

The *Zeinz* Court concluded, "When the Village decided to prosecute this case, it took on the burden to prove that defendant committed his offenses within the Village limits." *Id*. Likewise, a village also takes on the burden of proving to the court that it had written permission from the State's Attorney to prosecute the state offense. Where the Village of Lincolnshire failed to carry that burden, Daniel's conviction for DUI charged under the Illinois Vehicle Code, like the defendant's conviction in *Zeinz*, must be reversed. *Zeinz*, 2014 IL App (2d) 140053, ¶¶ 22, 24.

The case of *People v. Herman*, 2012 IL App (3d) 110420, cited with approval in *Zeinz*, further supports the assertion that clear and obvious error occurred in the case at hand. In *Herman*, a Village of Frankfort police officer issued four traffic citations to the defendant, including two for driving under the influence. 2012 IL App (3d) 110420, ¶ 1. Each citation alleged the defendant violated the Illinois Vehicle Code. *Id.*, ¶ 3. Before trial, the municipal attorney filed a motion to amend the citations to designate the village, rather than the State, as the prosecuting authority. *Id.*, ¶ 4. The village attorney signed the motion. *Id.*

The trial court allowed the motion and the citations were amended by crossing out "State of Illinois" and replacing it with "Village of Frankfort" as the plaintiff. *Herman*, 2012 IL App (3d) 110420, ¶ 5. An Assistant State's Attorney purportedly approved this change and indicated as much by handwriting her initials on the amended citation. *Id.* The actual citations were not changed to allege violations of village ordinances. *Id.* After a stipulated bench trial prosecuted by the village attorney, the defendant was found guilty of DUI under 625 ILCS 5/11-501(a)(1). *Id.*, ¶ 6.

On appeal, the defendant argued the village did not have the authority to prosecute her for a violation of the Illinois Vehicle Code. *Id.*, ¶ 8. The appellate court agreed and reversed her conviction. *Id.*, ¶ 1. Citing to *People v. Koetzle,* 40 Ill. App. 3d 577 (5th Dist. 1976), the *Herman* Court noted that the record on appeal did not contain written permission from the State's Attorney granting the Village of Frankfort the authority to prosecute the DUI under the Illinois Vehicle Code. *Herman*, 2012 IL App (3d) 110420, ¶ 10. Additionally, the motion to amend the citations was presented by the village attorney, rather than the State's Attorney. *Id.* No corresponding request was made to allege violations of village ordinances. *Id.* The Third District stated, "Under these circumstances, we conclude the Village did not acquire the authority to prosecute defendant for a designated violation of section 11-501(a)(1) of the Illinois Vehicle Code as set forth in the amended citation in Will County case No. 10-DT-1195 by simply having an Assistant State's Attorney initial the face of the uniform citation." *Id*. at, ¶ 12.

In Daniel's case, the Second District attempted to distinguish *Herman* by describing the issue there as "the sufficiency of the claimed grant of permission to prosecute." *Olvera*, 2024 IL App (2d) 230255, ¶ 67. However, the basis on which the appellate court purported to distinguish *Herman* actually bolsters Daniel's position. In *Herman*, the State's Attorney and municipal prosecutor made at least *some* effort, albeit futile, to demonstrate the defendant was being prosecuted by the proper authority. If an insufficient effort to demonstrate authority can be the basis for reversal, then *no* effort at all must also be a basis for reversal.

The Second District in *Olvera* rejected the holdings in *Zeinz* and

Herman in favor of its decision in *People v. Wiatr*, 119 Ill. App. 3d 468 (2d Dist. 1983). Quoting *Wiatr*, the *Olvera* Court stated:

> "Where they have chosen to delegate authority to prosecute *** Vehicle Code violations to a municipality, it is probable the State's Attorneys of the various counties do so in more than one way. Some may give such permission on a case by case basis; others do so by a general letter of permission to the municipality. [Citation.] To require, as urged by [the] defendant, that the municipal attorney offer proof in the record of each case that prosecutorial permission has been given by the State's Attorney appears to be an unreasonable and unnecessary burden to impose on the municipal attorneys and State's Attorneys and would also unduly burden the record keeping responsibilities of the circuit clerks." *Olvera*, 2024 IL App (2d) 230255, ¶ 61 (quoting *Wiatr*, 119 Ill. App. 3d at 472-73).

The record-keeping concerns imagined in *Wiatr* are unwarranted. To the extent those concerns ever were valid, they have been erased over the 40 years that have passed since *Wiatr* was decided. Technological advances have streamlined record-keeping. Particularly in this age of electronic filing, it is not unduly burdensome for municipal attorneys to provide proof of written permission to prosecute from the State's Attorney.

Moreover, requiring a municipal attorney to "offer proof in the record of each case that prosecutorial permission has been given by the State's Attorney," is no more burdensome than any other routine filing. For example, in 1982, a year before *Wiatr* was decided, a new Supreme Court Rule established the now-routine requirement of filing an appearance. Ill. S. Ct. R. 13, committee comments. Every day, attorneys throughout the State comply with this rule, and every day clerks process the filings. Just as the *Wiatr* Court feared would happen if municipal attorneys were required to file proof

of written permission to prosecute, Supreme Court Rule 13 had increased the record-keeping responsibilities of circuit clerks. Nevertheless, the system remained functional, just as it would if municipal attorneys filed proof of written permission to prosecute violations of the Illinois Vehicle Code.

Routine filings are a necessary facet of trial procedure. *See People v. Calloway*, 2019 IL App (1st) 160983, ¶ 70 (finding deficient performance where defense counsel failed to file a routine discovery motion); *Shanklin v. Hutzler*, 277 Ill. App. 3d 94, 99-100 (1st Dist. 1995)(characterizing as routine a motion to name a special process serve as routine); *Browning v. Jackson Park Hosp.*, 163 Ill. App. 3d 543, 548 (1st Dist. 1987)("motions to add new defendants are routine motions"). Considering the myriad of other documents that are routinely filed without incident, it is not unduly burdensome for a municipality to demonstrate on the record that it has written permission to prosecute a state vehicle code violation.

Although this Court has not addressed whether failure to provide proof of written permission to prosecute constitutes second-prong plain error, it has acknowledged "that 'in the absence of written permission from the State's Attorney, [a municipal attorney has] no authority to prosecute or negotiate the disposition of' a case involving a violation of the Illinois Vehicle Code." *Village of Palatine v. Regard*, 136 Ill. 2d 503, 511 (1990) (quoting *People v. LaFrank*, 104 Ill. App. 3d 650, 652 (5th Dist. 1982)). In Daniel's case, written permission to prosecute was entirely absent from the record. As a result, the Village of Lincolnshire lacked authority to prosecute him for DUI. This constitutes a clear and obvious error.

Second-prong plain error exists.

Having established a clear and obvious error occurred, the next step is to determine "whether the defendant has shown that the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process." *People v. Moon*, 2022 IL 125959, ¶ 2 (quoting *People v. Sebby*, 2017 IL 119445, ¶ 50). "Errors that fall within the purview of the second prong of the plain error rule are 'presumptively prejudicial errors—errors that may not have affected the outcome, but must still be remedied' because the error 'deprive[d] the defendant of a fair trial.'" *Moon*, 2022 IL 125959, ¶ 24, (quoting *People v. Herron*, 215 Ill. 2d 167, 183 (2005)). Daniel recognizes, as this Court recently reiterated, that "Obtaining review under the second prong of the plain error rule is indeed a high hurdle[.]" *People v. Johnson*, 2024 IL 130191, ¶ 54. A high hurdle, however, is not an insurmountable one.

Second-prong plain error is akin to structural error. *Johnson*, 2024 IL 130191, ¶ 55. "The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial," *People v. Jackson*, 2022 IL 127256, ¶ 29 (quoting *Weaver v. Massachusetts*, 582 U.S. 286, 294-95 (2017)). Structural errors "affect the framework within which the trial proceeds, rather than mere errors in the trial process itself." *Jackson*, 2022 IL 127256, ¶ 29.

The United States Supreme Court has identified the following as structural errors: complete denial of counsel, denial of self-representation at trial, trial before a biased judge, denial of a public trial, racial discrimination in selection of a grand jury, and a defective reasonable doubt instruction. *Id.* While those are examples of structural errors, they do not constitute an

exhaustive list. Illinois "may find an error to be structural as a matter of state law independent from the categories of errors identified by the Supreme Court." *Id.*, ¶ 30.

In *People v. Moon*, this Court identified another category that constitutes structural error: the failure to administer a jury oath at any time before a verdict is rendered. The *Moon* Court noted, "The jury oath is more than a mere formality." *Moon*, 2022 IL 125959, ¶ 62. The same is true regarding prosecutorial authority. Delegating prosecutorial authority to an elected official is a foundational element of the modern criminal justice system and is more than a "mere formality." A brief historical overview demonstrates that the integrity of the judicial process very much depends on prosecutions by the properly permitted authorities.

In colonial America, the crime victim bore the responsibility of apprehending and prosecuting an offender. Angela J. Davis, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 Iowa L. Rev. 393, 449 (2001). Overtime, colonies developed a "system of public prosecution to combat the 'chaos and inefficiency' of private prosecutions in a rapidly industrializing society." 86 Iowa L. Rev. at 450 (2001). At first, prosecutors were appointed but eventually were elected as the newly formed country "move[d] toward a system of popularly elected officials." 86 Iowa L. Rev. at 451 (2001). "In the early days of statehood in Illinois, the governor initially appointed 'all the State's attorneys,' but the legislature, 'vesting in their own body all the appointing powers they could lay their hands on,' began appointing prosecutors, leading to 'innumerable intrigues and corruptions.'" Michael J. Ellis, *The Origins of the Elected Prosecutor*, 121 Yale L. J. 1528,

1548 (2012) (quoting Thomas Ford, *A History of Illinois, from Its Commencement as a State in 1818 to 1847*, at 26-27 (Chicago, S.C. Griggs & Co. 1854)). Illinois ended its practice of appointing prosecutors in 1848 when it passed an amendment providing that each county would have an elected prosecutor. 121 Yale L. J. at 1561 (2012).

Since then, the power to charge a citizen with a criminal offense has been the purview of the elected State's Attorney. Pursuant to statute, a State's Attorney bears the responsibility to "commence and prosecute all actions suits, indictments and prosecutions, civil and criminal, in the circuit court for the county, in which the people of the State or county may be concerned." 55 ILCS 5/3-9005(a)(1)(2021). Every four years, residents in each county vote for the candidate they believe will best fulfill those duties, which "are not purely ministerial, but involve in a large measure the exercise of discretion as a minister of justice." Ill. Const. art. VI, § 19; *People ex rel. Hoyne v. Newcomer*, 284 Ill. 315, 324 (1918). As this Court has stated, "If the voters are unsatisfied with the State's Attorney's manner of discharging his duties, they have a remedy every four years in the election booth." *County of Cook ex rel. Rifkin v. Bear Stearns & Co., Inc.*, 215 Ill. 2d 466, 481 (2005).

In 1974, the legislature enacted a narrow exception to the State's Attorneys broad power by permitting unelected municipal attorneys to prosecute certain violations of the Illinois Vehicle Code if the violation occurred within their municipality *and* if they obtained written permission to prosecute from the State's Attorney of their respective counties. 625 ILCS 5/16-102(c) (2021). Unless a municipality has written authorization from the State's Attorney to prosecute violations of the Vehicle Code, a municipality

infringes on the authority of the State's Attorney and violates the law by moving forward with such a prosecution. It renders the trial fundamentally unfair because, without the requisite showing of written permission, the defendant is being prosecuted by an entity which, for all intents and purposes, has no authority to do so. Had the legislature intended prosecutorial authority to be so casually delegated, it would not have required *written* permission. As the Fourth District once observed, "The sanctity of prosecutorial discretion should not be cavalierly discarded." *People v. Thompson*, 88 Ill. App. 3d 375, 379 (4th Dist. 1980). Similarly, prosecutorial authority should not be cavalierly delegated to municipalities without proof of written permission from the State's Attorney.

Based on the above, it was clear and obvious error for the Village of Lincolnshire to commence prosecution of Daniel Olvera without first providing evidence of written permission to do so from the State's Attorney, as is statutorily required under 625 ILCS 5/16-102(c). As the elected officer tasked with prosecuting criminal offenses, the State's Attorney has an ethical duty to both the public and the defendant "to insure that a fair trial is accorded to the accused. [Internal citation omitted]." *People v. Valdery*, 65 Ill. App. 3d 375, 378 (3d Dist. 1978); 55 ILCS 5/3-9005(a)(1). "While the State's Attorney must diligently prosecute each case before him, he may never disregard the constitutional right of a fair and impartial trial or the search for truth which is an inherent part of justice." *Valdery*, 65 Ill. App. 3d at 378.

That prosecutorial authority cannot be relinquished lightly, as it forms the framework of the proceeding and is fundamental to a fair trial. As such, the failure to provide written evidence of permission to prosecute constitutes a

structural error under the plain error doctrine. Daniel's conviction must be reversed.

II. The lower courts erred in finding Daniel Olvera, a 16-year-old driver's education student, committed DUI, where the only witness to testify about his driving was an experienced instructor who never even suggested Daniel was incapable of driving safely.

By all accounts, 16-year-old sophomore Daniel Olvera was emotionally and physically drained when he went to school on May 6, 2021. He was distraught because his mother had caught him smoking marijuana the night before, and he did not go to sleep until 3:00 a.m. (R. 143) The school nurse later described him as "really nervous, really upset, worried[.]" (R. 120-121) Against this backdrop, Daniel practiced driving during his seventh-period driver's education class. His instructor, Scott Peckler, who had more than 30 years experience teaching students how to drive, allowed Daniel to complete the entire practice drive. Only after Daniel parked the vehicle and returned to the classroom did Peckler voice any concerns about Daniel's behavior, telling the director of the driver's education program, "there's something going on here. I think you should check this out." (R. 76) Significantly, nothing in the record indicates Peckler suspected Daniel of being under the influence, let alone to a degree that rendered him incapable of driving safely. As Peckler testified, "[T]here was some behavior that was indicated that – you know, a little foolish whatever, but nothing that I would say I'm going to keep him out of the car." (R. 85)

Following Peckler's post-drive report to the program director, a school dean and police resource officer conducted a brief investigation which led to Daniel's arrest for driving under the influence of cannabis. The provision he was charged with states as follows:

> (a) A person shall not drive or be in actual physical control of any vehicle within this State while:

> [***]
> (4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;
>
> 625 ILCS 5/11-501(a)(4) (2021).

Specifically, the issue here is whether a driving instructor's "concerns" about a nervous student's behavior is sufficient to prove beyond a reasonable doubt that the student was *incapable* of driving safely. Even assuming, *arguendo,* that Daniel was under the influence, the record belies the conclusion that Daniel was under the influence *to a degree that rendered him incapable of driving safely.* In affirming the trial court, the Second District addressed that particular element of the offense in a single paragraph in which it recounted Peckler's testimony about Daniel's driving mistakes. *Village of Lincolnshire v. Olvera*, 2024 IL App (2d) 230255, ¶ 88. The appellate court concluded, "This evidence, in addition to the evidence of defendant's physical condition upon his return to school, is sufficient to prove beyond a reasonable doubt that defendant was incapable of driving safely." *Id*. Contrary to the findings of the lower courts, the Village failed to meet its burden of proving beyond a reasonable doubt that Daniel was not only impaired but impaired to such a degree that rendered him incapable of driving safely.

The Due Process Clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. U.S. Const. amend. XIV; Ill. Const., art. I, §2; *In re Winship*, 397 U.S. 358, 364 (1970). The prosecution has the burden of proving beyond a reasonable doubt all of the material and essential facts constituting the crime. *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966). When considering whether the

Village proved Daniel's guilt beyond a reasonable doubt, the question to resolve is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); U.S. Const. amend. XIV; Ill. Const., art. I, § 2.

A reviewing court does not retry defendants, and, on issues involving the weight of the evidence or the credibility of the witnesses, it will not substitute its judgment for that of the trial court's. *People v. Jackson*, 2020 IL 124112, ¶ 64. The trial court's judgment, however, is not immune from challenge or reversal. While a reviewing court need not disregard inferences that flow normally from the evidence, it may not allow unreasonable inferences. *People v. Bush*, 2023 IL 128747, ¶ 33; *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). As this Court has stated:

> [T]he fact a judge or jury did accept testimony does not guarantee it was reasonable to do so. Reasonable people may on occasion act unreasonably. Therefore, we reaffirm that the fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

A criminal conviction will be overturned on a challenge to the sufficiency of the evidence only where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Belknap*, 2014 IL 117094, ¶ 67. A conviction cannot be affirmed based on speculation or conjecture. *People v. Ehlert*, 211 Ill. 2d 192, 215 (2004). As the Seventh Circuit has said, "The government may not prove its case, as we have said, with 'conjecture camouflaged as evidence.'" *United States v. Jones*, 713 F.3d 336, 340 (7th Cir. 2013)(quoting *Piaskowski v. Bett*,

256 F. 3d 687, 693 (7th Cir. 2001)).

Daniel's driving errors were not so egregious that they demonstrated he was *incapable* of driving safely. At no point did Peckler – the only trial witness who saw and experienced Daniel's driving – testify to anything even insinuating such a conclusion. At worst, Peckler testified that "My concerns towards the end increased. . . There was something wrong here I could not pinpoint it – ... but there was something to a degree – " (R. 89)

Peckler's extensive experience as a driving instructor imbues his testimony with particular significance. He had been a driver's education and special education teacher for 30 years. (R. 51) Following his retirement in 2017, he served as a substitute driving instructor at several Lake County high schools. He typically worked two or three days a week at Stevenson. (R. 51-52)

With all of that experience, it is unreasonable to infer Peckler would allow a student to drive – especially while he and another student were passengers – if he suspected the student driver was under the influence of drugs or otherwise impaired, especially to a degree that made the student incapable of driving safely. Peckler confirmed that assumption during cross-examination:

> Q: Okay. Is it fair that you -- well, let me put it this way. One of your responsibilities is making sure the kids are safe, correct?
>
> A: Yes.
>
> Q: And it's fair to say – I can argue to Judge Haxall that you would not – you're not going to let these kids be put in danger, correct?
>
> A: No.
>
> Q: And the minute Daniel gets into that car, it's fair

> to say that you had no doubt as to any -- any danger to the Juvenile No. 2 or even Daniel, correct?
>
> A: (No response.)
>
> Q: I mean, if you think a kid might be high, you're not going to put him in a car?
>
> A: Of course not. Of course not.
>
> Q: Of course.
>
> A: Right. I mean, there was some behavior that was indicated that – you know, a little foolish whatever, but nothing that I would say I'm going to keep him out of the car.
>
> Q: Okay.
>
> (R. 84-85)

Peckler testified that Daniel's driving errors could have all been attributed to fatigue or the nervousness of a new driver. (R. 56, 65, 71, 72, 86) At one point, the following exchange occurred between the prosecutor and Peckler:

> Q: And let me ask you this, Mr. Peckler. Given the fact that you're teaching new drivers, was there anything unusual about the way he was driving at that point based on your experience with other new drivers?
>
> A: Yes. I felt that he was – could be nervous, pretty nervous to drive. I've done this for many years, and I've seen students drive all over the place because they're afraid. They don't practice at home. That's a big factor. In this particular case it appeared to me he was very nervous while he was driving.
>
> (R. 71)

Only after Daniel completed the approximately 40-minute drive did Peckler verbalize his concerns to the driver's education supervisor. (R. 75, 86) Contrary to the findings of the trial court, he never told the supervisor "that

he had concerns that Mr. Olvera was under the influence." (R. 215) Rather, Peckler made the more innocuous observation, "there's something going on here, I think you should check it out." (R. 76)

During his testimony, Peckler never suggested he felt unsafe while Daniel drove. As the driving instructor, Peckler was responsible for the students' safety while they were on the road. His decision to allow Daniel to finish the driving course and park the vehicle demonstrated Daniel was not "incapable of driving safely." Defense counsel addressed Peckler's decision to keep Daniel behind the wheel, asking, "Now, you said something might be a little off, but nothing to the point where you decided to stop the car and have him not drive, correct?" Peckler answered, "Correct." (R. 87)

If Peckler suspected intoxication, let alone intoxication to a degree that rendered Daniel incapable of driving safely, Peckler should have taken some measure to protect himself and the students. See *Moreno v. Mercier*, 275 Ill. App. 3d 884, 888 (3d Dist. 1995) (When a passenger has "reason to suspect the driver is incompetent, careless, or is unable to operate the vehicle safely," the passenger has a duty to "change from passive reliance to active protest" for the passenger's own safety). Since he did not prevent Daniel from driving, Daniel was not incapable of driving safely.

Even the most liberal interpretation of the evidence, viewed in the light most favorable to the prosecution, cannot sustain the guilty finding in this case. The trial court unreasonably relied on the testimony of Dean Sara Rogers and School Resource Officer T.J. Beale, neither of whom actually saw Daniel drive. Even if he was under the influence, as they both surmised, it was not to a degree that rendered Daniel incapable of driving safely. The

judgment here must be reversed.

CONCLUSION

For the foregoing reasons, Daniel Olvera, defendant-appellant, respectfully requests that this Court reverse the judgment of the lower courts.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in 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, is 32 pages.

/s/ Ann Fick
ANN FICK
Assistant Appellate Defender

No. 130775

IN THE

SUPREME COURT OF ILLINOIS

VILLAGE OF LINCOLNSHIRE, Plaintiff-Appellee, -vs- DANIEL OLVERA, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 2-23-0255. There on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, No. 21 DT 703, 21 TR 23260. Honorable Bolling W. Haxall, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 18, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

VILLAGE OF LINCOLNSHIRE
Plaintiff/Petitioner

v.

DANIEL OLVERA
Defendant/Respondent

Reviewing Court No: 2-23-0255
Circuit Court/Agency No: 2021DT000703
Trial Judge/Hearing Officer: BOLLING W. HAXALL

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

VILLAGE OF LINCOLNSHIRE
Plaintiff/Petitioner

v.

DANIEL OLVERA
Defendant/Respondent

Reviewing Court No: 2-23-0255
Circuit Court/Agency No: 2021DT000703
Trial Judge/Hearing Officer: BOLLING W. HAXALL

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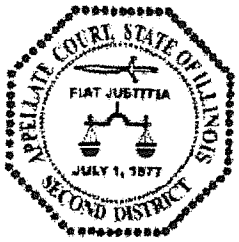

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2-23-0255

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

VILLAGE OF LINCOLNSHIRE
Plaintiff/Petitioner

v.

DANIEL OLVERA
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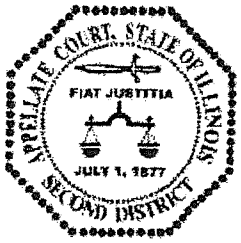

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IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
vs)
Daniel Olvera)
Case No. 21 DT 703

FILED
JUN 09 2023
Eric Cummings
CIRCUIT CLERK

ORDER AND CERTIFICATE OF ~~MISDEMEANOR PROBATION~~ / SUPERVISED SUPERVISION

This cause coming on for sentencing, pursuant to a: ☒ finding of guilty ☐ negotiated plea of guilty, ☐ open plea of guilty, Defendant having been adjudged guilty of DUI, being a Class A Misdemeanor.

The Court after conducting a hearing or having accepted a negotiated plea, and after considering the factors and the nature and circumstances of the offense, and the history, character, and condition of the offender, and after considering Defendant's financial ability to pay the amount hereinafter assessed,

ORDERS:
Defendant is hereby sentenced to a term of 12 months ~~☐ probation~~ / ☒ supervised supervision. The conditions of which are that Defendant shall:

☒ 1. Not violate any laws or ordinances of any jurisdiction, including traffic regulations;

☒ 2. Not leave the State without the consent of the Court; however, upon verification and approval of the Probation Officer, the Defendant may leave the State for work, school, vacation, treatment, family emergencies and _____

_____

_____;

☒ 3. Pay all fines, fees, court costs, assessments and restitution set forth on **Exhibit A** through the Office of the Clerk of the Circuit Court in equal monthly installments by the first of each month to be paid in full not later than 90 days before the termination date unless the Court orders otherwise;

☒ 4. Obtain/continue employment and/or attend educational programs unless otherwise ordered by the Court;

☒ 5. Not use or be in possession of any illegal substance, cannabis, prescription medication of another, or use any substance designed to have the effects of an illegal substance, or be in the presence of anyone using or in possession of such substances;

☒ 6. Appear in Court on the oral or written notice of the Circuit Clerk, Compliance Officer, Probation Officer, State's Attorney, or the Court;

☒ 7. Unless otherwise ordered by this Court, not less than 90 days prior to the termination of this case, provide proof of completion of all terms and conditions of sentence to the Lake County Adult Probation Services Division;

☒ 8. Strictly comply with the terms and provisions of any and all Orders of Protection;

☒ 9. Not operate a motorized vehicle without a valid driver's license;

☒ 10. Appear immediately in person before the Lake County Adult Probation Services Division at 215 W. Water Street, Waukegan, Illinois 60085, or if in custody immediately upon release from custody, to have an intake interview and thereafter report as often as directed by the Probation Officer;

☒ 11. Notify Probation Officer of telephone contact information and notify Probation Officer immediately of any changes of telephone contact information;

☒ 12. Notify Probation Officer within 24 hours of any new arrests and/or the issuance of a citation for any violation of law including traffic tickets;

☒ 13. Upon a violation of any term or condition of this Order, the Lake County Adult Probation Services Division may invoke any sanctions from the list of intermediate sanctions adopted by the Chief Judge;

☒ 14. Permit the Probation Officer to visit Defendant at home or elsewhere to the extent necessary to discharge probation duties;

☒ 15. Consent to and submit to searches of his/her person, residence, papers, automobiles, computers, any device capable of accessing the internet or storing electronic data, and/or other personal or real property accessible to Defendant at any time such requests are made by a Probation Officer. Defendant consents to the use of anything located, found or seized as evidence in any court proceeding and consents to the destruction of any contraband seized;

☒ 16 Provide executed releases and execute such releases as requested by the Probation Officer including but not limited to all medical treatment, psychological, substance abuse, employment, financial, military, governmental, disability, phone records, internet provider, media, social network or other probation and criminal justice system records;

☒ 17. Provide such proof of Defendant's details of employment, income, job search and/or attendance at educational programs as directed by the Probation Officer;

☒ 18. Submit to random testing of urine and/or breathalyzer and/or blood testing, submitting a sample at such time and place as directed by a Probation Officer and pay the assessed fees;

☒ 19. Not change present place of residence or move outside the County or the State without prior permission of the Court or Probation Officer;

☒ 20. Upon request, provide the Probation Officer with immediate access to any e-mail, text or messaging services, internet chat rooms, blogs, and social media websites Defendant uses to communicate with anyone, as well as any electronic devices including but not limited to telephones, cellphones, smartphones, computer tablets and computers with internet capability.

IF CHECKED, THE FOLLOWING PROVISIONS APPLY

☒ 21. Defendant shall not possess any firearm or other dangerous weapon because:

☐ the offense involved the intentional or knowing infliction of bodily harm or the threat of bodily harm (mandatory for probation sentence);

☐ the offense involved a family or household member as defined in the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.*);

☒ the court finds it is necessary and appropriate in this case.

☒ 22. Defendant shall not consume or possess alcoholic beverages and not be in any establishment whose primary purpose is the sale of alcohol.

☐ 23. Defendant shall submit a sample for DNA indexing as required by law.

☐ 24. Defendant shall register as required by law as a ☐ sex offender ☐ other _____

_____

_____

Defendant shall submit to such testing as required by law or specifically required by separate order.

☐ 25. Defendant is sentenced to a determinate term of _____ days in the custody of the County Sheriff.

☐ No good time shall be awarded as injury resulted from offense.

☐ 26. Defendant shall serve a term of periodic imprisonment to be confined for twenty-four (24) hours, seven (7) days each week for a period of _____ months ☐ in the Sheriff's Community Based Corrections Center (CBCC) and shall follow all rules of the CBCC program, or ☐ if eligible, through the Sheriff's Electronic Home Monitoring program (EHM) and shall follow all rules of the EHM program. Defendant shall follow all rules of periodic imprisonment and shall be released to ☐ seek employment ☐ work ☐ attend school ☐ obtain treatment as ordered ☐ perform public service ☐ perform probation obligations ☐ other _____

_____

_____

☐ 27. Defendant shall serve a term in the County Work Release Program for a period of _____ months, which does not exceed the statutory term of 12 months, as required by 730 ILCS 5/5-7-1(d).

☐ 28. Defendant shall pay a fee for ☐ room and board ☐ electronic home monitoring at the rate established by Lake County Board Ordinance with the concurrence of the Chief Judge pursuant to statute.

☒ 29. Defendant shall perform 100 hours of public service at a minimum rate of 10 hours per month and report immediately to and register with the Public Service Unit of the Lake County Adult Probation Services Division. Defendant shall perform this service at the time and places directed and shall comply with all Public Service Unit protocols and shall serve upon the Public Service Unit written evidence of completion of the public service hours at least 90 days prior to the termination of this sentence.

☐ 30. Good cause having been shown, Defendant shall perform _____ hours of community service at a minimum rate of _____ hours per month and report immediately to and register with the Lake County Adult Probation Services Division. Defendant shall perform this service at a self-selected not-for-profit organization, public body, religious institution, charitable organization, or individual agreeing to accept community service from offenders as verified by the Lake County Adult Probation Services Division and shall serve upon the Lake County Adult Probation Services Division written evidence of completion of the community service hours at least 90 days prior to the termination of this sentence.

☐ 31. Defendant shall complete all requirements for ☐ high school graduation ☐ GED ☐ other _____

_____

_____

☐ 32. Defendant shall:

☐ reside at _____

☐ not reside at _____

☐ not engage in any abusive, violent, or harassing conduct of any kind with _____

_____

☐ not be present at _____

☐ not have any contact of any kind directly or indirectly with members of street gangs and drug users or dealers and not wear clothing associated with any street gang, communicate or exhibit gang signs

☐ not have any contact of any kind directly or indirectly with _____

_____

_____

_____

☒ 33. Defendant shall comply with the following evaluations, treatment recommendations, educational or vocational requirements by approved providers including the payment of fees:

☐ The Cognitive Program, "Thinking for a Change"
☐ Mental health/psychiatric treatment
☐ Repatriate Project
☐ Physician/psychiatrist/psychologist treatment plans
☐ Victim impact panel
☒ Live victim impact panel
☐ Parenting classes
☐ Substance abuse evaluation and treatment
☐ Sex offender evaluation and treatment
☐ Domestic violence evaluation and treatment
☐ DCFS Service/Safety Plan
☐ Traffic Safety School
☒ Youthful Offender Program

☐ Comply with medication plan as directed by physician, taking medications only as prescribed
☐ DUI Project: ☐ Level 1 ☐ Level 2 Moderate ☐ Level 2 Significant ☐ Level 3

☐ Other: _____

_____

_____

_____

Defendant shall obtain all required evaluations or be actively engaged or enrolled in treatment, educational or vocational programs as ordered above within 45 days of today's date or, if in custody, within 45 days of release date, providing proof of same to the Lake County Adult Probation Services Division. Defendant shall meet all program and treatment schedules as set by the Lake County Adult Probation Services Division and provide proof as required in Paragraph 7 of this order. Defendant must follow all programs/treatment/class rules, participate in a respectful, cooperative and constructive manner and complete all requirements.

34. Defendant shall be assessed for all risk factors and criminogenic needs by the Lake County Adult Probation Services Division at the time of his / her initial in-take interview as well as periodically throughout the term of probation, and based upon these assessments (which must include consideration of Defendant's criminal, psychological, intellectual, behavioral and social history), Defendant shall undergo all further assessments and evaluations including but not limited to, medical, psychological, psychiatric, substance abuse, anger management, domestic violence, sexual offender, educational and vocational, and successfully complete all necessary classes, programs, and treatment relating to the nature of the offense, or the rehabilitation of Defendant, or the protection of the public, or that may be beneficial to Defendant ("Rehabilitative Assessment and Services") as directed by the Lake County Adult Probation Services Division. This process requires Defendant to comply with all program and treatment schedules as set by the Lake County Adult Probation Services Division and provide proof of successful completion as set forth in Paragraph 7. Defendant must follow all programs/treatment/class rules, participate in a respectful, cooperative and constructive manner and complete all requirements including the payment of all fees.

☐ 35. Upon the approval of the receiving State, pursuant to the Interstate Compact Rules, Defendant may reside in _____. Defendant is required to pay a $125.00 processing fee prior to submission of a transfer request. The Lake County Adult Probation Services Division fees will be assessed up to the date a transfer is accepted by the receiving State, and waived thereafter. Defendant will be required to pay supervision fees imposed by the receiving State. Any subsequent out-of-state transfers must obtain the approval from the 19th Judicial Circuit Court, prior to the relocation. Defendant will continue to remain under the jurisdiction of this Court and must continue to comply with all the Lake County Adult Probation Services Division requests and directives.

☐ 36. Upon the approval of the Lake County Adult Probation Services Division and acceptance of the probation supervision by another circuit of Illinois, Defendant may reside in a county (_____) within that circuit. Defendant is responsible for all the Lake County Adult Probation Services Division fees incurred up to the date a transfer is accepted by the receiving circuit and waived thereafter. Defendant will be required to pay probation fees imposed by the receiving circuit. Defendant will continue to remain under the jurisdiction of this Court and must continue to comply with all the Lake County Adult Probation Services Division requests and directives.

☐ 37. Defendant shall comply with a daily curfew of _____ to _____ requiring Defendant to be in his/her residence except when performing probation obligations, attending treatment, working at employment approved by Probation Officer, attending court, or attending to other specific activities which have been approved in advance by his/her Probation Officer. The Defendant's Probation Officer may lessen or reinstate this curfew based upon Defendant's compliance and performance.

☐ 38. Defendant shall follow and comply with all of the additional terms and conditions of the following specialized probation supervision units as set forth in **Exhibit B** which is attached hereto and incorporated by reference:

- ☐ Domestic Violence Unit
- ☐ Sex Offender Unit
- ☐ DUI Unit

☐ 39. Defendant shall follow and comply with all of the additional terms and conditions of the following Therapeutic Intensive Monitoring (TIM) Court specialized probation set forth in **Exhibit B** which is attached hereto and incorporated by reference:

- ☐ TIM Drug Court
- ☐ TIM Mental Health Court
- ☐ TIM Veterans Treatment and Assistance Court

Additionally, Defendant must follow, comply and complete all of the obligations undertaken by him/her in the Specialty Court Contract which is attached to and incorporated into both **Exhibit B** and this Probation Order by reference.

☐ 40. Defendant shall also comply with **OTHER** requirements as follows: _____

_____

_____

_____

_____

_____

☒ 41. If the sentence is to supervised supervision, upon successful completion Defendant shall be discharged and the charges dismissed without further order of the Court.

☒ 42. Probation will terminate and the Circuit Clerk shall transfer the case to closed status on Jne 7, 2023 unless there is pending an unresolved petition to revoke probation or this order has been otherwise modified or extended.

☒ 43. The Clerk of this Court is directed to make all notifications and take all actions as required by law.

ENTER:

JUDGE

Dated this 9 day of June, 2023

Order prepared by Luis Albarran

I, the above-named Defendant, acknowledge reading and receipt of this document.

I understand and have been advised in open court that if I am not a citizen of the United States, that a conviction or a sentence of supervision or probation for the offense for which I have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

I understand that any individual convicted of domestic battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the federal Gun Control Act of 1968 [18 U.S.C. 922(g)(8) and (9)].

I understand that upon a finding of any violation of a condition contained in this Order or accompanying Exhibits, and after due notice and hearing, the Court may revoke this sentence, enter judgment of conviction and impose any penalty originally provided for by applicable statute or ordinance including a jail sentence.

I UNDERSTAND THAT FAILURE TO APPEAR IN COURT WHEN REQUIRED CONSTITUTES A **WAIVER** OF MY RIGHT TO CONFRONT WITNESSES AGAINST ME, AND A HEARING TO REVOKE MY SENTENCE CAN PROCEED IN MY ABSENCE AND RESULT IN RE-SENTENCING **WITHOUT MY BEING PRESENT**.

Street Address: 860 Cherry Valley Rd

City/State/Zip: Vernon hills 60061

Telephone No.: 224-501-9839

Date of Birth: 04/18/2005

Defendant

White-Original Green-Client Canary – Probation/Compliance Pink – State's Attorney Goldenrod – Defense

171-132 (Rev. 06/12)

C 72

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
vs)
Daniel Olvera) Case No. 21 DT 703

EXHIBIT B

Additional Conditions of Probation/Supervised Supervision
DUI UNIT

Defendant has been sentenced to a term of probation or supervised supervision and ordered to be supervised by the DUI Unit of the Adult Probation Services Division of the 19th Judicial Circuit. Defendant is therefore subject to and **MUST** follow as well as comply with these additional conditions and requirements:

A. Not use, ingest or consume any over-the-counter medication, hygiene product or other compound or product that contains alcohol.

B. Not operate a motorized vehicle unless the Probation Officer has previously viewed and confirmed the validity of the Defendant's driver's license or permit and current liability insurance coverage.

C. Provide his/her Probation Officer with the name(s) and contact information of all persons that will regularly provide Defendant with transportation when Defendant is unable to operate a motor vehicle himself/herself.

D. Provide his/her Probation Officer with the dates, details and dispositions of all driver's license hearings and proceedings.

E. Not reside in any house, apartment unit, condominium unit or other location where alcoholic beverages are present or regularly consumed.

F. Report to his/her Probation Officer as often as directed and within the time frames that are directed; verify residence and employment at each office meeting; provide proof of progress in completion of treatment requirements at each office meeting; permit his/her Probation Officer to visit him/her at any location without prior notice, granting the Officer entrance and access to the extent that is necessary to carry out the duties as ordered by the Court in the probation Order; and cooperate in facilitating collateral contacts that shall be made by the Probation Officer (such as a spouse, alcohol counselor, or significant other).

G. Comply with a daily curfew requiring Defendant to be in his/her residence except when performing probation obligations, attending treatment, working at employment approved by Probation Officer, attending court, or attending to other specific activities which have been approved in advance by his/her Probation Officer. The Defendant's Probation Officer may lessen or reinstate this curfew based upon Defendant's compliance and performance.

Defendant's Signature X Daniel Olvera

White-Original Green-Client Canary – Probation/Compliance Pink – State's Attorney Goldenrod – Defense
171-426 (Rev. 06/12)

C 73

2024 IL App (2d) 230255
No. 2-23-0255
Opinion filed May 10, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF LINCOLNSHIRE, Plaintiff-Appellee, v. DANIEL OLVERA, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Lake County. Nos. 21-DT-703 21-TR-23260 Honorable Bolling W. Haxall III, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Presiding Justice McLaren and Justice Mullen concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant, Daniel Olvera, was found guilty of driving under the influence (DUI) of drugs, namely cannabis, under section 11-501(a)(4) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(a)(4) (West 2020)).[1] The trial court placed him on 12 months of supervision. On appeal, defendant contends that his conviction must be reversed because (1) he was improperly prosecuted for a Vehicle Code violation by the Village of Lincolnshire (Village) without a showing on the record of written permission to prosecute from the Lake County State's

[1]Defendant was also found guilty of improper traffic lane usage (625 ILCS 5/11-709(a) (West 2020)) and two ordinance violations. His arguments on appeal are confined to the DUI (cannabis) conviction.

Attorney and (2) the evidence was insufficient to prove him guilty beyond a reasonable doubt of DUI (cannabis). We affirm.

¶ 2 I. BACKGROUND

¶ 3 On May 6, 2021, defendant was arrested and charged with DUI (cannabis) (*id.*), among other offenses.

¶ 4 A bench trial was held on January 9 and January 20, 2023. The evidence established that, on May 6, 2021, defendant was a 16-year-old sophomore at Stevenson High School and his seventh-period class was driver's education. On that day, Scott Peckler was serving as a substitute driving instructor. Peckler had retired five years earlier after teaching special education and driver's education for 30 years. Peckler was assigned to take defendant and a female fellow student out for on-the-road driving instruction. Defendant was scheduled to drive; the female student was scheduled to observe from the back seat.

¶ 5 Peckler testified that it took several minutes to walk from the classroom to the vehicle's location. During the walk, defendant was hiccupping, and Peckler asked him if he was okay "because a lot of kids at that point in time are very nervous." Peckler could not recall defendant's level of driving experience but agreed that the semester was nearing its end. Peckler did not notice anything else unusual about defendant during the walk to the vehicle.

¶ 6 Peckler testified that defendant drove for about 40 minutes, during which Peckler made the following observations. When defendant was backing the vehicle out of the parking space, "he had a little difficulty maneuvering the car," and Peckler "had to help him a little bit." Defendant did not look over his shoulder or check the car's rearview camera. As they proceeded down the road, Peckler instructed defendant to turn left onto a street with two lanes in each direction. As defendant turned left into the inside lane, he veered into the outside lane, and Peckler "grabbed the wheel and

put him back because there was a car approaching on [the] right." Defendant was "veering left and right" as he drove down the road, and Peckler thought "that he was probably a little nervous driving." Peckler "grabbed the wheel several times and put [defendant] straight back into [the] lane."

¶ 7 Peckler told defendant that they would travel through a roundabout and explained how to do so. As they were driving toward the roundabout, defendant "kept talking back to the passenger," and Peckler told defendant to concentrate on driving. When defendant entered the roundabout, he "veer[ed] up towards the curb in the circle," and Peckler "had to grab the wheel" to redirect him. Peckler directed defendant through the roundabout a second time and again had to grab the wheel.

¶ 8 After defendant exited the roundabout and drove a short distance, Peckler directed defendant to turn right at an upcoming stop sign. Peckler had to use the brake on his side of the vehicle to stop the car because defendant "wasn't going to come to a complete stop." Peckler had to use his brake a second time when defendant approached a stoplight. At this point, Peckler believed that defendant was "very nervous while he was driving." He stated: "I've done this for many years, and I've seen students drive all over the place because they're afraid. They don't practice at home. That's a big factor."

¶ 9 Peckler testified that, as they headed back toward the roundabout, defendant was "a little nervous driving, weaving a little bit." Defendant still had "a little difficulty" navigating the roundabout; he was "weaving left and right," but Peckler did not have to grab the steering wheel at this point. Defendant approached a red light. As the light turned green, Peckler observed defendant's "head go down" and asked him if he was okay. Defendant responded that "he's been tired, he hasn't slept." Defendant then proceeded to make a right turn "a little erratically."

¶ 10 As defendant drove back to the school, he kept talking to the female student. Peckler tried to keep defendant "directed towards the task at the time." Defendant was "weaving," and Peckler "had to grab the wheel several times." Peckler testified: "I just felt that it could have been nerves." When they returned to school, defendant had a "little bit" of difficulty parking the vehicle; Peckler "had to help him straighten out the car and put it into the parking space." Peckler spoke with the director of driver's education and told her, "[T]here's something going on here, I think you should check this out."

¶ 11 On cross-examination, Peckler testified that he had not met defendant until the day of the drive. Although Peckler would have seen defendant's driver's education record, including how many drives he had completed, Peckler could not recall if this was defendant's first drive. He believed that Stevenson High School required 6 hours of driving time and that the State required an additional 50 hours. Peckler testified that he had been around people who had consumed cannabis and was familiar with its odor. Peckler would not have allowed a student to drive if he believed that the student was "high." Peckler did not detect the odor of cannabis or any other unusual odor emanating from defendant. Peckler noted that defendant's behavior before the drive was "a little foolish," but nothing that would have caused Peckler to bar him from driving. When defendant was talking to the female student in the vehicle, Peckler noticed "a little slur" but thought it could be due to fatigue.

¶ 12 On redirect examination, Peckler stated that his concerns about defendant increased "towards the end" of the drive. At that time, he believed "[t]here was something wrong here," but he could not "pinpoint it."

¶ 13 Sara Rogers testified that she has been a dean of students at Stevenson High School for the past eight years. Including previous employment, she has been a dean of students for

approximately 15 years. Before that, she worked as an English teacher for four years. Students are typically assigned to one dean throughout high school. Defendant had been assigned to her "caseload" since freshman year. Before May 6, 2021, Rogers had "[q]uite a bit of contact" with defendant. She worked with defendant "on a couple different situations" when he was a freshman and in the fall of his sophomore year. She testified that she knew him "well."

¶ 14 Rogers testified that, on the day in question, she was asked to report to the driver's education room because it was suspected that a student was "driving under the influence." Courtney Bresnan, who was in charge of driver's education, relayed to her what Peckler had reported about defendant. After speaking with Bresnan, Rogers saw defendant in the hallway. She testified: "His speech was slow. He was confused. You know, he couldn't respond quickly to questioning. So I was concerned. I agreed with the recommendation that he needed some assistance, and I walked him to the nurse's office." She "decided that he needed to be checked out medically." She further testified: "He was slow to walk—slow at walking, slow at responding, slow to speech, slurry words, not a lot of enunciation as we were kind of walking toward the nurse's office." Rogers testified that she had previously spoken with defendant "over 30, over 40" times before May 6, 2021. She had seen him "every day" and had "interacted with him quite a bit, even during the remote-learning time." As they walked to the nurse's office, Rogers noticed that defendant was "just slow, meandering, not moving at a typical pace that he had in previous experience." Defendant was with the nurse for less than 10 minutes before the nurse spoke with Rogers about defendant. The nurse reported that defendant was "really nervous, really upset, worried, and slow in his speech still."

¶ 15 Rogers testified that she then interviewed defendant. Defendant told her that "he had been up all night long because he had been using marijuana in the evening hours and had been caught

by his mother and so he hadn't been sleeping well." Because of this admission, Rogers called David Schoenfisch, another dean of students at Stevenson, and asked him to conduct a student search of defendant. Schoenfisch came "right away" and searched defendant. Schoenfisch found an object in defendant's wallet that was "skinny, white, rolled." When Rogers asked defendant what it was, he told her that it was a "marijuana cigarette." Based on her experience, Rogers concluded from the appearance and scent of the object that it was indeed a "marijuana cigarette." Rogers then called Officer Thomas Beale, a Village police officer employed by Stevenson High School as a school resource officer. Rogers reported to Beale that she "suspected that [defendant] was under the influence and certainly in possession of marijuana."

¶ 16 Rogers testified that Beale left "to go write the tickets." Beale returned less than 15 minutes later and stated that he wanted to conduct field sobriety tests (FSTs) on defendant. Rogers, Beale, and defendant went outside to a "quiet" and "isolated location" where there was a dining tent sent up "for pandemic reasons." There, Beale conducted "a balance assessment" on defendant. Rogers could not recall "if it was on one foot or two feet, but [defendant] kept falling over, and that's what I saw." She explained: "He'd lose his balance and then have to catch himself with his other foot or with a hand even. He just wasn't able to maintain his balance." At some point, Beale stopped the test. Beale "expressed concern" and informed defendant that he would be arrested. Defendant left with Beale. Rogers did not see defendant again that day.

¶ 17 On cross-examination, Rogers testified that defendant said he had gone to bed "like 3:00 a.m." the night before. He claimed that "his mom had caught him for smoking pot that evening, that night," but he "didn't specify the time" she caught him.

¶ 18 Thereafter, the trial court conducted the following examination of Rogers:

"Q. [(THE COURT)] So just to clarify what you just said, so during your questioning of [defendant], you didn't ask him what specific time he had last used marijuana?

A. No.

Q. Did you ask him if he was still feeling the effects at the time he was meeting with you?

A. Yes, and he said that he must be.

Q. When was that conversation? Was that with the nurse or with the officer later?

A. That would have been with me. So between the nurse and the officer. You know, we always ask students why do you think your speech is slurred, why do you think you feel this way. He said, oh, because I got high last night, and I actually got busted by my mom.

Q. Okay. But—

A. He felt he was feeling the effects still.

Q. Okay. But he—so there's a—I just want to make sure I differentiate.

A. Sure.

Q. Did he indicate he was feeling, as you put it, the term high last night or at the time that he was talking to you?

A. At the time he was talking to me.

Q. Okay. Did he say anything else about any physical effects at that time?

A. Exhaustion and emotional effect. He was worried. He was scared.

Q. Okay. Based on everything you had observed and your conversations with [defendant], did you believe that at that moment he was under the influence of cannabis?

A. Absolutely.

Q. Is it possible that was just due to his staying up all night, or do you think it was—

A. No, I think he was under the influence.

Q. Okay. And what's the basis of that?

A. Life experience, job experience.

Q. I mean, what about him specifically do you think led you to believe that?

A. His response was extremely emotional and uncontrolled and indicative of being under the influence, and he indicated to me that he had been under the influence recently and that he was under the influence.

Q. But you don't think—and, look—I mean, you have so much experience with kids—

A. Sure.

Q. —in fact, with [defendant] in particular. You don't think that could be—that emotional response could be because his mom busted him last night? You think it's—

A. No.

Q. —because he was still under the influence?

A. I think it was because he was still under the influence."

¶ 19 On redirect examination, Rogers could not recall whether defendant told her that he went to bed at 3 a.m. or that he fell asleep at 3 a.m. Using an e-mail that she sent to Beale to refresh her recollection, Rogers testified that defendant told her "[t]hat he had been caught smoking marijuana by his mom and then had stayed up until 3:00 a.m. because he was under the influence and worried and disappointed at disappointing his mother."

¶ 20 On recross-examination, Rogers conceded that her e-mail to Beale did not indicate that she observed defendant to have bloodshot eyes. Her e-mail did indicate that defendant exhibited some

slow speech and slurred words. The e-mail also indicated that defendant denied recent drug use but admitted that he had smoked marijuana the previous evening.

¶ 21 Schoenfisch testified that he was a dean of students at Stevenson High School. His first contact with defendant was on May 6, 2021. He received a call from Rogers that she needed assistance with a student. When he arrived at Rogers's office, he was asked to search defendant, who was present and sitting quietly. Schoenfisch's search uncovered "a marijuana joint" in defendant's wallet. Schoenfisch described it as "a rolled-up piece of paper that looked like it had been lit at one point." Schoenfisch did not recall if there was an odor. When Schoenfisch asked defendant what the item was, he responded "[t]hat it was marijuana."

¶ 22 On cross-examination, Schoenfisch testified that he did not notice any balance issues when defendant stood up to be searched. Schoenfisch did not recall whether defendant had any issues with his manual dexterity. The item Schoenfisch located was about two inches long and looked like it had been lit at some point, but he could not say when it was lit.

¶ 23 Beale testified that he has been a police officer for 26 years and the school resource officer at Stevenson High School since August 2020. While in the police academy, he received training in "DUI detection." He subsequently had "additional training" in DUI detection. He explained: "Most of it has been in-house [training] in dealing with DUI detection through [FSTs]. I've had a refresher, not really much training in regards to DUI detection with drugs." He testified that, "in addition to DUI detection training, [he] had training in detecting individuals under the influence of drugs besides alcohol." During his time as a police officer, he has encountered people under the influence of drugs besides alcohol "approximately over 100" times.

¶ 24 Beale testified that, on May 6, 2021, he responded to Rogers's request to meet her at the nurse's office and saw defendant. Rogers told Beale that there had been a report that defendant

was "not acting right" during driver's education, that "they believed he could be possibly under the influence of drugs," and that a "cigarette of cannabis" was found in defendant's wallet. Beale testified that he had "been trained in regards to DUI detection in regards to detecting the odor within a car," and he stated that the cigarette "smelled like cannabis." Defendant admitted that the cannabis was his and that he had been "smoking earlier—the night before." Beale testified regarding his observations of defendant. He stated: "I noticed his speech was slurred. He seemed to be confused, was not answering questions or couldn't remember some of the questions that were being asked to him. He also appeared very tired, lethargic." Upon learning that defendant had been driving and that his "poor driving led [Peckler] to believe that [defendant] was under the influence of drugs," Beale left to speak with Bresnan. Less than 15 minutes later, after speaking with Bresnan, he returned to the nurse's office to conduct FSTs on defendant. Beale testified that the refresher courses, to which he had previously referred, included instruction on administering FSTs.

¶ 25 Beale testified that he and Rogers brought defendant to a tent outside the school so that Beale could privately conduct the FSTs. He received the call from Rogers a little before 2 p.m., and they got to the tent a little before 3 p.m. Before beginning the tests, Beale ensured that there were no obstacles in defendant's way and that there were no other people in the tent. He ensured that the surface, made of "smooth pavers," was flat and debris-free. Defendant confirmed that he had no injuries or other issues that would impact his performance on the tests.

¶ 26 Beale testified that the first test he asked defendant to perform was the "Romberg balance test." Beale explained:

> "Basically you will stand with your feet together, your hands down at your sides. You will then raise your chin so it's pointing upwards. You will then close your eyes, and then you

> will stand there, and then you will count or tell me when 30 seconds is up, and then you will stop the test."

Beale demonstrated the test and asked defendant if he understood his instructions and demonstration. Defendant indicated that he did.

¶ 27 When asked about defendant's performance on the test, Beale stated:

> "Well, first, he had difficulty placing his feet in the correct position and getting them aligned so he could keep his balance. In fact, one of the times when he was doing that, he actually lost balance and had to grab a chair that was nearby in order to prevent himself from falling maybe.
>
> Then once he was properly aligned, his feet and he was in proper position, he attempted the test three times. During the three times he would sway in all directions. He would have a hard time keeping his eyes closed. He would lower his chin. And then he would also stop the test each time prior to 30 seconds."

Beale described defendant's swaying motion as "a circular pattern, kind of left to right, front to back." Defendant was swaying "in all directions approximately 3 to 4 inches." Beale kept track of the time with his phone. Although he did not document when defendant stopped the test, he knew it was earlier than 30 seconds. Defendant attempted the test three times, and Beale observed the same performance on each attempt. Beale described defendant's balance as "poor, poor."

¶ 28 Beale testified that he next asked defendant to perform the "finger-to-nose test." Beale instructed defendant to raise both arms to the side at about shoulder height, place his feet together, tilt his head back, extend his index fingers, and then touch his nose with whichever index finger Beale directed. In addition to providing verbal instructions, Beale demonstrated the test. Beale asked defendant if he understood what he was supposed to do, and defendant responded

affirmatively. Beale testified that it took defendant a couple of attempts to get into the correct position. Beale then asked defendant to bring his right index finger to his nose. When defendant did so, "he went towards his nose and ended up hitting the middle of his check." When asked to use his left hand, defendant "hit himself in his left eyeball." When next asked to use his right hand, defendant "hit his nostril." Beale observed that defendant "was swaying to the right and left approximately 3 to 4 inches and having difficulty standing still." His balance was "poor." Beale stopped the test because he did not want defendant to fall.

¶ 29 Beale informed defendant that he would be arrested for DUI. As they walked to Beale's squad car, Beale noticed that defendant was not walking straight. "[Defendant] would walk kind of like in a serpentine every now and then. It just didn't appear to be walking normal." Beale contacted fellow Village police officer Barrett Weadick and asked him to meet them at the police station. Beale wanted Weadick to perform additional FSTs in the booking room because Beale "didn't get a chance to record any [FSTs] in the *** tent" and Weadick had more training and experience in "DUI enforcement with drugs." Weadick met Beale and defendant when they arrived and had defendant perform additional FSTs. In addition, Beale asked defendant to submit to a blood test, but defendant said no. In Beale's opinion, defendant was "under the influence of drugs or cannabis."

¶ 30 On cross-examination, Beale testified that he could not tell if the cigarette found on defendant had been smoked. He further testified that defendant did not smell like cannabis.

¶ 31 Weadick testified that he has been a patrol officer with the Village for almost four years. His police academy training encompassed "traffic enforcement and DUI detection," including the administration of FSTs. He subsequently received additional training in "detecting people under the influence of cannabis." As part of this training, he attended "Drug Recognition Expert, DRE,

school." He has "completed numerous hours of continuing education in the fields of impaired driving enforcement and how drugs affect the body."

¶ 32 Weadick testified that, on May 6, 2021, he performed FSTs on defendant in the booking room at the police station. Those tests were video recorded, admitted into evidence, and played for the trial court.

¶ 33 In the video, Weadick began by advising defendant that they were going to do a few quick tests. Defendant denied that he had any physical or balance issues that would interfere with the tests, and he denied taking any prescription medicine.

¶ 34 For the first test, Weadick asked defendant to follow Weadick's finger with his eyes, without moving his head, as Weadick moved his finger to the left and right several times. Weadick repeated the test, moving his finger to the left and right several times. While conducting the test, Weadick reminded defendant to keep following his finger and told him once to keep his head still. Weadick next asked defendant to again follow his finger with his eyes as he moved the finger up and down in front of defendant.

¶ 35 Weadick next instructed defendant to put his right foot in front of his left foot, while keeping his hands at his side. As defendant attempted to do so, he wobbled to his left, grabbed a nearby counter for support, and stepped out of position. He had some trouble getting back into position. Weadick then instructed defendant to take nine heel-to-toe steps. Defendant took nine such steps, wobbling a bit on his eighth step. After his ninth step, he turned and took another nine steps back to his starting position.

¶ 36 Weadick next instructed defendant to stand with his feet together and his arms at his side. He asked defendant to raise one foot off the ground, keeping his arms at his side, and count aloud. Defendant counted to 27 before Weadick stopped him.

¶ 37 For the next test, Weadick instructed defendant to follow Weadick's finger with his eyes as Weadick moved it around in front of defendant, bringing it toward defendant's nose. Weadick once reminded defendant to keep his head still.

¶ 38 Weadick next instructed defendant to stand with his feet together, place his arms at his side, tilt his head back, and close his eyes. Weadick explained that, at Weadick's signal, defendant should wait for 30 seconds and then tilt his head forward and say stop. Defendant had some trouble understanding the instructions, but he ultimately was able to perform the test. Defendant stopped the test at about 39 seconds.

¶ 39 For the final test, Weadick asked defendant to stand with his feet together and his arms at his side. He instructed defendant to tilt his head back, close his eyes, and point his fingers. He then directed defendant to touch the tip of his finger to the tip of his nose, using whichever arm Weadick instructed him to use. Weadick called out the directions in this order: left, right, left, right, right, left. Weadick said "miss" four times during the test. Defendant appeared to touch the side of his nose rather than the tip. Also, at one point, when told to use his right arm, defendant started to move his left arm but then corrected himself.

¶ 40 After the video ended, the State asked Weadick if, after conducting the tests, he was able to determine whether defendant was under the influence of cannabis. Weadick replied that he "determined that [defendant] was under the influence." He further stated: "Barring a full DRE drug influence evaluation I cannot determine the category or categories. So I determined that he was impaired, but that is as far as I can go."

¶ 41 On cross-examination, Weadick testified that defendant did not smell like burnt cannabis and that his speech was "[n]ear normal." He never had to ask defendant to repeat himself. Defendant did not need help walking around the police station.

¶ 42 The trial court also examined Weadick. The court asked Weadick what he found significant about defendant's performance during certain portions of his testing. As for the modified Romberg balance test, Weadick stated: "[T]he distorted estimation of time[,] the distorted internal clock as [defendant] stopped the 30-second test at 39 seconds and also the very pronounced sway that we saw as he was performing the test." As for the finger-to-nose test, Weadick stated:

> "[O]nce again, the very pronounced sway, his difficulty understanding the instructions that I gave for it, as well as him missing his touching the tip of his finger to the tip of his nose and then when he confused—when he brought up the incorrect arm when I gave him the instruction for right and left."

As for the one-leg-stand test, Weadick stated: "[H]im leaning to his left and then also the sway that he had during the—." The court interrupted, and the following colloquy occurred:

> "Q. [(THE COURT)]: And, obviously this is a different—what you're looking for is different than *** for the alcohol-impairment issues.
>
> If you were scoring this for alcohol, how would he have performed on the one-legged stand for that? Was—were there sufficient clues that you would normally say that's [*sic*] indicates impairment for alcohol as well, or is it just different for cannabis?
>
> A. So I would say it absolutely indicated impairment—
>
> Q. Okay.
>
> A. —yes. If we were to score it, it would absolutely indicate impairment."

¶ 43 On recross-examination, Weadick agreed that, during the finger-to-nose test, when Weadick instructed defendant to use his right arm twice in a row (rather than continuing the left, right, left, right pattern), defendant immediately corrected himself as he began to use his left arm.

¶ 44 Following Weadick's testimony, the Village introduced into evidence a 30-minute video "compilation from security cameras at Stevenson High School," which showed defendant walking from the driver's education classroom through various hallways to the parking lot where the driver's education vehicles were located. It also showed defendant driving away from and back to campus and parking the car. The trial court viewed the video.

¶ 45 The Village rested. Thereafter, defendant moved for a directed finding, which the trial court denied. Defendant rested without presenting evidence.

¶ 46 The trial court found defendant guilty of DUI (cannabis). In doing so, the court made the following comments. The court first noted that, although defendant did "very well" on the FSTs at the police station, there was "one moment *** where the defendant los[t] his balance, reache[d] out with his left hand and scabs [*sic*] the sink to steady himself." The court also noted that it did not find defendant's refusal to take a blood test "significant," given that defendant admitted to having smoked marijuana the previous evening and that he "might think it would still be in a test performed the next day."

¶ 47 The trial court next addressed defendant's driving. The court acknowledged defense counsel's argument that defendant drove poorly simply because he was a novice driver. The court rejected that position:

> "That could be true to a certain degree. It could also be a [*sic*] true that it's a novice driver who has—or at that time was under the influence of cannabis. And I think it can also be true that any amount of cannabis could potentially affect the driving of a new driver in a more significant manner than it might a more experienced driver in the same way that different amounts of cannabis affect different people differently, it is also possible that the

same amount of cannabis could affect different drivers differently based on their relative experience."

The court acknowledged Peckler's testimony[2] that he initially attributed defendant's poor driving to the fact that he was a young driver. The court credited Peckler's initial assessment, which was based on his "decades" of experience as a driving instructor and witnessing the effect of nerves on a beginning driver's performance. But the court noted that Peckler's impressions changed during the drive: "But at the end of the defendant's driving and having seen the defendant before and after, [Peckler] was concerned enough to bring it to the attention of the school that he had concerns that [defendant] was under the influence."

¶ 48 The trial court next noted the video from the school that showed defendant walking through various hallways, along with Peckler and another student, to the driver's education vehicle outside. The court noted that "the line down the center of the hallway" allowed for a "better than usual view" to observe defendant walking. The court observed: "[Defendant] is all over the hallways. He is stumbling back and forth. He repeatedly nearly walks into kind of pieces of wall that seemed to jet out." And further: "[A]t one point I think he ran into the lockers and there's another where he almost hits a table."

¶ 49 The trial court next found Rogers's testimony to be "significant." The court noted that Rogers knew defendant well. Rogers was familiar with "how [defendant] talked, how he walked, and she had concern[s] that he was under the influence." The court also remarked that it had asked Rogers whether she could attribute defendant's behavior to his having been "up all night," as he claimed. Her response, the court noted, was "no, I think he was under the influence."

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[2]Periodically throughout the transcript, the word "money" inexplicably appears in place of "Peckler."

¶ 50 The trial court concluded:

> "[T]he question for me is whether or not the defendant was under the influence of cannabis to a degree which rendered him incapable of safely driving. I believe he was. I believe [Peckler's] testimony about [defendant's] driving may also have been due somewhat to his inn experience [*sic*] but was also due to the cannabis that the defendant had at some point prior to driving that vehicle. I would note that the [FSTs] conducted at the school, the school resource officer described but also Dean Rogers described that she observed [defendant] nearly falling over and having to put his foot down. What seems to make sense to me is by the time he was at the police station, the effects of the cannabis to a certain degree had dissipated somewhat. Certainly to where he was able to perform those [FSTs] better than he did at the school. It may also have been a situation where the police booking room is a more controlled environment, you know, no wind, no weather, better floor, those also could have had some impact. But when I view [defendant] walking through those hallways and one of the officers today said something that something just wasn't right and that's—that's what I observed. There's something about [defendant] that wasn't right. And while I do believe fatigue and emotion could have played some part in that, I believe cannabis also did and did so to a degree which rendered [defendant] incapable of safely driving."

¶ 51 After he was sentenced, defendant filed this timely appeal.

¶ 52 II. ANALYSIS

¶ 53 A. The Village's Authority to Prosecute

¶ 54 Defendant first contends that, because he was prosecuted for DUI (cannabis) under the provisions of the Vehicle Code (as opposed to a Village ordinance), the Village was required,

under section 16-102(c) of the Vehicle Code (625 ILCS 5/16-102(c) (West 2020)), to obtain written permission from the State to prosecute the case.[3] According to defendant, because the record does not contain evidence of the required authorization, it was improper for the Village to prosecute him, and thus, his conviction must be reversed. Defendant acknowledges that he has forfeited the issue by failing to raise it below, but he asserts that it is reviewable under the second prong of the plain error rule.

¶ 55 In response, the Village argues that it *did* have authority to prosecute. In support, it included in its brief's appendix a copy of a letter from Lake County State's Attorney Eric F. Rinehart, granting the Village's attorney authority to prosecute Vehicle Code violations occurring in the Village (and certain other municipalities). Moreover, the Village argues that, under *People v. Wiatr*, 119 Ill. App. 3d 468 (1983), it was not required to provide record proof of its authority to prosecute. Finally, it argues that, in any event, defendant has forfeited the issue and that the issue is not subject to plain error review.

¶ 56 Initially, we note that we do not consider the Village's contention that it had written permission to prosecute, because it improperly relies on a document outside of the record in support. See *In re Marriage of Pavlovich*, 2019 IL App (1st) 172859, ¶ 14 ("To the extent that documents or allegations relied on *** are not contained in or supported by the record on appeal, we will disregard them in addressing [the] contentions on appeal."); *People v. Wright*, 2013 IL App (1st) 103232, ¶ 38 ("The inclusion of evidence in an appendix is an improper supplementation of the record with information *dehors* the record."); Ill. S. Ct. R. 342 (eff. Oct. 1, 2019).

[3]The parties do not dispute that defendant was charged with and convicted of DUI (cannabis) under the Vehicle Code.

¶ 57 We next address defendant's forfeiture. As noted, defendant concedes that he has forfeited the issue by failing to raise it below. See *People v. Cregan*, 2014 IL 113600, ¶ 15 ("To preserve an issue for review, a party ordinarily must raise it at trial and in a written posttrial motion."). However, defendant invokes the plain error rule. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court."). A defendant invoking the plain error rule must demonstrate that a clear or obvious error occurred and that either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error" or (2) "the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Moon*, 2022 IL 125959, ¶ 20. Under both prongs, a defendant bears the burden of persuasion. *Id.* Here, defendant seeks relief under the second prong. Our review is *de novo*. *Id.* ¶ 25.

¶ 58 "The first analytical step under the plain error rule is to determine whether there was a clear or obvious error." *Id.* ¶ 22. Not all errors, even ones that might demand reversal had the argument been preserved, constitute clear or obvious errors for purposes of the plain error rule. *People v. Hammons*, 2018 IL App (4th) 160385, ¶ 17. It is not enough that the defendant identifies "arguable issues that could have been raised in the trial court." *Id.* "Plain-error review is reserved for errors that are clear or obvious based on law that is well settled at the time of trial ***." (Internal quotation marks omitted.) *People v. Rollins*, 2024 IL App (2d) 230372, ¶ 16.

¶ 59 After establishing a clear or obvious error, a defendant seeking relief under the second prong must establish that the error is equivalent to "structural error." *People v. Jackson*, 2022 IL 127256, ¶ 28. "[I]n analyzing whether an error is structural under the second prong of the plain error rule, we often look to the type of errors that the United States Supreme Court has identified

as structural to determine whether the error being considered is comparable." *Moon*, 2022 IL 125959, ¶ 30. "The structural errors identified by the Supreme Court include a complete denial of counsel, denial of self-representation at trial, trial before a biased judge, denial of a public trial, racial discrimination in the selection of a grand jury, and a defective reasonable doubt instruction." *Id.* ¶ 29. Structural errors are ones that "affect the framework within which the trial proceeds, rather than mere errors in the trial process itself." *Id.*

¶ 60 Given the above guidelines, we must first consider whether the Village's prosecution of defendant for DUI (cannabis) under the Vehicle Code without a record showing of its authority to prosecute is clear or obvious error. There is no question that the Village must have written permission from the state's attorney to prosecute violations of the Vehicle Code. Section 16-102(c) of the Vehicle Code (625 ILCS 5/16-102(c) (West 2020)) states: "The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so is obtained from the State's Attorney." However, the plain language of this provision does not impose an affirmative duty on a municipality to submit, at any time, proof of its authority to prosecute.

¶ 61 In *Wiatr*, the defendant, like defendant here, argued for the first time on appeal that his convictions of Vehicle Code violations must be reversed because the village attorney prosecuted him and the record did not disclose proof that the village attorney had permission from the state's attorney to prosecute him. *Wiatr*, 119 Ill. App. 3d at 470, 472. We concluded that the defendant

"waived"[4] the argument by failing to raise it below. *Id.* at 473. Nevertheless, we stated: "If the authority to prosecute was, in fact, delegated by the State's Attorney, the statutory requirement has been met and the village was the proper prosecuting party." *Id.* at 472. We further stated:

> "Where they have chosen to delegate authority to prosecute *** Vehicle Code violations to a municipality, it is probable the State's Attorneys of the various counties do so in more than one way. Some may give such permission on a case by case basis; others do so by a general letter of permission to the municipality. [Citation.] To require, as urged by [the] defendant, that the municipal attorney offer proof in the record of each case that prosecutorial permission has been given by the State's Attorney appears to be an unreasonable and unnecessary burden to impose on the municipal attorneys and State's Attorneys and would also unduly burden the record keeping responsibilities of the circuit clerks." *Id.* at 472-473.

We acknowledged *Village of Hoffman Estates v. Spychalski*, 33 Ill. App. 3d 83, 84 (1975) (*per curiam*), where the Village of Hoffman Estates appealed from the trial court's dismissal, for want of prosecution, of the Village's prosecution of the defendant for a Vehicle Code violation. The First District dismissed the appeal because the record did not disclose that the municipal

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[4]Although courts often use the terms "waiver," "forfeiture," and "procedural default" interchangeably, "waiver" is the voluntary relinquishment of a known right, whereas "forfeiture" or "procedural default" means that an issue could have been raised but was not. See *People v. Blair*, 215 Ill. 2d 427, 443-44 (2005); *People v. Turner*, 2012 IL App (2d) 100819, ¶ 26. In *Wiatr*, although we used the term "waived," the substance of our decision made clear that we found that the defendant forfeited the issue. *Wiatr*, 119 Ill. App. 3d at 473.

attorney was given permission to prosecute the violation. *Id.* at 85-86. We expressly declined to follow *Spychalski. Wiatr*, 119 Ill. App. 3d at 473.

¶ 62 Defendant acknowledges *Wiatr* but directs us to our later decision in *Village of Bull Valley v. Zeinz*, 2014 IL App (2d) 140053, and to *People v. Herman*, 2012 IL App (3d) 110420.

¶ 63 In *Zeinz*, the defendant was charged with two violations of the Vehicle Code and prosecuted by the Village of Bull Valley. *Zeinz*, 2014 IL App (2d) 140053, ¶ 1. At his bench trial, after the Village rested, the defendant moved for a directed finding based on section 16-102(c) of the Vehicle Code, arguing that the prosecution was not authorized because the Village failed to prove that the offense occurred " 'within the corporate limits of a municipality.' " *Id.* ¶ 7 (quoting 625 ILCS 5/16-102(c) (West 2012)). The trial court denied the motion. *Id.* ¶ 9. The defendant reiterated his claim of unauthorized prosecution both in his closing argument and, after being found guilty, in his motion to reconsider. *Id.* ¶¶ 10-11. At the hearing on the motion to reconsider, the Village produced evidence of a letter from the McHenry County State's Attorney, authorizing the Village to prosecute. *Id.* ¶ 11. The court denied the motion to reconsider, finding that, because the officer had the authority to stop the defendant for Vehicle Code violations " 'that were observed *** within the Village but occurred outside of the Village,' " the Village impliedly had the authority to prosecute those charges. *Id.* ¶ 12.

¶ 64 We reversed on appeal. *Id.* ¶ 24. We held that the trial court's conclusion improperly "read in an exception to section 16-102(c)'s unambiguous limitation on the Village's authority." *Id.* ¶ 16. We next considered the Village's argument that the evidence was sufficient to prove that the DUI occurred within its corporate limits, and we found that it was not. *Id.* ¶ 19-21. Thus, we concluded that the Village lacked the authority to prosecute:

> "Under the case law, a municipality relying on a grant of authority to prosecute offenses under the Code must establish that it has satisfied section 16-102(c). [Citations.] The cases do not specify a burden of proof. We assume for the sake of this analysis that the Village was required to prove only by a preponderance of the evidence that the prosecution of defendant complied with section 16-102(c). Although we recognize that location is a factual issue, we may decide whether the facts in evidence were legally sufficient for the Village to prevail. We hold that they were not. For the reasons given earlier, any conclusion that [the] defendant committed DUI within the Village was sheer speculation. When the Village decided to prosecute this case, it took on the burden to prove that [the] defendant committed his offenses within Village limits. The Village did not meet this obligation, and the judgment cannot stand." *Id.* ¶ 22.

¶ 65 In *Herman*, a Village of Frankfort police officer issued four traffic citations to the defendant, including two for DUI. *Herman*, 2012 IL App (3d) 110420, ¶¶ 1, 3. Each citation alleged that the defendant violated the Vehicle Code. *Id.* ¶ 3. Before trial, the Village's attorney filed a motion to amend the citations to designate the Village, rather than the State, as the prosecuting authority. *Id.* ¶ 4. However, the motion did not seek to modify the statutory basis for the violation. *Id.* The Village's attorney signed the motion. *Id.* The trial court granted the motion, and the citations were amended by crossing out " 'State of Illinois' " and replacing it with " 'Village of [Frankfort]' " as the plaintiff. *Id.* ¶ 5. An assistant state's attorney purportedly approved this change and indicated as much by writing her initials on the amended citation. *Id.* However, the citations were not changed to allege violations of village ordinances. *Id.* After a stipulated bench trial prosecuted by the Village's attorney, the defendant was found guilty of DUI under the Vehicle Code. *Id.* ¶ 6.

¶ 66 On appeal, the defendant argued that the Village did not have the authority to prosecute her for a Vehicle Code violation. *Id.* ¶ 8. The Third District agreed and reversed her conviction. *Id.* ¶¶ 12, 14. The court noted that the record on appeal did not contain written permission from the state's attorney, granting the Village of Frankfort the authority to prosecute the DUI under the Vehicle Code. *Id.* ¶ 10. Moreover, the Village's attorney, rather than the state's attorney, presented the motion to amend the citations with no corresponding request to allege violations of the Village's ordinances. *Id.* The court stated:

> "Under these circumstances, we conclude the Village did not acquire the authority to prosecute [the] defendant for a designated violation of section 11-501(a)(1) of the *** Vehicle Code as set forth in the amended citation *** by simply having an assistant State's Attorney initial the face of the uniform citation." *Id.* ¶ 11.

¶ 67 Both *Zeinz* and *Herman* are distinguishable. *Zeinz* is readily distinguishable because the issue presented was not whether the Village had written permission to prosecute (it did), but instead whether the offense occurred within the Village's limits. At issue in *Herman* was the sufficiency of the claimed grant of permission to prosecute. In any event, neither case constitutes well-settled law establishing that reversal is warranted here because the Village failed to enter into the record evidence of its written permission to prosecute DUI (cannabis) in this case.

¶ 68 Given the plain language of the statute and our holding in *Wiatr*, we find that defendant has not established a clear or obvious error in the Village's failure to put forth evidence of its written permission to prosecute defendant under the Vehicle Code.

¶ 69 Even if we were to find that defendant established clear or obvious error, defendant would not be entitled to relief because he has not met his burden of establishing that the error is second-prong plain error. Citing *Moon*, defendant correctly notes that "[t]he next step [in a second-prong

plain error analysis] is to determine whether the defendant has shown that the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process." (Internal quotation marks omitted.) To that end, defendant argues: "The error here was so serious that it affected the fairness of [his] trial and challenged the integrity of the judicial [*sic*] because he was prosecuted by an entity that failed to show it had statutory authority to do so." However, defendant does not explain how the absence from the record of written permission to prosecute is comparable to any of the categories of structural error. See *Moon*, 2022 IL 125959, ¶¶ 26-30. He merely suggests that "[a] conviction which results from an unauthorized prosecution is an affront to the integrity of the judicial process." This conclusory argument is insufficient to carry his burden of persuasion. See *People v. Williams*, 2022 IL App (2d) 200455, ¶ 120 (merely suggesting that the alleged improper admission of evidence calls into question the verdict's reliability is insufficient to carry the burden of establishing second-prong plain error). In any event, we cannot say that the Village's failure to submit evidence that it had written permission to prosecute rises to the level of structural error. See *People v. Woodall*, 333 Ill. App. 3d 1146, 1159 (2002) ("Any defect in an attorney's appointment process or in his or her authority to represent the State's interests on a given matter is not fatal to the circuit court's power to render a judgment. The right to be prosecuted by someone with proper prosecutorial authority is a personal privilege that may be waived if not timely asserted in the circuit court."); see also *Village of Glen Ellyn v. Podkul*, 2024 IL App (3d) 220420-U, ¶ 20 (even assuming that the entry of judgment against the defendant without proof of the Village's prosecutorial authority was error, the defendant's argument "that

the prosecution was brought by the wrong party" "did not rise to the level of a structural error that threatened the fairness or reliability of the trial").[5]

¶ 70 Accordingly, because defendant has not established clear or obvious error for purposes of plain error review, we hold him to his forfeiture.

¶ 71 B. Sufficiency of the Evidence

¶ 72 Defendant next contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt of DUI (cannabis).

¶ 73 In considering a challenge to the sufficiency of the evidence, we ask only whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Hopkins*, 201 Ill. 2d 26, 40 (2002). Assessing the credibility of the witnesses and determining the weight to be given the evidence are matters within the prerogative of the fact finder. *People v. Holmes*, 141 Ill. 2d 204, 243 (1990). Moreover, we must allow all reasonable inferences from the evidence in favor of the State. *People v. Baskerville*, 2012 IL 111056, ¶ 31.

¶ 74 To obtain a conviction of DUI (cannabis) as charged, the State had to prove that defendant drove or was in actual physical control of the vehicle while he was under the influence of cannabis to a degree that rendered him incapable of safely driving. See 625 ILCS 5/11-501(a)(4) (West 2020).

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[5]Cited as persuasive authority under Illinois Supreme Court Rule 23(e)(1) (eff. Feb. 1, 2023) ("a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes").

¶ 75 Defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that he was under the influence of cannabis to a degree that rendered him incapable of driving.[6] Defendant acknowledges his postdriving statements to Rogers admitting that he (1) had smoked marijuana the previous evening, (2) had stayed up until 3 a.m., and (3) was still feeling the effects of the marijuana while talking to her. However, he argues that these statements are not dispositive. He claims that none of the witnesses were qualified to render an opinion on whether defendant was under the influence of cannabis. He further argues that, even if the evidence established that he was under the influence of cannabis, the evidence rebuts any finding that he was incapable of driving safely.

¶ 76 "Under the law of Illinois, proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged." *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). A defendant's confessions, admissions, or extrajudicial statements alone cannot establish *corpus delicti*. *People v. Lara*, 2012 IL 112370, ¶ 17. "[T]he *corpus delicti* rule requires only that the corroborating evidence correspond with the circumstances recited in the confession and tend to connect the defendant with the crime." *Id.* ¶ 51. The independent corroborative evidence required is significantly less than the evidence needed to prove the defendant's guilt beyond a reasonable doubt. *Id.* ¶ 45. This evidence need not corroborate every element of the charged offense. *Id.* ¶ 50. "If such evidence tends to prove that the offense occurred and corroborates a defendant's confession, it may be considered, together with the confession, to establish the *corpus delicti* of the offense." *People v. Call*, 176 Ill. App. 3d 571, 575 (1988).

[6]Defendant does not dispute that he drove or was in actual physical control of the vehicle.

¶ 77 Here, the totality of the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. First, as acknowledged by defendant on appeal, he admitted to Rogers that he smoked marijuana the night before and was still feeling its effects while talking to her. "[A] defendant's admissions can provide direct evidence of intoxication to sustain a conviction." See *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 110; see also *People v. Workman*, 312 Ill. App. 3d 305, 311 (2000); *People v. Bitterman*, 142 Ill. App. 3d 1062, 1065 (1986). Indeed, Rogers testified that defendant told her that "he had been up all night long because he had been using marijuana in the evening hours and had been caught by his mother and so he hadn't been sleeping well." He told Rogers that he "got high last night." When she asked him if he was still feeling the effects, he responded "that he must be."

¶ 78 Defendant's admission to being under the influence was corroborated by accounts of defendant's physical condition from individuals with varying degrees of experience dealing with people under the influence of cannabis. Rogers, who knew defendant "well," testified that defendant's "speech was slow" and his words were "slurry." He was "confused" and "couldn't respond quickly to questioning." He was "slow at walking"; "just slow, meandering, not moving at a typical pace that he had in previous experience."

¶ 79 Beale described defendant as "confused"; he "couldn't remember some of the questions that were being asked." Defendant "appeared very tired, lethargic," and his was speech was "slurred." Beale also testified as to defendant's performance on the FSTs, which were conducted about an hour after defendant finished driving. He noted that, during the Romberg balance test, defendant had "difficulty placing his feet in the correct position." He also had difficulty "keeping his eyes closed" and would "stop the test each time prior to 30 seconds." In addition, defendant was swaying "in a circular pattern," about three to four inches "in all directions." On the finger-

to-nose test, defendant never touched the tip of his nose, hitting instead his cheek, eyeball, and nostril. Beale testified that he had to stop the test because he feared defendant might fall. Rogers observed the FSTs and agreed that defendant "just wasn't able to maintain his balance." Beale also testified that, as they walked to the squad car, defendant was not walking "normal[ly]" but instead in a "serpentine" fashion.

¶ 80 Weadick, who first encountered defendant at the police station, testified regarding defendant's performance on the FSTs that he conducted in the booking room, which were video recorded and viewed by the trial court. Asked by the trial court to describe defendant's performance, Weadick testified that during the Romberg balance test, defendant "stopped the 30-second test at 39 seconds" and exhibited a "pronounced sway" while performing the test. During the finger-to-nose test, defendant had a "very pronounced sway" and had "difficulty understanding the instructions." In addition, he "miss[ed] *** touching the tip of his finger to the tip of his nose." On the one-leg-stand test, defendant was "leaning to his left" and exhibited a "sway."

¶ 81 Defendant agrees that expert testimony is not required in every DUI drug case. See *People v. Gocmen*, 2018 IL 122388, ¶¶ 29, 62. Nevertheless, relying primarily on *Workman*, 312 Ill. App. 3d 305, and *People v. Vanzandt*, 287 Ill. App. 3d 836 (1997), defendant argues that the witnesses were not qualified to render an opinion that defendant was under the influence of cannabis. He cites both cases for the proposition that, "[w]hile a person's intoxication from alcohol can be established by a layperson's observations because such observations are within the competence of all adults of normal experience, the same cannot be said of drugs." He cites *Workman* for the proposition that, "[i]n order to offer an opinion that someone is under the influence of a drug or combination of drugs, a police officer must have the relevant skills, experience, or training to render such an opinion."

¶ 82 In *Workman*, the defendant was convicted of driving under the influence of a drug, *i.e.*, lorazepam, to a degree that rendered him incapable of safely driving. *Workman*, 312 Ill. App. 3d at 306, 311. We reversed based on the insufficiency of the evidence. We stated:

> "[I]n a case involving a charge of driving under the influence of a drug or combination of drugs, when there is no competent evidence by a qualified witness regarding the nature and effect of the drug alleged to have been ingested and the defendant has not admitted to taking the drug and being under the influence, this lack of competent testimony may create a reasonable doubt of the defendant's guilt, absent other sufficiently incriminating evidence." *Id.* at 311.

Thus, we held that the evidence was insufficient because (1) the defendant "denied taking the drug and never admitted to being under the influence of any chemical substance" and (2) the only evidence supporting the conviction was testimony from an officer who had no knowledge "about lorazepam, its nature, or its effects on a driver." *Id.* at 311-12.

¶ 83 In *Vanzandt*, the defendant was convicted of driving under the combined influence of alcohol and a drug, *i.e.*, insulin. *Vanzandt*, 287 Ill. App. 3d at 841. On appeal, the court noted that, regarding drug use, "the testimony of police officers that a defendant was under the influence of drugs would be sufficient, provided that the officers had relevant skills, experience, or training to render such an opinion." *Id.* at 845. The court reversed the defendant's conviction because (1) the defendant "never admitted 'being under the influence' of insulin" and (2) there was "no evidence that would indicate that insulin, either by itself or in combination with alcohol, would render a person incapable of driving safely." *Id.*

¶ 84 The present case is readily distinguishable from both *Workman* and *Vanzandt*. First, defendant admitted to Rogers that he had smoked marijuana the previous evening and was still

feeling the effects as he was talking to her. Second, unlike the officers in *Vanzandt* and *Workman*, the officers here had training and experience in detecting the drugs at issue. Beale testified that he was trained in DUI detection while in the police academy and had additional training since then. To be sure, he testified that he had "a refresher, not really much training in regards to DUI detection with drugs." However, he also testified that he "had training in detecting individuals under the influence of drugs besides alcohol." Further, in his 26 years as a police officer, he had encountered people under the influence of drugs "approximately over 100" times. Weadick testified that he had academy training in traffic enforcement and DUI detection, which included administering FSTs. Since that time, he had received additional training in detecting people under the influence of cannabis, including attending "Drug Recognition Expert, DRE, school." He had "completed numerous hours of continuing education in the fields of impaired driving enforcement and how drugs affect the body."

¶ 85 In addition, the trial court observed the defendant in two videos. In the video from the high school, defendant walked through several hallways on his way to and from the parking lot where the driver's education vehicle was located. As the court noted, the yellow line marking the center of the hallway made it clear that defendant was not walking in a straight line but was veering at various points to the left and right.

¶ 86 The trial court also reviewed the video-recorded FSTs conducted at the police station. To be sure, the court commented that defendant did "very well" on the FSTs at the police station, but the court also noted "one moment *** where the defendant los[t] his balance, reache[d] out with his left hand and scabs [*sic*] the sink to steady himself." The court also acknowledged that the tests at the police station occurred later, when the effects of the marijuana could have "dissipated somewhat," such that defendant performed "better than he did" when the FSTs were conducted at

the school. We note, however, that, in addition to defendant's loss of balance noted by the trial court, defendant's performance on the video is consistent with Weadick's testimony that, during the modified Romberg balance test, defendant displayed a distorted estimation of time and that, on the finger-to-nose test, defendant missed touching the tip of his nose with the tip of his finger several times.

¶ 87 Considering all this evidence in the light most favorable to the prosecution, a reasonable factfinder could find beyond a reasonable doubt that defendant was under the influence of cannabis.

¶ 88 The evidence was also sufficient to prove beyond a reasonable doubt that defendant was under the influence of cannabis to a degree that rendered him incapable of driving safely. Although Peckler testified that he did not notice anything disconcerting about defendant while they walked to the vehicle, his concerns about defendant grew during the drive such that, by the end, he felt that "[t]here was something wrong here." Peckler noted that there were "several times" during the drive that he had to grab the steering wheel because defendant was "veering left and right." At one point, as defendant turned left into the inside lane, he veered into the outside lane, and Peckler "grabbed the wheel and put him back because there was a car approaching on [the] right." While driving through a roundabout, defendant "veer[ed] up towards the curb in the circle," and Peckler "had to grab the wheel" to redirect him. As they approached an intersection, Peckler had to use the brake on his side of the vehicle to stop the car because defendant "wasn't going to come to a complete stop." Peckler had to use his brake a second time when defendant approached a stoplight. This evidence, in addition to the evidence of defendant's physical condition upon his return to school, is sufficient to prove beyond a reasonable doubt that defendant was incapable of driving safely.

¶ 89 Considering all the testimony in the light most favorable to the State, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of DUI (cannabis).

¶ 90 III. CONCLUSION

¶ 91 Based on the foregoing, we affirm the judgment of the circuit court of Lake County.

¶ 92 Affirmed.

Village of Lincolnshire v. Olvera, 2024 IL App (2d) 230255

Decision Under Review:	Appeal from the Circuit Court of Lake County, Nos. 21-DT-703, 21-TR-23260; the Hon. Bolling W. Haxall III, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Thomas A. Lilien, and Ann Fick, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	Lawrence R. LaLuzerne, of LaLuzerne & Smith, Ltd., of Waukegan, for appellee.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

FILED
JUL 05 2023
Eric Cartwright Weinstein
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
)
VS.) GEN. NO. 21 DT 703, 21 TR 2360
Daniel Olvera)

NOTICE OF APPEAL

An Appeal is taken from the Order described below.

(1) Court to which Appeal is taken: Appellate Court - Second District

(2) Name of Appellant and address to which notices shall be sent.
Name: Daniel Olvera
Address: c/o Albarran & Mennie, P.C., 204 N. West St., Waukegan, Illinois 60085

(3) Name and address of Appellant's attorney on appeal.
Name: Luis R. Albarran
Address: 204 N. West St., Waukegan, Illinois 60085
If Appellant is indigent and has no attorney, does he want one appointed? Yes

(4) Date of Judgment Order: June 9, 2023

(5) Offense of which convicted: Driving Under the Influence of Alcohol and Improper Lane Usage

(6) Sentence: One (1) year of supervised court supervision.

(7) If appeal is not from a conviction, nature of Order appealed from: Finding of guilty

(Signed) _____
(May be signed by appellant, attorney for appellant, or Clerk of the Circuit Court)

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