No. 131300

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. TERRY T. COLLINS, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-24-0005 There on Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois, No. 21 CF 1729 The Honorable David Paul Kliment, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ARGUMENT

As the People explained in their opening brief, because defendant *requested* that he be tried on the charge of unlawful possession of a firearm by a felon (UPWF) separately from the charge of aggravated unlawful use of a weapon (AUUW), he cannot object to the trial court giving him the separate trials that he requested. *See* Peo. Br. 9-19.[1] That bar, resulting from his strategic choice to pursue separate trials, applies equally whether the defendant cites the federal or state constitution or Illinois statutory or common law as the basis for his objection.

Although defendant seeks to avoid the consequences of his choice by arguing that he merely seeks to bar the People from litigating an "issue" or "theory," not to bar trial altogether, Def. Br. 19-20, that distinction is immaterial, for the "issue" or "theory" that defendant seeks to bar the People from litigating is whether he is guilty of the charged offense. The "issue" or "theory" that defendant seeks to bar the People from litigating is the fact that he possessed a firearm, which is one of the elements that the People must prove beyond a reasonable doubt to prove defendant guilty of AUUW. *See* C34-36; 720 ILSC 5/24-1.6(a). If the People are barred from attempting to prove this element of the offense, then they are barred from prosecuting the offense. *See* Def. Br. 20 (conceding that his proposed limitation would

[1] The People employ the same citation convention as in their opening brief, with the addition that the People's opening brief and defendant's appellee's brief are cited as "Peo. Br. __" and "Def. Br. __," respectively.

"effectively prohibit[ ]" prosecution of the charges). And, indeed, that is the relief that the trial court granted and the appellate court affirmed: outright dismissal of the charge of AUUW.

Under binding United States Supreme Court precedent, however, defendant's strategic choice to request severed trials bars him from invoking the double jeopardy clause of the federal constitution. And, under this Court's established, limited-lockstep approach to interpreting the double jeopardy provision of the Illinois Constitution, that same principle bars relief under the state constitution. Defendant's reliance on the statute and common law principles of issue preclusion is equally unavailing, for the doctrine of invited error precludes him from obtaining relief. Moreover, the doctrine of issue preclusion defined by statute and common law is the same doctrine of issue preclusion that is incorporated into the double jeopardy clause, and so is similarly inapplicable where, as here, a defendant makes a strategic choice to sever charges.

In sum, because defendant asked to be tried twice, in two separate proceedings, he cannot object to being tried twice on any basis.

I. Binding United States Supreme Court Precedent Holds That Defendant Cannot Object to the Separate Trial for AUUW Under the Federal Double Jeopardy Clause.

As explained in the People's opening brief, a defendant's "consent[ ] to two trials when one would have avoided a double jeopardy problem precludes any constitutional violation associated with holding a second trial." *Currier v. Virginia*, 585 U.S. 493, 502 (2018). The purpose of the double jeopardy

clause is to protect a defendant against an arbitrary or abusive government "subjecting him to embarrassment, expense and ordeal and compelling him to live in a state of anxiety and insecurity" as it repeatedly pursues convictions for the same offense. *Green v. United States*, 355 U.S. 184, 187 (1957); *see McElrath v. Georgia*, 601 U.S. 87, 94 (2024) (purpose of double jeopardy clause is to ward off "a potentially arbitrary or abusive Government that is in command of the criminal sanction" (internal quotation marks omitted)). When a defendant requests two trials because he thinks it strategically advantageous to defend against charges separately, he "experiences none of the prosecutorial 'oppression' the Double Jeopardy Clause exists to prevent." *Currier*, 585 U.S. at 502. Accordingly, a defendant who requests two trials cannot invoke the double jeopardy clause's issue-preclusion component to bar one of the trials on the ground that the government would have to prove an element that it failed to prove at the other trial. *Id.* at 501-02.

Nor can a defendant who requests two trials invoke issue preclusion to bar one of those trials just because it will take place after the other trial. When a defendant requests that the charges in a single indictment be tried in severed proceedings to obtain an evidentiary benefit with respect to some of those charges, it is irrelevant whether those severed proceedings take place simultaneously or sequentially. Just as a defendant who is tried on all counts simultaneously cannot use an acquittal on one count to challenge a guilty verdict on another count, *see People v. Jones*, 207 Ill. 2d 122, 133-34

(2003), a defendant who is tried on all counts at simultaneous severed proceedings may not use one jury's acquittal to challenge the other jury's guilty verdict, regardless of which jury happens to return its verdict first. A single case severed into two proceedings at the defendant's request puts the defendant in jeopardy only once. *Cf. People v. Kimble*, 2019 IL 122830, ¶ 32 (when defendant consents to mistrial, "retrial may proceed without offending double jeopardy principles" because "the second trial is properly understood as the continuation of the original jeopardy arising from the first trial").

The same is true when the severed proceedings occur sequentially rather than simultaneously, so that the two juries return their verdicts days rather than hours apart. The fact that the jury considering one half of a severed case returns its verdict before the jury considering the other half does not put the defendant in any additional jeopardy. Otherwise, the protection against double jeopardy would come down to a race between juries; if the jury that returns first delivers an acquittal, then the double jeopardy clause would bar the other jury from continuing its deliberations, but if the first jury delivers a guilty verdict, then the other jury is free to continue with its task. *Currier*'s straightforward application of waiver and invited-error principles avoids this absurd result. *See* 585 U.S. at 501-02 (following precedent holding that when defendant "invited a second trial," he is barred from later raising double-jeopardy challenge to that trial); *see also People v. Carter*, 208 Ill. 2d 309, 319 (2003) ("Under the doctrine of invited error, an accused may

not request to proceed in one manner and then later contend . . . that the course of action was in error.").

Although defendant maintains that *Currier* is "distinguishable" from his case, Def. Br. 26, he does not argue that the facts in *Currier* were materially different than the facts here, *see id.* at 26-31. Nor could he. In *Currier*, as here, the defendant moved to sever the charges against him to prevent prejudicial evidence that was probative on only one charge from affecting the jury's deliberations on others. 585 U.S. at 496. He was acquitted of the charge that was tried first, then attempted to prevent his trial on the remaining charges under the doctrine of issue preclusion. *Id.* at 497-98. That is exactly what happened here.

Rather than distinguish *Currier*, defendant argues that *Currier* was wrongly decided because, by barring a defendant who requests two trials from using the outcome of one trial to prevent the other, *Currier* supposedly forces defendants to choose between the right to the effective assistance of counsel and the right not to be put in jeopardy twice. *See* Def. Br. 26-31. But this Court does not review the merits of the United States's Supreme Court's decisions construing the United States Constitution. *See People v. Hale*, 2013 IL 113140, ¶ 20.

Moreover, *Currier* rejected defendant's argument, and for good reason: it is meritless. As *Currier* explained, "this simply isn't case where the defendant had to give up one constitutional right to secure another." 585

U.S. at 502-03. A defendant who considers seeking a severance to prevent evidence that is relevant to one count from potentially affecting deliberations on other counts "face[s] a lawful choice between two courses of action that each b[ear] potentially costs and rationally attractive benefits." *Id.* at 503. On the one hand, he may seek a severance, which will guarantee that the jury's consideration of the prejudicial evidence is limited to the relevant count but will subject him to two trials. On the other hand, he may choose to be tried on all counts together. In that case, he will avoid the stress and expense of two trials (and the risk that he or his witnesses will be impeached at the second trial with their testimony from the first), but he will have to rely on a limiting instruction to cabin the jury's consideration of the prejudicial evidence. This might be "a hard choice," like the decision "between exercising [one's] right to testify in [one's] own defense or keeping impeachment evidence of past bad acts from the jury," but the Supreme Court "has held repeatedly that difficult strategic choices like these" are choices that a defendant may constitutionally be required to make. *Id.*

Contrary to defendant's assertion that *Currier* puts counsel in an impossible position, Def. Br. 31, counsel is perfectly capable of making a reasoned strategic decision about whether to seek a severance, weighing the evidentiary benefit provided by severance against the risk, stress, and expense of two trials. Indeed, that is the choice that counsel contemplating a severance has always had to make, for Illinois courts recognized years before

Currier that "[a] major disadvantage of a severance is that it gives the State two bites at the apple," such that "[a]n evidentiary deficiency in the first case can perhaps be cured in the second." *People v. Poole*, 2012 IL App (4th) 101017, ¶ 10. Counsel may look at the prejudicial evidence at issue and reasonably conclude that it justifies seeking a severance of the counts. Or counsel might conclude that a limiting instruction or stipulation will sufficiently limit the risk of prejudice and reasonably decide to "pursue an 'all or nothing' trial strategy, in which the defendant is acquitted or convicted of all charges in a single proceeding." *People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 28. Ultimately, counsel must assess whether and how the defendant's chances of being acquitted on all charges are affected by seeking a severance and plan the defense strategy accordingly. "'[T]he Double Jeopardy Clause, which guards against Government oppression, does not relieve a defendant from the consequences of [such a] voluntary choice.'" *Currier*, 585 U.S. at 501 (quoting *United States v. Scott*, 437 U.S. 82, 99 (1978)).

Defendant's belief that counsel would be ineffective for not requesting a severance to exclude evidence of a defendant's prior felony convictions, Def. Br. 29-30, is unsupported by law. To the contrary, Illinois courts have frequently held that counsel acted reasonably by declining to request a severance for that purpose. *See, e.g., Poole*, 2012 IL App (4th) 101017, ¶ 10 (counsel not ineffective for declining to seek severance of UPWF charge);

People v. Gapski, 283 Ill. App. 3d 937, 942-43 (2d Dist. 1996) (same, where counsel could have anticipated that defendant would testify, making his prior conviction admissible, or "felt that it made sense to try for an acquittal of both counts in one proceeding, thinking that the impact of the additional conviction would not be significant"); *see also People v. Brown*, 2025 IL App (5th) 200194-U, ¶ 54 (same, where counsel "may have believed that the odds of getting an acquittal on all charges in one proceeding were greater than receiving acquittals in multiple proceedings").

Indeed, *People v. Utley*, upon which defendant primarily relies, *see* Def. Br. 30, recognized that counsel may reasonably decline to seek a severance. *Utley* held that counsel in that case was ineffective for not seeking a severance only because counsel "made no attempt to minimize the prejudice to [the] defendant in lieu of filing a motion to sever, either by filing a motion *in limine* or by offering to stipulate to the fact of [the] defendant's predicate felonies." 2019 IL App (1st) 152112, ¶ 48. Thus, *Utley* is consistent with precedent recognizing that counsel who wishes to exclude prejudicial evidence of his client's prior convictions has several reasonable options available. In choosing between those options, counsel must consider that one of the consequences of obtaining a severance is that the defendant will be tried twice. Whether that consequence warrants pursuing one of the other options is a question of strategic judgment.

Thus, *Currier*'s recognition of the principle that Illinois courts already recognized — that a defendant who requests two trials cannot use the outcome of one to prevent the other — does not force defendants to choose between the right to effective counsel and the right not to be put in jeopardy twice. It merely requires that counsel make strategic decisions about whether to request a severance by evaluating the pros and cons of doing so, just as counsel must do when making any other strategic decision.

To be sure, had defendant *not* requested that he be tried twice when faced with a single prosecution, then his acquittal of UPWF would bar a later, separate prosecution for AUUW because the People would have to prove the same element that the jury found they had not proved at the trial for UPWF — that defendant knowingly possessed a firearm. *See Dowling v. United States*, 493 U.S. 342, 347-48 (1990) (citing *Ashe v. Swenson*, 397 U.S. 436, 443-46 (1970)). But when a defendant *asks* to be tried twice in a single prosecution, he cannot invoke this principle.

II. Pursuant to This Court's Established, Limited-Lockstep Approach, Defendant Likewise Cannot Object to the Separate Trial for AUUW Under the Illinois Constitution's Double Jeopardy Clause.

Because the federal double jeopardy clause permits the People to try defendant on the severed AUUW count, the double jeopardy clause of article I, section 10 of the Illinois Constitution similarly permits that trial under the limited-lockstep doctrine that this Court applies to those cognate constitutional provisions. *See* Peo. Br. 16; *see Kimble*, 2019 IL 122830, ¶ 28

("We interpret our state's double jeopardy provision identically to the federal provision."); *People v. Colon*, 225 Ill. 2d 125, 153 (2007) (applying limited-lockstep doctrine to article I, section 10 double jeopardy clause).

Defendant does not dispute that the limited-lockstep doctrine forecloses his argument under the Illinois Constitution. Instead, defendant argues that the Court should abandon the limited-lockstep doctrine altogether whenever it disagrees with the Supreme Court's interpretation of a cognate federal provision. Def. Br. 36-38. But defendant's argument asks this Court to overturn decades of settled precedent and fundamentally misapprehends why the Court adheres to the limited-lockstep doctrine in the first place.

This Court follows the limited-lockstep doctrine because that is the approach necessary to give effect to the framers' intent. *People v. Caballes*, 221 Ill. 2d 282, 313 (2006) ("In the end, we affirm our commitment to limited lockstep analysis not only because we feel constrained to do so by the doctrine of *stare decisis*, but because the limited lockstep approach continues to reflect our understanding of the intent of the framers of the Illinois Constitution of 1970."). As this Court recognizes, the limited-lockstep doctrine "has deep roots in Illinois and was firmly in place before the adoption of the 1970 constitution." *Id.* at 292. "The existing state of the law at that time was lockstep interpretation of identical or nearly identical language," *id.* at 293-94, and "[t]his fact would have been known to the drafters of the Bill of

Rights of the 1970 constitution, to the constitutional delegates who voted to adopt the present language, and to the voters who approved the new constitution," *id.* at 292. Accordingly, when the people of Illinois adopted article I, section 10, with its text that is materially indistinguishable from that of the federal double jeopardy clause, they did so with the intent that it provide the same protections as the federal clause.

Although defendant cites *People v. McCauley*, 163 Ill. 2d 414 (1994), for the proposition that "Article I, Section 10 of the Illinois Constitution differs significantly from that the Fifth Amendment," Def. Br. 33, *McCauley* did not suggest that the limited-lockstep doctrine is inapplicable to the double jeopardy clause. Indeed, *McCauley* did not concern the double jeopardy clause at all; it addressed the validity of a waiver of the right to counsel during a custodial interrogation under the provision of the clause of article I, section 10 that protects against compulsory self-incrimination. 163 Ill. 2d at 421. After applying the limited-lockstep doctrine, the Court concluded that the framers intended the Illinois provision to provide different protections than the Fifth Amendment with respect to that issue. *Id.* at 439-46. Thus, *McCauley* merely identified a point on which the lockstep reached its limits due to a long-standing Illinois tradition of providing greater protection than the federal constitution.

This Court's continued interpretation of Illinois's double jeopardy clause in limited lockstep with the federal double jeopardy clause therefore

"is not a surrender of state sovereignty or an abandonment of the judicial function." *Caballes*, 221 Ill. 2d. at 314. It is a recognition that it is the sole and sovereign prerogative of the people of Illinois to provide such further protections as they deem proper. *Id.* at 316. Should the people determine that further protections are warranted, the people are free to add them "by amending the constitution or by the enactment of statutes by the General Assembly." *Id.* at 316-17. For example, the General Assembly enacted a statutory protection against a person being prosecuted for an offense previously prosecuted to final judgment in another state or federal jurisdiction, 720 ILCS 5/3-4(c), even though "the State and Federal double jeopardy clauses do not bar [such] prosecution under the long-recognized separate sovereigns doctrine," *People v. Porter*, 156 Ill. 2d 218, 221 (1993). "Such expansion of rights, however, is not the function of this [C]ourt." *Caballes*, 221 Ill. 2d at 317.

Therefore, the Court should reject defendant's invitation to overturn decades of precedent and ignore the framers' intent by abandoning the limited-lockstep doctrine.

III. Defendant Cannot Object to the Separate Trial for AUUW Under Illinois's Double Jeopardy Statute or the Civil Doctrine of Issue Preclusion.

As explained in the People's opening brief, defendant cannot object to separate trials under Illinois's double jeopardy statute, 720 ILCS 5/3-4(b)(2), or the common-law doctrine of issue preclusion because those objections are barred under the doctrines of invited error. Peo. Br. 16-19. Moreover,

defendant is incorrect that these provisions operate independently of, and are broader than, the protections of the United States and Illinois Constitutions.

A. Defendant is precluded from invoking the double jeopardy statute or the civil doctrine of issue preclusion under the doctrines of waiver and invited error.

As explained in the People's opening brief, even assuming (without deciding) that defendant could potentially invoke the double jeopardy statute or the civil doctrine of issue preclusion, principles of waiver and invited error preclude defendant's reliance on either source.

Issue preclusion (also known as collateral estoppel, *People v. Jefferson*, 2024 IL 128676, ¶ 34) "is an equitable doctrine." *People v. Watkins-Romaine*, 2025 IL 130618, ¶ 46. As such, even when its threshold legal requirements are met, it does not apply unless required by the dictates of fairness. *See Nowak v. St. Rita High Sch.*, 197 Ill. 2d 381, 391 (2001); *see also Watkins-Romaine*, 2025 IL 130618, ¶¶ 47-48 (declining to enforce issue preclusion where "[i]t would not be equitable" to the People). Fairness does not support the application of issue preclusion against the People, where defendant asked to be tried twice knowing that the issue of firearm possession would have to be tried in both proceedings.

Instead, defendant is barred from invoking issue preclusion under the competing equitable doctrine of invited error or acquiescence. *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004); *see People v. Reed*, 2020 IL 124940, ¶ 39 ("The invited error doctrine is akin to equitable estoppel in that a party may not request to proceed in one manner and then later contend the course of

action was in error." (cleaned up)). "Simply stated, a party cannot complain of error which that party has induced the court to make or to which that party consented." *Swope*, 213 Ill. 2d at 217.

Here, defendant asked the trial court to try him twice. He did so against the legal background of federal and Illinois precedent recognizing that an acquittal on whatever charge was tried first would not bar trial on the remaining charges. *See Currier*, 585 U.S. at 501-02; *Poole*, 2012 IL App (4th) 101017, ¶ 10. The People did not object to defendant's request, R83, and the court proceeded as he asked. Just as "it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings," *Swope*, 213 Ill. 2d at 217, it would be unfair to deny the People the opportunity to try defendant on the AUUW count, where defendant asked to be tried twice, and the People acceded to that request. *See Givens v. City of Chicago*, 2023 IL 127837, ¶ 77 ("[I]t is fundamental to our adversarial process that a party forfeits his right to complain of an error where to do so would be inconsistent with the position taken by that party in an earlier court proceeding."); *People v. Liechron*, 384 Ill. 613, 615 (1943) (enforcing defendant's waiver of double-jeopardy challenge where basis of challenge was trial court action that defendant had requested); *see also People v. Camden*, 115 Ill. 2d 369, 376-77 (1987) (whether mistrial bars retrial "turns on whether the mistrial can be said to be attributable to the

defendant by virtue of his motion or consent" (internal quotation marks omitted)).

Defendant asserts that the invited-error doctrine should not apply because, after asking the trial court to sever the charges, he did not then complain that it erred in doing so, *see* Def. Br. 21, but when he asked the court to sever the charges, he necessarily asked the trial court to conduct two trials, one on UPWF and another on AUUW. Thus, defendant's objection that the trial court will err by conducting the separate trial on AUUW that he requested is barred by the doctrine of invited error because he induced the trial court to hold two trials by requesting the severance.

In sum, the same fundamental principle that bars defendant from invoking the constitutional double jeopardy protections — that defendant is bound by his own strategic choice — bars him from invoking issue preclusion under the Illinois double jeopardy statute or common law.

B. Even if not barred by invited error, neither the statute nor the civil issue-preclusion doctrine extends beyond the constitutional double jeopardy right where defendant requests two separate trials.

In any event, neither the double jeopardy statute nor the civil issue-preclusion doctrine applies where the defendant's request for two separate trials precludes relief under the double jeopardy clause.

This Court has expressly held that "[t]he central purpose of section 3–4 of the Criminal Code of 1961 was to codify the rules of double jeopardy." *People v. Mueller*, 109 Ill. 2d 378, 383 (1985). Thus, Illinois courts have

consistently rejected arguments that the double jeopardy statute provides relief where the constitutional provisions do not. *See, e.g., People v. Staple*, 2016 IL App (4th) 160061, ¶ 26; *People v. Price*, 369 Ill. App. 3d 395, 404 (4th Dist. 2006).

Nor has this Court held that the civil doctrine of issue preclusion extends beyond the constitutional protections. Defendant asserts that *People v. Jefferson* "found that the civil doctrine of issue preclusion, when applied in the criminal context, exists independently of the Double Jeopardy Clause," Def. Br. 18, but *Jefferson* expressly did "not decide" whether "civil issue preclusion principles . . . appl[y] in all criminal cases as a general matter." 2024 IL 128676, ¶ 43. And the Court's precedent overwhelmingly recognizes that the doctrine of issue preclusion that was incorporated into the double jeopardy clause under *Ashe* is the same as Illinois's common-law doctrine of issue preclusion.

Under *Ashe*, if the People fail to prove an ultimate fact[2] at a trial held in one prosecution, then they are barred from trying another offense in a second prosecution that would require them to prove that same ultimate fact. *Dowling*, 493 U.S. at 347-48. The decisions that defendant cites apply the

[2] An "ultimate fact" is one that jury must find beyond reasonable doubt to convict, unlike "evidentiary facts," which may support findings of ultimate facts but need not themselves be found beyond reasonable doubt. *People v. Stavrakas*, 335 Ill. 570, 579 (1929); *see People v. Hester*, 131 Ill. 2d 91, 98 (1989) (distinguishing between "elemental or ultimate facts" and "basic or evidentiary facts").

same rule and hold that, when issue preclusion applies, it bars a second prosecution for an offense that would require relitigating the element found not proven beyond a reasonable doubt at the first prosecution. *See Carrillo*, 164 Ill. 2d at 151-52 (citing *Ashe* and holding that failure to prove intent at trial for attempted murder barred subsequent prosecution for intentional murder after the victim died but not subsequent prosecution for felony murder, which would not require proof of same element); *see also People v. Fort*, 2017 IL 118966, ¶ 34 (failure to prove that defendant committed first degree murder due to insufficient evidence that defendant did not act in imperfect self-defense barred subsequent prosecution for first degree murder, which would require proof of same fact). This doctrine does not apply here because the charges against defendant were part of the *same prosecution*. *See supra* pp. 3-4.

Defendant's reliance on *People v. Haran*, 27 Ill. 2d 229 (1963), for the proposition that Illinois's common-law issue preclusion differs from *Ashe* is misplaced. Since at least the early 1900s, this Court has recognized that issue preclusion does not limit the issues that may be litigated at a successive prosecution unless they are elements of both the offense that the People previously failed to prove and the offense that the People subsequently seek to prove. *See Hoffman v. Hoffman*, 330 Ill. 413, 418 (1928). Accordingly, the Court has consistently allowed evidence of acquitted conduct to be presented in a subsequent prosecution at which that conduct was not an element. *See*

People v. Kidd, 357 Ill. 133, 140-41 (1934) (although two offenses "were committed in the same transaction and were so directly connected that the proof was in some respects inseparable," the People "were not estopped by the former acquittal [of one offense] to prove any of the facts connected with the [other offense] charged in the case on trial although similar evidence was introduced in the former trial"); *Nagel v. People*, 229 Ill. 598, 603-04 (1907) (acquittal for robbery did not bar prosecution for murder that "grew out of the same act or series of acts," "[n]or was the State estopped by it from proving any of the facts connected with the crime charged in [the murder] indictment, although much or all of this evidence had been introduced in the former trial [for robbery]"). Similarly, the Court has consistently permitted defendants who were acquitted of one offense to be prosecuted for another offense based on the same conduct, even though doing so necessarily entailed presenting evidence of the acquitted offenses. *People v. Fox*, 269 Ill. 300, 311-12, 315-16 (1915) (defendant acquitted of arson for burning a building could still be prosecuted for burning goods inside that building, even though evidence that defendant hired someone to burn the building was used to prove he burned the goods). Thus, decades of Illinois precedent demonstrate that there was no long-standing tradition of excluding evidence of acquitted conduct from a prosecution for a different offense.

Then, in 1963, *People v. Haran* held that because the defendant had been acquitted of rape for having intercourse with the victim, evidence of

intercourse was inadmissible in a subsequent prosecution for a crime against nature, which did not require that intercourse be proved beyond a reasonable doubt. 27 Ill. 2d at 235-36.[3] *Haran* acknowledged that its holding was inconsistent with numerous prior decisions in criminal cases, including *Nagel* and *Kidd*, *id.* at 232-35, but broke with that precedent by purportedly extending the civil issue-preclusion doctrine articulated in *Hoffman*, or "estoppel by verdict," to criminal cases, *id.* at 231-32.

But *Haran* misapprehended *Hoffman*'s rule. *Haran* held that the evidence of intercourse was inadmissible in the prosecution for the crime against nature because whether the defendant had intercourse was an ultimate fact in the prior rape prosecution, even though it was not an ultimate fact in the subsequent prosecution for a crime against nature. *See id.* at 231 (acknowledging that "the acts in question constituted different crimes"). But *Hoffman* made clear that "[t]o operate as an estoppel by verdict it is *absolutely necessary* that there shall have been a finding of a specific fact in the former judgment or record that is material and controlling in that case and *also material and controlling in the pending case*." 330 Ill. at 418 (emphasis added). In other words, the civil doctrine of estoppel by verdict under *Hoffman*, like the issue preclusion component of the double jeopardy

[3] A crime against nature was defined as either anal sex between people or bestiality. *See* Deviate Sexual Behavior Under the New Illinois Criminal Code, 1965 Wash. U. L. Q. 220, 221 (1965), *available at* https://tinyurl.com/sft73xn5 (last visited Dec. 18, 2025).

clause defined in *Ashe*, does not apply unless the ultimate fact necessarily decided in the prior proceeding is also an ultimate fact that must be proved in the subsequent proceeding.[4]

Indeed, after *Haran*, this Court promptly returned to applying preclusion as articulated in *Hoffman* (and later, *Ashe*). *See People v. Jones*, 207 Ill. 2d 122, 138-39 (2003) (citing *Ashe* and applying *Ashe*'s articulation of issue preclusion); *Carrillo*, 164 Ill. 2d at 151-52 (same). On those occasions when the Court cited *Haran* for the proposition that issue preclusion applies to criminal cases, it did so alongside *Ashe* and applied the definition of preclusion from *Ashe* and *Hoffman* — that when a defendant is acquitted on the basis of a particular element, that same element cannot be retried as an element of a different offense. *See People v. Borchers*, 69 Ill. 2d 578, 581-89 (1977); *People v. Ward*, 72 Ill. 2d 379, 382-86 (1978). In 1985, in *People v. Mueller*, the Court reaffirmed that *Ashe* defines the limits of issue preclusion in criminal cases in Illinois, holding that overlap in the proof presented to prove different offenses was irrelevant "[e]xcept when there is a question of collateral estoppel [under *Ashe*]." 109 Ill. 2d at 387 (citing *Ashe*). And when

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[4] This same rule is codified in the Illinois Criminal Code. *See* 720 ILCS 5/3-4(b)(2) (providing that prior prosecution bars subsequent prosecution "if that former prosecution . . . was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution"); *see People v. Fosdick*, 166 Ill. App. 3d 491, 495-96 (1st Dist. 1988) ("Section 3-4(b)(2) of the Criminal Code embodies the common law doctrine of collateral estoppel, which is included in the double jeopardy prohibition of the fifth amendment to the United States Constitution.").

a few years later the United States Supreme Court in *Dowling* held that evidence of acquitted conduct may be presented at trial for an offense at which that conduct need not be proved beyond a reasonable doubt, 493 U.S. at 348-49, this Court followed and has continued to do so ever since. *See Colon*, 125 Ill. 2d at 151-52 (evidence of acquitted conduct admissible at subsequent prosecution for probation revocation); *In re Nau*, 153 Ill. 2d 406, 424-28 (1992) (same, at civil commitment proceeding); *People v. Jackson*, 149 Ill. 2d 540, 547-51 (1992) (same, at sentencing).

In other words, there is no difference between Illinois's common-law doctrine of issue preclusion and the doctrine of issue preclusion that is incorporated into the Illinois and federal double jeopardy clauses. Defendant cannot avoid the consequence of his request for two trials by claiming that his issue-preclusion objection would not bar the second of the two trials he requested.

CONCLUSION

This Court should reverse the appellate court's judgment and remand for trial on the AUUW charge. In addition, the Court should either (1) allow the People's PLA in No. 131298, reverse the appellate court's judgment in No. 2-23-0584, and remand for trial on the FOID violation charge, or alternatively (2) issue a supervisory order directing the appellate court to vacate its judgment in that case and reconsider in light of the Court's decision in this case.

January 27, 2026

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RULE 341(C) CERTIFICATE OF COMPLIANCE

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. 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) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,437 words.

/s/ Joshua M. Schneider
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Assistant Attorney General

CERTIFICATE 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 January 27, 2026, the **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

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