No. 129357

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANTHONY HARVEY, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-21-1242. There on appeal from the Circuit Court of Cook County, Illinois , No. 21119172101. Honorable Robert Kuzas, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

PHILIP D. PAYNE
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

***Lorena Essak-Hernandez, a third-year law student at Yale Law School and an intern with the First District of the Office of the State Appellate Defender, assisted in the research and drafting of this brief.**

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NATURE OF THE CASE

Anthony Harvey was convicted of unlawful use of a weapon after a bench trial and was sentenced to 30 days in the Cook County Jail.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether, in a prosecution for unlawful use of a weapon, (1) the State must prove that the defendant had not been issued a currently valid concealed carry license at the time of the alleged offense; and if so, (2) the State may satisfy that burden with evidence that the defendant merely did not possess a concealed carry license at the time of his arrest.

STATUTE INVOLVED

720 ILCS 5/24-1 (2021). Unlawful use of weapons.

(a) A person commits the offense of unlawful use of weapons when he knowingly:

. . .

(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:

. . .

(iv) are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act.

STATEMENT OF FACTS

Anthony Harvey was arrested on February 19, 2021, and charged with misdemeanor unlawful use of a weapon under 720 ILCS 5/24-1(a)(10). (C. 17-18).[1] After a bench trial, the circuit court found Harvey guilty and sentenced him to 30 days in the Cook County Jail, with time considered served. (C. 40-41).

Harvey's bench trial was held on August 12, 2021. (Supp.C. 4; Supp.3R. 48-49). For the State, Officer Baciu testified that, on the night of February 19, 2021, he and his partner (Officer Cruz) were on patrol when they saw a minivan driving with an obstructed windshield. (Supp.3R. 50-51). As the officers pulled the van over, Baciu saw the front passenger, who he identified as Harvey, "make a movement toward the floor board of the van." (Supp.3R. 52). While the officers spoke to the driver and passenger, Officer Cruz noticed the odor of alcohol and saw a suspicious liquid in two cups in the cup holders, so they asked the men to get out of the van. (Supp.3R. 53). When Harvey stepped out, Officer Baciu saw that Harvey's pants were unbuttoned. (Supp3.R. 54). Baciu could not recall if they found any alcohol in the van, but Cruz searched the interior and found a semiautomatic pistol between the driver's seat and passenger's seat, under a removable console. (Supp.3R. 53, 58). That location was accessible to Harvey as well as the driver. (Supp.3R. 58-59). Though the State elicited that Baciu inventoried the recovered gun, the gun itself was not presented at trial. (Supp.3R. 55).

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[1] In order to be consistent with the page numbering that appears in the record, citations to the record will be denoted as follows: "C. __" will refer to the common law record; "Supp.C. ___" will refer to the first supplemental common law record; "Supp.5C. ___" will refer to the second supplemental common law record; "R. ___" will refer to the report of proceedings; "Supp.2R. ___" will refer to the first supplemental report of proceedings, and "Supp.3R. ___" will refer to the second supplemental report of proceedings.

Officer Baciu testified that he had the following exchange with Harvey at the time of the stop regarding a Firearm Owner Identification card ("FOID") card and a concealed carry license ("CCL"):

STATE: Officer, did you ask whether the defendant had a FOID or CCL?

BACIU: I did.

STATE: And what did the defendant respond with?

BACIU: He related that he did not.

STATE: Did not?

BACIU: Possess either one.

STATE: A FOID or CCL?

BACIU: Correct. (Supp.3R. 53-54).

On cross-examination, Baciu acknowledged that the van was not registered to Harvey. (Supp.3R. 56). Baciu never saw a firearm in Harvey's possession. (Supp.3R. 56). Harvey never made any admission that he possessed the firearm. (Supp.3R. 57).

Officer Cruz testified in a manner generally consistent with Baciu. (Supp.3R. 60-65). When asked what Harvey said to him, Cruz referred to the same exchange to which Baciu had previously testified:

STATE: What, if anything, did you observe about the defendant when you were speaking to him?

CRUZ: I didn't really speak to him but my partner did.

STATE: Officer, did you ask whether the defendant had a FOID or a CCL?

CRUZ: Yes, and he said no.

STATE: He said no to what?

CRUZ: No to the CCL and to the FOID. (Supp.3R. 63).

On cross-examination, Cruz acknowledged that he never saw a firearm in Harvey's hands or on his person. (Supp.3R. 65-66). Though the gun was sent for fingerprinting, no latent prints were recovered. (Supp.3R. 66). The State rested. (Supp.3R. 67).

In moving for a directed finding, defense counsel argued, *inter alia*, that the State had presented "no witness testimony or stipulations from the state trooper that Mr. Harvey does not have a FOID or a concealed [carry] license." (Supp.3R. 67). After that motion was denied, the defense rested. (Supp.3R. 67-68).

In closing, defense counsel highlighted the lack of evidence linking the gun to Harvey, as well as the lack of evidence suggesting that Harvey would have known the gun was in the van. (Supp.3R. 68-70). In rebuttal, the State argued that Harvey's knowledge of the gun could be inferred from his actions in the van. (Supp.3R. 71).

The circuit court found Harvey guilty, concluding that the evidence of his unbuckled pants did not "really sway one way or the other," but that the "[furtive] movement just as the emergency equipment came on, a gun being found there I believe it was beyond a reasonable doubt that there was." (Supp.3R. 72). The court's factual findings do not mention anything relating to a CCL or the lack thereof.

The circuit court sentenced Harvey to 30 days in the Cook County Jail, with time considered served. (Supp.3R. 73; C. 40-41). In his post-trial motion, defense counsel renewed his argument that the evidence was insufficient to prove that Harvey had not been issued a valid CCL, and argued that the State had not proven the *corpus delicti* where the only evidence that Harvey lacked a CCL was his admission to the police that he did not possess one. (C. 46-47; Supp.3R. 116-17). The court denied this motion based on its credibility finding in favor of the testifying

officers. (Supp.3R. 121).

On appeal, Harvey argued that the evidence was insufficient to prove that he constructively possessed the recovered weapon, and that the State violated the *corpus delicti* rule where the only evidence that Harvey "ha[d] not been issued a currently valid" CCL was his one-word admission to officers. *People v. Harvey*, 2022 IL App (1st) 211242-U, ¶¶ 2, 8, 15. In advancing his *corpus delicti* argument, Harvey pointed out that the Second Amendment bars a categorical ban on possessing a firearm outside of the home, and consequently the State had to prove by competent evidence that Harvey had not been issued a valid CCL in order to sustain his conviction for UUW. (Deft. App. Br. 13-14; App. Reply Br. 7). The State, for its part, conceded that "[t]he People had to further prove that at the time defendant possessed the firearm, he did not have a valid license under the Firearm Concealed Carry Act." (St. App. Br. 5) (citing 720 ILCS 5/24-1(a)(10)(iv)).

A majority of the appellate court rejected Harvey's challenges to his conviction, concluding that his "furtive movement coupled with the subsequent recovery of the pistol was sufficient evidence, if not overwhelming evidence," to prove his constructive possession. *Harvey*, 2022 IL App (1st) 211242-U, ¶ 13. With respect to the *corpus delicti* challenge, the majority found that Harvey's admission to the officers "that he did not have a CCL" was sufficiently corroborated by his "furtive movement": "The court was entitled to find that an individual with a CCL would not have behaved in this manner." *Id.*, ¶ 18.

Justice Pucinski dissented, stating that the State's failure to "get a qualified exhibit entered as evidence or person to testify that the defendant did not possess a Concealed Carry License" indicated a "slap-dash" approach by the prosecution that was "inconsistent with our commitment to proof beyond a reasonable doubt."

Id., ¶ 23 (Pucinski, J. *dissenting*).

This Court granted Harvey's petition for leave to appeal on March 29, 2023.

ARGUMENT

In order to comport with the Second and Fourteenth Amendments, the State had to prove that Anthony Harvey had not been issued a currently valid concealed carry license to sustain his conviction for unlawful use of a weapon, and the State's evidence in this case fell short of that threshold.

When must the State prove a negative? That was the question with which Anthony Harvey began his petition for leave to appeal to this Court. Without attempting to universally resolve that question, one answer is as follows: the State must prove a negative when the Constitution requires it. Because "[t]he Second Amendment's plain text [ ] presumptively guarantees . . . a right to 'bear' arms in public for self-defense," *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, ___ U.S. ___, 142 S.Ct. 2111, 2135 (2022), the State cannot treat the possession of a firearm as presumptively illegal while demanding that the defendant prove his entitlement to the exercise of that constitutional right. Rather, in order to sustain a conviction for unlawful use of a weapon ("UUW") under 720 ILCS 5/24-1(a)(10)(iv), the State must prove that an individual was not properly licensed in Illinois to carry a concealed firearm in public.

Moreover, the State's evidence in this case failed to satisfy that burden. The only evidence adduced at Harvey's trial relating to a concealed carry license ("CCL") was his one-word admission that he did not possess such a license at the time of his arrest. (Supp.3R. 53-54, 63). Such evidence fails to carry the State's burden on an essential element of UUW, and it lacks sufficient corroboration to satisfy the *corpus delicti* rule. Accordingly, Harvey respectfully asks this Court to reverse his conviction for UUW.

A. The constitution requires the State to affirmatively prove that Harvey did not have a currently valid CCL.

The offense for which Harvey stands convicted, UUW under 720 ILCS 5/24-1(a)(10)(iv), makes it a crime to possess a loaded firearm in public without a CCL. That section provides:

> (a) A person commits the offense of unlawful use of weapons when he knowingly:
> . . .
>
> (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:
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> . . .
>
> (iv) are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act.

720 ILCS 5/24-1 (2021).

The above-referenced Firearm Concealed Carry Act ("the FCCA") was enacted in response to *Moore v. Madigan*, 702 F.3d 933, 934, 942 (7th Cir. 2012), which held that the UUW statute's erstwhile flat ban on the public carry of ready-to-use firearms violated the Second Amendment. 430 ILCS 66/1 *et seq*. (eff. July 9, 2013); *Culp v. Raoul*, 921 F.3d 646, 649-50 (7th Cir. 2019). The FFCA and the CCL licensing exception that was incorporated into section 24-1(a)(10)(iv) are precisely what corrected the constitutional infirmity recognized in *Moore*, by allowing an individual

to carry a concealed firearm in public in Illinois so long as he is properly licensed.

In other words, the simple possession of a loaded gun in one's vehicle, without more, *cannot* be a crime. See *Bruen*, 142 S.Ct. at 2135 ("[t]he Second Amendment's plain text [ ] presumptively guarantees . . . a right to 'bear' arms in public for self-defense"); *District of Columbia v. Heller*, 554 U.S. 570, 628-30 (2008) (finding unconstitutional a law banning the possession of handguns in the home and requiring any lawful firearms kept in the home be rendered inoperable); *Moore*, 702 F.3d at 940-42 (holding that Illinois's "flat ban on carrying ready-to-use guns outside the home" embodied in sections 720 ILCS 5/24-1(a)(4), (10) and 720 ILCS 5/ 24-1.6(a) violated the second amendment). This Court has recognized as much since *People v. Aguilar*, which, adopting the reasoning in *Moore*, held that parts of the aggravated UUW statute were unconstitutional because they "categorically prohibit[ed] the possession and use of an operable firearm for self-defense outside the home." 2013 IL 112116, ¶ 19-22.

Accordingly, as the State recognized below (St. App. Br. 5), in order to convict Harvey of *criminally* possessing a gun, in violation of section 24-1(a)(10), it had to prove that Harvey had not been issued a currently valid CCL. This is true notwithstanding a different statutory provision, which states that having a valid CCL at the time of the alleged offense gives rise to an exemption from prosecution under section 24-1(a)(10). See 720 ILCS 5/24-2(a-5) (2021).

1. As the State conceded below, the exemption statute does not apply to this case.

Section 24-2 of the Criminal Code tracks the same statutory language as appears in subsection 24-1(a)(10)(iv), but this time provides that an individual's valid CCL *exempts* him from prosecution under the UUW statute, so long as he

can prove it:

> (a-5) Subsections 24-1(a)(4) and 24-1(a)(10) do not apply to or affect any person carrying a concealed pistol, revolver, or handgun and the person has been issued a currently valid license under the Firearm Concealed Carry Act at the time of the commission of the offense.
>
> . . .
>
> (h) An information or indictment based upon a violation of any subsection of this Article need not negative any exemptions contained in this Article. *The defendant shall have the burden of proving such an exemption*.

720 ILCS 5/24-2(a-5), (h) (emphasis added).[2] This provision arguably requires a defendant to prove that he has a valid CCL, rather than requiring the State to prove that the defendant does not have a valid CCL. See *People v. Smith*, 71 Ill.2d 95, 105-06 (1978) ("[T]he State need never negate any exemption.").

However, thrusting the burden of proof on the defendant in this manner cannot stand under *Bruen*, wherein the United States Supreme Court held that "[t]he Second Amendment's plain text [ ] presumptively guarantees . . . a right to 'bear' arms in public for self-defense." *Bruen*, 142 S.Ct. at 2135. Since the conduct at issue here—"carry[ing] a handgun for self-defense outside the home," *Id*. at 2122—is presumptively protected conduct under the Second and Fourteenth Amendments, no State may reverse that presumption to effectively ban the carrying of firearms in public while requiring the defendant to prove that he has a license to do so. In other words, in order to bring subsection 24-1(a)(10)(iv) into comportment with the Second Amendment, that statute must be read to place the burden on the State to prove that the defendant had not been issued a currently valid CCL.

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[2] Like the FCCA, subsection 720 ILCS 5/24-2(a-5) was added to the exemptions statute with an effective date of July 9, 2013, in response to the *Moore* ruling.

See *Commonwealth v. Guardado*, 491 Mass. 666 (2023).

The State therefore correctly recognized in the courts below that, where the fact at issue determines whether defendant's conduct is criminal or constitutionally protected, that fact is an element of the offense the State must prove beyond a reasonable doubt. Cf. *People v. Tolbert*, 2016 IL 117846 (permitting defendant to bear burden of proving he was on another's property as an invitee, an exemption in section 24-2, where there is no constitutional right to possess a gun on someone else's private property); (St. App. Br. 5). If it were otherwise, then Illinois law would deem carrying a weapon outside the home to be *presumptively illegal conduct*. But this is precisely the opposite of what *Bruen* dictates: conduct that is covered by the "plain text" of the Second Amendment, including carrying a weapon outside the home for self-defense, is presumptively protected by the Constitution. *Bruen*, 142 S.Ct. at 2126.

Following *Bruen*, courts across the country have held that individuals who seek to bear arms in public through concealed carry of weapons are engaging in constitutionally protected conduct under the Second Amendment: specifically, the right to carry a handgun for self-defense outside the home. See, e.g., *Goldstein v. Hochul*, No. 22-CV-8300 (VSB), 2023 WL 4236164, at *7 (S.D.N.Y. June 28, 2023) (finding that Plaintiffs' "desire to carry concealed firearms into places of worship" is "clearly 'affected with a constitutional interest'"); *Antonyuk v. Hochul*, 639 F.Supp.3d 232, 297 (N.D.N.Y. Nov. 7, 2022) ("The Court begins this analysis by finding that the Second Amendment's plain text covers the conduct in question: carrying … a concealed handgun in public for self-defense."); *Siegel v. Platkin*, No. CV 22-7464 (RMB/AMD), 2023 WL 1103676, at *12 (D.N.J. Jan. 30, 2023) ("the Second Amendment's plain text covers the conduct in question (carrying

a concealed handgun for self-defense in public)."); *McKinney v. Fresno Cnty. Sheriff's Off.*, No. 122CV00475ADAEPG, 2022 WL 17822069, at *4 (E.D. Cal. Dec. 20, 2022) ("In light of *Bruen* and the complaint's allegation that Plaintiff wishes to obtain a California concealed carry permit, the Court concludes that the interest at stake is Plaintiff's interest in the right to publicly bear arms."); *United States v. Lewis*, No. 22-0222-WS, 2023 WL 4604563, *4, (S.D. Ala. July 18, 2023) (finding that "carrying a firearm in [a] bag while attending a neighborhood barbecue," *i.e.*, in public, falls within the plain text of the Second Amendment's guarantee).

Due process does not permit the State to require the individual to prove that he has a right to engage in constitutionally protected conduct. *Patterson v. New York*, 432 U.S. 197, 215 (1977) ("[A] State must prove every ingredient of an offense beyond a reasonable doubt, and [ ] may not shift the burden of proof to the defendant by presuming that ingredient upon proof of the other elements of the offense.") (citing *Mullaney v. Wilbur*, 421 U.S. 684 (1975)). As noted, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 142 S.Ct. at 2126. And such is the case here, because "[t]he Second Amendment's plain text thus presumptively guarantees . . . a right to 'bear' arms in public for self-defense." *Id.* at 2135. Since the Constitution presumptively protects Harvey's right to bear arms in public for self-defense, the burden must fall upon the State to prove that he was not entitled to do so. See *Walton v. Arizona*, 497 U.S. 639, 650 (2002) (State may not allocate the burden of proof in a manner that "lessen[s] the State's burden to prove every element of the offense charged").

2. Recent post-*Bruen* decisions reflect that the State must prove additional facts beyond mere possession of a firearm in public to sustain a criminal conviction.

For the foregoing reasons, section 24-1(a)(10)(iv) must be construed as requiring the State to prove the defendant did not have a valid CCL. This Court adopted just such a construction of a firearms statute in *People v. Ramirez*, 2023 IL 128123, ¶ 23, which held that a conviction for possession of a defaced firearm under 720 ILCS 5/24-5 requires proof that the defendant knew of the weapon's defacement. In reaching that conclusion, this Court noted that holding otherwise would necessarily violate the Second Amendment under *Bruen*:

> We further find that our construction of section 24-5(b) is necessary to avoid this provision impermissibly burdening the federal constitutional right to keep and bear arms. **A statute that criminalizes the knowing possession of a firearm, without more, would run afoul of the second amendment.** See *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ——, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022).

Ramirez, 2023 IL 128123, ¶ 26 (emphasis added). If section 24-1(a)(10)(iv) does not require affirmative proof from the State that an accused lacks proper licensure, then it "criminalizes the knowing possession of a firearm, without more," thus violating the Second Amendment. *Id*.

This is precisely what the Supreme Judicial Court of Massachusetts concluded when evaluating *Bruen*'s impact on its own firearm licensing regime. Like Illinois, Massachusetts law criminalizes the unlicensed possession of a handgun in public. *Commonwealth v. Guardado*, 491 Mass. 666, 667, 690 (2023). And similar to Illinois's exemption scheme, Massachusetts law starts from a presumption that the defendant was not so licensed, and requires him to advance his concealed carry license as an affirmative defense to a gun possession charge. *Guardado*, 491 Mass. at 667-68, (discussing *Commonwealth v. Gouse*, 461 Mass. 787, 807 (2012)). But in light of

Bruen, the Supreme Judicial Court found that, where the conduct at issue is presumptively protected by the constitution, the accused cannot be forced to prove that his exercise of the right was legitimate:

> Since our decision in *Gouse*, the United States Supreme Court has determined that the Second Amendment right to possess a firearm applies outside the home. In *Bruen*, the Court concluded that the Second Amendment's protection of "the individual right to possess and carry weapons in case of confrontation" requires that one have a "right to carry handguns publicly." The Court reasoned that "the Second Amendment guarantees an 'individual right to possess and carry weapons in case of confrontation,' and confrontation can surely take place outside the home."
>
> In the wake of *Bruen*, this court's reasoning in *Gouse* is no longer valid. **It is now incontrovertible that a general prohibition against carrying a firearm outside the home is unconstitutional.** Because possession of a firearm outside the home is constitutionally protected conduct, it cannot, absent some extenuating factor, such as failure to comply with licensing requirements, be punished by the Commonwealth. Accordingly, the absence of a license is necessary to render a defendant's possession of a firearm 'punishable.' **It follows, then, that failure to obtain a license is a 'fact necessary to constitute' the crime of unlawful possession of a firearm.**

Id. at 689-90 (citations omitted) (emphases added). Accordingly, the Massachusetts Supreme Judicial Court held that, "in order to convict a defendant of unlawful possession of a firearm, due process requires the Commonwealth prove beyond a reasonable doubt that a defendant did not have a valid firearms license." *Id.* at 669.

Given the similarities shared by the Massachusetts and Illinois statutory frameworks, as well as the universality of *Bruen*'s holding, this Court should use *Guardado* as a roadmap for analyzing the issue at bar. Harvey, like all of "the People" protected by the Constitution of the United States, has a right to due process of law. Under *Bruen*, Harvey has the presumptive right to possess a weapon outside the home. While that right is not without restriction, it is incumbent on *the State*

to show that he has exceeded the reasonable bounds of that constitutional right. It is unconstitutional for Harvey to be required to demonstrate a right to carry a weapon in public for self-defense.

3. The State has demonstrated in other cases that it can meet its burden to prove that a defendant has not been issued a valid CCL.

The State has the means to readily satisfy its burden of proving that a defendant has not been issued a currently valid CCL. In Illinois, one agency administers the application process for, and the issuance of, all CCLs: the Illinois State Police ("ISP"). See 430 ILCS 66/5; 430 ILCS 66/10(a)-(d). Likewise, the ISP is the sole agency that records and stores all CCLs in a searchable database, which statute mandates must be accessible to all law enforcement agencies and State's Attorney offices. 430 ILCS 66/10(i); see also, ISP Firearm Services Bureau website.[3] Accordingly, police and prosecutors have at their disposal the resources with which to demonstrate, either by live witness or by certification, that a given defendant "has not been issued a currently valid" CCL. See ISP Firearms Services Bureau Law Enforcement Portal.[4]

In fact, the State has already undertaken this practice in many other cases. In *People v. Beck*, 2019 IL App (1st) 161626, ¶ 10, for instance, the State introduced into evidence a certified letter from the ISP Division of Administration stating that no one with the defendant's name and date of birth had either a FOID or a CCL. See also, *People v. Diggins*, 2016 IL App (1st) 142088, ¶¶ 6-7 (same); *People v. Bell*, 2018 IL App (1st) 153373, ¶ 6 (same); *People v. Brown*, 2018 IL App (1st)

[3] Available at: https://isp.illinois.gov/Foid

[4] Available at: https://www.cclisp.com/Public/home.aspx?ReturnUrl=%2f

160924, ¶ 4 (same); *People v. Crowder*, 2018 IL App (1st) 161226, ¶ 12 (same). And in *People v. Cox*, 2017 IL App (1st) 151536, ¶¶ 21-22, the State presented a certification from an ISP employee attesting that there was no record of the defendant being issued a CCL.

Relying on this type of centralized data to prove a negative is not unique to firearms licensure either. Cases involving allegations of the unauthorized practice of law, for instance, provide a ready analogue. In *People v. Deming*, 87 Ill.App.3d 953, 958 (5th Dist. 1980), a post-conviction petitioner contended he was denied reasonable assistance of counsel at his guilty plea because, in part, his attorney was not licensed to practice law in Illinois. The appellate court found that the defendant had not established his lawyers' lack of Illinois licensure:

> Ordinarily, it is very difficult to prove a negative. However, the negative defendant sought to establish in this case, that [his attorneys] were not Illinois attorneys, could have been conclusively proven by reference to the official roll of attorneys licensed to practice law in Illinois in the year in question maintained by the Attorney Registration and Disciplinary Commission. No such evidence was offered at trial; therefore, we conclude that defendant failed to establish that [his attorneys] were foreign attorneys.

Deming, 87 Ill.App.3d at 959. Cf. *People v. Haiman*, 2018 IL App (2d) 151242, ¶ 24 (rejecting defendant's argument that, in drug prosecution, State has to prove that defendant did not have a valid prescription for the substance, as such would unreasonably require the State to contact every pharmacy in order to eliminate each as the provenance of the prescription). Per the express provisions of the FCCA, the ISP's CCL database, like the ARDC's official roll of licensed attorneys in *Deming*, provides access to the precise information by which the State can satisfy its burden in this and other UUW prosecutions. 430 ILCS 66/5, 430 ILCS 66/10(a)-(d), (i).

The State has thus demonstrated its ability to prove a defendant's lack

of licensure in other cases by reference to that database.

B. The State mustn't merely show that Harvey did not possess a CCL at his arrest, but rather that he had not been issued a currently valid CCL—a burden that the State failed to meet in this case.

Having shown that the constitution requires the State to prove, as an element of UUW under section 24-1(a)(10)(iv), that a defendant lacks a CCL, Harvey turns to this Court's next step: determining whether the State's evidence in this case was sufficient to satisfy that burden. A review of the evidence shows that the State failed to meet its burden.

Due process requires proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); U.S. Const. amend. XIV; Ill. Const. 1970, art. 1, § 2. Reviewing courts ask whether, considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A conviction must be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Smith*, 185 Ill.2d 532, 541 (1999). Under this standard, while the Court must give due consideration to the fact that the trier of fact saw and heard the witnesses, the Court must still carefully examine the evidence. *Smith*, 185 Ill.2d at 541; *People v. Ortiz*, 196 Ill.2d 236, 267 (2001). A trial judge's decision to accept testimony during a bench trial is entitled to deference, but it is neither conclusive nor binding on a reviewing court. *People v. Herman*, 407 Ill.App.3d 688, 704 (1st Dist. 2011).

Section 24-1(a)(10)(iv) prohibits the possession of a firearm on a public street, but excepts from prosecution any individual who "has been issued a currently valid license under the Firearm Concealed Carry Act." 720 ILCS 5/24-1(a)(10)(iv).

This form of UUW requires the State to prove that Harvey had *not* been issued a valid CCL at the time of the alleged offense. See *People v. Laubscher*, 183 Ill.2d 330, 335 (1998) ("When an exception appears as part of the body of a substantive offense, the State bears the burden of disproving the existence of the exception beyond a reasonable doubt in order to sustain a conviction for the offense."); *People v. Bruemmer*, 2021 IL App (4th) 190877, ¶ 30 ("[I]f the exception is necessary in defining or describing the offense, then the State must negate the exception, meaning it must prove beyond a reasonable doubt the defendant does not fall within the exception."). Mere evidence that Harvey did not *possess* a CCL at the time of his arrest is insufficient to meet this burden.

The manner in which this Court has read and construed substantially similar statutory language in the aggravated unlawful use of a weapon ("AUUW") statute provides support for this interpretation. In *People v. Holmes*, 241 Ill.2d 509 (2011), this Court considered the defendant's conviction for AUUW based on possession of a firearm in a vehicle and "the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card." 720 ILCS 5/24-1.6(a)(1), (3)(C) (2004). The State argued, in part, that the defendant's Indiana gun permit was immaterial to his conviction because "he did not have his Indiana permit in his possession at the time of his arrest." *Holmes*, 241 Ill.2d at 521-22. This Court rejected that contention based on the language of the statute:

> The unlawful use of a weapon statute provides that it is an aggravating factor where the defendant "has not been issued a currently valid FOID card." The language of the unlawful use of weapons statute only contemplates that a FOID card has been issued to that individual. **There is no requirement in the unlawful use of weapons statute that an individual have his or her FOID card or other similar permit in his or her possession**.

Id. at 522 (emphasis added).

Following *Holmes*, several appellate court decisions have found an accused's failure to present a FOID card at the time of his arrest was insufficient to prove that he had not been issued one. *In re Manuel M.*, 2017 IL App (1st) 162381, ¶ 15, the respondent challenged his AUUW conviction, which was "predicated on not having been issued a valid FOID card." At trial, the arresting officer "indicated that the respondent did not present a FOID card following his arrest, but the State presented no evidence that the respondent had not been issued a FOID card." *Id.* The appellate court, accepting the State's concession, reversed the respondent's AUUW conviction. *Id.* (citing *Holmes*, 241 Ill.App.3d at 522) ; *In re Gabriel W.*, 2017 IL App (1st) 172120, ¶ 3 (same). See also, *Diggins*, 2016 IL App (1st) 142088, ¶ 18 ("[W]hether defendant *has been issued a valid FOID* card was an essential element the State had to prove in order for the trial court to convict him of AUUW.") (emphasis added). In other words, *Holmes* and its progeny indicate that the State cannot fulfill that essential element of UUW by pointing the finger at the defendant's failure to produce a proper license at his arrest. Rather, the State must affirmatively prove that Harvey had not "been issued a currently valid" CCL at the time of the firearm possession. 720 ILCS 5/24-1(a)(10)(iv).

The evidence in this case plainly falls short of that threshold. The arresting officers in this case did *not* ask Harvey if he had been issued a currently valid CCL. Nor did the State present testimony or documentary evidence from any witness or regulatory body indicating that Harvey had not been issued a currently valid CCL. Instead, when the prosecution asked Officer Baciu whether he had asked Harvey if he "had a FOID or a CCL," Baciu testified that Harvey "related that he did not." (Supp.3R. 53-54). Baciu immediately clarified that Harvey told him he did not "*[p]ossess* either one." (Supp.3R. 54) (emphasis added). Officer Cruz's

testimony offers no more clarity on this point:

> STATE: Officer, did you ask whether the defendant had a FOID or a CCL?
>
> CRUZ: Yes, and he said no.
>
> STATE: He said no to what?
>
> CRUZ: No to the CCL and to the FOID. (Supp.3R. 63).

In sum, both the officers testified that Harvey did not possess a CCL. This was the totality of the State's evidence on the lack of licensure element. The exchange between the officers and Harvey fails to show that Harvey had not been issued a valid CCL; it merely speaks to his lack of *possession* of a CCL when he was arrested. As Justice Pucinski pointed out below in dissent, that was not sufficient to carry the State's burden:

> When a man's liberty interest is at stake, the least the state could do is get a qualified exhibit entered as evidence or person to testify that the defendant did not possess a Concealed Carry License.

People v. Harvey, 2022 IL App (1st) 211242-U, ¶ 23 (Pucinski, J. *dissenting*).

As noted above, the State has demonstrated in other cases its ability to prove that a defendant has not been issued a valid firearm license with competent documentary evidence from the ISP database. See, *e.g.*, *Beck*, 2019 IL App (1st) 161626, ¶ 10; *Diggins*, 2016 IL App (1st) 142088, ¶¶ 6-7; *Bell*, 2018 IL App (1st) 153373, ¶ 6; *Brown*, 2018 IL App (1st) 160924, ¶ 4; *Crowder*, 2018 IL App (1st) 161226, ¶ 12; *Cox*, 2017 IL App (1st) 151536, ¶¶ 21-22. Failing to do so amounts to a "shortcut" that "makes the case look slap-dash and is inconsistent with [the] commitment to proof beyond a reasonable doubt." *Harvey*, 2022 IL App (1st) 211242-U, ¶ 23 (Pucinski, J. *dissenting*).

Harvey acknowledges that several Illinois decisions suggest that the State

can satisfy the lack of licensure element merely by showing that the defendant did not possess a FOID or a CCL at the time of his arrest, or that the defendant failed to affirmatively produce such a license. See *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 30 (rejecting argument that State had to affirmatively prove that defendant had not been issued a valid FOID: "The law in Illinois does not require the State to prove a negative and we decline to do so in this case."); *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 36 (remanding for sentencing on AUUW conviction based on "defendant's acknowledg[ment to officers] that he did not have a FOID card on his person at the time of the offense"); *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 12 (characterizing the charged version of AUUW as "predicated upon a defendant's *inability to produce a valid FOID card*") (emphasis added).

To the extent that *Grant* holds that the State never has to prove a negative, that plainly is not the case. See, *e.g.*, *People v. Eubanks*, 2019 IL 123525, ¶ 88 ("Establishing a violation of [failure to report an auto accident causing death] necessarily requires the State to prove a negative: the State must prove that the defendant did not report the offense within half an hour."). Nor do these decisions adequately contend with express statutory language that defines the FOID or CCL licensure element by requiring the State to prove that an accused has not "been issued a currently valid" FOID or CCL. See 720 ILCS 5/24-1.6(a)(1), (3)(A-5), (3)(C); 720 ILCS 5/24-1(a)(10)(iv). Finally, these decisions do not address this Court's finding in *Holmes* that the salient question is whether the defendant has been *issued* a license, not whether he possesses one at the time of his arrest. 241 Ill.2d at 521-22.

Accordingly, Harvey respectfully asks that this Court reverse his conviction

for UUW where the State failed to prove that he had not been issued a currently valid CCL.

C. Alternatively, the State failed to prove the *corpus delicti* of the offense, where the only evidence that Harvey lacked a valid concealed carry license was his own statement.

If this Court concludes that the officers' testimony regarding Harvey's one-word admission that he did not possess a CCL was enough to satisfy the lack of licensure element of UUW, his conviction still must fall under the *corpus delicti* rule. For the State failed to introduce any independent evidence to corroborate Harvey's alleged admission.

Proof of an offense requires proof of two concepts: (1) that a crime occurred; and (2) that it was committed by the person charged. *People v. McKown*, 2022 IL 127683, ¶ 45; *People v. Sargent*, 239 Ill.2d 166, 187 (2010); *People v. Cloutier*, 156 Ill.2d 483, 503 (1993). The first of these concepts, *i.e.*, the "fact of a transgression," is known as the *corpus delicti* (Latin for "body of the crime"). Black's Law Dictionary 369 (8th ed. 2004)."[P]roof of the *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement." *Sargent*, 239 Ill.2d at 183. Where a defendant's admission is part of the prosecution's evidence of the *corpus delicti*, "the prosecution must also adduce corroborating evidence independent of a defendant's own statement." *Cloutier*, 156 Ill.2d at 503; see also *People v. Lara*, 2012 IL 112370, ¶ 17. If the defendant's confession is corroborated, then "the corroborating evidence may be considered together with the confession to determine whether the crime, and the fact the defendant committed it, have been proven beyond a reasonable doubt." *Sargent,* 239 Ill.2d at 183. If the defendant's confession is not corroborated with independent evidence, however, "a conviction based on the confession cannot be sustained." *Id.* See also *People*

v. Willingham, 89 Ill.2d 352, 358-359 (1982) ("It is axiomatic that, in order for a conviction based on a confession to be sustained, the confession must be corroborated.").

While the independent evidence corroborating the admission need not, by itself, prove the crime beyond a reasonable doubt, that evidence must tend to confirm the defendant's confession. *Cloutier*, 156 Ill.2d at 503; see also *People v. Williams*, 317 Ill.App.3d 945, 954 (2000)(the independent evidence need not mirror every detail of the confession, but it must tend to strengthen the confession); *People v. Rivera*, 2011 IL App (2d) 091060, ¶ 41 ("[T]he State's independent evidence must inspire belief in the defendant's confession."). The independent evidence must be analyzed, "not with an eye to whether it tended to buttress the confession as a whole, but whether it established or tended to establish the specific crime charged." *People v. Wright*, 286 Ill.App.3d 456, 461 (1st Dist. 1996).

As discussed at length above, the charged levied against Harvey required the State to prove, *inter alia*, that he had not been issued a valid CCL. 430 ILCS 66/10(c)(2) (allowing a CCL holder to keep a loaded, concealed firearm about his person within a vehicle); *Aguilar*, 2013 IL 112116, ¶¶ 19-21 (finding a categorical ban on firearm possession unconstitutional). Here, the only evidence introduced by the State regarding the CCL element of the offense, whether Harvey lacked a CCL, was his alleged statement to the arresting officers. (Supp.3R. 53). Officer Baciu testified that he asked Harvey whether he "had a FOID or a CCL," and Harvey answered no, meaning he "did not possess either one." (Supp.3R. 53-54). Officer Cruz testified to the same exchange, stating that, when asked whether he "had a FOID or a CCL," Harvey "said no." (Supp.3R. 63). Those bits of testimony constitute the *entirety* of the State's proof with regard to an essential element

of the offense as, aside from his one-word admission, there was simply no evidence even hinting that Harvey had not been issued a valid CCL.

The lack of a valid CCL amounted to *the* dispositive fact that had the capacity to turn Harvey's conduct from legal to illegal. *Ramirez*, 2023 IL 128123, ¶ 26 ("A statute that criminalizes the knowing possession of a firearm, without more, would run afoul of the second amendment.") (citing *Bruen*). Because possession of a firearm in public is presumptively protected by the Constitution, *Bruen*, 142 S.Ct. at 2126, the mere existence of a gun in the vicinity of an accused cannot, by itself, constitute the corroboration that satisfies the *corpus delicti* rule.

Thus, there is nothing to corroborate Harvey's admission that he did not possess a CCL. The majority of the appellate court below concluded that Harvey's admission"that he did not have a CCL" was sufficiently corroborated by his "furtive movement" when the police activated the emergency lights: "The court was entitled to find that an individual with a CCL would not have behaved in this manner." *Harvey*, 2022 IL App (1st) 211242-U, ¶ 18. Even if we assume that the movement attributed to Harvey during the traffic stop suggests that he was placing the gun underneath the van's console, that does nothing to support the notion that he had not been issued a valid CCL. In other words, the "furtive movement" ascribed to Harvey is simply the act of placing one's gun in a concealed place when the police are approaching. It is entirely reasonable for a passenger in a car who possesses a firearm, legally or otherwise, to ensure that the weapon is stowed away before interacting with police. Certainly, it is preferable for all parties involved for the individual to disarm himself before interacting with law enforcement, regardless of whether or not he has been issued a valid CCL. And again, the furtive movement may lend itself to proving that Harvey had constructive possession

of the recovered weapon, but it does nothing to make it more likely that he had not been issued a valid CCL.

Lastly, this case is distinguishable from *Grant*, 2014 IL App (1st) 100174–B, ¶¶ 25-26, where the appellate court affirmed a defendant's conviction upon a *corpus delicti* challenge, finding there was sufficient evidence the defendant did not have a currently valid FOID card. Although the State in *Grant* relied primarily on the defendant's admission to the arresting officer that he did not have a FOID card, the appellate court held that "there was corroborating evidence apart from the defendant's admission," including that the defendant fled when the officers approached, indicating consciousness of guilt. *Id*. at ¶¶ 29-33. Also, since the defendant stated that he had purchased the gun for $75 from a "crack head" three months prior to his arrest, the appellate court concluded that "the illegal origin of the gun certainly could be regarded by the trier of fact as evidence corroborating the defendant's statement that he did not possess a valid FOID card when he was arrested[.]" *Id*. at ¶ 32.

Unlike *Grant*, in this case, there was simply no evidence to corroborate Harvey's statement—Harvey did not try to flee from police at any point, he cooperated with them throughout, and there was no evidence whatsoever that the firearm had an illegal origin. Thus, since the State failed entirely to corroborate Harvey's statement with independent evidence, it did not establish the *corpus delicti* of the charged offense. Accordingly, this Court should reverse Harvey's conviction for unlawful use of a weapon.

CONCLUSION

For the foregoing reasons, Anthony Harvey, Defendant-Appellant, respectfully requests that this Court reverse his conviction for unlawful use of a weapon.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

PHILIP D. PAYNE
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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 or words contained in 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, the certificate of service, and those matters to be appended to the brief under Rule 342, is 27 pages.

/s/Philip D. Payne
PHILIP D. PAYNE
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Anthony Harvey No. 129357

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION/MUNICIPAL DEPARTMENT-DISTRICT

PEOPLE OF THE STATE OF ILLINOIS

v.

ANTHONY M HARVEY
Defendant

CASE NUMBER 21119172101

SID NUMBER

IR NUMBER 1765354

ADDENDUM TO PREVIOUS ORDER SETTING BAIL AND COMMITTING THE DEFENDANT TO THE COOK COUNTY DEPARTMENT OF CORRECTIONS FOR FAILURE TO DEPOSIT BAIL

ORDER

THIS MATTER COMING BEFORE THE COURT AND THE COURT BEING FULLY ADVISED IN THE PREMISES, IT IS HEREBY ORDERED:

DEFENDANT TO BE RELEASE FROM THIS CASE ONLY

NEXT COURT DATE:

C01 , PNG JW FG 30 DAYS CCDOC TCS/TAS C02, C03 , City Non-Suit;

DISPOSITION(S) MUST REFLECT WHICH COUNT(S) THE ORDER(S) ARE APPLICABLE TO.

ENTERED: 8/12/2021

Judge Kuzas, Robert D

2129
Judge's No.

DEPUTY CLERK: V. Tenard

ROOM/BRANCH: Branch 43, Room 1

VERIFIED BY:

AT: 9:00 AM

ENTERED
8/12/2021
Iris Y Martinez
Clerk of the Circuit Court
of Cook County, IL
V. Tenard
DEPUTY CLERK

IRIS Y MARTINEZ , CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STATE OF ILLINOS)
) SS
COUNTY OF COOK)

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT --- CRIMAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellee,	)	Appeal from the Circuit
	)	Court for the First
Vs.	)	Judicial Circuit, Cook
	)	County, Illinois
ANTHONY HARVEY	)	21119172101
Defendant-Appellant.	)	Honorable Robert Kuzas
	)	Judge Presiding.

NOTICE OF APPEAL

Anthony Harvey, the Defendant – Appellant in the above-captioned and numbered cause, gives Notice that an appeal is taken from the order of judgement described below:

1. Court to which appeal is taken: Branch 43
2. Name of appellant and address to which notices shall be sent.

   Name: Anthony Harvey

   Address: 1525 E 53rd Street, Suite 440 Chicago IL 60615
3. Name and address of appellant's attorney on appeal

   Name: Illinois State Appellate Defender

   Address: 203 N LaSalle, 24th Floor, Chicago IL 60601
4. Date of judgment or order: September 23rd , 2021
5. Offense of which convicted: Unlawful use of a weapon
6. Sentence: 30 days Cook County Department of Corrections

Respectfully submitted,

Samuel Jackson

Samuel Jackson III
Law Office of Samuel Jackson III

1525 E 53rd St, Suite 440
Chicago IL 60615
(773) 993 – 8852
Attorney # 57503
sjacksondefense@gmail.com

2022 IL App (1st) 211242-U

No. 1-21-1242

Order filed December 27, 2022.

First Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 21119172101
	)	
ANTHONY HARVEY,	)	The Honorable
	)	Robert D. Kuzas,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justice Coghlan concurred in the judgment.
Justice Pucinski dissented.

ORDER

¶ 1 *Held*: The evidence was sufficient to sustain the defendant's conviction for unlawful use of a weapon where his furtive movement in the area where a gun was subsequently found permitted the trial court to find he knew the firearm was present. Additionally, the State established the *corpus delicti* where the defendant's statement was corroborated by his furtive movement.

¶ 2 Following a bench trial, defendant Anthony Harvey was found guilty of misdemeanor unlawful use of a weapon and was sentenced to 30 days in prison. On appeal, he asserts that the

evidence was insufficient to demonstrate that he knew a weapon was present. Defendant also asserts that the State did not establish the *corpus delicti* because it failed to corroborate his statement to police that he did not possess a concealed carry license (CCL). For the following reasons, we affirm the trial court's judgment.

¶ 3 I. Background

¶ 4 At trial, the State presented the testimony of Officers Baciu and Cruz. Their testimony showed that at about 11:36 p.m. on February 19, 2021, the officers were patrolling in the area of 4513 West Chicago Avenue when they observed a 2010 Chrysler Town and Country being driven with an obstructed view. After the officers activated their emergency equipment, Officer Baciu observed defendant, sitting in the front passenger seat, "reach down towards the middle of the floor board." Officer Cruz similarly testified that "defendant made a motion towards the middle floorboard."

¶ 5 Once the Chrysler was curbed, the officers spoke to its occupants and smelled alcohol. In addition, Officer Baciu saw two cups in the cup holders. As defendant stepped out of the vehicle per the officers' request, they observed that his pants were undone, as though he was trying to conceal or discard something. The officers then searched the car for alcohol. While Officer Baciu did not recall if any was found, the officers did recover a SA1 Springfield XD-9 millimeter semi-automatic pistol. Officer Baciu testified that the gun was found "[a]pproximately where [defendant] was reaching in between the driver's seat and passenger's seat under a removable object." Moreover, the pistol was in defendant's immediate area and was easily accessible to him. When asked if he had a firearm owners identification card or a CCL, defendant responded that he did not. The Chrysler was not registered to defendant and the officers did not know whether fingerprints were found on the firearm.

¶ 6 The trial court found defendant guilty of unlawful use of a weapon. While the state of defendant's pants did not sway the court, it noted that defendant made a furtive movement after emergency equipment was activated and a firearm was subsequently recovered from that location. The court then sentenced defendant to 30 days in prison.

¶ 7 II. Analysis

¶ 8 On appeal, defendant asserts that the evidence was insufficient to prove that he constructively possessed the firearm.

¶ 9 In reviewing a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, any rational tier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Cline*, 2022 IL 126383, ¶ 25. This is true even where the evidence is circumstantial. *People v. Smith*, 2015 IL App (1st) 132176, ¶ 24. Additionally, we must draw all reasonable inferences in favor of the State (*Cline*, 2022 IL 126383, ¶ 25) and must not substitute the trier of fact's credibility judgments with our own (*Smith*, 2015 IL App (1st) 132176, ¶ 29). We will not reverse the trial court's judgment unless the evidence is so improbable, unreasonable or unsatisfactory as to leave a reasonable doubt of the defendant's guilt. *People v. Jones*, 2019 IL App (1st) 170478, ¶ 25.

¶ 10 Section 24–1(a)(10)(iv) states, in pertinent part, that a person commits unlawful use of a weapon "when he knowingly *** [c]arries or possesses on or about his or her person, upon any public street, *** any pistol ***, except that this subsection (a)(10) does not apply to or affect transportation of weapons that *** are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act." 720 ILCS 5/24-1(a)(10)(iv) (West 2020). Thus, the State was required to prove that defendant knowingly possessed the pistol recovered from the Chrysler.

¶ 11 A defendant's knowing possession of contraband may be actual or constructive. *Jones*, 2019 IL App (1st) 170478, ¶ 27. To demonstrate constructive possession, the prosecution must prove that the defendant knew that the weapon was present and exercised immediate, exclusive control over the area where the weapon was found. *People v. Wise*, 2021 IL 125392, ¶ 25; see also *People v. Givens*, 237 Ill. 2d 311, 339 (2010) (finding that the presence of other individuals does not diminish the defendant's exclusive dominion and control). Here, defendant solely asserts that the State failed to demonstrate he knew that the pistol was in the vehicle.

¶ 12 A defendant's presence in a vehicle is not alone sufficient evidence that he knows a weapon is therein. *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). In addition, defendant's control over and access to an area does not alone show he knew that contraband was present. *People v. Macias*, 299 Ill. App. 3d 480, 487 (1998). That being said, constructive possession, including the element of knowledge, is usually demonstrated by circumstantial evidence, as direct proof is rarely available. *Givens*, 237 Ill. 2d at 339. Factors relevant to the defendant's knowledge include (1) whether the weapon was visible to the defendant; (2) the time period in which the defendant would have been able to observe the weapon; (3) whether the defendant made any gestures indicating an effort to hide or retrieve the weapon; (4) the weapon's size; and (5) whether the defendant had a possessory or ownership interest in the vehicle or the weapon found inside. *Bailey*, 333 Ill. App. 3d at 891-92. Knowledge may be established by the defendant's statements or conduct from which the trier of fact can infer that he knew the weapon was present. *Smith*, 2015 IL App (1st) 132176, ¶ 27. Generally, knowledge and possession are factual questions to be resolved by the trier of fact. *Id.*

¶ 13 Here, as defendant concedes, the officers testified that after they activated their emergency equipment, they observed defendant make a movement toward the floorboard.

Testimony also showed that the pistol was subsequently found in that area. Furthermore, the trial court found the officers' testimony to be credible. While defendant argues that defendant reacted to the officers' presence in the manner of a person holding a cup of alcohol, this ignores that the alcohol was in the cupholders, not down toward the floor. The evidence of defendant's furtive movement coupled with the subsequent recovery of the pistol was sufficient evidence, if not overwhelming evidence, to permit the trial court to find that he had been concealing the pistol and, thus, knew of its presence.

¶ 14 Citing other factors relevant to knowledge, defendant argues that the pistol was not visible when found, that it was apparently small, that he had no possessory interest in the vehicle and that no fingerprint evidence showed he had handled the pistol. Given defendant's furtive movement, however, the State was not required to establish those factors. *Cf. Bailey*, 333 Ill. App. 3d at 892 (finding no evidence showed the defendant knew that a weapon was under his seat where, among other things, the officers did not testify to seeing the defendant make any gestures suggesting he was attempting to hide or retrieve the weapon); *Macias*, 299 Ill. App. 3d at 486-87 (finding the State did not establish the defendant's knowledge of contraband where, among other things, the police did not see the defendant enter the bedroom where contraband was recovered, the defendant testified he had not been in that bedroom and no fingerprints linked him to the premises or the contraband). Defendant has cited no authority setting a minimum number of factors required for a trial court to find a defendant had the requisite knowledge. Accordingly, the evidence of defendant's knowledge was sufficient.

¶ 15 Next, defendant asserts that the State failed to establish the *corpus delicti* because no evidence corroborated his admission that he had not been issued a valid CCL. We disagree.

¶ 16 The proof necessary to establish an offense requires the State to demonstrate the *corpus delicti*, *i.e.*, that a crime occurred. *People v. King*, 2020 IL 123926, ¶ 53. Generally, the State cannot establish this through the defendant's confession or out-of-court statement alone. *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 26. This rule arose from the historical mistrust of out-of-court confessions. *People v. Lara*, 2012 IL 112370, ¶ 18.

¶ 17 When a confession is part of the *corpus delicti*, the State must present additional, independent evidence corroborating that confession. *People v. Sanchez*, 2019 IL App (3d) 160643, ¶ 13. Yet, it is only necessary that such independent evidence tend to demonstrate the commission of a crime. *Lara*, 2012 IL 112370, ¶ 18. Only some consistency between the defendant's admission and the independent corroboration is required. *Smith* 2015 IL App (1st) 132176, ¶ 18. The independent evidence need not be so strong that it alone proves the commission of the offense beyond a reasonable doubt. *Sanchez*, 2019 IL App (3d) 160643, ¶ 14. It is also unnecessary for the independent evidence to disprove the possibility that no crime occurred. *Lara*, 2012 IL 112370, ¶¶ 38, 41. In short, "the *corpus delicti* rule requires only that the corroborating evidence correspond with the circumstances recited in the confession and tend to connect the defendant with the crime. The independent evidence need not precisely align with the details of the confession on each element of the charged offense, or indeed to any particular element of the charged offense." *Id.* ¶ 51.

¶ 18 Here, defendant told the officers that he did not have a CCL. In addition, the trial court found, based on the officers' testimony, that defendant made a furtive movement to conceal the pistol after the officers activated their emergency equipment. The court was entitled to find that an individual with a CCL would not have behaved in this manner. Accordingly, independent

evidence that defendant made a furtive movement corroborated his statement that he lacked a CCL, establishing the *corpus delicti*.

¶ 19 Finally, to the extent that defendant's opening brief asserts in a conclusory fashion that his conviction violates the second amendment, he has failed to develop a cohesive argument in that regard. Accordingly, that contention is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 242 (stating that the appellate court is entitled to clearly defined issues and cohesive arguments).

¶ 20 For the foregoing reasons, we affirm the trial court's judgment.

¶ 21 Affirmed.

¶ 22 JUSTICE PUCINSKI, dissenting:

¶ 23 Where a man's liberty interest is at stake the least the state could do is get a qualified exhibit entered as evidence or person to testify that the defendant did not possess a Concealed Carry License. Taking shortcuts makes the case look slap-dash and is inconsistent with our commitment to proof beyond a reasonable doubt. I would reverse.

No. 129357

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANTHONY HARVEY, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-21-1242. There on appeal from the Circuit Court of Cook County, Illinois , No. 21119172101. Honorable Robert Kuzas, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Anthony Harvey, 201 Mason Avenue, Chicago, IL 60644

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 September 27, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the Defendant-Appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/ Erika Roman
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us