No. 122566

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, Second District, No. 2-14-1143
Plaintiff-Appellee,	)	
	)	There on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 13 CF 1687
v.	)	
	)	
JENNIFER N. NERE,	)	The Honorable Daniel P. Guerin
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

Defendant was convicted of drug-induced homicide following a DuPage County jury trial and sentenced to nine years of imprisonment. C230.[1] Defendant appealed, and the Illinois Appellate Court, Second District, affirmed, holding that the evidence was sufficient to convict and the trial court did not abuse its discretion when it gave the Illinois Pattern Jury Instruction regarding cause of death in homicide cases. *People v. Nere*, 2017 IL App (2d) 141143. This Court granted defendant's timely petition for leave to appeal. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether *Burrage v. United States*, 134 S. Ct. 881 (2014), which construed a federal sentencing statute, announced a constitutional rule requiring this Court to overturn a century's worth of Illinois jurisprudence defining causation in homicide cases.

2. Whether the evidence was sufficient to convict defendant of drug-induced homicide.

JURISDICTION

This Court granted defendant's petition for leave to appeal on November 22, 2017. Jurisdiction thus lies under Supreme Court Rules 315 and 612(b).

[1] "C" refers to the common law record; and "R" refers to the report of proceedings.

PROVISIONS INVOLVED

720 ILCS 5/9-3.3(a) (2012)

> A person commits drug-induced homicide when he or she violates Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act by unlawfully delivering a controlled substance to another, and any person's death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance.

7.15 Causation in Homicide Cases Excluding Felony Murder

> In order for you to find that the acts of the defendant caused the death of [victim's name], the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Illinois Pattern Jury Instruction, Criminal, No. 7.15 (4th ed. 2000).

STATEMENT OF FACTS

On June 27, 2012, Augustina "Tina" Taylor and other family members gathered at her mother's apartment in Wheaton, Illinois to celebrate Taylor's release from prison the previous day. R1096-1101, 1129-34, 1149-53, 1178-79. Sometime between 1:00 and 3:00 that afternoon, Taylor's girlfriend, Leslie Walker, joined the party. R1101, 1134, 1154, 1179-80. As the party wound down, attendees moved away from the outdoor pool area and into the apartment. R1103, 1156.

Around 10:30 p.m., Taylor called defendant to arrange a ride home for Walker. R1139-40. About an hour later, defendant arrived to pick up

Walker. R1139-40, 1158. Taylor accompanied Walker out to the car and stopped to greet and hug defendant. R616-18, 1139-40, 1158, 1184. Defendant passed Taylor heroin, crack cocaine, a syringe, and a crack pipe in a dirty sock. Exh. 47. About five minutes later, Taylor returned to the apartment alone. R1141, 1160-61. She was fidgeting, tugging at her shirt, and acting as if she were in a rush, and she told her children that she was going to take a shower. R1141-42, 1159. Taylor's nephew was in the bathroom; she told him to get out, then she entered the bathroom and closed the door. R1160-61, 1184-85. After about fifteen minutes, witnesses heard the shower turn on. R1161.

While Taylor was in the bathroom, Walker called the apartment asking for her. R1104-06, 1143, 1162-64. Taylor's son, Joshua, answered the phone; Walker's tone was urgent and Joshua hung up the phone because he did not want to speak with Walker. R1163-64. Walker then called the apartment repeatedly, but no one answered. R1163-64. Joshua eventually answered the phone and Walker again sounded urgent and very serious; based on what Walker told him, Joshua alerted his grandmother, and family members began trying to enter the locked bathroom. R1106, 1164-65. Taylor's family members removed the doorknob, but were unable to open the door. R1106-07, 1143-45, 1165-66, 1185-86. Joshua called 911. R1107, 1165, 1186.

When officers arrived at the apartment, they forced the bathroom door open and performed CPR on Taylor, who was found unresponsive. R1029-32, 1107, 1145-47, 1166. Paramedics transported Taylor to the hospital, where she was pronounced dead. R1032-33, 1054-62, 1108-09, 1146. From the bathroom, officers collected a glass pipe, a small plastic bag, cigarettes, a lighter, a blood-stained sock, a drug cooking spoon, a syringe, and two foil bindles (small packets of heroin wrapped in foil) containing .02 grams of heroin residue. R309, 1033-48; Exh. 47. DNA analysis of the blood-stained sock revealed that the blood belonged to defendant. R1085-90.

Dr. Jeff Harkey, the forensic pathologist who performed Taylor's autopsy, testified that Taylor died of heroin and cocaine intoxication due to intravenous drug use. R316-53. Harkey noted two fresh needle puncture marks (unrelated to medical interventions) on Taylor's arm. R332-37. Taylor's blood and urine contained three opiates associated with heroin use: morphine, codeine, and 6-MAM. R341-43. The presence of 6-MAM is associated only with heroin use and indicates recent ingestion of heroin. R343-47. The morphine was present in a very high concentration, much higher than an amount associated with medicinal purposes. R351-58. The morphine levels were consistent with those associated with fatalities, but Dr. Harkey explained that there is no safe amount of heroin that can be ingested without risking death. R352, 379. Taylor's bodily fluids also contained small amounts of cocaine metabolites, indicating either that she had consumed

large amounts of cocaine the day before, or a small amount of cocaine on the day of her death. R349.

Dr. Harkey opined that the amount of heroin Taylor consumed could have been fatal itself, without the presence of cocaine. R353. On cross-examination, he also testified that any amount of cocaine could theoretically lead to death as well. R360.

Officer Daniel Salzmann testified to a video-recorded interview that he conducted with defendant on June 29, 2012. R452-60. Prior to playing defendant's video-recorded confession, the court instructed the jury on the proper consideration of evidence (contained in the recording) that defendant provided Taylor with not only heroin, but also crack cocaine:

> Evidence will be received that the Defendant has been involved in conduct other than that charged in the indictment. This evidence has been received on the issues of the Defendant's intent and knowledge regarding the charged offenses, and to reflect a coherent narrative of events leading to the charged offenses, and may be considered by you only for that limited purpose. It is for you to determine whether or not the Defendant was involved in that conduct and, if so, what weight should be given to this evidence on the issues of the Defendant's intent and knowledge regarding the charged offenses and regarding a coherent narrative of events leading to the charged offenses.

R495.

In the video, defendant states that on the evening of Taylor's death, Taylor called her requesting heroin, crack cocaine, a syringe, and a pipe. Exh. 47. Defendant retrieved the items and drove with her friend, Lewis, to Taylor's mother's apartment in Wheaton. *Id*. Taylor and Walker greeted

defendant at the car. *Id*. Defendant gave Taylor two bindles of heroin, one rock of crack cocaine, and one bump of crack cocaine (less than a rock), plus a sock containing a glass pipe and a syringe. *Id*. Then Lewis drove defendant and Walker home. *Id*. On the drive home, Walker discovered that defendant had given Taylor a syringe and became angry with defendant. *Id*. Walker tried to call Taylor and spoke with Taylor's son. *Id*. When Taylor's son received no response from his mother after knocking on the bathroom door, Walker informed him of her suspicion that Taylor was in trouble. *Id*. Taylor's son hung up the phone; despite repeatedly calling, Walker and defendant were unable to reach Taylor or her family after that. *Id*.

Officer Salzmann further testified that defendant also gave a written statement, in which defendant repeated that she gave Taylor two bindles of heroin, a rock of crack cocaine, and a bump of crack, along with a syringe and a crack pipe. R504-13.

Conflicting testimony was given regarding whether Taylor consumed any drugs between the time she was released from prison and the time she received the heroin and crack cocaine from defendant. Taylor's family members testified that she came to her mother's apartment the night she was released from prison, at which time she looked well and behaved normally. R109-1100, 1129-32, 1149-52, 1178-79. At the party, Taylor's family saw Taylor and Walker walking on a path around the pool, and they remained visible to the party goers as they did so. R1117, 1121-22, 1134, 1155. After

the party-goers had moved inside, Taylor sat in the living room with family members and braided Walker's hair. R1103-04, 1136-39, 1156-57, 1182. Taylor and Walker remained in the living/dining area of the apartment during this time and were not alone. R1136-39, 1171. Taylor's family members testified that she was acting normally up until the time she escorted Walker out to defendant's car. R1110, 1136-39, 1157.

The defense called Walker, and prior to her testimony the court again instructed the jury that evidence of defendant's uncharged criminal behavior was to be considered only as it related to her state of mind and for purposes of presenting a coherent narrative. R601-02. Walker testified that on the day Taylor was released from prison, she picked up Taylor from the Chicago Greyhound bus station. R609. Walker drove Taylor back to Walker's home in Summit, Illinois, and they used heroin together. R610. Taylor used the heroin intravenously. R611. Taylor then smoked some crack cocaine. R612. That evening, Walker and defendant took Taylor back to Taylor's mother's home in Wheaton. *Id.* Walker did not know whether Taylor had any leftover heroin from that evening. *Id.* But Walker was impeached with her prior statements to police that after Taylor's release from prison, Walker took Taylor to Walker's sister's home and they did not consume any drugs. R626-27. Walker also told police that she then drove Taylor to Taylor's mother's home in Wheaton, and Taylor had no drugs with her at that time. *Id.*

Walker testified that the next morning she and defendant used drugs together. R614. Around 2:00 or 3:00 in the afternoon, defendant drove Walker to Taylor's mother's house for the party. *Id.* Walker claimed that shortly after she arrived at the party, Taylor snorted heroin in the bathroom. R615. Walker was again impeached with her prior statements to police that Taylor did not consume any drugs during the party and that Walker would have known if Taylor were high. R631-33. Walker admitted that she had prior convictions for drug and firearm charges and that she remained friends with defendant. R623-24.

On rebuttal, Officer Salzmann testified that in an interview with Walker, she told him that when she picked up Taylor following Taylor's release from prison, they went to Walker's sister's home. R646-60. Walker further told Salzmann that after she left the party, defendant told her that defendant had given Taylor heroin. R659-60. Walker called Taylor's mother's home and spoke several times with Taylor's son, informing him that Taylor had heroin and may have overdosed. *Id.*

In closing, the People argued that they had proved defendant guilty beyond a reasonable doubt because they showed that defendant gave Taylor heroin, and that heroin caused Taylor's death. R672-92. Defense counsel argued that the People had failed to prove that the heroin defendant gave Taylor caused her death because the cocaine that defendant gave Taylor was also capable of causing her death. R692-712. In rebuttal, the People

emphasized the forensic pathologist's testimony that the heroin was a fatal dose and could have killed Taylor even without the cocaine. R712-33.

The court then instructed the jury on the elements of drug-induced homicide:

> To sustain the charge of drug-induced homicide, the State must prove the following propositions: First proposition, that the defendant knowingly delivered to another a substance containing heroin, a controlled substance.
>
> And second proposition, that any person injected, inhaled or ingested any amount of that controlled substance.
>
> And third proposition, that Augustina Taylor's death was caused by that injection, inhalation or ingestion. . . .
>
> In order for you to find that the acts of the defendant caused the death of Augustina Taylor, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death, and that the death did not result from a cause unconnected from the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

R741-42.

The jury found defendant guilty of drug-induced homicide. R747. Defendant moved for a new trial arguing, as relevant here, that the People failed to prove her guilty beyond a reasonable doubt and that the trial court erred by refusing to instruct the jury that defendant could be found guilty of drug-induced homicide only if Taylor would not have died but for the heroin provided by defendant. C208-23. The circuit court denied the motion and sentenced defendant to nine years of imprisonment. R768; C230.

Defendant renewed these arguments on appeal, where the Second District held that the trial court had not abused its discretion by using the pattern jury instruction on causation and that the People had presented sufficient evidence to convict defendant of drug-induced homicide. *Nere*, 2017 IL App (2d) 141143.

STANDARDS OF REVIEW

Questions of a statute's interpretation and constitutionality are reviewed de novo. *People v. Hardman*, 2017 IL 121453, ¶ 19; *People v. Gray*, 2017 IL 120958, ¶ 57. The trial court's decision not to give a requested instruction is reviewed for an abuse of discretion. *People v. McDonald*, 2016 IL 118882, ¶ 69 And "[i]n reviewing the sufficiency of the evidence in a criminal case, [the] inquiry 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 offense beyond a reasonable doubt." *Hardman*, 2017 IL 121453, ¶ 37.

ARGUMENT

I. The Jury Was Properly Instructed on Causation.

Defendant's jury was properly instructed using this Court's long-standing definition of causation in homicide cases. *Burrage v. United States*, 134 S. Ct. 881 (2014), did not announce a rule of constitutional dimension and has no bearing on this Court's homicide jurisprudence. In fact, defendant's reading of *Burrage* has been rejected by state courts across the

country that have upheld their own definitions of causation and rejected the argument that but-for causation is constitutionally required in all homicide cases. There is no special justification to depart from *stare decisis* and hold that but-for causation is required in homicide cases. Doing so would drastically affect all first degree murder, second degree murder, and reckless homicide cases. This Court should therefore reaffirm its existing definition of causation in homicide cases, under which defendant was properly convicted of drug-induced homicide.

A. This Court's well-settled precedent applies "contributory" cause in homicide cases.

The causation requirement for all homicides in Illinois, except for felony murder, requires proof that the defendant's criminal acts "contributed" to the victim's death and that the death was not "unrelated" to the defendant's actions. *People v. Brackett*, 117 Ill. 2d 170, 172-75 (1987). "It is not the law in this State that the defendant's acts must be the sole and immediate cause of death." *Id.* at 176 (citing *People v. Reader*, 26 Ill. 2d 210, 213 (1962)). And, as this Court recently noted, "[i]t is well settled that if the State shows the existence of a sufficient cause of death through the act of the accused, the death is presumed to have resulted from such act. To relieve a defendant from criminal liability, an intervening cause or a supervening act must be 'completely unrelated' and 'disconnected' from any act of the defendant." *People v. Staake*, 2017 IL 121755, ¶ 53 (internal citations omitted) (quoting *People v. Domagala*, 2013 IL 113688, ¶ 39).

Over the past 100 years, this Court has repeatedly upheld this definition of causation. *E.g.*, *People v. Lowery*, 178 Ill. 2d 462, 465 (1997) (intervening cause unrelated to defendant's acts relieves defendant of criminal liability but "when criminal acts of the defendant have contributed to a person's death, the defendant may be found guilty of murder"); *People v. Brown*, 169 Ill. 2d 132, 139-53 (1996) (defendant caused victim's death where defendant and another man both shot victim and any one of the gunshot wounds could have been fatal); *People v. Amigon*, 239 Ill. 2d 71, 76-84 (2010) (adequate evidence of causation for murder where defendant shot victim, rendering victim quadriplegic, and victim died of pneumonia five years later); *People v. Gacho*, 122 Ill. 2d 221, 244 (1988) (sufficient evidence of murder where defendant shot victim and victim subsequently died of pneumonia); *Brackett*, 117 Ill. 2d at 172-76 (defendant caused victim's death where he beat her and five weeks later, victim died of asphyxiation in hospital); *People v. Love*, 71 Ill. 2d 74, 81 (1978) (sufficient evidence of causation where defendant beat victim, who was subsequently hospitalized with a ruptured spleen and died of pneumonia); *Cunningham v. People*, 195 Ill. 550, 573 (1902) ("a blow with the fist," even if not usually fatal, is murder if landed on a feeble individual, contributing to his death).

This Court's definition of causation — requiring contributory causation and not but-for causation — comports with the legislative intent underlying the drug-induced homicide statute, 720 ILCS 5/9-3.3 (2012). The statute was

enacted in 1988, at the height of the war on drugs. Public Act 85-1259, § 1 (eff. Jan. 1, 1989). Legislative debate reveals that the purpose of the statute was to deter the production and distribution of drugs, and the debate strongly suggests that the General Assembly favored a broad, rather than narrow, application of the statute. 85th Gen. Assemb., Senate Debates (June 24, 1988) at 92-95 (remarks of Senators D'Arco and Jones on H.B. 4125 suggesting that "drug pushers" should receive the death penalty and that "[w]e've got to rid our society of one of the most pressing problems we have and that is the delivery and sale of . . . illegal drugs").

Although this Court has not had occasion to construe the drug-induced homicide statute, the appellate court has consistently applied this Court's contributory causation standard from other homicide cases to drug-induced homicide. *See People v. Kidd*, 2013 IL App (2d) 120088, ¶¶ 33-34 (holding that contributory cause, not but-for cause, is required for drug-induced homicide, and that it was foreseeable that victim would ingest other drugs and could die from combination of drugs provided by defendant and other substances); *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 127-29 (2d Dist. 2006) (drug-induced homicide statute not void for vagueness; statute imports "knowing" mental statute from drug distribution statute and punishes any death that results from knowing distribution of drug); *People v. Boand*, 362 Ill. App. 3d 106, 139-43 (2d Dist. 2005) (affirming conviction for drug-induced homicide where defendant delivered only methadone to victim, but victim

died of cocaine and methadone intoxication, and rejecting argument that statute is unconstitutional for failure to "specify the degree to which the resulting death must be foreseeable"). And in the murder context, this Court has rejected jury instructions similar to those proposed by defendant here. *Reader*, 26 Ill. 2d at 213 ("As the instruction directs the jury to find the defendant 'not guilty' if they find that the injury inflicted by the defendant was not 'the sole and immediate cause of death,' the instruction does not properly state the law and the trial judge correctly refused the instruction.").

The circuit court here instructed defendant's jury according to Illinois Pattern Jury Instructions, Criminal No. 7.15 (4th ed. 2000) ("IPI"), which adopted this Court's language in *People v. Brackett*, 117 Ill. 2d at 172-77. IPI 7.15 is given whenever causation is at issue in a case of intentional murder, knowing murder, or reckless homicide. IPI 7.15 Committee Note. That instruction — informing jurors that to find defendant caused Taylor's death, "the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death, and that the death did not result from a cause unconnected from defendant" — accurately reflected this Court's precedent. R741-42. Accordingly, the circuit court's use of IPI 7.15 was not an abuse of discretion. *See McDonald*, 2016 IL 118882, ¶ 69.

B. *Burrage* did not establish a rule of constitutional dimension and therefore did not overturn this Court's homicide jurisprudence.

The United States Supreme Court's decision in *Burrage* did not overturn this Court's well-established precedent on causation in homicide cases. *Burrage* construed the federal drug-induced homicide sentencing provision — which imposes a mandatory minimum twenty-year sentence when "death or serious bodily injury results from" the distribution of a drug, 21 U.S.C. § 841(a)(1), (b)(1)(A)-(C) (2012) — and rested upon a plain-language construction of that federal statute. *Burrage*, 134 S. Ct. at 887-92. The court held that the federal statute requires but-for causation, and the enhanced sentencing provision applies only where the government proves beyond a reasonable doubt that the victim would not have died absent the use of the drugs provided by the defendant, including cases where the defendant has ingested multiple types of drugs. *Id*. But *Burrage* recognized that many states use "contributory" cause in homicide cases, and there is no indication that the court intended its exercise of federal statutory interpretation to invalidate, *sub silentio*, potentially hundreds of state laws. *Id*. at 890.

Other state courts have recognized that *Burrage* is confined to the interpretation of a federal statute and is not a rule of constitutional dimension. *E.g. People v. ZuHui Li*, 155 A.D.3d 571 (N.Y. App. Div. 2017) (rejecting argument that *Burrage* was constitutional ruling requiring but-for causation in manslaughter case); *People v. Chapman*, Nos. B257249 &

B262234, 2016 WL 865690, *10 (Cal. Ct. App. Mar. 7, 2016) ("*Burrage* was concerned with the interpretation of specific language Congress had used in a federal statute; the court was not imposing a definition of causation as a matter of constitutional mandate."); *State v. Irish*, 873 N.W.2d 161, 167 (Neb. 2016) (rejecting argument that *Burrage*'s holding was a rule of constitutional dimension and controlled State's interpretation of causation in its homicide statute); *Castle v. Commonwealth*, 2016 WL 4410098, No. 2014-CA-970-MR, *4-5 (Ky. Ct. App. Aug. 19, 2016) (rejecting argument that *Burrage* altered Kentucky's statutory definition of causation as "any antecedent which constitutes a substantial factor in bringing about the result in issue") (internal quotation marks and alterations omitted); *State v. Bacon*, 2016 Ohio 618, ¶¶ 75-89 (Ohio Ct. App. Feb. 19, 2016) (trial court did not err by refusing to instruct jury, in accordance with *Burrage*, that defendant is criminally responsible only for immediate and obvious results of her actions); *Rollf v. State*, 472 S.W.3d 490, 495-96 (Ark. Ct. App. 2015) (causation was adequately established, *Burrage* notwithstanding, where victim could have died from any of the blows landed by multiple assailants); *State v. Bennett*, 466 S.W.3d 561, 562-63 & n.1 (Mo. Ct. App. 2015) ("We decline Defendant's invitation to reinterpret Missouri's felony-murder statute in light of [*Burrage*]. *Burrage* addressed sentencing provisions of the federal Controlled Substances Act, did not declare constitutional law, was not a felony murder case *per se*, and compels no particular result here.").

The United States Supreme Court itself has rejected the argument that *Burrage* was a rule of constitutional dimension requiring proof of but-for causation to impose criminal liability. In *Paroline v. United States*, 134 S. Ct. 1710 (2014), the defendant argued that under *Burrage*, the restitution he owed a child pornography victim was limited to those damages the victim would not have sustained but for Paroline's personal possession of the offending images. The Court rejected the argument, drawing no distinction between restitution and other forms of criminal liability. *Id*. *Paroline* recognized that but-for causation is not well suited to all circumstances and is not constitutionally required. *Id*. at 1727 ("It would be unacceptable to adopt a causal standard so strict that it would undermine congressional intent where neither the plain text of the statute nor legal tradition demands such an approach."); *see also State v. Shorter*, 893 N.W.2d 65, 71-74 (Iowa 2017) (accepting State's argument that under *Paroline*, prosecution may prove defendant guilty through theory of aggregate causation where group of people beat victim to death).

C. This Court should not depart from *stare decisis* to redefine causation.

Because *Burrage* did not require but-for causation as a matter of constitutional law, this Court should not depart from *stare decisis* by redefining causation in homicide cases. *See People v. Caballes*, 221 Ill. 2d 282, 313 (2006) ("Adhering to precedent is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled

than it be settled right.") (internal quotation marks and citations omitted). There is no "specially justified" reason to depart from the well-settled definition of causation in Illinois simply because the United States Supreme Court construed a similar federal statute in a different way. *See People v. Colon*, 225 Ill. 2d 125, 146 (2007) ("any departure from *stare decisis* must be 'specially justified'" because "a question once deliberately examined and decided should be considered as settled and closed to further argument") (internal quotation marks and citations omitted).

Departing from *stare decisis* would have a grave impact on Illinois's homicide laws. The concept of contributory causation is used not only in drug-induced homicide cases, but also in intentional first and second degree murder, as well as reckless homicide cases. *See* IPI 7.15 Committee Note. It is often difficult to prove as a matter of medical certainty that had circumstances been different the victim would not have died.

In cases of multiple assailants beating or shooting a victim to death, this Court recognizes that where one defendant's actions contributed to that death but it is impossible to know whether the victim would have lived had there been one less assailant or one less bullet wound, the defendant is guilty of murder. *E.g.*, *Brown*, 169 Ill. 2d at 139-53 (1996) (defendant and co-offenders guilty where any of the victim's bullet wounds could have been fatal); *see also People v. Martinez*, 348 Ill. App. 3d 521, 530-31 (2004) (1st Dist. 2004) (defendant guilty of murder where he and a group of other men

beat victim, even though prosecution could not prove that victim would not have died from the beating absent defendant's contribution). Likewise, where a defendant injures a victim who subsequently dies of pneumonia or other medical complications, and there is no way to prove that the victim would not have fallen ill absent the injuries, this Court recognizes that the defendant is guilty of murder if the injuries were a contributory cause of the death. *E.g.*, *Amigon*, 239 Ill. 2d 76-84; *Gacho*, 122 Ill. 2d at 244; *Brackett*, 117 Ill. 2d 172-75; *Love*, 71 Ill. 2d at 81.

Departing from this Court's existing definition of causation and instead adopting but-for causation would overturn each of these cases and make homicides substantially more difficult to prosecute in cases involving multiple assailants or where the defendant's acts have triggered a chain of events that eventually lead to the victim's death. *See People v. Manning*, 2018 IL 122081, ¶ 21 ("The process of statutory interpretation should not be divorced from consideration of real-world results, and in construing a statute, courts should presume that the legislature did not intend unjust consequences.") (internal quotation marks and citations omitted).

Moreover, the General Assembly's intent in passing the drug-induced homicide statute would be substantially frustrated if defendant's construction were adopted. As *Burrage* noted, nearly half of all overdose deaths involve the consumption of more than one type of drug. 134 S. Ct. at 890. Heroin, for example, has no safe dosage and can be lethal in any quantity. R352, 379. In

those cases involving the consumption of multiple substances, it would be impossible to prove beyond a reasonable doubt that the victim would have lived had a single drug been removed from the cocktail. The General Assembly passed the drug-induced homicide statute in 1988, at which point this Court's definition of causation in homicide cases — requiring contributory and not but-for causation — had been consistently applied for more than eighty years. *See Cunningham*, 195 Ill. at 573; Public Act 85-1259, § 1 (eff. Jan. 1, 1989). If the General Assembly intended to depart from that definition, it would have clearly stated as such. *See People v. Manning*, 76 Ill. 2d 235, 241 (1979) ("It is a principle of statutory construction that the General Assembly knows how the courts have interpreted statutes" and that it has "acted conscientiously and thoroughly.").

In contrast, *Burrage* recognized that Congress drafted its own drug-induced homicide provision using the common understanding of the phrase "results from" in federal statutes, which differs from Illinois's definition of causation. *See Burrage*, 134 S. Ct. at 887-92. Because *Burrage* interprets a federal statute and does not purport to overturn the many criminal laws of various States employing contributory causation, this Court should reject defendant's invitation to defy the legislature's intent and upend settled precedent by redefining causation in all homicide cases.

II. The Evidence Was Sufficient for the Jury to Find Defendant Guilty Beyond a Reasonable Doubt.

Applying this Court's well-settled definition of causation in homicide cases, the evidence was more than sufficient for a reasonable jury to find defendant guilty of drug-induced homicide beyond a reasonable doubt. Dr. Harkey determined that Taylor's cause of death was heroin and cocaine intoxication. R316-53. Harkey noted two fresh needle puncture marks (unrelated to medical interventions) on Taylor's arm — so fresh that when he squeezed the surrounding skin blood freely exited the puncture wounds, revealing that the wounds were completely unhealed. R332-37. The presence of 6-MAM in Taylor's blood and urine established that Taylor had ingested heroin within hours of her death. Dr. Harkey opined that the amount of heroin Taylor consumed was consistent with fatal doses in other cases and could have been fatal by itself. R353.

The jury rejected defendant's efforts to show that Walker could have given Taylor a fatal dose of heroin or cocaine prior to defendant's arrival. *See* R614-15 (Walker's significantly impeached testimony that she and Taylor did drugs earlier in the day). The jury instead credited the evidence that Taylor was with her family and behaving normally from the evening of her release from prison through the following day during the party. *See* R1117-82. Taylor and Walker did not have an opportunity to be alone during the party, and once Taylor and Walker went inside the apartment on the evening of the party, they remained in the common areas where they spoke with Taylor's

mother, sister, and children. It was only after Taylor received the heroin and crack cocaine from defendant that she secluded herself in the bathroom and overdosed. *Id*.

Taylor's death was eminently foreseeable. Defendant provided Taylor, who had completed a six-month term of imprisonment just the previous day, with two bindles of heroin, a syringe, crack cocaine, and a crack pipe. Exh. 47. Taylor's death was not "completely unrelated" to or "disconnected" from defendant's actions. *Staake*, 2017 IL 121755, ¶ 53; *Brackett*, 117 Ill. 2d at 172-75. The heroin that defendant provided Taylor contributed to her death because — although Dr. Harkey could not rule out the possibility that Taylor could have died of an overdose had she consumed only the cocaine that defendant provided — the heroin alone could have killed Taylor and certainly contributed to her death by heroin and cocaine intoxication. R316-53.

Using the proper construction of the drug-induced homicide statute — under which defendant is guilty if the People proved beyond a reasonable doubt that her acts contributed to Taylor's death and that Taylor's death did not result from a cause unconnected from defendant, *see* Section I, *supra* — a reasonable jury could have found beyond a reasonable doubt that defendant's act of providing Taylor with two bindles of heroin (and a syringe with which to inject it) contributed to Taylor's death. Accordingly, the evidence was sufficient to convict defendant of drug-induced homicide. *See Hardman*, 2017 IL 121453, at ¶ 37.

CONCLUSION

This Court should affirm defendant's conviction.

April 4, 2018

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is twenty-three pages.

/s/ Lindsay Beyer Payne
LINDSAY BEYER PAYNE
Assistant Attorney General

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 4, 2018, the **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my email address to the email addresses of the persons named below:

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

/s/ Lindsay Beyer Payne
LINDSAY BEYER PAYNE
Assistant Attorney General