No. 119484

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Petition For Leave to Appeal
	)	from the Appellate Court of Illinois,
Plaintiff-Appellant,	)	Third District,
	)	Nos. 3-13-0523, 3-13-0823,
	)	3-13-0848, 3-13-0926 &
	)	3-13-0927 (cons.)
v.	)	
	)	There on Appeal from the Circuit Court
	)	of the Thirteenth Judicial Circuit,
	)	LaSalle County, Illinois,
	)	Nos. 12 CF 61, 12 MR 20, 13 CF 37,
CARA RINGLAND, STEVEN PIRRO,	)	12 CF 584, 12 CF 552 & 13 CF 144
JAMES SAXEN, STEVEN L. HARRIS,	)	
AND MATTHEW P. FLYNN,	)	The Honorable
	)	H. Chris Ryan & Daniel J. Bute,
Defendants-Appellees.	)	Judges Presiding.

BRIEF OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE ACTION

Defendant Cara Ringland was charged with violating 720 ILCS 550/5(g) (2012) by unlawfully possessing with the intent to deliver more than 5,000 grams of a substance containing cannabis. C14.[1] Defendant Steven Pirro was charged with violating 720 ILCS 550/5(f) (2013) by unlawfully possessing with the intent to deliver more than 2,000 grams but not more than 5,000 grams of a substance containing cannabis. Pirro, C10. Defendant James Saxen was charged with violating 720 ILCS 646/55(a)(1), (a)(2)(C) (2012) by unlawfully possessing with the intent to deliver fifteen or more grams but less than one hundred grams of a substance containing methamphetamine. Saxen, C10. Defendant Steven L. Harris was charged with violating 720 ILCS 570/401(a)(2)(A) (2012) by unlawfully possessing with the intent to deliver fifteen grams or more but less than one hundred grams of a substance containing cocaine. Harris, C10. And defendant Matthew P. Flynn was charged with violating 720 ILCS 550/5(f) (2103) by unlawfully possessing with the intent to deliver more than 2,000 grams but not more than 5,000 grams of a substance containing cannabis. Flynn, C4. The Circuit Court of LaSalle County granted defendants' motions to

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[1] With respect to the record on appeal in *People v. Ringland*, No. 2012 CF 61 (consolidated with *People v. Ringland*, No. 2012 MR 20 on appeal to the Third District in *People v. Ringland*, No. 3-13-0523), citations to the common law record appear as "C__"; to the report of proceedings as "R__." With respect to the records on appeal in *People v. Pirro*, No. 3-13-0823, *People v. Harris*, No. 3-13-0926, and *People v. Flynn*, No. 3-13-0927, citations to the common law record appear as "Pirro, C__," "Harris, C__," and "Flynn, C__," respectively; and to the reports of proceedings as "Pirro, R__," "Harris, R__," and "Flynn, R__," respectively. With respect to the record on appeal in *People v. Saxen*, No. 3-13-0848, citations to the common law record appear as "Saxen, C__," to the report of proceedings volume containing hearing transcripts from December 14, 2012 through October 17, 2013, as "Saxen, R__," and to the report of proceedings volume containing the hearing transcript for November 1, 2013, as "Saxen, Supp. R__." Citations to the separate appendix to this brief appear as "A__."

suppress on the basis that the State's Attorney special investigator who arrested them had not been appointed in strict compliance with 55 ILCS 5/3-9005(b) because the LaSalle County State's Attorney did not take his fingerprints and transmit them to the Illinois State Police (ISP) and ISP did not submit to the LaSalle County State's Attorney any conviction information it had on file concerning the arresting special investigator. R226-27, R236-37; Pirro, R45-46; Saxen, Supp. R7-8; Harris, R4-5; Flynn, R14-15.

On appeal, the Illinois Appellate Court, Third District, affirmed the judgments of the LaSalle County Circuit Court on the alternative basis that State's Attorneys lack statutory authority to appoint special investigators to conduct drug interdiction. A30.

The People filed a petition for leave to appeal, which this Court allowed on November 25, 2015. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether, under 55 ILCS 5/3-9005(b), State's Attorneys have authority to appoint special investigators for the purpose of conducting joint investigations with local law enforcement agencies where such investigators are "peace officers," 55 ILCS 5/3-9005(b), possessing "all the powers possessed by policemen in cities and by sheriffs," 725 ILCS 210/7.06(a), and are permitted to exercise those powers "in cooperation with the appropriate law enforcement agencies," *id.*

2. Whether, under 55 ILCS 5/3-9005(b)'s requirement that "[b]efore a person is appointed as a special investigator, his fingerprints shall be taken and transmitted to the Department of State Police," the appointment of a State's Attorney special investigator is valid where ISP had the investigator's fingerprints on file prior to the appointment, but the

appointing State's Attorney did not send ISP an additional set of the investigator's fingerprints.

3. Whether, under 55 ILCS 5/3-9005(b)'s requirement that ISP "shall examine its records and submit to the State's Attorney of the county in which the investigator seeks appointment any conviction information concerning the person on file with the Department," the appointment of a State's Attorney special investigator is valid where ISP did not submit any conviction information concerning the investigator, but the Department files contained no such information to submit.

4. Whether evidence obtained pursuant to a defendant's arrest by a State's Attorney special investigator may be excluded on the basis that the investigator's appointment was procedurally flawed where the procedural shortcomings were unknown to both the investigator and the defendant and the arrest was otherwise proper.

JURISDICTION

This Court allowed the People's petition for leave to appeal on November 25, 2015. *See People v. Ringland*, No. 119484 (Nov. 25, 2015). Accordingly, this Court has jurisdiction pursuant to Supreme Court Rules 315 and 612(b).

STATUTES INVOLVED

55 ILCS 5/3-9005(b) provides, in relevant part, that

> [t]he State's Attorney of each county shall have authority to appoint one or more special investigators to serve subpoenas, make return of process and conduct investigations which assist the State's Attorney in the performance of his duties. A special investigator shall not carry firearms except with permission of the State's Attorney and only while carrying appropriate identification indicating his employment and in the performance of his assigned duties.

> Subject to the qualifications set forth in this subsection, special investigators shall be peace officers and shall have all the powers possessed by investigators under the State's Attorneys Appellate Prosecutor's Act.
>
> No special investigator employed by the State's Attorney shall have peace officer status or exercise police powers unless he or she successfully completes the basic police training course mandated and approved by the Illinois Law Enforcement Training Standards Board or such board waives the training requirement by reason of the special investigator's prior law enforcement experience or training or both. Any State's Attorney appointing a special investigator shall consult with all affected local police agencies, to the extent consistent with the public interest, if the special investigator is assigned to areas within that agency's jurisdiction.
>
> Before a person is appointed as a special investigator, his fingerprints shall be taken and transmitted to the Department of State Police. The Department shall examine its records and submit to the State's Attorney of the county in which the investigator seeks appointment any conviction information concerning the person on file with the Department. No person shall be appointed as a special investigator if he has been convicted of a felony or other offense involving moral turpitude. . . .

The State's Attorneys Appellate Prosecutor's Act, 725 ILCS 210/7.06, provides, in relevant part, that special investigators appointed under 55 ILCS 5/3-9005(b) "shall be peace officers and shall have all the powers possessed by policemen in cities and by sheriffs; provided, that investigators shall exercise such powers anywhere in the State only after contact and in cooperation with the appropriate local law enforcement agencies."

STATEMENT OF FACTS

I. The LaSalle County State's Attorney Creates the SAFE Unit.

In 2011, LaSalle County State's Attorney Brian Towne created a drug interdiction unit to operate along Interstate 80 (I-80). A33-34.[2] Towne believed that one of his duties

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[2] At Ringland's suppression hearing, State's Attorney Towne and Investigator Jeffrey Gaither testified regarding, among other subjects, the creation of the SAFE Unit, Gaither's appointment as an investigator, and the traffic stop resulting in Ringland's arrest. R19-201.

was the eradication of drug trafficking in LaSalle County, A57-58, and created the State's Attorney Felony Enforcement (SAFE) unit, A33, A71, to assist him with drug trafficking investigations, A33-34. The SAFE unit is comprised of special investigators — appointed by the State's Attorney pursuant to 55 ILCS 5/3-9005(b) and selected for their extensive experience with drug interdiction, A33-34 — who work in cooperation with local law enforcement agencies, *see* A56; R45, R99; Pirro, R9-11. SAFE unit investigators conduct traffic stops on vehicles they suspect of involvement with drug trafficking along I-80, A72, A74-75; Pirro, R20-22, and canine units are automatically dispatched to the traffic stops by prearrangement with local law enforcement agencies, R99; Pirro, R9-11. If the canine unit does not arrive by the time the SAFE unit investigator has finished writing a warning for the violation that warranted the stop, the stopped vehicle is permitted to leave without being subjected to a canine sniff. Pirro, R11, R28-29.

Any forfeiture proceeds resulting from a SAFE Unit investigation are divided as directed by the Controlled Substances Act and Cannabis Control Act: 12.5% to the Office of the LaSalle County State's Attorney, 12.5% to the Office of the State's Attorneys Appellate Prosecutor, 10% to the ISP, and the remainder to the Spring Valley Police Department or LaSalle Police Department as the participating local law enforcement agency.

The other defendants stipulated to State's Attorney Towne's testimony, Pirro, R4-5; Saxen, Supp. R3;Harris, R3; Flynn, R3; and all but Pirro stipulated to portions of Gaither's testimony regarding his appointment, Saxen Supp. R3; Harris, R2-3; Flynn, R4. In addition, Pirro, Saxen, Harris, and Flynn stipulated to the testimony of Laura Baker, an employee of the Illinois Law Enforcement Training and Standards Board, Pirro, C49; Saxen, C67; Harris, C53; Flynn, C44, and ISP Lieutenant John Rattigan, Pirro, C50; Saxen, C68; Harris, C52; Flynn, C45. The stipulated testimony of State's Attorney Towne appears in the separate appendix at A31-67, Gaither at A68-77, Baker at A78, and Rattigan at A79.

A54-56; *see* 720 ILCS 550/12(g) (providing that 12.5% of proceeds from all forfeitures and seizures shall be distributed to Office of State's Attorney, 12.5% to Office of State's Attorneys Appellate Prosecutor, 10% to Department of State Police, and remaining 65% to "the metropolitan enforcement group, local, municipal, county, or state law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture"); 720 ILCS 570/505(g) (same).

II. Investigator Gaither Is Appointed to the SAFE Unit.

On January 21, 2012, State's Attorney Towne appointed Jeffrey Gaither as a special investigator in the SAFE unit. A59. Gaither had been trained at the Illinois State Police Academy, R59, and served as an officer with the ISP from 1987 until 2011, when he retired with the rank of sergeant, A70-71; C68.

In preparation for Gaither's appointment, State's Attorney Towne's office was in communication with the Illinois Law Enforcement Training and Standards Board (the Board) to ensure that Gaither had met all of the requirements. A46. State's Attorney Towne knew that Gaither had been an ISP officer for more than twenty years and that he had completed all the training required to both be an ISP officer and to be promoted to sergeant. A46. On January 16, 2012, State's Attorney Towne submitted to the Board a notice of appointment A60-61, in which he attested that Gaither had completed a Board certified law enforcement basic training course and mandatory firearms training courses, C143; Towne also submitted a request for a waiver of minimum training standards, A60; C144. The Board assured State's Attorney Towne that it would grant the waiver, *see* A51-52, and did so on March 2, 2012, A42; C146.

State's Attorney Towne verified with ISP that it had Gaither's fingerprints on file and did not need him to send another set. A48. Gaither's fingerprints had been maintained by ISP since 1987, when they were taken prior to his graduation from the State Police Academy, C68; A72, A79; accordingly, they were not taken and transmitted to ISP again in connection with his appointment as a SAFE unit special investigator, A72; Pirro, R6-8. On January 19, 2012, a background check was performed on Gaither through ISP's Criminal History Record Inquiry, producing no record of any felony convictions or crimes of moral turpitude that would disqualify Gaither from appointment as a special invstigator. A78. ISP did not inform State's Attorney Towne that its records contained no conviction information concerning Gaither. *See* C68.

On January 21, 2012, after the county board approved Gaither's salary, A42-43, State's Attorney Towne swore Gaither in as a special investigator, A59, A73. The Office of the LaSalle County State's Attorney provided Gaither with a ticket booklet to write written warnings, A64; R87; *see* C148, and an official vehicle for the purpose of conducting traffic stops, A75 — a Ford Explorer with a radio, a siren, red and blue lights, and video equipment, R55, R67; Pirro, R8. Gaither was also equipped with a body microphone. R66. Gaither believed that he received a waiver of the basic police training requirement when he was appointed. *See* R119-20. Sometime after January 21, 2012, Gaither also was sworn with the Spring Valley Police Department. A76.

III. Investigator Gaither, in Cooperation with Local Law Enforcement, Conducts a Series of Traffic Stops Along Interstate 80, Resulting in the Discovery of Illegal Drugs and Felony Drug Charges Against the Defendants.

A. Ringland

On January 31, 2012, Gaither was stopped in his official vehicle on the median of I-80. R22, R56. In the passenger seat was Peru Police Officer Jeremiah Brown, R19, present at the direction of the Peru police chief, who wanted officers to receive training by riding along with the SAFE Unit, R20, R56. Gaither drove after Ringland's passing U-Haul truck, while explaining drug interdiction tactics to Officer Brown. R22-23, R57-58. As they approached the U-Haul, Gaither explained common grounds for conducting a traffic stop on a suspicious vehicle, such as seat belt violations. R24. Gaither determined that this particular U-Haul had an obstructed license plate, R131, and inadequate mud flaps under 625 ILCS 5/12-710(b), R62, R77, R80-81, R132-33 — truck enforcement was one of Gaither's specialties as an ISP officer, R26, R63 — and he and pulled the U-Haul over, R26. Officer Brown also noticed that the U-Haul's license plate was partially obstructed by its frame. R27.

Gaither told Brown to call in the stop, and Brown radioed dispatch that they had made a traffic stop. R28, R67-68. Gaither approached the passenger side and Brown approached the driver's side. R35-36, R85-86. Gaither got Ringland's driver's license and rental agreement, and she stepped out of the vehicle. R38, R88. While Gaither was writing Ringland a warning for the mud flap violation, the Peru canine unit arrived, having been dispatched automatically by prearrangement, and alerted to Ringland's vehicle. R99, R142-43 (video footage from SAFE vehicle reflecting that Brown called in stop at approximately

2:10 mark, canine unit appeared at 3:46 mark, and Gaither acknowledged alert to vehicle at 4:35 mark).

Peru K-9 Officer Matt Heiden, R159-60, responded to the call, R162-63. Heiden was assigned to the SAFE Unit by the Peru police chief. R160; he was to listen to the radio and respond to any SAFE unit stops. R161-62; *see* R45. When Heiden heard over the radio that Gaither had made a traffic stop on eastbound I-80 at mile marker 74, he drove to that location pursuant to this prearranged agreement, R161, arriving within a minute of the stop being called in. R162-63. Gaither signaled Officer Heiden to conduct a sniff of the truck, R163, and the dog alerted to the vehicle, R167-68, R171-72. Gaither told Ringland that the dog had alerted to her vehicle and asked whether it contained anything illegal. R103-04. Ringland admitted to having some medical marijuana in the front cab. R104-05. Gaither asked whether she was transporting more than one hundred pounds of marijuana in the back and she answered that she did not know. R110-11.[3]

Ringland was charged with unlawful possession of a controlled substance with the intent to deliver for possessing more than 5,000 grams of a substance containing cannabis. C14. The court found that Gaither lacked probable cause to stop Ringland based on an obstructed license plate, but had probable cause to stop Ringland based on the mud flap violation. R235. The court further found that Towne had the authority to appoint Gaither for the purpose of drug interdiction, R232, but granted Ringland's motion to suppress on the ground that ISP did not report Gaither's lack of criminal convictions to Towne, R233.

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[3] Gaither was not examined regarding the results of the subsequent search of Ringland's U-Haul.

B. Pirro

On January 14, 2013, Gaither stopped Pirro's vehicle for exceeding the speed limit. Pirro, R25. While Gaither was writing Pirro a warning, the canine unit arrived. Pirro, R27. Gaither testified consistently with his testimony at Ringland's suppression hearing regarding his appointment. *See* Pirro, R5-9. He further testified that the LaSalle Police Department assigned a canine unit to work with the SAFE unit, and that the canine unit was automatically dispatched in response to SAFE unit traffic stops. Pirro, R9-10, R21-22.[4]

Pirro was charged with violating 720 ILCS 550/5(f) (2013) by unlawfully possessing with the intent to deliver more than 2,000 grams but not more than 5,000 grams of a substance containing cannabis. Pirro, C10. The court found that the length of the stop was reasonable, that Gaither had probable cause to stop Pirro for speeding, that Gaither had been granted a waiver of the basic police training requirement, and that Towne was authorized to appoint special investigators for the purpose of drug interdiction, but it granted Pirro's motion to suppress on the ground that Gaither's appointment was invalid because Towne had not taken and transmitted Gaither's fingerprints to ISP and ISP did not report Gaither's lack of criminal convictions to Towne. Pirro, R41-45.

C. Saxen

Gaither testified that on December 1, 2012, he noticed Saxen's pickup truck traveling faster than the speed of traffic and began pacing it in his official vehicle. Saxen, R76-77. He observed a GPS unit mounted on Saxen's windshield, below the rearview mirror and on the driver's side. Saxen, R96-98. By pacing the truck, Gaither determined that Saxen was

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[4] Gaither was not examined regarding the canine sniff and Pirro's subsequent arrest.

driving over the speed limit. Saxen, R82-83. Gaither stopped Saxen for speeding and for having the GPS mounted on his windshield. Saxen, R96-98.

Saxen was charged with violating 720 ILCS 646/55(a)(1), (a)(2)(C) (2012) for unlawfully possessing with the intent to deliver fifteen or more grams but less than one hundred grams of a substance containing methamphetamine. Saxen, C10. The court denied Saxen's motion to suppress on the ground that Gaither lacked probable cause for the stop, Saxen, R114, but granted the motion on the ground that, although Towne had statutory authority to appoint Gaither for drug interdiction purposes, the appointment was invalid because Towne had not taken and transmitted Gaither's fingerprints to ISP and ISP did not report Gaither's lack of criminal convictions to Towne, Saxen, Supp. R7-8.

D. Harris

No evidence regarding the circumstances of Harris's arrest was presented at his suppression hearing. Harris was charged with violating 720 ILCS 570/401(a)(2)(A) (2012) for unlawfully possessing on November 20, 2012 fifteen grams or more but less than one hundred grams of a substance containing cocaine with the intent to deliver. Harris, C10. The court granted Harris's motion to suppress on the ground that Towne had not taken and transmitted Gaither's fingerprints to ISP and ISP did not report Gaither's lack of criminal convictions to Towne. Harris, R4-5.

E. Flynn

No evidence regarding the circumstances of Flynn's arrest was presented at his suppression hearing. Flynn was charged with violating 720 ILCS 550/5(f) (2103) for unlawfully possessing on March 12, 2013 more than 2,000 grams but not more than 5,000

grams of a substance containing cannabis with the intent to deliver. Flynn, C4. The court granted Flynn's motion to suppress on the ground that the Towne had not sent Gaither's fingerprints to ISP and did not get "a waiver regarding the fingerprints." Flynn, R14-15; Flynn, C48.

On appeal, the Third District affirmed the orders granting defendants' motions to suppress on the alternate ground that the State's Attorney lacked statutory authority under Section 3-9005(b) to appoint special investigators to investigate drug trafficking along I-80. A30. The appellate court found that "the legislature clearly intended that special investigators appointed by the State's Attorney have police powers to the extent necessary to assist the State's Attorney in cases brought before him and originated by traditional police agencies, or in cases where the police were unable or unwilling to investigate." *Id.* at 29.

ARGUMENT

I. Standard of Review

The question of whether 55 ILCS 5/3-9005(b) authorizes State's Attorneys to appoint special investigators for the purpose of conducting joint investigations with local law enforcement agencies is a question of statutory construction that this Court reviews de novo, *People v. Perry*, 224 Ill. 2d 312, 324 (2007), as is the question of whether that statute's fingerprinting provision dictates that a special investigator's appointment is invalid unless the appointing State's Attorney transmits a redundant set of the investigator's fingerprints to the ISP, *In re M.I.*, 2013 IL 113776, ¶ 15. The question of whether evidence obtained incident to a defendant's arrest by a State's Attorney special investigator may be suppressed on the basis that the investigator's appointment was procedurally flawed where the

procedural shortcomings were unknown to both the investigator and the defendant and the arrest was otherwise proper is also a question of law that this Court reviews de novo. *See People v. Carlson*, 185 Ill. 2d 546, 551 (1999).

II. Under 55 ILCS 5/3-9005(b), State's Attorneys Are Authorized to Appoint Special Investigators for the Purpose of Investigating Suspected Illegal Activity in Cooperation with Local Law Enforcement Agencies, and Such Investigators Are Authorized to Exercise Police Powers in the Course of Those Investigations.

The Court's "primary objective in construing a statutory scheme is to ascertain and give effect to the intent of the legislature," with "[t]he most reliable indicator of legislative intent [being] the language of the statute, given its plain and ordinary meaning." *People v. Boyce*, 2015 IL 117108, ¶ 15. "Courts are not at liberty to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Ill. State Treasurer v. Ill. Worker's Comp. Comm'n*, 2015 IL 117418, ¶ 21 (citing *Solich v. George & Anna Portes Cancer Prevention Ctr. of Chicago, Inc.*, 158 Ill. 2d 76, 83 (1994)).

A. Section 3-9005(b) Authorizes State's Attorneys to Appoint Special Investigators for the Purpose of Conducting Investigations that Assist the State's Attorneys in the Performance of Their Duties, Which Include Investigating Suspected Illegal Activity.

Section 3-9005(b) provides that "[t]he State's Attorney of each county shall have authority to appoint one or more special investigators to . . . conduct investigations which assist the State's Attorney in the performance of his duties." 55 ILCS 5/3-9005(b) (2012). Thus, the plain language of Section 3-9005(b) authorizes State's Attorneys to appoint special

investigators for the purpose of conducting investigations that assist them in the performance of their duties.[5]

State's Attorneys perform a number of duties that special investigators may assist by conducting investigations. As the "chief law enforcement official[s]" of their counties, *Ware v. Carey*, 75 Ill. App. 3d 906, 913 (1st Dist. 1979), State's Attorneys are charged with the broad duty "'to see that the laws are faithfully executed and enforced in order to maintain the rule of law,'" *id.* at 914 (quoting ABA Standards, *The Prosecution Function*, § 1.1 (1971)). This overarching duty is comprised of both duties defined by statute, *see* 55 ILCS 5/3-9005(a), and duties recognized at common law, which include "the duty to investigate as well as to prosecute," *People v. Wilson*, 254 Ill. App. 3d 1020, 1039 (1st Dist. 1993) (citing *People v. Pohl*, 47 Ill. App. 3d 232, 242 (4th Dist. 1964)).

A State's Attorney's duty to investigate is not limited to investigating illegal activity previously identified by other law enforcement agencies and brought to the State's Attorney for prosecution, but rather includes "an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.'" *People v. Williams*, 147 Ill. 2d 173, 256 (1991) (quoting ABA Standards, *The Prosecution Function*, § 3-3.1(a)

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[5] In her answer to the People's petition for leave to appeal, Ringland argued that, notwithstanding this provision, State's Attorneys could not appoint special investigators prior to August 17, 2012, because prior to that date the State's Attorneys Appellate Prosecutor's Act, to which Section 3-9005(b) refers for the definition of special investigators' police powers, provided that "[t]he Director may hire no more than 0 investigators to provide investigative services in criminal cases," 725 ILCS 210/7.06 (eff. May 28, 2010 to Aug. 16, 2012). But the Director referenced in Section 7.06 is the Director of the Office of the State's Attorneys Appellate Prosecutor, *see* 725 ILCS 210/2(3), and a limit on the Director's authority to appoint special investigators under Section 7.06 of the State Appellate Prosecutor's Act is irrelevant to State's Attorneys' independent authority to appoint special investigators under Section 3-9005(b) of the Counties Code.

(1980), and citing *Ware*, 75 Ill. App. 3d at 914). Because State's Attorneys' "duty to investigate is not exclusive," performing that duty "necessarily involves [them] with other investigative agencies." *Wilson*, 254 Ill. App. 3d at 1039. In keeping with their role of "maintaining liaison, cooperation and constructive joint effort with the police department to assure police effectiveness in dealing with crime," *Ware*, 75 Ill. App. 3d at 916-17 (citing ABA Standards, *The Urban Police Function*, § 1.1 (1973)), "[i]t is . . . the general practice that the State's Attorney stands ready to provide assistance to the police," *Wilson*, 254 Ill. App. 3d at 1039, either by supporting current police investigations or by expanding investigations into areas currently beyond police capabilities, *see, e.g.*, Carroll County State's Attorney Office, Investigations Division, www.carrollcountystatesattorney.org/unit_invest.html (last visited Mar. 9, 2016) ("Assisting other law enforcement agencies, when requested, is also an important function of the Investigation Unit."); Cook County State's Attorney, Investigations Bureau, www.statesattorney.org/investigationsbureau.html (last visited Mar. 9. 2016) ("Investigators also launch investigations of very specialized crimes that may not be handled by other law enforcement agencies, such as official misconduct, public integrity, election fraud, child support, and complex financial crimes."). This assistance can take a variety of forms, from the services of Assistant State's Attorneys (ASAs), who can review warrant applications to ensure their sufficiency, *see People v. Walensky*, 286 Ill. App. 3d 82, 93 (1st Dist. 1996) (ASA evaluated police officer's warrant application), and advise suspects of their *Miranda* rights to ensure the admissibility of their statements, *see People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 36 (ASA advised defendant of *Miranda* rights), to the services of special investigators, who may offer particular

expertise, *see People v. Black in Color Leather Vest with Attached Outlaws Motorcycle Club Patches*, 2016 IL App (2d) 15049, ¶ 10 (special investigator was expert on motorcycle gangs), an unfamiliar face for undercover work, *see People v. Alcala*, 248 Ill. App. 3d 411, 413-15 (1st Dist. 1993) (undercover state's attorney investigator posed as purchaser in drug transaction), or just additional manpower for particularly large or involved investigations, *see People v. Sequoia Books, Inc.*, 150 Ill. App. 3d 211, 212 (2d Dist. 1986) (after police officer purchased three magazines containing obscene material from bookstore, special investigators executed search warrant and reviewed "several hundred magazines" for obscenity).

The appellate court's contrary conclusion — that special investigators may assist a State's Attorney only "in cases brought before him and originated by traditional police agencies, or in cases where the police were unable or unwilling to investigate," A29 — has no support in the text of Section 3-9005(b) or the common law, but instead springs from an apparent belief that the criminal justice system is inalterably divided into discrete spheres, with each sphere under the exclusive authority of either the police or the State's Attorney. *See* A29 ("The prosecution of drug dealers and traffickers is indisputably a duty of the State's Attorney; outfitting his own drug interdiction unit is not."). But investigation is not so clearly distinct from prosecution. *See People v. Nohren*, 283 Ill. App. 3d 753, 759 (4th Dist. 1996) (explaining that State's Attorney's duty to investigate necessarily begins prior to filing charging instrument because "[i]f the State's Attorney did not have such investigative power, it would lead to the perverse result that the State must formally charge an individual prior to investigating the factual basis for the charge"). Nor is investigation exclusive to any

particular executive agency. *See McDonald v. Cnty. Bd. of Kendall Cnty.*, 146 Ill. App. 3d 1051, 1055 (2d Dist. 1986) (noting that "investigatory responsibilities are the exclusive domain of no one county officer"). Rather, investigation plays an integral role in every step of law enforcement, from discovering the existence of a crime, to identifying the perpetrator, to obtaining admissible evidence sufficient to obtain a conviction. *See, e.g., People v. Lopez*, 229 Ill. 2d 322, 331 (2008) (recounting that "in the course of their investigation, [investigators] learned that defendant was a possible witness to the crime," but that "[a]t that time, defendant was not considered a suspect."); *People v. Chapman*, 194 Ill. 2d 186, 205 (2000) (ASA arrived at police station "to assist in the investigation" of suspect). Although State's Attorneys often "defer[ ] to the investigative duties of the police," this deference is a product of pragmatism rather than principle, as State's Attorneys generally "do[ ] not possess the technical facilities nor [sic] the manpower that the police have." *Wilson*, 254 Ill. App. 3d at 1039. Where State's Attorneys have resources that can contribute to law enforcement efforts to fight crime, neither Section 3-9005(b) nor the common law bars them from contributing those resources in service of the law enforcement community's shared duty to maintain the rule of law.

Indeed, State's Attorney special investigators can be such a valuable resource for local law enforcement agencies with limited resources and expertise that they are often involved in criminal investigations from the very beginning. In *People v. Nolan*, 332 Ill. App. 3d 215 (1st Dist. 2002), the Cook County State's Attorney conducted a joint drug trafficking investigation with the Cook County Sheriff's Department. *Id.* at 217. A Cook County State's Attorney investigator "supervised the 'Operation Hollywood' narcotics

investigation on the south side of Chicago," in which a surveillance team in the narcotics section of the Cook County State's Attorney's office installed and monitored wiretaps. *Id.* at 218. Another Cook County State's Attorney investigator "was the undercover officer involved in the price negotiations and purchases of cocaine with the various parties involved," *id.* at 219, and a third investigator ultimately arrested one of the defendants and was present during her interrogation by an ASA, *id.* at 221. *See also, e.g., Alcala*, 248 Ill. App. 3d at 413-15 (undercover state's attorney investigator posed as purchaser in drug transaction, while being monitored by police surveillance team and backed up by team consisting of both police officer and state's attorney investigator); *People v. Breton*, 237 Ill. App. 3d 355, 357-58 (2d Dist. 1992) (informed by an inmate that defendant sought to engage hit man services, state's attorney investigators, through informant, provided defendant with untraceable undercover phone number and answered posing as hit men); *People v. McCommon*, 79 Ill. App. 3d 853, 857 (1st Dist. 1979) (undercover state's attorney investigator recorded solicitation by police officer to commit aggravated battery); *People v. Di Nunzio*, 33 Ill. App. 3d 697, 697 (1st Dist. 1975) (state's attorney investigator investigated tip that illegal slot machines were present in defendant's place of business). Such joint investigations are the successful result, rather than a perversion, of the intended cooperative relationship between State's Attorneys and local law enforcement agencies.

B. Special Investigators Conducting Investigations of Suspected Illegal Activity in Cooperation with Local Law Enforcement Agencies May Exercise the Same Police Powers as Members of the Local Law Enforcement Agencies with Whom They Are Cooperating.

Section 3-9005(b) provides that special investigators appointed by State's Attorneys to assist them in the performance of their duties by conducting investigations "shall be peace

officers and shall have all the powers possessed by investigators under the State's Attorneys Appellate Prosecutor's Act." 55 ILCS 5/3-9005(b) (2012). The State's Attorneys Appellate Prosecutor's Act, in turn, defines those powers as "all the powers possessed by policemen in cities and by sheriffs," provided they are exercised "only after contact and in cooperation with the appropriate local law enforcement agencies." 725 ILCS 210/7.06(a) (2012). Thus, under the plain language of Sections 3-9005(b) and 7.06(a), special investigators conducting investigations in cooperation with local law enforcement agencies to assist in the performance of the State's Attorney's duty to investigate suspected illegal activity, *see supra* § II.A, may exercise the same police powers as those members of the local law enforcement agencies with whom they are cooperating.

The appellate court's rejection of the plain language of Sections 9005(b) and 7.06(a) affording special investigators the same police powers as policemen and sheriffs under certain circumstances appears to be based on aesthetic rather than legal grounds. The appellate court concluded that applying Sections 9005(b) and 7.06(a) as written was unacceptable because it would render special investigators "no different than the county sheriff's police" and "would effectively give the State's Attorney the power to create and maintain the equivalent of his own police force." A29. But the plain language of Sections 3-9005(b) and 7.06(a) provides that the special investigators may exercise their police powers "only after contact and in cooperation with the appropriate local law enforcement agencies," 725 ILCS 210/7.06(a), whereas police officers may exercise their police powers independently. In other words, special investigators may exercise police powers only to supplement, not supplant, local law enforcement agencies.

C. Section 3-9005(b) Authorizes SAFE Unit Investigators to Exercise Police Powers While Conducting the Joint Drug Trafficking Investigations Along Interstate 80 at Issue Here Because the Investigations Assist the Performance of the LaSalle County State's Attorney's Duty to Investigate Suspected Illegal Activity and Are Conducted in Cooperation with Local Law Enforcement Agencies.

As explained above, *see supra* § II.A, State's Attorneys have a duty to investigate suspected illegal activity and are authorized under Section 3-9005(b) to appoint special investigators to conduct investigations that assist in the performance of that duty. And, as explained above, *see supra* § II.B, special investigators appointed for that purpose are authorized under Section 3-9005(b) to exercise all the same police powers that a police officer could, provided that they exercise those powers after contact and in cooperation with local law enforcement agencies. Accordingly, the LaSalle County State's Attorney acted within his statutory authority when he created the SAFE unit to investigate suspected drug trafficking along Interstate 80 in cooperation with the Peru, Spring Valley, and LaSalle Police Departments, and the SAFE unit investigators acted within their statutory authority when they conducted traffic stops and issued traffic warnings in the course of those joint investigations.

The LaSalle County State's Attorney created the SAFE unit to investigate suspected drug trafficking along I-80, A33-34, and the SAFE unit conducts its investigations in cooperation with local police departments, *see* A56; R45, R99; Pirro, R9-11. SAFE unit investigators exercise their police powers to conduct traffic stops (supported by reasonable suspicion of a traffic violation) on vehicles that they suspect are involved in drug trafficking. *See* A72, A74-75, Pirro, R20-22. After stopping a suspected vehicle, the SAFE unit investigator alerts the local police department, which by prearrangement automatically

dispatches a canine unit, thereby ensuring that the canine sniffs do not unconstitutionally prolong the stops. *See* R99, R160-62; Pirro, R9-10, R20-22. Some SAFE unit investigators have special expertise in truck regulation, allowing them to identify violations that create reasonable suspicion to stop vehicles where generalist local police officers could not. *See* R26, R63. In addition, the SAFE unit investigators both supplement the ranks of the local police force, allowing a greater number of investigative stops along I-80 than would otherwise be possible, and coordinate drug interdiction efforts along I-80, which passes through the jurisdictions of a number of local police departments. The five consolidated cases here, involving charges of possession of various illegal drugs with intent to deliver, demonstrate the efficacy of these joint investigations. Absent the assistance of SAFE unit investigators, defendants' vehicles might not have been stopped and defendants' crimes might have gone undetected.

III. Investigator Gaither's Appointment Was Valid Under 55 ILCS 5/3-9005(b) Because, Although the LaSalle County State's Attorney Did Not Submit Gaither's Fingerprints to ISP and ISP Did Not Provide Any Conviction Information to the LaSalle County State's Attorney, Gaither's Fingerprints Had Been Taken and Transmitted to ISP Prior to Gaither's Appointment and ISP Had No Conviction Information About Gaither to Provide.

The trial court erred in suppressing the evidence obtained incident to defendants' arrests on the grounds that Gaither's appointment as a special investigator and the traffic stops he conducted in that capacity were invalid both because (1) the State's Attorney did not take and transmit Gaither's fingerprints to ISP prior to Gaither's appointment, and because (2) ISP did not "submit to the [LaSalle County State's Attorney] any conviction information concerning [Gaither] on file with the Department." 55 ILCS 5/3-9005(b). But these

requirements were satisfied, and even if they were not, they are directory procedural requirements and noncompliance does not automatically invalidate Gaither's appointment.

A. Gaither's Appointment Was in Strict Compliance with Section 3-9005(b).

1. Gaither's fingerprints were taken and transmitted to ISP in strict compliance with Section 3-9005(b)'s fingerprint provision.

Gaither's fingerprints were taken and transmitted to ISP in strict compliance with Section 3-9005(b)'s requirement that his "fingerprints shall be taken and transmitted to the [ISP]" prior to his appointment as a special investigator. 55 ILCS 5/3-9005(b). Section 3-9005(b) employs the passive voice, and does not specify that the appointing State's Attorney, or any other specific party, must take and transmit the proposed special investigator's fingerprints to ISP, only that the prints be taken and transmitted to ISP by *someone*. The undisputed evidence shows that ISP had a set of Gaither's fingerprints on file for decades prior to his appointment, proving that his fingerprints had "be[en] taken and transmitted to [them]." *Id.* Thus, Investigator Gaither's appointment was in strict compliance with Section 3-9005(b)'s fingerprint provision.

2. ISP submitted all the information it had regarding Gaither's convictions — that is, no information — to the LaSalle County State's Attorney in strict compliance with Section 3-9005(b)'s record search provision.

On January 19, 2012, a background check was performed on Gaither through ISP's Criminal History Record Inquiry, which produced no felony convictions or crimes of moral turpitude. A78. On January 21, 2012, after having confirmed that the requirements for Gaither's appointment had been met, A46, State's Attorney Towne appointed Gaither as a special investigator. A59. Section 3-9005(b)'s record search provision provides that ISP

"shall examine its records and submit to the State's Attorney of the county in which the investigator seeks appointment any conviction information concerning the person on file with the Department," 55 ILCS 5/3-9005(b), but does not require that ISP report that there is no such conviction information to submit. Thus, because the search of ISP records produced no conviction information concerning Gaither, the ISP had no obligation to submit notice of that absence to the LaSalle County State's Attorney, and Gaither's appointment was valid.

B. Even If Gaither's Appointment Was Not in Strict Compliance with Section 3-9005(b)'s Fingerprint and Record Search Provisions, the Appointment Was Valid Because Those Provisions Are Directory and Because Noncompliance Did Not Prejudice the Interests that They Protect.

A statute providing that a governmental entity "shall" act or refrain from acting in a particular manner is usually mandatory rather than permissive, *People v. Robinson*, 217 Ill. 2d 43, 54 (2005); that is, it "refers to an obligatory duty which a governmental entity is required to perform," as opposed to "a discretionary power which a governmental entity may exercise or not as it chooses." *People v. Delvillar*, 235 Ill. 2d 507, 514 (2009) (quoting *Robinson*, 217 Ill. 2d at 51) (internal quotations omitted). But the mere fact that a rule is mandatory rather than permissive does not mean that noncompliance necessarily invalidates the governmental action; a separate distinction — between mandatory and directory rules — determines the consequences of such noncompliance. *Delvillar*, 235 Ill. 2d at 516 (citing *Robinson*, 217 Ill. 2d at 52). Only if a rule is mandatory (rather than directory) does noncompliance necessarily invalidate the governmental action to which the rule relates. *Delvillar*, 235 Ill. 2d at 516 (quoting *Robinson*, 217 Ill. 2d at 51-52).

At this second level of inquiry (*i.e.*, when distinguishing between rules that are mandatory/mandatory and mandatory/directory), a rule is mandatory/mandatory only if the underlying intent "dictates a particular consequence for failure to comply with the provision." *Delvillar*, 235 Ill. 2d at 514 (citing *Pullen v. Mulligan*, 138 Ill. 2d 21, 46 (1990)). Rules issuing procedural commands to governmental entities are presumed to be directory, and this presumption may be overcome only if (1) "there is negative language prohibiting further action in the case of noncompliance," or (2) "when the right the provision is designed to protect would generally be injured under a directory reading." *Delvillar*, 235 Ill. 2d at 517 (citing *Robinson*, 217 Ill. 2d at 58).

1. Were there an implied requirement that the LaSalle County State's Attorney be the party to transmit Gaither's fingerprints, it would be directory, and noncompliance would not invalidate Gaither's appointment where ISP already had his fingerprints on file.

Even if, despite the use of the passive voice, Section 3-9005(b) could be construed as imposing an unwritten requirement that the appointing State's Attorney take and transmit a set of the proposed special investigator's fingerprints to ISP, the trial court still erred in ruling that Gaither's appointment was invalid because that unwritten requirement would be directory, such that noncompliance would not automatically invalidate the appointment absent prejudice to the interests the provision protects. Were Section 3-9005(b) construed to contain an unwritten requirement that the appointing State's Attorney be the party to transmit a proposed special investigator's fingerprints to ISP, that requirement would be directory with respect to the identity of the transmitting party: it contains no negative language prohibiting further action in the event that a prospective special investigator's

fingerprints are transmitted to ISP by a party other than the appointing State's Attorney, and a directory reading of the unwritten transmitting party requirement would not prejudice the public interest protected by the fingerprint provision. The requirement that a prospective special investigator's fingerprints be transmitted to ISP is intended to allow ISP to search its records and alert the appointing State's Attorney of any disqualifying convictions. *See* 55 ILCS 5/3-9005(b) (providing that prospective special investigator's fingerprints "shall be taken and transmitted to the [ISP]" and that ISP "shall examine its records and submit to the State's Attorney of the county in which the investigator seeks appointment any conviction information concerning the person on file with the Department"). This ensures that the public is not subjected to exercises of police power by special investigators with disqualifying criminal backgrounds. *See id.* (providing that "[n]o person shall be appointed as a special investigator if he has been convicted of a felony or other offense involving moral turpitude"). ISP is able to use a prospective special investigator's fingerprints to perform the requisite background check and inform the appointing State's Attorney of any disqualifying convictions regardless of who sends the fingerprints, and so the public interest is unaffected by noncompliance with the unwritten requirement that the appointing State's Attorney be the party who transmits the fingerprints. Therefore, the requirement is directory, and the LaSalle County State's Attorney's failure to comply with it does not invalidate Gaither's appointment.

2. Were there an implied requirement that ISP notify the appointing State's Attorney that its files contained no conviction information to submit, that requirement would be directory, and noncompliance would not invalidate Gaither's appointment where it did not result in the appointment of a special investigator with a disqualifying criminal conviction.

Even if Section 3-9005(b) required that ISP submit to the appointing State's Attorney notice that its files contain no conviction information concerning the prospective special investigator, that requirement would also be directory, and noncompliance would not invalidate the investigator's appointment. Like the transmitting party requirement, *see supra* § III.B.1, the notice requirement would be a presumptively directory procedural command: it contains no negative language prohibiting further action in the event that search of ISP records produces no conviction information to submit, and a directory reading of the notice requirement would not prejudice the public interest protected by the record search provision. Like the fingerprint provision, *see supra* § III.B.1, the record search requirement is intended to protect the public from exercises of police power by special investigators with disqualifying criminal backgrounds. *See* 55 ILCS 5/3-9005(b) (providing that "[n]o person shall be appointed as a special investigator if he has been convicted of a felony or other offense involving moral turpitude"). But where there is no such disqualifying conviction information to report to the appointing State's Attorney, a failure to report that fact does not prejudice the public, because it does not lead to the appointment of disqualified investigators. If anything, noncompliance with the unwritten notice requirement will simply delay the appointment of qualified investigators, as the appointing State's Attorney seeks confirmation that the lack of notice is due to a lack of conviction information to report, rather than the

pendency of an ISP record search. Therefore, any notice requirement is directory, and ISP's failure to comply with it does not invalidate Gaither's appointment.

C. Even If Section 3-9005(b) Contained Mandatory Rather Than Directory Unwritten Requirements that Prospective Special Investigators' Fingerprints Be Taken and Transmitted to ISP Only by the Appointing State's Attorney and that ISP Report to the Appointing State's Attorney that It Has Nothing to Report, Those Requirements Would Be Satisfied by the Substantial Compliance Evident in the Record.

Substantial compliance is sufficient to satisfy a mandatory statutory requirement if the statute's purpose can be achieved without strict compliance and the interests it is intended to protect are not prejudiced by the failure to strictly comply. *Fehrenbacher v. Mercer Cnty.*, 2012 IL App (3d) 110479, ¶ 16. As explained above, the fact that a party other than the LaSalle County State's Attorney transmitted Gaither's fingerprints to ISP prior to his appointment prejudiced neither ISP's ability to use Gaither's fingerprints to search their records for disqualifying convictions nor the public's interest in preventing the appointment of investigators with disqualifying convictions was prejudiced. A search of ISP records conducted on January 19, 2012, before Gaither's appointment, revealed no disqualifying convictions. A78. If the State's Attorney's decision not to transmit a redundant set of Gaither's fingerprints to ISP did not strictly comply with the fingerprint provision, his confirmation with ISP that they already had Gaither's fingerprints on file and did not need another set, A48, was certainly substantial compliance sufficient to preserve the validity of Gaither's subsequent appointment.

Nor did the fact that ISP did not report to the LaSalle County State's Attorney that Gaither had no disqualifying convictions to report prejudice the public's interest in

prohibiting exercises of police power by special investigators with disqualifying criminal backgrounds. On January 19, 2012, prior to Gaither's appointment, a background check was performed on Gaither through ISP's Criminal History Record Inquiry, producing no record of any felony convictions or crimes of moral turpitude that would disqualify Gaither from appointment as a special invstigator. A78. The Board informed Towne of that fact when he confirmed that Gaither had met all the requirements to obtain a waiver of the basic police training requirement, *see* A46, which include the requirement that the appointee has no convictions for felony offenses or crimes of moral turpitude, *see* 20 Ill. Admin. Code § 1770.205(g) (2016) (recruits cannot have been convicted of felony or crime involving moral turpitude); *see also* C146 (waiver form requiring verification that applicant have been subjected to ISP background check and have no convictions for crimes of moral turpitude). Where the Illinois Law Enforcement Training and Standards Board informs an appointing State's Attorney that a search of ISP records reveals no convictions that would prohibit a prospective special investigator's appointment, the lack of additional confirmation from ISP that a second search of those same records produced the same results does not prejudice the public's interest in preventing exercises of police power by investigators with disqualifying criminal convictions. It is important that ISP records be searched for any disqualifying convictions prior to a special investigator's appointment, not that the results of that search be reported to the appointing State's Attorney by one agency rather than another.

IV. Even If Gaither's Appointment Was Invalid Due to Procedural Errors, Defendants Cannot Exclude the Evidence Obtained Incident to Their Arrests on that Basis.

The exclusionary rule "is a judicially created, prudential remedy that prospectively protects fourth amendment rights by deterring future police misconduct." *People v. Willis*, 215 Ill. 2d 517, 531 (2005). "'Exclusion exacts a heavy toll on both the judicial system and society at large, because it almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence, and its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment.'" *People v. LeFlore*, 2015 IL 116799, ¶ 23 (quoting *United States v. Stephens*, 764 F.3d 327, 335 (4th Cir. 2014) (internal quotation marks omitted). Therefore, exclusion is a "'last resort,'" *LeFlore*, 2015 IL 116799, ¶ 23 (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)), applied only when "the deterrent benefits outweigh its heavy costs," *LeFlore*, 2015 IL 116799, ¶ 23 (citing *United States v. Davis*, 131 S. Ct. 2419, 2427 (2011)).

Where the trial court did not find that defendants' traffic stops violated the Fourth Amendment such as to require application of the exclusionary rule, neither Illinois statutory nor common law allows exclusion of the drug evidence based solely on the alleged invalidity of the arresting investigator's appointment.

A. Under 725 ILCS 5/107-3, Defendants Cannot Exclude the Evidence Obtained Incident to Their Traffic Stops on the Basis that Gaither's Invalid Appointment Barred Him from Exercising the Powers of His Office Because the Stops Were Valid Citizen's Arrests.

Under 725 ILCS 5/107-3, "[a]ny person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed."

Thus, if a law enforcement officer would be authorized to conduct traffic stops under the circumstances present in defendants' cases, Gaither, as a private citizen, had the same authority to conduct the stops. *See People v. Shick*, 318 Ill. App. 3d 899, 904-05 (3d Dist. 2001) (private citizens authorized to conduct traffic stops under 725 ILCS 5/107-3). And once Gaither had stopped defendants, there was no reason that he could not, as a private citizen, contact the local police to advise them that he had conducted a traffic stop. *See People v. Niedzwiedz*, 268 Ill. App. 3d 119, 123 (2d Dist. 1994) (validity of officer's citizen's arrest not compromised by use of car radio to call for assistance because private citizens have "ample access to citizen's band radios, cellular phones, and other devices for requesting assistance"). Nor was there any reason that the local police could not dispatch a canine unit to investigate. Accordingly, because the stops were proper citizen's arrests regardless of the validity of Gaither's appointment, the evidence they produced cannot be excluded on the basis that his appointment was invalid.

B. Under the Common Law De Facto Officer Doctrine, Defendants Cannot Exclude the Evidence Obtained Incident to Their Traffic Stops by Collaterally Challenging the Validity of Gaither's Appointment in a Criminal Proceeding.

Under the de facto officer doctrine, "[a] person actually performing the duties of an office under color of title is an officer *de facto*, and his acts as such officer are valid so far as the public or third parties who have an interest in them are concerned." *People ex rel. Chillicothe Twp.*, 19 Ill. 2d 424, 426 (1960); *see People v. Rios*, 2013 IL App (1st) 121072, ¶ 18; 63C Am. Jur. 2d, *Public Officers and Employees* § 32 (2016) ("When an official person or body has apparent authority to appoint an individual to a public office, and apparently

exercises such authority, and the person so appointed enters such office and performs its duties, he or she will be an officer de facto, notwithstanding that there was want of power to appoint in the body or person who professed to do so, or that the power was exercised in an irregular manner."). The purpose of the doctrine "is to protect the public's reliance on an officer's authority and to ensure the orderly administration of government by preventing technical challenges to an officer's authority." 63C Am. Jur. 2d, *Public Officers and Employees* § 23 (2016); *see Daniels v. Industrial Com'n*, 201 Ill. 2d 160, 173-74 (2002) (McMorrow, J., specially concurring) (quoting *Ryder v. United States*, 515 U.S. 177, 180-81 (1995)) ("'The de facto doctrine . . . seeks to protect the public by insuring the orderly functioning of the government despite technical defects in title to office.'"). Accordingly, defendants may not challenge the validity of a de facto officer's appointment in a collateral proceeding such as a suppression hearing in a criminal trial. *See People v. Woodruff*, 9 Ill. 2d 429, 437 (1956) ("It is a well settled principle that the acts of officers de facto are as valid and effectual where they concern the public or the rights of third persons as though they were officers de jure and that the title to an office cannot be decided in a collateral suit but only in a direct proceeding for that purpose."); *Daniels*, 201 Ill. 2d at 179 (Fitzgerald, J., dissenting) (citing *People ex rel. Rusch v. Wortman*, 334 Ill. 298, 301 (1929)) ("Importantly, an officeholder's eligibility to [sic] appointment and the validity of his or her official acts may be challenged only in a proceeding brought directly for that purpose."); *Commonwealth v. Pontious*, 578 A.2d 1, 4 (Pa. Ct. App. 1990) (holding that suppression hearing "is not an appropriate forum" for challenge to validity of police officer's appointment). Rather, someone wishing to challenge the validity of a de facto officer's authority must bring a quo

warranto action. *Chillicothe*, 19 Ill. 2d at 427. In short, a defendant at a suppression hearing may challenge the extent of the arresting officer's authority — that the circumstances were such that no officer could make the arrest — but may not challenge the fact of the arresting officer's authority — that the officer is not an officer at all.

Thus, the trial court erred in suppressing the evidence obtained incident to defendants' arrests on the ground that Gaither's appointment was not in strict compliance with Section 3-9005(b) because Gaither was a de facto officer. There is no question that Gaither was qualified to perform his duties; he had no disqualifying criminal convictions, A78, he had decades of Illinois law enforcement experience , A79 (on the strength of which the Board waived the requirement that he complete a basic police training course, C146), and he had a level of expertise such that he was asked to instruct local police officers on the nuances of truck regulations, *see* R20, R23-24, R58. Nor is there any question that Gaither was acting in his apparent capacity as a special investigator when he stopped defendants' vehicles along Interstate 80. The LaSalle County State's Attorney had administered Gaither's oath of office, A59, A73, and the county board approved his appointment, A42-43. He was issued an official ticket booklet for writing traffic warnings, A64;R87, and an official vehicle equipped with emergency lights and a radio, A75; R55, R67; Pirro R8. His investigations along Interstate 80 were conducted in cooperation with local police departments pursuant to standing arrangements with the Office of the LaSalle County State's Attorney. *See* A56; R45, R99, R160-63; Pirro, R9-11. To the extent that his appointment was technically deficient, those defects were invisible to both Gaither and defendants; as far as he and they knew, he was a LaSalle County special investigator with peace officer status

and the police powers that come with it. *See* R119-20. Under these circumstances, without a finding that the stops involved some form of police misconduct, "applying the exclusionary rule . . . would . . . have little deterrent effect, [but] it would have significant societal costs, as the State has already acknowledged that without the evidence against defendant[s], its case[s] against [them] would be substantially impaired." *People v. Galan*, 229 Ill. 2d 484, 523 (2008); C161; Harris, C58; Pirro, C56; Saxen, C72; Flynn, C52.

Indeed, applying the exclusionary rule under these circumstances would invite routine challenges to arresting officers' authority. *See Malone v. Cnty. of Suffolk*, 968 F.2d 1480, 1483 (2d Cir. 1992) (public policy underlying de facto officer doctrine "is fully implicated in the case of police officers acting under imperfect title, since invalidation of their actions would undermine the finality of convictions and would engender dilatory and costly lawsuits challenging the credentials of arresting officers") (citing 63A Am. Jur. 2d *Public Officers and Employees* § 578 (1984)). Law enforcement officers must meet a variety of requirements to gain and maintain officer status, which requirements vary from agency to agency. Were a technical defect in a substantively qualified officer's appointment or hiring alone sufficient to invalidate the officer's searches and seizures, defendants would be encouraged to embark on fishing expeditions, hoping to uncover some technical noncompliance with a filing or training or residency requirement that they could use to keep evidence of their crimes from the trier of fact. But where such deficiencies have no bearing on a particular defendant's Fourth Amendment rights, exclusion is inappropriate. *See, e.g.*, *State v. Griffin*, 776 S.E.2d 87, 89-91 (S.C. App. Ct. 2015) (defendant's arrest not unlawful where arresting sheriff's deputies were not appointed in compliance with statutory

requirements that proof of their bonds and oaths be filed with clerk of court because they were de facto deputies); *Malone v. State*, 406 So. 2d 1060, 162-63 (Ala. Crim. App. 1981) (finding trial court properly denied motion to quash arrest because arresting deputies were acting under color of right as de facto deputies notwithstanding technical defect of not having filed written copies of their oaths prior to arresting defendant).

The de facto officer doctrine also defeats Ringland's related challenge to the validity of Gaither's appointment. Ringland argued before the trial court that the drug evidence in her case should be suppressed because at the time of her arrest, the LaSalle County State's Attorney had not yet obtained a waiver exempting Gaither from the requirement that he complete a basic police training course. C109.[6] As an initial matter, Gaither's exercise of police powers was not contingent on receiving a waiver of the requirement that he complete a Board-approved basic police training course because the record shows that he had completed such a course. Section 3-9005(b) conditions special investigators' peace officer status and exercise of police powers on either the investigators "successfully complet[ing] the basic police training course mandated and approved by the Illinois Law Enforcement Training Standards Board *or* such board waiv[ing] the training requirement by reason of the special investigator's prior law enforcement experience or training." 55 ILCS 5/3-9005(b) (emphasis added). As Gaither testified, he was trained at the Illinois State Police Academy when he became an Illinois state police officer. R59. That this training included a basic

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[6] This argument was unavailable to the other defendants, who were arrested after the Board granted the waiver. *See* R183; C146 (waiver granted on March 21, 2012); Harris, C10 (arrested November 20, 2012); Saxen, C10 (arrested December 12, 2012); Pirro, C10 (arrested January 14, 2013); Flynn, C4 (arrested March 12, 2013).

police training course is evidenced by Towne's attestation in his notification of Gaither's appointment to the Board that Gaither had completed a Board-certified law enforcement basic training course, C143, as well as by the Board's subsequent written waiver, granted on the bases of Gaither's previous training and experience as a retired ISP officer and his successful completion of basic recruit training, C146. Thus, because Gaither successfully completed the requisite basic police training course when he graduated from the Illinois State Police Academy and became an ISP officer in 1987, his status as a peace officer was not contingent on the Board's waiver and his traffic stop of Ringland was a proper exercise of his police powers.

But even if Gaither had not satisfied one of Section 3-9005(b)'s two disjunctive training conditions, he still was acting as a de facto investigator when he stopped Ringland, and his authority cannot be challenged collaterally in a criminal proceeding. A failure to complete required training does not invalidate a de facto officer's otherwise proper exercise of police powers. *See Commonwealth v. Vaidulas*, 741 N.E.2d 450, 455-56 (Mass. 2001) (criminal defendant cannot exclude arresting officer's testimony on grounds that officer had not completed statutorily required training and was therefore not police officer; officer was de facto officer whose office could not be challenged collaterally in criminal proceeding); *Pontious*, 578 A.2d at 3-4 (criminal defendants cannot exclude evidence obtained incident to arrest on ground that arresting officer was appointed without having been administered statutorily required civil service examination because arresting officer was de facto officer and, "[u]nder the de facto doctrine, a law enforcement officer hired in violation of the law may legitimately exercise search and seizure powers").

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court and remand to the circuit court with instructions to vacate its orders suppressing evidence obtained incident to defendants' arrests.

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is thirty-six pages.

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COUNTY OF COOK)

PROOF OF FILING AND SERVICE

The undersigned deposes and states that on March 9, 2016, the foregoing **Brief of Plaintiff-Appellant People of the State of Illinois** and **Separate Appendix** were filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system, and one copy was served upon the following by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, in envelopes bearing sufficient first-class postage:

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

/s/ Joshua M. Schneider
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