

ARGUMENT

The People's opening brief established that the General Assembly intended that anyone carrying a stun gun or Taser have a concealed carry license (CCL) under the Concealed Carry Act (CCA) and that if someone possesses a CCL, carries his Taser or stun gun in a completely or partially concealed manner, and avoids the restricted locations enumerated in the CCA, then he is carrying the weapon in accordance with the CCA, and therefore legally. In other words, the unlawful use of a weapon (UUW) statute regulates the carriage of stun guns and Tasers, as opposed to banning it.

Moreover, this regulation is reasonable under the Second Amendment. While the firearms training portion of Illinois's licensing system may have little relevance to the carriage of stun guns and Tasers, the rest of the system *is* relevant because stun guns and Tasers are highly dangerous, sometimes lethal, weapons. Tasers and stun guns are firearms according to the UUW statute and, as with other firearms, it is reasonable for the State to consider an applicant's criminal history and mental health, as well as whether he is a danger to himself or others, when he seeks to carry a Taser or stun gun in public. The licensing process imposes a relatively modest burden on Second Amendment rights, and that burden is closely tied to the government's interest in ensuring the safe, responsible carriage of a dangerous firearm. Therefore, the UUW provisions related to stun guns and Tasers survive this Court's means-ends analysis under the Second Amendment.

I. The Plain Language of the U UW Statute Regulates, Rather Than Bans, the Carriage of Stun Guns and Tasers.

The “cardinal rule” of statutory interpretation is to give effect to the General Assembly’s intent. *People v. Hardman*, 2017 IL 121453, ¶ 19. The best indicator of that intent is usually the statutory language given its plain and ordinary meaning, *id.*, and the plain language of the U UW statute provides that it “does not apply to” stun guns or Tasers that “are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license.” 720 ILCS 5/24-1(a)(4)(iv). Thus, by its plain language, the U UW statute regulates the carriage of stun guns and Tasers, rather than banning it.

Moreover, we have clear evidence that when the General Assembly wants to completely ban the carriage of certain types of weapons, it knows how to do so. Subsection (a)(1) of the U UW statute completely bans the carriage of switchblade knives, throwing stars, brass knuckles and other similar dangerous weapons. 720 ILCS 5/24-1(a)(1). Subsection (a)(7) completely bans the carriage of machine guns; sawed-off shotguns and rifles; and bombs, grenades, and Molotov cocktails. 720 ILCS 5/23-1(a)(7). Stun guns and Tasers could have been included in either of these sections had the legislature intended to effectuate a complete ban. Instead, the General Assembly chose to include them with pistols and revolvers, which can be carried legally so long as they are carried in accordance with the CCA by a person with a valid CCL. Therefore, this Court “must presume that the legislature did not intend” to completely ban stun guns and

Tasers. *See Brucker v. Mercola*, 227 Ill. 2d 502, 532 (2007); *see also City of Chicago v. Roman*, 184 Ill. 2d 504, 520 (1998) (same).

Because the plain language of the UUW statute does not ban carriage of stun guns and Tasers, defendants' statutory interpretation argument rests principally on the text of other statutes.¹ The People acknowledge the tension between the language of the CCA, which excludes stun guns and Tasers, and the language of the UUW statute, which does not. The Court must, if possible, construe the CCA and UUW statute in harmony, *see People v. Villa*, 2011 IL 110777, ¶ 35, and here, it is not only possible to harmonize them, but it can reasonably be done in such a way as to affirm the constitutionality of the UUW statute. *See People v. Johnson*, 225 Ill. 2d 573, 584 (2007) (this Court will affirm statute's constitutionality if it is reasonably possible to give statute such an interpretation). For example, because stun guns and Tasers are excluded from the CCA, a licensee could not be prosecuted under sections 65 or 70 of the CCA, which ban carriage in prohibited areas and while intoxicated. 430 ILCS 66/65; 430 ILCS 66/70. But under the UUW statute, one can be prosecuted for carrying a stun gun or Taser in public, unless one abides by the same rules the CCA applies to handguns. In other

¹ One of the statutes defendants rely on is 720 ILCS 5/24-1.6, barring *aggravated* UUW. Whether the distinct language the General Assembly chose to use in that statute *is* a complete ban on carriage of a stun gun or Taser — and the People do not concede that it is — is not before this Court. This Court should not infer from the language of the AUUW statute that the General Assembly intended for UUW to act as a complete ban on the carriage of stun guns and Tasers when the plain language of the UUW statute unambiguously does not impose a ban.

words, while the CCA may not have contemplated the licensed carriage of stun guns and Tasers, under the UUW statute, one who carries a stun gun or Taser as he would legally carry a handgun — with a valid CCL, fully or partially concealed, and not in the prohibited areas listed in section 65 of the CCA — is not guilty of UUW.

Defendant contends that the CCA's restrictions on manner of carriage do not apply to stun guns and Tasers given the statute's exclusion of those weapons from its scope. Def. Br. 14. If that is so, then legal carriage of a stun gun or Taser under the UUW statute would merely require the person possessing the weapon to have a valid CCL. In other words, this is also a reasonable interpretation that harmonizes the CCA and UUW statutes in a manner that preserves the constitutionality of the UUW statute.

In sum, the People's interpretation gives effect to the plain and unambiguous language of the UUW statute, *see Hardman*, 2017 IL 121453 at ¶ 19, harmonizes it with the CCA, *see Villa*, 2011 IL 110777 at ¶ 35, and preserves the constitutionality of both, *see Johnson*, 225 Ill. 2d at 584. In contrast, defendants offer no reasonable interpretation of the UUW statute's plain language that demonstrates a legislative intent to completely ban stun guns and Tasers.

II. Requiring Stun Guns and Tasers to be Carried in Accordance with the Concealed Carry Act Does Not Violate the Second Amendment.

Regardless of whether legal carriage of a stun gun or Taser requires compliance with the carriage restrictions imposed by the CCA or merely possession of a valid CCL, these regulations of the right to possess a stun gun or Taser in public are reasonable ones. Defendant argues that the CCA's regulatory scheme makes no sense when applied to stun

guns and Tasers because the Act mandates firearms training rather than Taser-specific training. Yet firearms training is but one feature of the Act's regulatory scheme. At the very least, requiring a person seeking to carry a Taser or stun gun to comply with the other prerequisites for a CCL significantly advances the State's safety-related interests. "Illinois is entitled to check an applicant's record of conviction, and any concerns about his mental health, close to the date the applicant proposes to go armed on the streets."

Berron v. Ill. Concealed Carry Licensing Review Bd., 825 F.3d 843, 847 (7th Cir. 2016).

The State's right to regulate, via the CCA, citizens who wish to arm themselves in public applies whether the person in question chooses to appear in public while armed with a handgun or a less dangerous, but still lethal, stun gun or Taser. The People's opening brief detailed the lethal history of stun guns and Tasers, how even trained police officers struggle to use them safely, and how the Taser company itself has acknowledged that it manufactures a lethal weapon. Peo. Br. 11-14. Increased training of police and efforts by the Taser manufacturer to eliminate fatal encounters involving their weapons have not brought an end to them, however. For example, this Fall, police in San Mateo County, California killed a third person in 2018 by using a Taser, prompting police there to reconsider their use of the "less lethal" weapon. Vivian Ho, *After third Taser death, California police officials reconsider 'less-lethal' weapon*, The Guardian (Oct. 31, 2018), <https://www.theguardian.com/world/2018/oct/31/san-mateo-county-taser-death-law-enforcement> (last visited December 12, 2018). Indeed, even the CCA's firearms training provision has relevance to Tasers and stun guns. As discussed in the People's opening

brief, the training includes instruction on the use of force in self-defense, defense of one's dwelling, defense of other property, and crimes such as unlawful use of a weapon. Peo. Br. 12; 20 Ill. Adm. Code 1231.10. Knowledge of these laws is necessary whether the weapon in question is a handgun, a stun gun, or a Taser.

CONCLUSION

For these reasons, and those stated in the People's opening brief, this Court should reverse the judgments of the circuit court and reinstate defendants' convictions.

December 19, 2018

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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(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is six pages.

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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. The undersigned certifies that on December 19, 2018, the foregoing **Reply Brief of Plaintiff-Appellant** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and copies were served upon the following by email:

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