No. 125392

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. CHARLES P. WISE, Defendant-Appellee.	)	On Appeal from the Appellate Court of Illinois, Third District, No. 3-17-0252 There on Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Henry County, Illinois, No. 15 CF 170 The Honorable Carol Pentuic, Judge Presiding.

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

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ORAL ARGUMENT REQUESTED

E-FILED
6/17/2020 11:18 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

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NATURE OF THE CASE

Defendant was convicted in Henry County of Unlawful Use or Possession of a Weapon by a Felon (UUWF) under 720 ILCS 5/24-1.1. The Appellate Court, Third District, vacated the conviction, reasoning that even though the gun was in the passenger compartment of defendant's vehicle, it was not immediately accessible from the driver's seat, where defendant was sitting, and thus not "on or about his person."

No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the prohibition on possession of dangerous weapons by felons includes constructive possession in a vehicle.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a), 604(a)(2), and 612(b)(2). On January 29, 2020, this Court allowed the People's petition for leave to appeal.

STATUTE INVOLVED

720 ILCS 5/24-1.1:

> (a) It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction.

720 ILCS 5/24-1(a):

> A person commits the offense of unlawful use of weapons when he knowingly:

* * *

(4) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a) (4) does not apply to or affect transportation of weapons that meet one of the following conditions:

* * *

(ii) are not immediately accessible;

* * *

(10) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village, or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his or her own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun, or taser or other firearm, except that this subsection (a) (10) does not apply to or affect transportation of weapons that meet one of the following conditions:

* * *

(ii) are not immediately accessible.

720 ILCS 5/24-1.6:

(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; or

(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his or her own land or in his or her own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; and

(3) One of the following factors is present:

(A) the firearm, other than a pistol, revolver, or handgun, possessed was uncased, loaded, and immediately accessible at the time of the offense; or

(A-5) the pistol, revolver, or handgun possessed was uncased, loaded, and immediately accessible at the time of the offense and the person possessing the pistol, revolver, or handgun has not been issued a currently valid license under the Firearm Concealed Carry Act; or

(B) the firearm, other than a pistol, revolver, or handgun, possessed was uncased, unloaded, and the ammunition for the weapon was immediately accessible at the time of the offense; or

(B-5) the pistol, revolver, or handgun possessed was uncased, unloaded, and the ammunition for the weapon was immediately accessible at the time of the offense and the person possessing the pistol, revolver, or handgun has not been issued a currently valid license under the Firearm Concealed Carry Act; or Protection Act; or

* * *

(c) This Section does not apply to or affect the transportation or possession of weapons that:

* * *

(ii) are not immediately accessible.

STATEMENT OF FACTS

Defendant, who had been convicted of felony burglary in Iowa, R84, was charged with UUWF in violation of 720 ILCS 5/24-1.1(a), C1.[1] The trial testimony showed that Officer Edwin Shamblin stopped a Dodge minivan that was speeding. R4, R36-38. While confirming the identity of the driver (defendant), Shamblin detected an odor of cannabis, and a subsequent search of the van revealed cannabis and a firearm. R5, R41-42. A .357 Derringer pistol was hidden in a glove in the cupholder/armrest of the third-row passenger seat. R6, R42.

Two passengers were also in the van. Darnell Montgomery sat in the front passenger seat and Jerry Horne sat in the third-row passenger seat. R12-13, R39-40.[2] They were returning from Louisville, Kentucky, where Montgomery had family, to Cedar Rapids, Iowa, where they lived. R117-18, 126. Defendant drove, except at the very beginning (the first ten minutes, according to defendant, R127, or twenty miles, according to Montgomery, R124), during which time defendant occupied Horne's seat in the rear of the van. R123.

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[1] "C_," R_," and "A_" refer to the common law record, the report of proceedings, and the appendix to this brief.

[2] Montgomery testified that Horne was in the "middle seat," "in the back of us." R118.

According to Shamblin, defendant acknowledged that he knew the firearm was in the van. R7, R57-58. He claimed it had been left behind by a friend who sometimes borrowed the van. R7, R13, R57-58.

Defendant testified that he told Shamblin that he did not know the firearm was in the car and that the "first thing [that] popped in [his] head" was that it was his friend Wade Burrell's. R130. Burrell testified that the firearm was his, and that he had borrowed the van the previous month, brought the gun with him for protection because he had been traumatized by a crime, and had left it in the van, unbeknownst to defendant, even though the gun was expensive and he knew that defendant was a felon. R102-08.

Guilty Verdict and Appellate Court Reversal

The trial judge found defendant guilty of UUWF, crediting Shamblin's testimony that defendant admitted that he knew the gun was there. R173-74. The trial judge also observed that defendant's own witness testified that, for part of the drive, defendant sat in the backseat "right next to where that gun was." R174. The trial judge sentenced defendant to two years in prison and one year of mandatory supervised release. C96.

The appellate majority vacated the conviction, reasoning that the evidence, even taken in the light most favorable to the People, did not show that the gun was "on or about [defendant's] person." A6. Recognizing that defendant would be guilty under the statutory construction employed by

"several districts of the Illinois Appellate Court," the majority nonetheless "decline[d] to follow their interpretation." A4-5.

For three reasons, the majority held that "on or about his person" meant that the weapon had to be within defendant's immediate reach. First, it reasoned that construed otherwise, the terms "on or about his person" and "possess" would be redundant. A5. Second, the majority reasoned that the legislature did not intend for the crime to encompass possession in "an entire vehicle" because the legislature could have included "vehicle" in the "specifically listed" places in which possession is prohibited, including "on his land," "in his abode," and in his "fixed place of business." A5. Third, the majority reasoned that this Court had construed the term "on or about his person," as it is used in section 24-1 to mean "in such close proximity that it can be readily used as though on the person." A5 (citing *People v. Liss*, 406 Ill. 419, 422 (1950)). The majority also noted that, although the testimony suggested that defendant was seated in back of the van, next to the gun for part of the trip, that portion of the trip likely occurred outside of Illinois. A6.

Justice Carter dissented, explaining that he would follow the "litany of cases" that would find sufficient evidence that defendant was guilty because "[s]uch a conclusion is consistent with the purpose of the statute — to protect the public safety by prohibiting the possession of weapons by felons." A7 (Carter, J., dissenting).

STANDARD OF REVIEW

This Court reviews a lower court's resolution of an issue of law, such as a question of statutory construction, de novo. *People v. Johnson*, 2019 IL 123318, ¶ 14.

ARGUMENT

The General Assembly has made the commonsense decision that convicted felons should not possess dangerous weapons. Thus, in the UUWF section of the Criminal Code, the legislature prohibited felons from possessing firearms, not only out in public, but also in their own homes, on their lands, or in their places of business. A majority of the court below held that this statutory prohibition does not apply to constructive possession in vehicles. That interpretation was incorrect.

UUWF prohibits a convicted felon from possessing a dangerous weapon or firearm "on or about his person or on his land or in his own abode or fixed place of business." 720 ILCS 5/24-1.1. In context, the language clearly reflects that possession is unlawful both outside of a felon's home, business, or land *and* within them. By contrast, Unlawful Use of Weapons (UUW), 720 ILCS 5/24-1, and Aggravated Unlawful Use of Weapons (AUUW), 720 ILCS 5/24-1.6, apply only to possession outside a non-felon's home, business, or land and not within them. In other words, unlike UUW and AUUW, location is not relevant in UUWF cases. Rather, as this Court has made clear, felons

may not possess weapons; the only elements to a UUWF violation are a prior felony conviction and possession of a dangerous weapon.

This is the only interpretation consistent with the legislative purpose of preventing felons from possessing dangerous weapons. Indeed, it is absurd to believe that the General Assembly intended the law to prohibit possession on a felon's land, or in his home or business, but not constructive possession in a vehicle traveling over public roads.

Finally, as the appellate majority recognized, its conclusion contradicts decades of settled law: both this Court's conclusion that location is not relevant for felons and specific applications of that conclusion by the appellate court to constructive possession in vehicles. By not amending the statutory language, the General Assembly acquiesced in that construction — for good reason, as it is the only interpretation consistent with the statute's language and purpose.

I. UUWF Prohibits Felons From Possessing Any Firearm in Any Situation, Including Constructive Possession in a Vehicle.

The relevant principles of statutory construction are well established. The primary objective "is to ascertain and give effect to the intent of the legislature," the most reliable indicator of which "is the language of the statute, given its plain and ordinary meaning." *People v. Casas*, 2017 IL 120797, ¶ 18. "The court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. Also, a court presumes that the

General Assembly did not intend to create absurd, inconvenient, or unjust results." *Id.* "A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *Id.* In doing so, it "consider[s] the statute's context, reading the provision at issue in light of the entire section in which it appears, and the Act of which that section is a part." *People v. Lloyd*, 2013 IL 113510, ¶ 25; *see also People ex rel. Devine v. Sharkey*, 221 Ill. 2d 613, 622 (2006) ("We are not required to turn a blind eye to a statute or a statutory scheme and construe a single subsection in isolation.").

The UUW, UUWF, and AUUW scheme differentiates between felons and non-felons with respect to the locations where possession of firearms is prohibited. UUW prohibits possession "in any vehicle or concealed on or about his person," but not "when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission." 720 ILCS 5/24-1(a)(4); *see also* 720 ILCS 5/24-1(a)(10). The same distinction is made by AUUW. *See* 720 ILCS 5/24-1.6(a)(1), (a)(2) (prohibiting carriage "on or about his or her person or in any vehicle or concealed on or about his or her person" but not "when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with person's permission"). Thus, for non-felons,

possession of a firearm at home, or on one's land or in one's business, without more, is not unlawful under UUW or AUUW.

For felons, the rule is different. Under UUWF, possession of a dangerous weapon is unlawful both outside felons' homes, businesses, and land *and* within them. The prohibition applies to possession "on or about his person or on his land or in his own abode or fixed place of business." 720 ILCS 5/24-1.1(a). This Court has recognized this key distinction between UUW and AUUW, on the one hand, and UUWF, on the other. "In enacting section 24-1 [the UUW section], the legislature decided that it should be criminal . . . to possess *certain* weapons in *certain, defined* manners." *People v. Gonzalez*, 151 Ill. 2d 79, 87 (1992) (emphases in original). But in "enacting section 24-1.1 [UUWF], the legislature determined that it should be a crime for a felon to possess *any* firearm, in *any* situation." *Id.* (emphases in original). "Accordingly, under this scheme, it is *always* a felony offense for a *felon* to possess a firearm even though a nonfelon who possesses the same firearm in the same manner may be guilty of only a misdemeanor or of no crime at all, depending on the facts." *Id.* at 87-88 (emphasis in original).

This blanket prohibition on firearm possession by felons thus necessarily includes constructive possession in a vehicle, and nothing in the statutory language is to the contrary. Indeed, where possession in a vehicle is specifically mentioned in the UUW and AUUW sections, it is treated as equivalent to possession on or about a person. *See* 720 ILCS 5/24-1(a)(4)

(prohibiting carriage or possession "in any vehicle or concealed on or about his person); 720 ILCS 5/24-1.6(a)(1) (prohibiting carriage "on our about his or her person or in any vehicle"); *see also* 720 ILCS 5/24-1(a)(3) (prohibiting carriage "on or about his person or in any vehicle" a tear gas gun projector and other similar weapons); 720 ILCS 5/24-1(a)(9) (prohibiting carriage or possession "in a vehicle or on or about his or her person" a firearm when concealing identity).

Nor does the "on or about his person" language demonstrate an intent to limit unlawful possession to firearms that are immediately accessible, whether inside or outside a vehicle. To the contrary, when the legislature wanted to include that limitation, it did so explicitly. *See* 720 ILCS 5/24-1(a)(4)(ii), (a)(10)(ii) (provisions of UUW that do not apply when weapon "not immediately accessible"); 720 ILCS 5/24-1.6(a)(3) (limiting aggravating factor in AUUW to firearm that is "immediately accessible at the time of the offense"); *see also People v. Smith*, 71 Ill. 2d 95, 102 (1978) ("So long as the weapon in question is in such proximity to the accused as to lie within easy reach so that the weapon is readily available for use, it is 'immediately accessible.'"). If "on or about his person" meant "immediately accessible," the latter would be redundant in the UUW and AUUW sections. Thus, when the statutory scheme is viewed as a whole, UUWF clearly entails a blanket prohibition on felons possessing firearms, including constructive possession in a vehicle.

II. The Only Interpretation Consistent with the Statute's Purpose of Protecting the Public by Prohibiting Felons from Possessing Dangerous Weapons Includes Prohibiting Constructive Possession in Vehicles.

To the extent that UUWF is deemed ambiguous, the clear legislative intent mandates that the prohibition on felons possessing firearms includes constructive possession in vehicles. The "UUWF statute's purpose [is] protecting the public from dangerous persons who are seeking to obtain firearms." *In re N.G.*, 2018 IL 121939, ¶ 62; *see also People v. Garvin*, 2013 IL App (1st) 113095, ¶ 14 ("The purpose of the UUWF statute "is to protect the health and safety of the public by deterring possession of weapons by convicted felons, a class of persons that the legislature has determined presents a higher risk of danger to the public when in possession of a weapon.") (internal quotation marks omitted). The statute's expansive "legislative intent . . . is to keep dangerous weapons, including but not limited to firearms, out of the hands of convicted felons in any situation whether it be in the privacy of their own home or in a public place." *People v. Starks*, 2019 IL App (2d) 160871, ¶ 32 (internal quotation marks omitted).

To accomplish this, the legislature established a blanket prohibition. "The essential elements of defendant's offense are thus twofold: (1) the knowing possession of a firearm and (2) a prior felony conviction." *Gonzalez*, 151 Ill. 2d at 84-85; *see also id.* at 87 ("In section 24-1.1 of the Criminal Code, the legislature created the offense of unlawful use or possession of a weapon by a felon. The elements of that offense are: (1) the knowing possession or

use of a firearm and (2) a prior felony conviction."). "There is no requirement in section 24-1.1 that the offender be using or possessing any particular type of firearm or that he be doing so in any particular place or manner." *Id.* at 87.

Allowing felons to lawfully possess firearms in vehicles would frustrate UUWF's purpose. The majority below failed to articulate any reason why the legislature would have elected to prohibit felons from possessing firearms on their own land but not while in constructive possession in a vehicle traveling over public roads. Indeed, the majority's interpretation leads to absurd results. Because felons may not lawfully possess firearms on their persons, they cannot transport firearms to their vehicles. And because they cannot possess firearms at their homes or places of work, or on their lands, they have nowhere to store them. The legislature surely did not intend that felons would have dangerous weapons delivered to and stored permanently in their vehicles parked outside their lands. Rather, by broadly prohibiting possession on their person, as well as on their lands and in their homes and businesses, the legislature intended to prohibit felons from possessing firearms in all locations, including their vehicles, and this Court should interpret UUWF consistent with that intent.

III. The Legislature Acquiesced in the Judicial Construction that UWWF Imposes a Blanket Prohibition on Possession and to Its Specific Application to Constructive Possession In a Vehicle.

When courts interpret a statute and the legislature thereafter keeps the relevant language unchanged, the legislature conveys agreement with that judicial construction. Here, multiple districts of the Appellate Court interpreted the relevant language of UUWF to prohibit constructive possession in a vehicle, this Court construed it as imposing a blanket prohibition on felons possessing firearms, and the General Assembly has acquiesced in this interpretation for decades. Abandoning this now-settled construction would frustrate legislative intent.

"When the legislature chooses not to amend a statute following judicial construction, it is presumed that the legislature has acquiesced in the court's construction of the statute and the declaration of legislative intent." *People v. Johnson*, 2019 IL 123318, ¶ 14. This is particularly true when the legislature revisits a statute following judicial decisions interpreting that statute without amending it in response to those precedents. *See Palm v. Holocker*, 2018 IL 123152, ¶ 31 (finding legislative acquiescence to two appellate court decisions after ten subsequent amendments); *Moon v. Rhode*, 2016 IL 119572, ¶¶ 31-33 (finding legislative acquiescence where statute was amended several times following more than ten appellate court decisions); *People v. Coleman*, 227 Ill. 2d 426, 435-38 (2008) ("Here, the General Assembly has remained silent following a line of cases spanning nearly 30 years. Its

inaction indicates that these appellate court cases are not contrary to its intent."). This rule applies with special force to decision of this Court. *See People v. Bywater*, 223 Ill. 2d 477, 492 (2006) ("In the 13 years since this court's decision in *Schaefer,* the General Assembly has not altered that interpretation by amendment, and the legislature's inaction must be deemed acquiescence in the holding."). Here, the General Assembly has acquiesced in multiple appellate court decisions holding that UUWF prohibits constructive possession in a vehicle, as well as to this Court's determination that the place of possession is not relevant.

Section 24-1.1 became effective in 1984 and, thereafter, several cases construed the "on or about his person" language to include possession in vehicles, including constructive possession. Between 1987 and 1990, three districts of the Appellate Court held that a firearm in a vehicle's passenger compartment — and elsewhere in the vehicle — was constructively possessed on or about the defendant's person for the purposes of section 24-1.1. *See People v. Rangel*, 163 Ill. App. 3d 730, 739-40 (1st Dist. 1987) (gun was possessed on or about person for purposes of section 24-1.1 when found on defendant-driver's side floor of car even after defendant exited the car); *People v. Clodfelder*, 172 Ill. App. 3d 1030, 1033-34 (4th Dist. 1988) (rifle in cargo area of station wagon was possessed on or about person of driver for purposes of section 24-1.1); *People v. Woodworth*, 187 Ill. App. 3d 44, 46 (5th Dist. 1989) (firearm under defendant-driver's seat was possessed on or about

person for purposes of section 24-1.1); *People v. Jastrzemski*, 196 Ill. App. 3d 1037, 1039 (1st Dist. 1990) (firearm located under hood of car was on or about person for purposes of section 24-1.1).

Significantly, the legislature has amended section 24-1.1 *nine* times since *Jastrzemski* was decided in 1990 without altering the relevant language. And two years after *Jastrzemski*, this Court stated that there were only two elements to UWWF: knowing possession of a firearm and a prior felony conviction. *Gonzalez*, 151 Ill. 2d at 84-85. Twenty-eight years later, the legislature still has not amended the relevant language.

Moreover, this Court's two-element framework for UWWF, including for possession in vehicles, has been consistent during the nearly three decades since this Court decided *Gonzalez*. Indeed, the Court recently applied the framework in *People v. Moore*, 2020 IL 124538. In *Moore*, the Court reversed the defendant's conviction under section 24-1.1(a), finding defense counsel ineffective for failing to stipulate to the underlying felony, and thereby allowing the jury to hear that defendant's prior conviction was for murder. *Id.* ¶¶ 1, 52. The firearm there was in the front center console of the defendant's vehicle. *Id.* ¶ 10. When addressing whether a new trial would subject the defendant to double jeopardy, the Court found "sufficient evidence that the jury could have found defendant guilty beyond a reasonable doubt," without addressing whether the firearm was immediately accessible to the defendant. *Id.* ¶ 53.

Thus, the General Assembly has acquiesced in this Court's pronouncement that location is not relevant in UUWF, as well as in the multiple decisions of the Appellate Court finding that UUWF prohibits felons from constructive possessing firearms in vehicles. This Court should not now abandon this settled construction — especially because it is the only interpretation consistent with the clear legislative intent to prohibit all possession of dangerous weapons by felons.

IV. The Appellate Majority's Reasoning Does Not Justify Departure from Settled Law.

The three reasons offered by the appellate majority for its novel interpretation fail in light of the statute's language and purpose. First, the majority posited that its interpretation was necessary to give "on or about his person" and "possess" "separate meanings." A5. To be sure, there is a superficial appeal to this argument when the phrase is read in isolation: if "possess" always includes actual and constructive possession, then "on or about his person" should do more than mean actual or constructive possession. But that phrase does do more when the statutory scheme is considered as a whole.

As discussed, the UUW and AUUW sections ban possession outside a non-felon's home, business, or land but not within them. *See supra* Section I; 720 ILCS 5/24-1(a)(4), (a)(10); 720 ILCS 5/24-1.6(a)(1), (a)(2). That is, these sections expressly do not apply to possession in a person's home or business or on a person's land but do apply when the possession occurs elsewhere. The

sections refer to this latter category of possession as possession "on or about his person." If the General Assembly had been writing on a blank slate, it could have achieved a blanket prohibition of weapons by felons by simply prohibiting "possession." But because the UUW and AUUW sections already distinguished possession of firearms by a non-felon within his home, business, or land from possession outside them, the legislature clarified that possession in *both* categories was prohibited for felons. The term "on or about his person" is necessary in the context of the statutory scheme because it distinguishes UUWF from UUW and AUUW.

Nor was the majority correct to think that the legislature did not intend for the crime of UUWF to encompass possession in "an entire vehicle" because the legislature could have included "vehicle" in the "specifically listed" places along with "on his land," "in his abode," and in his "fixed place of business." A5. The omission of a specific location in section 24-1.1 does not communicate the intention to permit possession there. As discussed, the list simply clarifies that the ban on possession in UUWF, unlike in the UUW and AUUW sections, applies both within a felon's home, business, and land and outside them. It is not a comprehensive list of locations where possession is prohibited.

Language elsewhere in the statute confirms this. Section 24-1 exempts from its operation possession of a firearm when a non-felon is on his own land or "on the land or in the legal dwelling of another person as an invitee with

that person's permission." 720 ILCS 5/24-1(a)(4). Section 24-1.6 also exempts from its operations a non-felon on the land or in the dwelling of another as an invitee. 720 ILCS 5/24-1.6(a)(1). But section 24-1.1 does not include the invitee language. The absence of the invitee language in 24-1.1 does not mean that felons may constructively possess firearms as invitees on other people's lands. The legislature would have no discernible reason to exempt such conduct.

Finally, the majority reasoned that terms "should be construed in the same way throughout the Criminal Code" and noted that, in *People v. Liss*, 406 Ill. 419, 422 (1950), the term "on or about his person" was interpreted to mean being "in such close proximity that it can be readily used as though on the person" in the context of a predecessor to section 24-1 (Ill. Rev. Stat. 1949, chap. 38, par. 155). A4. This reasoning is flawed in at least two ways.

First, as this Court has recognized, the General Assembly amended the statutory language interpreted in *Liss* not long afterward to include possession of a weapon concealed in a vehicle. *See People v. McKnight*, 39 Ill. 2d 577, 580 (1968). *McKnight* noted that the Committee Comments specified "'a significant modification of law in that the carrying of a firearm concealed in a vehicle is now prohibited" where it had previously been permitted unless it was "sufficiently accessible." *Id.* (citing Committee Comments by Professor Charles H. Bowman). In other words, the legislature amended the statute following *Liss* such that the statute it interpreted no longer had the same

meaning. Moreover, even before this amendment, it was understood that possession of a concealed weapon in a vehicle was prohibited if the "bearer was a previous offender." *McKnight*, 39 Ill. 2d at 580. Indeed, *Liss* illustrates why the term "vehicle" appears in UUW but not UUWF: the legislature amended the statutory language of UUW in response to *Liss* to clarify that "on or about his person" did not exclude constructive possession in a vehicle; no such amendment was necessary for UUWF because the legislature had made its intent clear.

And second, the majority's interpretation of section 24-1.1 is inconsistent with this Court's interpretation of the "on or about" language in the statute prohibiting armed violence, 720 ILCS 5/33A-1. In *People v. Harre*, 155 Ill. 2d 392 (1993), this Court held that a defendant was guilty of armed violence when he was standing just outside the closed car door and firearms were on the front seat of the car. *Harre* explained that the defendant was guilty because "armed violence occurs if a defendant commits a felony while having on or *about* his person a dangerous weapon or if a defendant is *otherwise* armed." *Id.* at 401 (emphases in original). The Court emphasized that "[w]e would completely eviscerate the deterrent purpose of the armed violence statute if we were to require police officers to wait to announce their presence and effect an arrest until a defendant's access and control over a readily available weapon had ripened into the temptation to take actual physical possession, which would invite rather than deter

violence." *Id.* The same is true here: To protect the public, UUWF flatly prohibits felons from possessing firearms, including both constructive and "actual physical possession," and the majority's reasoning fails to demonstrate that, in contravention of decades of precedent to the contrary, the legislature intended otherwise when it comes to possession in a vehicle travelling on a public road.

CONCLUSION

This Court should reverse the judgment of the appellate court.

June 17, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages 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 twenty-one pages.

/s/ Eldad Z. Malamuth
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 17, 2020, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Illinois Official Reports

Appellate Court

People v. Wise, 2019 IL App (3d) 170252

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES P. WISE, Defendant-Appellant.
District & No.	Third District No. 3-17-0252
Filed	September 18, 2019
Decision Under Review	Appeal from the Circuit Court of Henry County, No. 15-CF-170; the Hon. Carol M. Pentuic, Judge, presiding.
Judgment	Vacated.
Counsel on Appeal	James E. Chadd, Peter A. Carusona, and Steven Varel, of State Appellate Defender's Office, of Ottawa, for appellant. Matthew Schutte, State's Attorney, of Cambridge (Patrick Delfino, Thomas D. Arado, and Gary F. Gnidovec, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE McDADE delivered the judgment of the court, with opinion. Justice O'Brien concurred in the judgment and opinion. Justice Carter dissented, with opinion.

OPINION

¶ 1 Defendant was charged with several offenses and, pertinent to this case, was found guilty of unlawful possession of a weapon by a felon. The trial court based its verdict on testimony that defendant was aware that the gun was in the vehicle and that, at some point, defendant was seated near the firearm. On appeal, defendant argued that the State failed to prove beyond a reasonable doubt that the firearm was "on or about his person" as required by the offense charged. We agree and vacate defendant's conviction.

¶ 2 I. BACKGROUND

¶ 3 On June 18, 2015, defendant Charles Wise was charged with unlawful possession of a weapon by a felon under section 24-1.1(a) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/24-1.1(a) (West 2014)) and unlawful possession of a controlled substance under section 402(c) of the Illinois Controlled Substances Act (720 ILCS 570/402(c) (West 2014)). He was also charged with an open alcohol container violation and with a speeding violation. On June 19, 2015, Wise posted bond and was released from custody. A bench trial commenced in March 2016. The State introduced into evidence a certified copy of Wise's prior Iowa felony conviction of burglary.

¶ 4 The State also presented Illinois State Police Trooper Edwin Shamblin, who testified as follows. On June 18, 2015, he pulled over a 2005 Dodge Caravan minivan for speeding on I-74 in Henry County, Illinois. The inside of the van consisted of three rows of seats and a rear cargo area. The first row had two "bucket" seats, and the second and third rows had bench seating. At the time of the stop, Wise was in the driver's seat, Darnell Montgomery was in the passenger seat, and Jerry Horne was in the third row on the passenger side. After he smelled a "strong odor of burnt cannabis," Shamblin decided to search the vehicle and discovered two black gloves lying in the third seating row near Horne. Shamblin moved one glove and dislodged a Derringer .357 firearm, which had been inside of it. The gun was completely obscured from view before Shamblin moved the glove. Shamblin believed that the gun was located about 5 to 10 feet away from the driver's seat where Wise was sitting, and he did not think it was possible for Wise to reach the gun from the driver's seat. Shamblin arrested Wise and read him *Miranda* warnings. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Shamblin further testified that Wise agreed to speak with him and told Shamblin that he knew the firearm was in the van but it was not his; it belonged to his friend Wade Burrell, who sometimes borrowed the van. Burrell purchased the gun at Gander Mountain in Cedar Rapids, Iowa, about three months earlier.

¶ 5 The State rested, and the defense presented several witnesses to testify. Burrell testified that he was the owner of the .357 Derringer firearm found inside the van on the night in question and he had legally purchased the gun at Gander Mountain for $400. He borrowed the van from Wise's brother, Johnny, on May 20, 2015, to run some errands and took the gun with him for his protection. Although he had a valid permit to purchase weapons, he did not have a concealed carry permit. Because of this, he was advised by a Gander Mountain store employee to store the gun as far away from him as possible when traveling with the gun so that it was out of reach. When he borrowed the van on May 20, he placed the gun inside one of the gloves lying in the van and laid the glove in the backseat of the van so that it would be out of reach and out of sight while he was driving. He returned the van to Johnny the same day but forgot

to take the gun from the van. Burrell never retrieved the gun and forgot that he left the gun in the van. The receipt for the gun purchase was admitted into evidence.

¶ 6 Wise testified that he had taken a trip to Louisville, Kentucky, and was returning to Cedar Rapids, Iowa, when he was stopped by the police for speeding. He was driving a van he had borrowed from his brother, Johnny. Horne drove for about 10 minutes into the trip, and Wise drove the remainder of the trip. Wise stated that he did not know that the gun was in the van, and he denied telling Shamblin that he knew the gun was in the van. Wise was physically disabled, and his health issues included diabetes, high blood pressure, chronic back pain, and depression. He took multiple medications for his conditions.

¶ 7 Montgomery testified that he, Wise, and Horne were leaving Louisville and traveling to Cedar Rapids on June 18. Horne drove the first 20 miles, and thereafter, Wise drove the remainder of the trip. Montgomery testified that, when the police stopped the van, he was seated in the passenger seat, Horne was seated in the backseat, and Wise was in the driver's seat driving the van.

¶ 8 The trial court found Wise guilty of speeding and unlawful possession of a weapon by a felon and acquitted him of the remaining charges. The basis for the guilty verdict on the gun charge was unlawful possession of a weapon by a felon. The trial court based its verdict on Shamblin's testimony that Wise knew the gun was in the van and the witnesses' testimony that Wise had sat in the backseat near the gun for 10 to 20 minutes at the beginning of the trip. The court did not believe Burrell's testimony that he mistakenly left the gun in the van and forgot about it for two weeks. The trial court sentenced Wise to two years imprisonment and one year of mandatory supervised release on the unlawful possession of a weapon by a felon conviction. In the court's written order, Wise received credit for one day of presentence incarceration. Wise appealed his conviction.

¶ 9 II. ANALYSIS

¶ 10 A. Sufficiency of the Evidence

¶ 11 Wise argues that the State failed to prove beyond a reasonable doubt that the gun was "on or about his person" as required under the unlawful possession of a weapon by a felon statute. Wise claims that Illinois courts have established that a weapon is "on or about" a person when the weapon is within arm's reach of the accused and that, in this case, the gun was not within his reach when he was pulled over in Illinois. Wise also argues that his interpretation is supported by the legislature's decision to exclude the "on or about his person" language from similar provisions that exclude general unlawful possession, actual and constructive, of firearms.

¶ 12 The State argues that the "on or about his person" language in section 24-1.1(a) is not limited to possession within the accused's reach but expands the scope of possession where the accused has possession of a firearm in an area that is under his exclusive control. The State alleges that Wise's interpretation renders the "about his person" language superfluous because it essentially carries the same meaning as "on his person."

¶ 13 A criminal conviction will not be set aside unless the evidence is so improbable and unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* The relevant question is whether,

after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* Determinations of witness credibility, the weight given to the testimony, and the reasonable inferences to be drawn from the evidence are the responsibility of the trier of fact, not the reviewing court. *People v. Pollard*, 2015 IL App (3d) 130467, ¶ 26.

¶ 14 Section 24-1.1(a) of the Criminal Code states, "It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any *** firearm *** if the person has been convicted of a felony ***." 720 ILCS 5/24-1.1(a) (West 2014).

¶ 15 The parties dispute the meaning of "on or about his person" under section 24-1.1(a). Our supreme court has not construed the meaning of this phrase under section 24-1.1(a); however, several districts of the Illinois Appellate Court have interpreted it. The court in *People v. Rangel*, 163 Ill. App. 3d 730 (1987), held that a gun found in a vehicle, rather than on the defendant's body, could constitute being "on or about his person" under section 24-1.1. In *Rangel*, the police responded to a call from a woman stating that the defendant had threatened to kill her with his gun. *Id.* at 732. As the police were searching the apartment building where the incident occurred, one of the officers observed the defendant exiting a vehicle and walking toward the building. *Id.* at 733. The officer stopped the defendant in the building hallway and arrested him for aggravated assault. *Id.* Afterward, the officer walked over to defendant's vehicle and retrieved a loaded .22-caliber pistol lying on the floor of the driver's side of the vehicle. *Id.* Defendant was subsequently charged and convicted of unlawful use of a weapon by a felon under section 24-1.1. *Id.* at 732. On appeal, defendant argued that the State failed to prove beyond a reasonable doubt that the weapon was recovered "on or about his person." *Id.* at 738. The First District rejected this argument, holding that "the recovery of the gun from defendant's car rather than from his person, does not, in itself, exclude him from the provisions of the statute under which he was charged." *Id.* at 739. The court explained that the definitive question is whether the defendant knowingly possessed the weapon and determined that, based on the evidence, defendant was properly found guilty under section 24-1.1. *Id.*

¶ 16 In *People v. Clodfelder*, 172 Ill. App. 3d 1030, 1032 (1988), the police stopped a vehicle driven by the defendant because it did not have license plates. The police searched the vehicle and discovered a .22-caliber rifle directly behind the backseat on the driver's side. *Id.* Defendant was subsequently convicted of unlawful use of a weapon by a felon under section 24-1.1. *Id.* at 1031. On appeal, defendant argued that the State failed to prove that the gun was "on or about his person" because the gun was too remote from his body. *Id.* at 1032. The Fourth District found that defendant constructively possessed the gun "about his person" because (1) he knew where it was placed, (2) he was the owner with exclusive possession of the vehicle, and (3) he was the owner of the gun. *Id.* at 1034. The court distinguished its case from *People v. Liss*, 406 Ill. 419 (1950), in which the supreme court affirmed defendant's conviction of carrying concealed on or about his person a firearm because an element of carrying a weapon concealed on or about his person was accessibility of the weapon to the accused and that this element was separate from the element that the weapon was on or about the accused. *Clodfelder*, 172 Ill. App. 3d at 1033. It also reasoned that, regardless of the accessibility element, the *Liss* court placed more weight on the lack of evidence showing the defendant's possession because he did not have knowledge of the gun's presence and he did not have control over the area where the gun was found. *Id.* at 1033-34.

¶ 17 In *People v. Woodworth*, 187 Ill. App. 3d 44, 45 (1989), the defendant was stopped for driving erratically. When the defendant exited the vehicle, the officer noticed a handgun sticking out from under the driver's seat. *Id.* Defendant was later convicted of unlawful possession of a weapon by a felon. *Id.* On appeal, defendant argued that the State failed to prove beyond a reasonable doubt that he had a gun "on or about his person" because the gun was under the driver's seat. *Id.* at 46. The Fifth District explained that " 'possessing on or about one's person' is no different than 'having in one's possession' or simply 'possessing' " and that such determination depends on whether the weapon is "within one's reach." *Id.* The court held that the location of the firearm was "[c]learly" within defendant's reach and, therefore, the State proved that the gun was "on or about his person." *Id.*

¶ 18 In *People v. Jastrzemski*, 196 Ill. App. 3d 1037, 1038 (1990), the defendant was stopped for driving with a broken brake light. The officer checked defendant's driver's license and discovered that his license was suspended. *Id.* at 1038-39. The officer placed defendant under arrest and searched his vehicle. *Id.* at 1039. During the search, he found a loaded revolver under the hood of the car. *Id.* Ultimately, defendant was convicted of unlawful use of a weapon by a felon. *Id.* The First District held that the location of the gun, along with the evidence that he owned the car and knew where the gun was hidden, was sufficient to show that the weapon was on or about the defendant's person. *Id.* Analogizing its case to the court's rationale in *Clodfelder*, the First District determined that a gun need not be immediately accessible to show that a firearm was "on or about" the accused's person. *Id.* at 1039-40. It held that the location of the gun, along with the evidence that he owned the vehicle and knew where the gun was hidden, was sufficient to show that the weapon was on or about the defendant's person. *Id.* at 1040.

¶ 19 Reviewing the cases above, we decline to follow their interpretation of "on or about his person" for three reasons. First, "possession" and "on or about his person" have separate meanings. The court in *Woodworth* held that "on or about his person" equates to having in one's possession or possessing and interprets the phrase as if it is synonymous with the word "possess." This interpretation renders the phrase "on or about his person" meaningless. We are required to construe a statute so that no part of it is rendered meaningless or superfluous. *People v. Jones*, 214 Ill. 2d 187, 193 (2005). The legislature promulgated section 24-1.1(a) to state that it is unlawful for a person to knowingly "possess on or about his person *** any *** firearm if the person has been convicted of a felony." The word "possess" and the term "on or about his person" are distinctly included in the statute and should each be given its own meaning.

¶ 20 Second, the statutory language does not support a conclusion that the legislature intended for section 24-1.1 to encompass an entire vehicle. Nonetheless, the *Jastrzemski* court held that a firearm found under the hood of the defendant's vehicle, which is neither on the defendant's person nor within his reach and is not reasonably accessible to the defendant, satisfied the statutory requirement. We disagree with this interpretation of section 24-1.1(a). The rationale reads language into section 24-1.1(a) that is simply not there. The legislature specifically listed the places where a felon is culpably in possession of a firearm, including "on or about his person," "on his land," "in his abode," and in his "fixed placed of business." Notably, there is no mention of a vehicle of any kind in section 24-1.1(a). If the legislature had intended to impose liability for possession anywhere "in his vehicle," it would have included that language in the statute. It did not, and we cannot rewrite a statute to add provisions or limitations the

legislature did not include. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 29. We, therefore, limit our focus to whether the firearm was "on or about" Wise's person rather than whether the firearm was located in the vehicle.

¶ 21 Third, "on or about his person" should be construed in the same way throughout the Criminal Code. Where a word is used in different sections of the same statute, the presumption is that the word is used with the same meaning throughout the statute, unless a contrary legislative intent is clearly expressed. *People v. Maggette*, 195 Ill. 2d 336, 349 (2001). Construing predecessor provisions of a similar section under the Criminal Code, section 24-1, the Illinois Supreme Court has defined "on or about his person" as meaning the firearm is on the person or "in such close proximity that it can be readily used as though on the person." See *Liss*, 406 Ill. at 422; *People v. Niemoth*, 322 Ill. 51, 52 (1926) (" '[a]bout his person' means sufficiently close to the person to be readily accessible for immediate use"); see also 720 ILCS 5/24-1 (West 2014). The Criminal Code does not require or even suggest that "on or about his person" under section 24-1.1 be given a different meaning from other sections under the Criminal Code. We find no reason to give the phrase a different interpretation from the one established by our supreme court.

¶ 22 Given our construction of the statute, the evidence here shows that the gun was not on or about Wise's person as required by section 24-1.1 when his vehicle was searched. Wise was driving the minivan when Trooper Shamblin stopped and searched the vehicle. During the search, Shamblin discovered a .357 Derringer hidden inside a glove. The firearm was located two rows or, as Shamblin testified, about 5 or 10 feet behind the driver's seat. Shamblin also testified that he did not believe it was possible for Wise to reach over and grab the gun from the driver's seat. Thus, at the time of the stop the gun was not "on or about [the] person" of the defendant.

¶ 23 There was testimony from Montgomery that, for a very short time at the beginning of the trip from Louisville, Horne was driving and Wise was sitting in the backseat. This testimony indicates that, in the earliest stage of the drive, the firearm may have been "on or about" Wise's person. Illinois has jurisdiction over a criminal case only when the offense is committed wholly or partly within the state. 720 ILCS 5/1-5(a)(1) (West 2014). An offense is committed partly within the state when conduct that is an element of the offense occurs within the State. *Id.* § 1-5(b). Wise and Montgomery testified that Horne was driving for about 10 to 20 minutes before Wise began to drive, and the evidence appears clear that the 10 or 20 minutes Wise was in the backseat occurred in Kentucky or Indiana, not Illinois. Although a finding of inaccessibility does not prevent a finding of constructive possession, it does prevent a finding of guilt. *People v. Cook*, 46 Ill. App. 3d 511, 515 (1977).

¶ 24 For the foregoing reasons, we find that the State failed to prove Wise guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon. Accordingly, we vacate his conviction. We need not address Wise's issue concerning his credit for time served, as this issue is dispositive of this appeal.

¶ 25 III. CONCLUSION

¶ 26 The judgment of the circuit court of Henry County is vacated.

¶ 27 Vacated.

¶ 28 JUSTICE CARTER, dissenting:

¶ 29 I respectfully dissent from the majority's decision in the present case. I would find that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon and would, therefore, affirm defendant's conviction of that offense. In its analysis in this case, the majority goes through a litany of cases that are contrary to the conclusion that the majority eventually reaches—that the State failed to establish that defendant possessed the gun on or about his person as required for a conviction under section 24-1.1(a) of the Criminal Code. *Supra* ¶¶ 15-22. Ultimately, the majority elects not to follow those cases. *Supra* ¶ 19. I disagree with the majority's decision in that regard and believe that we should follow the cases that the majority has set forth. In my opinion, and contrary to the majority's decision, the State does not have to prove that a gun found in a vehicle is immediately or readily accessible to a defendant to obtain a conviction under section 24-1.1(a) of the Criminal Code. See *Jastrzemski*, 196 Ill. App. 3d at 1039-40 (affirming a defendant's conviction of unlawful use of a weapon by a felon where a gun was found under the hood of a car the defendant was driving); *Clodfelder*, 172 Ill. App. 3d at 1032-34 (upholding the defendant's conviction of unlawful use of a weapon by a felon where a gun was found in the rear cargo area of a station wagon that the defendant was driving). Such a conclusion is consistent with the purpose of the statute—to protect the public safety by prohibiting the possession of weapons by felons. See *Jastrzemski*, 196 Ill. App. 3d at 1040.

¶ 30 Applying a typical constructive possession analysis in this case, I would find that the State's evidence was sufficient to prove that defendant possessed the gun in question on or about his person. See *Rangel*, 163 Ill. App. 3d at 739-40 (upholding a defendant's conviction of unlawful use of a weapon by a felon where a gun was found on the driver's side floor of the vehicle the defendant had been driving); *Jastrzemski*, 196 Ill. App. 3d at 1039-40; *Clodfelder*, 172 Ill. App. 3d at 1032-34. The evidence showed that the gun was found inside a glove located on the third-row seat of the minivan defendant was driving and was approximately 5 to 10 feet away from the driver's seat of the van. Although defendant was allegedly not the owner of the van, he had been driving the van for some time, had control over the van, and admitted knowledge of the presence of the gun. It was for the trial court, as the trier of fact, to determine whether it believed the testimony of the alleged owner of the gun—that he had taken the gun into the vehicle with him for protection while he was running errands about a month earlier and had forgotten the gun in the vehicle. See *Pollard*, 2015 IL App (3d) 130467, ¶ 26. In this particular case, the trial court found that the alleged owner's testimony was not believable and ultimately concluded that defendant was in possession of the gun. I would affirm the trial court's ruling in that regard.

I don't know if you can jump from one to the other.

Perhaps, you know, some of his testimony wasn't credible. I think for the most part it was. But to say that if he's not credible there, then you've got to assume that he gave the gun to my client, and my client knew the gun was in the vehicle, and that's just not it.

So, your Honor, based on that, I would ask that you find my client, Charles Wise, not guilty of Count I and Count II. The speeding, we concede that. I'm not taking much issue with the alcohol. It wasn't within his reach. There was evidence it was back there. But he's not guilty of Count I and Count II.

THE COURT: I've heard the testimony and the arguments, and, like I said, let's start with the easy one, speeding. The State has met their burden on that, and the defendant admits he's guilty of the offense of speeding, so I am finding him guilty of the petty offense of speeding.

With regards to the petty offense of possession of open alcohol, I mean, we're dealing with a minivan here. We're inches from the cargo area. I just think the alcohol was so far back -- we're dealing with a minivan. You know, we've got a definition of passenger that maybe makes sense for a car, but when you're dealing with a minivan and an area so far back in a cooler, I just -- with respect to the

open alcohol, I am going to find the defendant not guilty of that as well. I just think given the fact that it was inches away from the cargo section of the car in a cooler -- although the trooper doesn't remember the cooler; everybody else does -- I just don't think the State has met their burden on that given the nature of that vehicle and where the items were.

With respect to Count I, the unlawful possession of a weapon by a firearm -- by a felon, I have the certified records from Linn County. I am finding that those indicate that the defendant is a convicted felon, so the State has met that prong of it.

Then we have the language of the statute was that it's unlawful for a person to knowingly possess on or about his person, his land or his own abode, place of business, a weapon prohibited.

Then I look at the definition of possession, and possession is a voluntary act of the offender knowingly -- that he knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his possession.

Knowledge is the nature or attendant circumstances of his or her conduct, described by the State defining the offense, when he is consciously aware that his or her

conduct is of that nature or those circumstances exist. Knowledge of a material fact, awareness, a substantial probability that the fact exists.

I have to weigh the credibility of the witnesses. Mr. Burrell's explanation is absurd. We get a gun because we're in horrible fear of our life, and then we borrow somebody else's car, and we stick the gun in the back in a glove, and we hide it even though we have a FOID card -- maybe he doesn't have a concealed carry -- but I take the gun with me because I'm so terrified for my safety, and then I forget about it for months, and I leave it in a car that somebody borrowed.

I mean, his description is like, oh, yeah, I left my coffee mug there; oh, it was there for months, I just forgot about it. It's a gun. We don't just leave guns lying around. Guns are a big deal. This country is obsessed with guns. People are killing each other every day with guns because we are so obsessed with them that we all need to have them, and we need to have them on us at all times.

So I'm supposed to believe that I left this gun in the car like somebody would leave their coffee mug or a pair of sneakers from the gym. That is just not believable on any level.

Then what I have is testimony from the defendant's witness that he and the other gentleman were taking turns driving, and that when he wasn't driving, he was back where the gun was, so his own witness puts him back there where the gun was.

And then I have the defendant saying to the trooper, oh, yeah, I knew that gun was there; yeah, I knew it was back there, it's my buddy's gun, and then he has extreme detail as to this gun, where it was purchased, how it was purchased.

I'm to believe that the defendant borrowed this car, and this gun just happened to be sitting in there, and it had been left in there from several months before when his buddy borrowed the car, so, apparently, everybody in Cedar Rapids is driving this van around and just leaving weapons in there willy-nilly, and that just flies into any -- the face of any common sense.

What I have here is the defendant admitting to the trooper that, yes, I knew the gun was back there, I know whose gun it is, and, yes, it was there, and he made the descriptions, and under the definition of knowledge and possession in the Illinois Code under 720 ILCS 5/4-2, possession, and 5/4-5, knowledge, the defendant's own admission to the officer was that he -- yes, he knew the gun

was there, and he had all the details about the gun.

Mr. Burrell said yeah, I only had .357, or whatever the bullets in there, and now we find out there's other bullets in there. In addition, the defendant's own witnesses put him in the back seat right next to where that gun was.

So I am going to find, with respect to Count I, that the State has met their burden of proof beyond a reasonable doubt. I'm finding the defendant guilty of Count I.

With respect to Count II, there is reasonable doubt in my mind as to whether or not the defendant had a prescription. He's got a bag of pills that is -- could get through TSA and the airport to go on vacation with that. He has a prescription for oxycontin. Whether or not this was an old one or a new one, he's got a valid current one. These were left over from a couple months ago. That's not unusual. That happens to people all the time.

So I don't think that the State has met their burden of proof with respect to Count II, the unlawful possession of a controlled substance.

So I'm finding the defendant guilty of the offense of speeding, not guilty of the other offenses, but guilty of the offense of unlawful possession of a firearm by a felon,

IN THE CIRCUIT COURT OF HENRY COUNTY, ILLINOIS
FOURTEENTH JUDICIAL CIRCUIT

Date of Sentence 033117
Date of Birth 072269

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) No. 15-CF-170
)
CHARLES P. WISE,)
Defendant.)

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS, the above-named defendant has been adjudged guilty of the offenses enumerated below. IT IS THEREORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
1	POSSESSION OF WEAPON BY A FELON	061815	720 ILCS 5/24-1.1(a)	3	2 YRS	1 YR
To run (concurrent with)(consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3						

The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 1 days as of the date of this order) from 061915-061915. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections. The defendant shall also receive credit for any time previously served in the Illinois Department of Corrections on this case. The defendant is eligible for day for day credit.

(X) Defendant shall pay a $100.00 Violent Crime Victim fee;

The Clerk of the Court shall deliver a certified copy of this order to the Sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

IT IS FURTHER ORDERED that, pursuant to 730 ILCS 5/5-4-3, the defendant shall provide specimens of his blood or saliva within 45 days of this Order at a collection site designated by the Illinois Department of State Police. The Illinois Department of

Filed 040717
Jackie Oberg, Clerk of Circuit Court
By _____ Deputy

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State Police shall provide all equipment and instructions necessary for the collection of blood or saliva samples. The collection of samples shall be performed in a medically approved manner. Only a physician authorized to practice medicine, a Registered nurse, or other qualified person approved by the Illinois Department of Public Health may withdraw blood for the purpose of this Order. Samples shall thereafter be forwarded to the Illinois Department of State Police, Division of Forensic Services and Identification, for analysis and categorizing into genetic marker groupings. The defendant is hereby ordered to cooperate with the collection of the specimen pursuant to this Order and defendant shall pay a $250.00 lab analysis fee to the Henry County Circuit Clerk for said DNA testing.

IT IS FURTHER ORDERED that the defendant shall pay the costs of this proceeding. Within 30 days of the defendant's release from the Illinois Department of Corrections, the defendant shall appear in person before this Court to establish a payment order for any owed fines, fees, costs and restitution. Defendant shall notify the Clerk of the Court of his current residence and mailing address within 30 days of his release from the Illinois Department of Corrections and shall keep the court advised of his current address within 7 days of any change of address until all fines, costs and assessments are paid in full.

This Order is effective immediately.

DATE: 4/7/17 ENTER: _____

CAROL M. PENTUIC

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IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICAL CIRCUIT
HENRY COUNTY, ILLINOIS
FELONY DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	NO.: 2015 CF 170
vs.	)	
	)	
CHARLES P. WISE,	)	
	)	
Defendant.	)	

NOTICE OF APPEAL

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

1) Court to which appeal is taken:

Appellate Court of Illinois, Third District
1004 Columbus Street, Ottawa, IL 61350

2) Name of appellant and address to which notices shall be sent:
Mr. Charles Wise
838 14th Street SE
Cedar Rapids, IA 52403

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

Appellant is indigent and requests that counsel be appointed for this appeal.

4) Date of Judgment or Order: Guilty verdict – 3/15/16; Sentencing -3/31/17

5) Offense of which convicted: Felon Poss/Use Weapon/Firearm

6) Sentence: 2 years DOC

7) Appellant is appealing his conviction for Felon Poss/Use Weapon/Firearm

DATE: April 6, 2017

SIGNED: [signature]

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Filed 04/017
Jackie Oberg, Clerk of Circuit Court
By [signature] Deputy

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