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NO. 4-17-0223

FILED
July 31, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JEFFREY DUHAIME, Defendant-Appellant.	)	Appeal from the Circuit Court of Woodford County No. 16CF31 Honorable Charles M. Feeney III, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's use of Illinois Pattern Jury Instruction, Criminal, No. 7.15 in defendant's drug-induced homicide case. The State presented sufficient evidence to convict defendant of drug-induced homicide but presented insufficient evidence to prove beyond a reasonable doubt that defendant delivered more than 10 objects of LSD.

¶ 2 In March 2016, defendant, Jeffrey Duhaime, was indicted on three counts (counts I-III) of drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2014)) and two counts (counts IV-V) of delivery of a controlled substance (720 ILCS 570/401(c)(7)(ii), 401(d) (West 2014)). The State alleged that (1) on December 18, 2015, defendant delivered lysergic acid diethylamide (LSD) to Keionta Williams and (2) her death was caused by the ingestion of that LSD. Counts I and IV alleged that defendant delivered more than 10 objects containing LSD in violation of section 401(c) of the Illinois Controlled Substances Act (720 ILCS 570/401(c) (West 2014)). Under the drug-induced homicide statute, a person who commits a drug-induced homicide in

violation of section 401(c) of the Illinois Controlled Substances Act is subject to a prison sentence of not less than 15 years and not more than 30 years. 720 ILCS 5/9-3.3(c) (West 2014).

¶ 3 In December 2016, a jury convicted defendant on all counts. In February 2017, the trial court sentenced defendant to 20 years in prison under subsection (c) of the drug-induced homicide statute. See *id*.

¶ 4 Defendant appeals, arguing (1) the trial court erred by instructing the jury that defendant could be found guilty if his acts were a contributing cause of Williams' death and (2) the State failed to present sufficient evidence to prove beyond a reasonable doubt that defendant (i) caused Williams' death or (ii) delivered more than 10 objects containing LSD. We agree only with defendant's last argument. Accordingly, we vacate his convictions on counts I and IV and remand to the trial court for resentencing. We affirm the trial court's judgment in all other respects.

¶ 5 I. BACKGROUND

¶ 6 A. The Charges

¶ 7 In March 2016, defendant was indicted on three counts of drug-induced homicide and two counts of delivery of a controlled substance. Count I alleged defendant (1) committed drug-induced homicide by delivering more than 10 objects containing LSD in violation of subsection (c) of section 401 of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(7)(ii) (West 2014)) to individuals attending a party in Kappa, Illinois, on December 18, 2015, and (2) Keionta Williams died as a result of ingesting that LSD. Because count I alleged delivery of more than 10 objects, defendant upon conviction was subject to a sentence of at least 15 and no more than 30 years in prison. See 720 ILCS 5/9-3.3(c) (West 2014). Counts II and III alleged (1) defendant delivered LSD in violation of subsection 401(d) of the Act and

(2) Williams died as a result of ingestion of that LSD. If convicted of either count II or III, defendant was subject to a sentence as in any other Class X felony—namely, a prison sentence of from 6 to 30 years. See *id*. § 9-3.3(b).

¶ 8 Count IV alleged defendant delivered more than 10 objects containing LSD to individuals at the party on December 18, 2015, a Class 1 felony. See 720 ILCS 570/401(c)(7)(ii) (West 2014). Count V alleged defendant delivered LSD to Williams at that same party, a Class 2 felony. See *id*. § 401(d).

¶ 9 B. The Trial

¶ 10 In December 2016, the trial court conducted a jury trial.

¶ 11 1. *The State's Case*

¶ 12 a. The House Party

¶ 13 Brittany Greiner testified that she and Williams were friends from high school and attended community college together at Heartland Community College, which is located in Normal, Illinois. On December 18, 2015, at about 10 p.m., she and Williams went to a house party in Kappa, Illinois. (We note that Kappa is approximately 12 miles north of Normal.) Greiner stated that someone gave her and Williams plastic cups filled with beer. After about an hour, a friend told them that defendant had LSD. Greiner and Williams went to defendant and asked for two hits of LSD. Greiner testified she and Williams had never before done LSD. Defendant gave each of them a small piece of paper, about the size of a pinky nail, and told them to place it on their tongues and wait for around an hour. The girls followed defendant's instructions and returned to the kitchen where they continued to drink, dance, and socialize.

¶ 14 Greiner stated the LSD took about an hour to take effect. When it did, she noticed the lights and walls moving. Greiner stated that during this time, she saw Williams dancing and

"having a lot of fun." Williams "started to make out with [Jacob Fairchild]," but Greiner told him to stop.

¶ 15 About 20 minutes later, Greiner looked at Williams and noticed something was wrong. Greiner stated she looked at Williams' eyes but "she wasn't there," and Williams looked scared. Williams asked if they could leave, but Greiner told Williams that Greiner could not drive. Greiner then went to look for a ride.

¶ 16 A few minutes later, Greiner heard a door slam and a friend yell that Williams had run off. Greiner, defendant, and some others searched outside for Williams but could not find her. Greiner testified she then drove around looking for Williams without success until about 3 a.m. Greiner believed the last time she saw Williams was 1:30 a.m.

¶ 17 Greiner acknowledged that she and Williams had smoked marijuana about an hour before coming to the party. Greiner stated that she and Williams smoked almost every day they were together, which was "[a] couple of times a week," and Williams had never reacted poorly as a result. Greiner further stated that she and Williams both had only two drinks that night and did not use any other drugs, including marijuana, at the party. Greiner acknowledged that she was starting to feel the effects of the alcohol when she took the LSD but maintained she was not drunk. Greiner did not see defendant give anyone else any LSD.

¶ 18 Jacob Fairchild testified he arrived at the party between 11 p.m. and midnight. He stated he saw Greiner, with whom he was friends, about an hour later. Fairchild met Williams that night, and the two talked for about thirty minutes before making out. Fairchild stopped when Greiner told him to, and shortly thereafter, he passed out drunk in the living room. Fairchild stated he remembered seeing defendant give a "younger black male" a hit of LSD and that was "the only thing I can actually remember very clearly." Fairchild did not see defendant give

anyone else any LSD and denied taking any himself. Fairchild estimated between 20 and 30 people attended the party and they were coming and going all night.

¶ 19 Devyn West testified that he was temporarily living at Deric Mool's house in Kappa at the time of the party. West estimated that between 40 and 50 people attended and stated he drank three beers and smoked marijuana that night. West further stated that defendant had a packet of aluminum foil that contained tabs of LSD. West stated defendant kept the packet in a cabinet and retrieved it when he sold the LSD. When asked how many times defendant gave out LSD, West stated as follows: "I'm not too sure on how many times, but definitely more than a few." West defined "a few" as "[l]ike, three or four people or more." The only person West could name that took LSD was Williams, whom he met that night and talked to for about five minutes. However, West did not see defendant give her LSD. Instead, he just saw that it was on her tongue when he spoke with her. West denied taking any LSD himself.

¶ 20 Deric Mool testified that he was the owner of the property in Kappa where the party took place. Mool explained a field was all that separated the interstate highway from his house and estimated that it was a half mile away. Mool acknowledged that he had been charged with the same crimes as defendant in a separate case as well as an unrelated residential burglary. In exchange for his testimony against defendant and his pleading guilty to burglary, the State agreed to dismiss the charges related to Williams' death and to consider his cooperation at sentencing, which was scheduled to take place seven days after his testimony in defendant's case.

¶ 21 Mool testified that a few days before the party, defendant texted him and said he was bringing a keg, marijuana, and LSD. On December 18, 2015, defendant arrived with a few of his friends at around 8:30 p.m. Mool stated defendant had a packet of foil containing LSD.

¶ 22 Mool stated he was in the kitchen at the beginning of the night playing beer pong. He saw Greiner and Williams, whom he met for the first time that night, receive LSD from defendant. Defendant had the foil packet on the counter next to him and took it with him wherever he went. Mool denied taking LSD himself but acknowledged smoking marijuana and drinking six beers. Mool testified he saw Greiner and Williams smoke marijuana and hold cups of beer, although he did not see them actually drink any. He testified they received the LSD at about 10 p.m., 45 minutes after they arrived at the party. About an hour after the girls took LSD, he noticed them laughing and giggling uncontrollably and attributed those behaviors to the drug. Mool did not see them have any negative reaction and did not see them leave. Mool estimated 70 people attended the party.

¶ 23 Regarding the number of people he saw take LSD, the following exchange occurred:

> "Q. Besides Brittany Greiner and [Williams,] did you see anybody else take LSD?
>
> A. Yes. There was a lot of people.
>
> Q. How many people do you believe received LSD from the defendant?
>
> A. That I personally saw? 10. Well, around 10.
>
> Q. Around 10?
>
> A. Yes."

¶ 24 On cross-examination, Mool stated he spoke with police on December 20, 2015, and told them defendant gave out LSD. Mool acknowledged that police asked him for names of who took LSD but Mool could not provide any. On further cross-examination and redirect examination, Mool testified inconsistently regarding whether he told the police on December 20,

2015, that Williams took LSD.

¶ 25 Shawna Klauzer testified that she was a friend of defendant's and arrived at Mool's house with him and two others around 9:30 p.m. on December 18, 2015. Klauzer stated she drank beer and smoked marijuana throughout the night. She also stated she lost count of the number of drinks she had and "got drunk quick." Klauzer indicated people were taking LSD, which defendant was providing. Klauzer denied ever taking LSD before or after the party but stated people told her she took LSD that night, although she did not remember doing so.

¶ 26 Klauzer testified that when she arrived, defendant had a foil packet that contained a white strip of paper, approximately two inches by two inches or two inches by three inches in size, that she was told contained LSD. Defendant asked for scissors and went to a bedroom where he cut the paper into approximately "12 or 13" pieces, each about the size of a pinky fingernail. Klauzer stated she saw defendant hand people LSD in exchange for money but she could not remember anybody specifically because "it was a long time ago, and I was drunk." She also could not guess how many people she saw receive LSD. Klauzer estimated that 50 people attended the party and stated people were coming and going all night.

¶ 27 Klauzer testified that she saw Williams, whom she had met once before, arrive with Greiner. Klauzer observed Williams with one cup of beer and saw her drink from it, but she did not believe Williams finished that beer. Klauzer testified that Williams' mood changed around midnight. Klauzer stated Williams was "freaking out" and asked for a cup of water. When Klauzer gave Williams a glass of water, Williams was "still freaking out[,] saying it's not water." Williams then ran out of the house and said, "[Y]ou people are fucking nuts."

¶ 28 Klauzer stated she followed Williams outside and asked her to come back. Williams looked scared, said she was leaving, and then "took off running." Klauzer stated

Williams "fell down in the bushes, and she stood up, and then she looked back, and she just looked terrified, and she just took off running." Klauzer yelled for Greiner, who came outside. The two, along with defendant and another partygoer, looked for Williams but could not find her.

¶ 29 On cross-examination, Klauzer repeatedly stated she was drunk that night, that she drank fast, and that she could not remember specific details from that night. Klauzer agreed that she did not count how many pieces of LSD defendant had and believed it could have been anywhere between 10 and 13.

¶ 30 b. The Accident and Investigation

¶ 31 Jose Cariaga-Sagrado testified he was working as a bus driver on the night of December 18, 2015. Cariaga-Sagrado stated that at approximately 2 a.m. on December 19, 2015, he was driving north on Interstate 39, near the town of Kappa, Illinois. Cariaga-Sagrado was in the right lane of traffic when he saw a silhouette to his right out of the corner of his eye. He attempted to change lanes, but a car was in the lane next to him, so he attempted to move the bus to the left part of the lane. Two seconds after seeing the silhouette, he felt a crash. Cariaga-Sagrado stopped the bus and walked back to investigate. He saw a woman's body in the ditch and called 911.

¶ 32 Kevin Caskey, a trooper with the Illinois State Police, testified as an expert in accident reconstruction. Caskey stated he arrived at the site of the accident on Interstate 39 in the early morning hours of December 19, 2015. Williams' body was found in a ditch to the right of the northbound lane of the interstate. She was an African-American woman, wearing a black sweater, black leg wear, and black boots.

¶ 33 Caskey testified that based on Williams' height and the damage to the windshield and front of the bus, Williams was standing up when she was struck. Additionally, the bottoms

of Williams' boots were scratched, which would only happen if she was standing at the time of the accident. Based on the injuries to the right side of her body, Caskey concluded Williams was walking south, in the direction of oncoming traffic. Caskey stated he found mud on Williams' boots and explained that the mud must have been wet at the time of the accident because dry mud would fly off.

¶ 34 Just north of the accident was a bridge over a river. On the bridge, Caskey found frozen footprints, which further indicated Williams was walking south. Just north of the bridge, Caskey found frozen mud and water on the guardrail and footprints leading down to a ditch with standing water in it. There was also a portion of wire fencing along an access road to the right of the ditch that had been torn down by a previous accident.

¶ 35 Caskey explained that, based on this evidence, Williams had climbed over the downed fence, walked through the watery ditch, and then over the guardrail to reach the interstate. Caskey testified that Williams was standing on the right side of the right lane of traffic at the time of impact. He based this on two factors: (1) calculations between the distance Williams' body travelled and the speed of the bus and (2) the absence of tire marks on the white fog line or rumble strips on the shoulder near the location of impact.

¶ 36 Dr. Amanda Youmans, a forensic pathologist, testified she performed an autopsy of Williams and concluded she died from multiple blunt force injuries from being hit by a bus. Youmans stated she received a toxicology report regarding Williams that Williams tested positive for LSD, marijuana, alcohol, and fluoxetine (which a stipulation later admitted into evidence identified as the generic name for the prescription drug Prozac). Youmans testified that LSD causes hallucinations, altered perceptions of reality, and paranoia, while marijuana causes relaxation and euphoria. Youmans stated alcohol was not detected in Williams' blood, only in

the fluid of her eye, which meant the level was very low. Youmans stated the level of fluoxetine "was a non-intoxicating, non-lethal level," consistent with a therapeutic range.

¶ 37 Youmans stated she did not list the drugs as a contributing cause because Williams would have died from her injuries regardless of whether she had drugs in her system. Therefore, the drugs did not contribute to the actual cause of death. However, Youmans testified as follows: "I'm not saying that the drug use did not lead to any circumstances that led to her cause of death[.] [W]hat I'm saying from a pathological standpoint is that drugs did not contribute to the actual cause of death."

¶ 38 The State introduced a stipulation with defendant to proposed testimony from L. Paul Miller, an expert in the field of forensic toxicology. The stipulation provided that, if called to testify, Miller would state that he received samples of various bodily fluids from Williams and analyzed them. He found LSD, fluoxetine, THC (tetrahydrocannabinol, the psychoactive chemical in marijuana), and THC metabolites in Williams' blood and found alcohol in Williams' eye fluid. Miller would testify that LSD can cause visual and auditory hallucinations as well as panic and paranoia, and "[b]lood concentrations of LSD between 4 and 6 nanograms per milliliter are usually seen one to two hours after the usual psychedelic dose." Williams had a LSD concentration of 1.9 nanograms per milliliter of blood. Miller would also testify that fluoxetine is the generic name for the prescription drug Prozac and is used to treat depression. The levels found in Williams were consistent with a therapeutic dose.

¶ 39 Chad Dumonceaux testified he was a special agent with the Illinois State Police. On December 19, 2015, he and his master sergeant interviewed some of the partygoers, including defendant. Dumonceaux stated that the interview with defendant was recorded. The State played a recording of the interview for the jury.

¶ 40 In the interview, defendant stated Fairchild was carrying a foil packet with LSD at the party. Defendant stated that at some point, a woman screamed and ran out of the house and he and several others looked for the woman. Defendant acknowledged meeting Williams at the party but denied that she ever asked for anything or that he gave her anything.

¶ 41 Illinois State Police trooper Jacob Duro testified that he and another officer interviewed defendant on December 21, 2015. Defendant initially denied having LSD at the party but later admitted that he brought approximately 12 hits and gave one to Mool, West, and Klauzer and took one himself. Defendant stated that at some point during the party, he set the LSD down when he went to the bathroom and it was gone when he returned.

¶ 42 Robert Gillson, a detective with the Woodford County Sheriff's Office, testified that he interviewed defendant with Duro on December 21, 2015. Gillson's testimony was consistent with Duro's. Gillson further testified he was present on February 10, 2016, when he and another officer arrested defendant. The State played a video of defendant being transported to jail after the arrest. In the video, defendant denied giving LSD to Williams but acknowledged his earlier statement that he brought LSD to the party, gave it to certain persons, and had it taken from him. Defendant also acknowledged Williams took LSD at the party.

¶ 43 2. *Defendant's Case*

¶ 44 Dr. John Bederka testified as an expert in toxicology and pharmacology for the defense. Bederka testified that fluoxetine can cause agitation and hallucinations. Bederka stated that marijuana generally causes calmness but can cause agitation, hallucinations, and confusion. Bederka also stated that LSD causes "hallucinations in most people, some auditory and some visual and sometimes both."

¶ 45 Bederka opined that nothing he reviewed showed that Williams was dysfunctional

when she arrived at the party. Based on the levels of chemicals found in the toxicology report, Bederka believed the fluoxetine was consistent with a therapeutic dose. Bederka stated the alcohol levels found were inconsistent with the reports he read that suggested she had around 12 drinks. He also believed Williams was a regular marijuana user. Bederka explained that the THC and THC metabolite levels were consistent with ingesting or eating marijuana but were far too high for recent smoking. However, Bederka explained the levels were consistent with THC that would be found in the tissues of a chronic marijuana user. Accordingly, he opined that the THC found in Williams' blood was released from her tissues due to the extreme trauma of the accident.

¶ 46 Bederka testified he could not find any literature supporting the notion that a person would be dysfunctional at the level of LSD found in Williams. He further believed that the drug levels in Williams would have been lower at the time of the accident than were found after the autopsy because levels generally increase after death as drugs seep out of organs and tissue, particularly in cases of trauma.

¶ 47 The upshot of Bederka's testimony was that Williams' behavior at the time she left the party could have been caused by alcohol, marijuana, or LSD, or some combination of all three. Similarly, Bederka testified that no one could say within a reasonable degree of certainty that "one drug led to this accident" because the drugs were taken in combination and "they all interacted at every level you can imagine."

¶ 48 On cross-examination, Bederka agreed that the level of alcohol found in Williams would be consistent with a person having two to three drinks over the course of several hours. He also agreed that the levels of fluoxetine were consistent with a prescription dose. Bederka agreed people who use marijuana for several years would not likely have adverse effects when they used

it. Finally, Bederka agreed that the psychological effects of LSD could be experienced for up to eight hours and its effects vary from "person to person and time to time," as well as the setting in which one takes LSD.

¶ 49 Defendant also called Officer Gillson who testified that he interviewed Mool on December 20, 2015. Gillson stated he asked Mool who took LSD and how many people but Mool could not provide names or a number. Gillson could not remember if he showed a picture to Mool.

¶ 50 3. *Jury Instructions*

¶ 51 The State offered a jury instruction based upon Illinois Pattern Jury Instruction, Criminal, No. 7.15 (approved Jan. 30, 2015) (hereinafter IPI 7.15), which stated as follows:

> "In order for you to find that the acts of the defendant caused the death of Keionta Williams, 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."

¶ 52 Defendant objected to the instruction, arguing that the drug-induced homicide statute used the phrase "is caused by" and IPI 7.15 inserted the word "contributing," thereby inaccurately stating the law. The trial court overruled defendant's objection. The court noted that "if [Williams] was on the road because of the LSD, then this instruction is appropriate because it doesn't—the law doesn't say it has to be the last cause or the sole cause, it has to be a cause. And that's—and that contributed to her death. So I think this is the right instruction."

¶ 53 4. *The State's Arguments*

¶ 54 During closing argument, the State succinctly summed up its theory of the case as follows:

> "The evidence shows that the defendant gave her LSD that caused her to freak out, that caused her to be scared, that caused her to run away from the scene trying to get home. And she crossed a fence, she went through mud, she went through grass, she went through a ditch. She got on the interstate and started walking home, and then all of a sudden she is in the lane, and she's struck by a bus, and her life ended right there. Why did her life end? LSD. Where did she get the LSD? The defendant."

¶ 55 The State argued it had proved defendant delivered more than 10 objects of LSD based on the observations of the witnesses and defendant's admissions. The State calculated that defendant could have had anywhere from 16 to 24 hits of LSD based on Klauzer's estimation as to the dimensions of the LSD before it was cut and the size of each hit. The State alternatively argued that even accepting defendant's statement that he brought 12 hits of LSD, the evidence demonstrated he delivered more than 10 of them.

¶ 56 The jury found defendant guilty on all counts.

¶ 57 C. The Sentencing Hearing

¶ 58 In February 2017, the trial court conducted a sentencing hearing. The court noted that counts II through V were lesser included offenses of drug-induced homicide and therefore sentenced defendant only on count I, which had a sentencing range of 15 to 30 years in prison. The presentence investigation report indicated defendant had prior convictions involving drugs and that defendant had completed drug treatment. The court believed defendant's prior involvement with drugs, as well as his continued involvement after treatment, demonstrated that

he should have known the dangers of drug dealing and a lengthy sentence was necessary to deter others. The court sentenced defendant to 20 years in prison.

¶ 59 This appeal followed.

¶ 60 II. ANALYSIS

¶ 61 Defendant appeals, arguing (1) the trial court erred by instructing the jury that defendant could be found guilty if his acts were a contributing cause of Williams' death and (2) the State failed to present sufficient evidence to prove beyond a reasonable doubt that defendant (i) caused Williams' death or (ii) delivered more than 10 objects containing LSD. We agree only with defendant's last argument. Accordingly, we vacate his convictions on counts I and IV and remand to the trial court for resentencing. We affirm the trial court's judgment in all other respects.

¶ 62 A. The Contributing Cause Instruction

¶ 63 Defendant first argues his "conduct had to be more than a contributing cause of *** Williams' death for him to be convicted of drug-induced homicide" and therefore, "the trial court erred by providing IPI 7.15 to the jury." Defendant contends that IPI 7.15 should not have been given for two reasons: (1) the instruction violated due process by lowering the burden of proof that the State had to meet to demonstrate causation and (2) the instruction rendered the drug-induced homicide statute unconstitutionally vague as applied to him. We address each argument in turn.

¶ 64 1. *The Applicable Law*

¶ 65 "The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence, so that the jury may reach a correct conclusion according to the law and the evidence." *People v. Bannister*, 232 Ill. 2d 52, 81, 902 N.E.2d 571, 589 (2008).

Whether a trial court erred by refusing to give a particular jury instruction is reviewed under an abused of discretion standard. *People v. Nere*, 2018 IL 122566, ¶ 29, 115 N.E.3d 205. The question of whether a given jury instruction accurately conveyed to the jury the applicable law is reviewed *de novo*. *Id*. ¶ 30.

¶ 66 The drug-induced homicide statute states, "A person who violates Section 401 of the Illinois Controlled Substances 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, commits the offense of drug-induced homicide." 720 ILCS 5/9-3.3(a) (West 2014). In *Nere*, the supreme court held that IPI 7.15 should be given in drug-induced homicide cases. *Nere*, 2018 IL 122566, ¶ 64. That instruction provides as follows:

> "In order for you to find that the acts of the defendant caused the death of ___, 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 Instructions, Criminal, No. 7.15 (approved Jan. 30, 2015).

¶ 67 2. *This Case*

¶ 68 a. Due Process

¶ 69 Defendant claims the trial court's use of IPI 7.15 violated due process because it failed to accurately state the law of causation in Illinois and lowered the burden of proof for the State, allowing it to convict him by merely showing that the LSD contributed in some manner to Williams' death. Defendant's main concern is this: "The jury may have convicted [defendant] of drug-induced homicide only because it thought that one of the numerous decisions that

[Williams] made that night was influenced, in some minute way, by her consumption of LSD. However, though supported by IPI 7.15, such a conclusion would be inconsistent with due process principles." Defendant then cites *Burrage v. United States*, 571 U.S. 204 (2014), for the proposition that but-for cause is required for a conviction.

¶ 70 We need not address defendant's arguments at length because the Illinois Supreme Court recently did so in *People v. Nere*, 2018 IL 122566. After a lengthy and thorough examination of the law of causation—both in Illinois and nationally—the supreme court concluded that IPI 7.15 accurately sets forth the law of causation in Illinois and must be given in drug-induced homicide cases. *Id.* ¶ 64. The court distinguished *Burrage* on statutory interpretation grounds, noting that the state legislature amended the statute in 2006 to change the language from "as a result of" (the language used in the federal statute examined in *Burrage*) to "caused by." *Id.* ¶ 42. The supreme court noted that "cause" "has always had [the same meaning] in Illinois homicide cases, and the Illinois courts have consistently used a 'contributing cause' standard." *Id.* Accordingly, the court concluded the legislature intended to invoke the contributing cause standard when it amended the drug-induced homicide statute and not the but-for standard discussed in *Burrage*. *Id.*

¶ 71 Moreover, the supreme court rejected outright the claim that any due process concerns were implicated by the contributing cause standard or that it impacted the State's burden of proof. *Id.* ¶¶ 47-48. The court explained in detail why the contributing-cause approach was the best method for determining cause in homicide cases generally and in drug-induced homicide cases in particular. *Id.* ¶¶ 53-64. Importantly, the court held that IPI 7.15 is sufficient to reject insubstantial causes and to adequately protect a defendant from being convicted for deaths that are completely unrelated to his acts. *Id.* ¶ 63.

¶ 72 Defendant appears to argue that the specific facts of this case demonstrate why the court's decision in *Nere* was wrong. But any contention that the supreme court was wrong is a matter for it to decide, and we need not recount the Illinois Supreme Court's detailed reasoning in *Nere* any further. *Nere* controls this case, and the trial court properly gave IPI 7.15 to the jury.

¶ 73 b. Unconstitutionally Vague

¶ 74 Defendant further argues that IPI 7.15 renders the drug-induced homicide statute unconstitutionally vague because he could not have foreseen Williams' death. Defendant states that he "had a right to rely on the plain language of the statute and, based on that plain meaning, would not have understood that he would be guilty of drug-induced homicide if he provided LSD to [Williams] and she was struck by a bus three to four hours later." However, once again, the Illinois Supreme Court has already rejected the notion that the drug-induced homicide statute is vague. *Id.* ¶ 47. Delivery of a controlled substance is illegal, and the statute is "crystal clear as to what conduct is forbidden, and persons of ordinary intelligence do not have to guess at what conduct is proscribed." *Id.* What is more, the court brushed aside foreseeability concerns, noting that the statute clearly proscribes the delivery of a controlled substance and delivery is the only element "that a defendant has any control over ***." *Id.* The particular result in this case may have been difficult for defendant to foresee, but defendant certainly knew selling drugs was illegal, and he easily could have avoided liability by not delivering LSD to Williams.

¶ 75 Defendant's final argument concerning vagueness is that the statute "encourages arbitrary and discriminatory enforcement by failing to provide guidelines to law enforcement." Defendant complains that others were not charged for Williams' death although they could have been, including the person who gave the LSD to defendant and the person who purchased the LSD for Williams. A "statute must adequately define the offense in order to prevent arbitrary and

discriminatory enforcement. *** If the legislature fails to provide minimal guidelines to govern law enforcement, a criminal law may permit a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." (Internal quotation marks omitted.) *People v. Maness*, 191 Ill. 2d 478, 484, 732 N.E.2d 545, 549 (2000).

¶ 76 The fact that more people could have been charged does not mean the statute is unconstitutionally vague. "The drug-induced homicide statute is a unique statute that imposes criminal responsibility for the death of a person on anyone in the chain of delivery of controlled substances that were the cause of that person's death." *People v. Faircloth*, 234 Ill. App. 3d 386, 391, 599 N.E.2d 1356, 1360 (1992). Although anyone in the supply chain could have been charged, the statute hardly permits prosecutors and law enforcement to "pursue their personal predilections." "The statute *** spells out what act a defendant must commit, what harm must occur, and how the harm must occur, and the only mental state requirement is the defendant's knowing delivery of a controlled substance." *Nere*, 2018 IL 122566, ¶ 31 n. 4. Accordingly, the drug-induced homicide statute contains sufficient guidelines to prevent arbitrary enforcement.

¶ 77 B. Sufficiency of the Evidence

¶ 78 Next, defendant argues that the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt in two distinct ways. First, defendant asserts that the State failed to demonstrate that his actions were a contributing cause of Williams' death. Second, defendant claims that even if the State proved the causation element, it failed to present sufficient evidence that defendant delivered more than 10 objects containing LSD. We agree with defendant's second argument.

¶ 79 1. *The Applicable Law*

¶ 80 When reviewing a challenge to the sufficiency of the evidence, a reviewing court

considers whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id*. ¶ 69. "A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, but it may not allow unreasonable inferences." *People v. Guerrero*, 2018 IL App (2d) 160920, ¶ 49, 109 N.E.3d 261 (citing *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004)). "[T]he testimony of a single witness is sufficient to convict *if positive and credible* [citations] ***." (Emphasis in original.) *People v. Smith*, 185 Ill. 2d 532, 545, 708 N.E.2d 365, 371 (1999). "While credibility of a witness is within the province of the trier of fact, and the finding of the jury on such matters is entitled to great weight, the jury's determination is not conclusive." *Id*. at 542. Whether a causal relationship exists is ordinarily a question of fact for the jury, and a reviewing court will only reverse that finding if "the evidence 'is so unreasonable, improbable and unsatisfactory as to leave a reasonable doubt as to defendant's guilt.' " *People v. Amigon*, 388 Ill. App. 3d 26, 33, 903 N.E.2d 843, 849 (2009) (quoting *People v. Brackett*, 117 Ill. 2d 170, 177, 510 N.E.2d 877, 881 (1987)).

¶ 81 A person commits drug-induced homicide when (1) he unlawfully delivers a controlled substance to another and (2) any person's death is caused by the ingestion of any amount of that substance. 720 ILCS 5/9-3.3(a) (West 2014). The State is required to prove that (1) a defendant's acts were a contributing cause of the death and (2) the death did not result from a cause unconnected with the defendant. *Nere*, 2018 IL 122566, ¶ 32. However, the defendant's acts need not be the sole and immediate cause of death. *Id*.

¶ 82 2. *Contributing Cause*

¶ 83 Defendant argues the State failed to present any evidence that the LSD contributed to the accident. Defendant suggests that the jury may have found him guilty based

solely on the evidence that LSD contributed to her leaving the party. Defendant contends this would be insufficient because her leaving the party would not have caused her death. Instead, the State had to prove that the LSD contributed to Williams' being hit by the bus, and no evidence was presented as to how Williams ended up in the roadway.

¶ 84 The State argues the jury could have reasonably inferred that the LSD caused "visual impairments" that in turn caused Williams to enter a lane of traffic. Alternatively, the State argues that the jury could have determined that the LSD caused Williams to leave the party and put her "into dangerous proximity to the almost adjacent Interstate 39."

¶ 85 The State clearly presented sufficient evidence for the jury to conclude that Williams left the party because of the LSD. The jury heard testimony that Williams ingested LSD, and LSD was found in her system after her death. Witnesses testified that Williams was having a good time and that her behavior changed suddenly and dramatically at some point after taking the LSD. The experts testified that the level of fluoxetine in Williams' system was consistent with a therapeutic dose. Greiner testified that Williams had smoked marijuana many times and never had a bad reaction. And the level of alcohol found in her system was low; even defendant's expert agreed that no one would be impaired at the level of alcohol found in Williams' system. Witnesses testified that they assumed Williams was intoxicated because everyone was drinking at the party. However, the witnesses did not actually see her drinking out of her cup and did not see her get another cup.

¶ 86 Meanwhile, the experts testified that LSD causes hallucinations and paranoia. Klauzer testified that she handed Williams a glass of water but Williams did not believe it was water, which suggests that Williams was experiencing paranoia or hallucinations. Greiner testified that Williams looked scared and like "she wasn't there." Klauzer stated that Williams

"freaked out" and ran outside. Williams tripped and fell in the bushes and looked "terrified" as she looked back before running off. Viewing this evidence in the light most favorable to the State, the jury could have concluded that the LSD was the substance that caused the bad reaction and therefore caused Williams to leave the party.

¶ 87 We need not determine whether evidence that Williams left the party because of the LSD was enough on its own to constitute a contributing cause of her death. The State presented sufficient evidence for the jury to infer that LSD contributed to Williams being in a lane of traffic when she was struck and killed.

¶ 88 Caskey testified that based on Williams' height and the damage to the windshield and front of the bus, Williams was standing up when she was struck. Caskey also testified that Williams was in the right lane of traffic and that the bus did not cross the fog line because there were no tire marks on the line. The experts testified that LSD causes hallucinations, paranoia, and visual impairments, and as discussed earlier, Williams exhibited symptoms that the jury could have attributed to the LSD. Taken together with the testimony that Williams was standing upright completely in the lane of traffic when she was struck, the jury could have concluded that the LSD contributed to her being in the roadway at the time of the accident.

¶ 89 Defendant argues there was no expert testimony linking Williams' accident to the LSD and suggests the accident could have happened in any number of ways. However, given the contributing cause standard, the existence of innocent or alternative explanations for why Williams was in the roadway does not prevent a jury from concluding that the LSD played some role in the accident. Although the State did not present an expert—or any other witness—that opined that the LSD contributed to the accident, Bederka stated that it would be unreasonable to conclude that any one drug caused the accident. Bederka emphasized that the drugs were acting

in combination and that any one of them could have affected Williams. See *People v. Brown*, 169 Ill. 2d 132, 153, 661 N.E.2d 287, 296-97 (1996) (homicide conviction upheld where expert could not say which gunshot caused death because any one was sufficient).

¶ 90 Further, we cannot say that further expert testimony was required in this instance to demonstrate that LSD played a role in the accident. Expert medical testimony may be needed to assist the trier of fact in determining whether the defendant's acts contributed to the victim's death in cases where the causal link between the defendant's act and the victim's death is not readily apparent. *Amigon*, 388 Ill. App. 3d. at 34. But walking in a lane of traffic on an interstate, in a rural area, in dark clothing, in the middle of the night, is clearly *not* normal behavior. See *People v. Mumaugh*, 2018 IL App (3d) 140961, ¶ 36, 94 N.E.3d 237 ("it is simply not foreseeable that a pedestrian would be walking in the middle of a dark, unlit, rural road at 10:30 p.m. on a moonless night wearing dark clothing and no reflectors"); see also *Reuter v. Korb*, 248 Ill. App. 3d 142, 153, 616 N.E.2d 1363, 1371 (1993) (highly intoxicated adult walking in a "pitch-dark area of the roadway" was "not in an area where [the] defendant [(driver)] should have known or expected a pedestrian to be"). Therefore, the question the jury was faced with was why did Williams put herself in such a dangerous position?

¶ 91 Experts testified that LSD can cause hallucinations, visual impairments, and paranoia, and Bederka testified the effects of LSD can last up to eight hours. Greiner testified she last saw Williams at 1:30 a.m., and the accident occurred around 2 a.m. Klauzer and others saw behavior consistent with hallucinations and paranoia when Williams ran off into the night. Given this context, a jury could reasonably conclude that Williams was experiencing these symptoms at the time of the accident and that they contributed to her death.

¶ 92 3. *Delivery of More Than 10 Objects*

¶ 93 Counts I and IV alleged that defendant violated subsection 401(c) of the Illinois Controlled Substances Act by delivering more than 10 objects containing LSD. See 720 ILCS 570/401(c)(7)(ii) (West 2014). Because defendant was found guilty of delivering more than 10 objects, his sentencing range was 15 to 30 years in prison. See 720 ILCS 5/9-3.3(c) (West 2014). The State argues the jury could have reasonably inferred that defendant delivered more than 10 objects containing LSD. The State notes that Mool testified he saw defendant deliver LSD to "around 10" people at the party. Klauzer testified that defendant had between 10 and 13 hits of LSD, and defendant admitted to the police that he had approximately 12. Defendant further claimed he left the foil containing the LSD on the counter when he went to the bathroom and when he returned it was gone. Accordingly, the State suggests that the jury could have inferred that defendant delivered more than 10 objects because he started with more than 10 hits of LSD and ended with none. We disagree.

¶ 94 First, no witness testified that defendant delivered more than 10 hits of LSD. Mool was the only witness who testified that defendant delivered a number approaching the 11 needed for a conviction. The positive testimony of a single witness is sufficient to establish guilt beyond a reasonable doubt, if credible. *Smith*, 185 Ill. 2d at 545. However, the statement "around 10" is hardly "positive;" indeed, it is clearly an estimate. The State was required to prove defendant delivered *more than 10* objects containing LSD. Anything up to and including 10 was not enough.

¶ 95 Further, Mool's testimony was impeached in a number of significant ways. Most important, Mool admitted he had been charged with the *exact same* crimes as defendant because he was the owner of the home where the party took place, which suggests he took notice of the significance of the delivery of more than 10 objects of LSD. In exchange for his testimony

implicating defendant, the State dismissed all the charges. As defendant argued at trial, Mool's use of the number 10 is deeply suspicious, particularly when West, the only other witness to give a number, estimated "three to four or more." Further, Mool was also facing burglary charges. Although he testified he had not been promised anything relating to that charge, he did state that he was aware that his level of cooperation in defendant's case was a factor that would be considered at his sentencing, which was scheduled a mere seven days later. In short, Mool had an incentive to testify in a manner favorable to the State.

¶ 96 Additionally, Mool admitted he drank alcohol and smoked marijuana at the party, which would clearly affect his ability to recall. When he spoke with police a mere two days after the party, he could not provide a number. Further, in that interview, Mool could not name a single person to whom he saw defendant deliver LSD. At trial, he could remember only Greiner and Williams and could not provide an explanation for why he could not provide a number to police in his prior interview. Surely, he would have known if West, who was living with him at the time, or Klauzer, a friend of his, had taken LSD, especially given his opinion testimony that he could readily tell when someone was on LSD. Taken together with the other problems described, Mool's testimony regarding the number of deliveries is suspect.

¶ 97 Aside from Mool, West stated he saw "three to four or more" people get LSD and saw Williams had it on her tongue but did not see her get it. Klauzer testified she saw "people" get LSD from defendant but could not say who or how many because she was "drunk" and "it was a long time ago." Fairchild stated "the only thing I can actually remember very clearly" was seeing defendant give a young black man a hit of LSD. Greiner testified she and Williams got LSD from defendant.

¶ 98 One possible inference is that the three or four hits that West saw defendant

deliver were in fact different from those Mool, Klauzer, and Fairchild saw, thus totaling more than 10. It is notable that the State does not advance this argument, and we would not accept it. An equally if not more compelling inference is that those witnesses saw the *same* people purchase LSD. See *People v. Steading*, 308 Ill. App. 3d 934, 940, 721 N.E.2d 789, 795 (1999) ("A fact cannot be inferred when a contrary fact could be inferred with equal certainty from the same evidence."). Evaluating who each witness saw purchase LSD is made all the more difficult by the fact that the witnesses could not remember specifics and admitted that they did not know most of the people at the party, on top of the witnesses' being impaired. Klauzer in particular repeatedly stated that she could not remember very well both due to the passage of time and to her level of intoxication. It is true that the witnesses implied that defendant was selling LSD all night, but they based this on assumptions, not observations.

¶ 99 Another way the jury may have attempted to aggregate witness testimony to reach more than 10 objects is to combine defendant's admission to delivering LSD to Mool, West, and Klauzer with the other witnesses' estimations. However, this approach is also problematic because each of those three witnesses denied taking LSD, and none of them said they saw each other take LSD (despite knowing each other). The jury could have simply believed the witnesses were being untruthful and that they did in fact take LSD. But LSD is a mind-altering substance that causes hallucinations and visual impairment. If the jury believed these witnesses took LSD, then their testimony is less credible because (1) they were not being honest on the stand and (2) their perception was impaired even further.

¶ 100 The State argues that the mere fact that defendant admitted he had more than 10 hits of LSD at the party, combined with the fact that he admitted he did not have it at the end of the party, was enough for the jury to reasonably infer defendant delivered more than 10 objects.

That is certainly one inference, but there are countless others that are just as likely. Defendant could have taken multiple doses himself. The LSD could have been stolen, as he claimed, or perhaps he just misplaced it or dropped it or it was contaminated in some way. Or, the simplest explanation of all, he could have simply had some remaining after the party. "A reasonable inference may support a criminal conviction. However, there is a line between reasonable inference and mere speculation." *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 28, 992 N.E.2d 148. The State was required to prove defendant delivered *more than 10 objects*. The mere fact that defendant had more than 10 objects at the party and delivered some of them is not sufficient to prove beyond a reasonable doubt he delivered more than 10.

¶ 101 "[A] criminal conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. For all the reasons stated, we conclude the evidence presented by the State was so unsatisfactory that it creates a reasonable doubt as to whether defendant delivered more than 10 objects containing LSD. Accordingly, we vacate defendant's convictions on count I and count IV and remand for a new sentencing.

¶ 102 III. CONCLUSION

¶ 103 For the reasons stated, we vacate defendant's convictions on count I and count IV and remand to the trial court for a new sentencing. We affirm the trial court's judgment in all other respects.

¶ 104 Affirmed in part, vacated in part, and remanded.