No. 125392

IN THE
SUPREME COURT OF ILLINOIS

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

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

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ORAL ARGUMENT REQUESTED

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ARGUMENT

The General Assembly reasonably decided that convicted felons should not possess dangerous weapons. Thus, the offense of unlawful use or possession of a weapon by a felon (UUWF), 720 ILCS 5/24-1.1, prohibits a convicted felon from possessing a dangerous weapon or firearm "on or about his person or on his land or in his own abode or fixed place of business." 720 ILCS 5/24-1.1(a). In other words, the UUWF statute clearly states that possession is unlawful both outside of a felon's home, business, or land *and* within them; and this Court and the appellate court have construed the statute that way for decades. Further, defendant's interpretation—that the law prohibits possession on a felon's land, or in his home or business, but not constructive possession in a vehicle traveling over public roads—is absurd. Defendant fails to justify the appellate majority's departure from decades of settled law.

I. The UUWF Statute Plainly Includes A Blanket Prohibition On Felons Possessing Dangerous Weapons.

Defendant incorrectly claims that the "State's arguments essentially invite this Court to look beyond the plain language of the U[U]WF statute." Def. Br. 6. To the contrary, the People ask this Court to assess the plain language of the statute in the context of the statutory scheme. *See People v. Casas*, 2017 IL 120797, ¶ 18 ("A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation."). When this Court construes a statute, it "consider[s]

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the statute's context, reading the provision at issue in light of the entire section in which it appears, and the Act of which that section is a part." *People v. Lloyd*, 2013 IL 113510, ¶ 25; *see also People ex rel. Devine v. Sharkey*, 221 Ill. 2d 613, 622 (2006) ("We are not required to turn a blind eye to a statute or a statutory scheme and construe a single subsection in isolation.").

Indeed, even defendant acknowledges that this Court must construe the UUWF statute in context. For starters, defendant argues that the Court should construe the UUWF statute in light of a now-repealed provision of the statute prohibiting unlawful possession of firearms and firearm ammunition (UPFFA), 720 ILCS 5/24-3.1. Def. Br. 2-3. And he asks the Court to look to its construction of similar language in the unlawful use of a weapon (UUW) predecessor statute in *People v. Liss*, 406 Ill. 419 (1950). Def. Br. 4. Thus, the parties agree that this Court should interpret the UUWF statute in the context of the statutory scheme as a whole. Doing so, it is clear that the UUWF statute imposes a blanket prohibition on felons possessing dangerous weapons, including in vehicles on public roads.

A. The UUWF statute prohibits felons from possessing any firearm in any location.

The People's opening brief demonstrated that the statutory framework makes clear that the UUWF statute prohibits constructive possession of a weapon in a vehicle. Peo. Br. 8-11. As explained, Illinois law treats felons and non-felons differently with respect to where they are prohibited from

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possessing a firearm. UUWF prohibits possession of a dangerous weapon both outside felons' homes, businesses, and land *and* within them. 720 ILCS 5/24-1.1(a) (prohibition applies to possession "on or about [the felon's] person or on his land or in his own abode or fixed place of business"). In contrast, UUW prohibits possession "in any vehicle or concealed on or about [the non-felon's] person," but not "when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission." 720 ILCS 5/24-1(a)(4), (a)(10); *see also* 720 ILCS 5/24-1.6(a)(1), (a)(2) (making the same distinction in the aggravated unlawful use of weapons (AUUW) statute). "In enacting section 24-1 [the UUW section], the legislature decided that it should be criminal . . . to possess *certain* weapons in *certain, defined* manners," but in "enacting section 24-1.1 [UUWF], the legislature determined that it should be a crime for a felon to possess *any* firearm, in *any* situation." *People v. Gonzalez*, 151 Ill. 2d 79, 87 (1992) (emphases in original). "Accordingly, under this scheme, it is *always* a felony offense for a *felon* to possess a firearm even though a nonfelon who possesses the same firearm in the same manner may be guilty of only a misdemeanor or of no crime at all, depending on the facts." *Id.* at 87-88 (emphasis in original).

Notably, where possession in a vehicle is specifically mentioned in the UUW and AUUW statutes, it is treated as equivalent to possession on or about a person. *See* 720 ILCS 5/24-1(a)(4); 720 ILCS 5/24-1.6(a)(1); *see also*

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720 ILCS 5/24-1(a)(3); 720 ILCS 5/24-1(a)(9); *see also* Peo. Br. 10-11. In contrast, where the legislature wanted to limit unlawful possession to immediately accessible firearms, it did so explicitly and did not use the "on or about his person" language. *See* 720 ILCS 5/24-1(a)(4)(ii), (a)(10)(ii); 720 ILCS 5/24-1.6(a)(3); *see also* Peo. Br. 11. If "on or about his person" meant "immediately accessible," the latter would be redundant in the UUW and AUUW sections. For instance, the exception in subsection 5/24-1(a)(10)(ii) for weapons that "are not immediately accessible" would add nothing to the language regarding a weapon "[c]arrie[d] or possesse[d] on our about his or her person." 720 ILCS 5/24-1(a)(10). Defendant does not contest this point. *See* Def. Br. 11. That UUWF does not add the "immediately accessible" exception to the "on or about his person" language, while UUW does, demonstrates that the exception does not apply to the former.

In sum, UUWF's blanket prohibition on firearm possession by felons necessarily includes constructive possession in a vehicle based on the plain language of the UUWF statute interpreted in the context of the statutory scheme as a whole: that context demonstrates that UUWF imposes broader proscriptions on firearm possession by felons than UUW and AUUW do by non-felons; possession on or about a person in UUWF is equivalent to possession in a vehicle under UUW and AUUW; and UUWF uses the language "on or about his person," but not "immediately accessible."

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B. The history of the UPFFA statute confirms that the UUWF statute imposes a blanket prohibition.

To evade this result, defendant unavailingly turns to the history of the statute prohibiting unlawful possession of a firearm or firearm ammunition (UPFFA), 720 ILCS 5/24-3.1. *See* Def. Br. 2-3. Public Act 83-1056, which enacted the UUWF statute, also amended section 24-3.1(a)(3) to make it a Class A misdemeanor for a felon to possess a firearm or firearm ammunition. According to defendant, the legislature's use of different language to create a blanket prohibition in section 24-3.1(a)(3) demonstrates that it did not intend to create a blanket prohibition in section 24-1.1. *See* Def. Br. 2-3. But the history of the UPFFA statute only confirms that the UUWF statute bars felons from possessing firearms, regardless of location.

After Public Act 83-1056 became effective, courts interpreted both UUWF and UPFFA to impose blanket bans on felons possessing firearms. In *People v. Crawford*, 145 Ill. App. 3d 318 (1st Dist. 1986), for example, the appellate court concluded that "sections 24-1.1 and 24-3.1 share identical elements of proof for the prosecution of a convicted felon found in possession of a firearm: conviction of a felony and knowing possession of a firearm." *Id.* at 325. The court rejected the defendant's argument that his prosecution for UUWF rather than UPFFA violated his rights to due process and equal protection, reasoning that "the legislature intended to provide the prosecutor with . . . discretion in determining the charge," as "evidenced by the fact that Public Act 83-1056 which enacted section 24-1.1 also amended sub-paragraph

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(a)(3) of section 24-3.1." *Id.*; *see also id.* ("[w]hen two acts relating to the same subject matter are passed by the same legislature, the courts must construe them together"); *see also People v. Terry*, 176 Ill. App. 3d 947, 949 (1st Dist. 1988) (relying on *Crawford* to reject due process claim even though sections 24-1.1 and 24-3.1 both were blanket bans on felons possessing firearms).

Subsequently, the General Assembly eliminated the misdemeanor crime of UPFFA. *See* 85th Ill. Gen Assemb., Senate Proceedings, May 2, 1987, at 132 (Statement of Senator Degnan) (explaining that possession of firearm by felon was then "a Class 3 felony and also elsewhere in the code a Class A misdemeanor," and "[w]e are removing the Class A misdemeanor wording"); 85th Ill. Gen Assemb., House Proceedings, June 26, 1987, at 386 (Statement of Representative O'Connell) (bill "deletes the lesser included offense of unlawful possession of a firearm, which is a misdemeanor and you are then compelled to be charged solely with a felony," and "eliminates the discretion of the prosecutor to charge you with a misdemeanor as opposed to the higher offense of a felony").

Thus, both courts and the General Assembly recognized that, when enacted, UUWF and UPFFA created blanket prohibitions on felons possessing firearms; the legislature then determined that the proper penalty for a violation of this ban was a felony sentence, and it eliminated the misdemeanor UPFFA offense. Defendant's interpretation of the UUWF

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statute to only partially prohibit felons from possessing firearms is diametrically opposed to the legislative intent to create a blanket ban.

Relatedly, defendant's argument that if the legislature intended the UUWF statute to be a blanket ban, it would have either used the same language as the UPPFA statute or omitted the 19 words after "possess" in section 24-1.1(a), is also incorrect. Def. Br. 9. To begin, as defendant concedes, there is no single way to draft a statute to accomplish a legislative goal. And, in any event, defendant's argument that the People's interpretation makes the 19 words after "possess" superfluous—*i.e.*, the statute could have created a blanket prohibition by eliminating them and simply banning "possession"—misses the mark. The General Assembly was not writing on a blank slate. On the contrary, the UUW and AUUW statutes already barred non-felons from possessing firearms in public, but not within their homes, businesses, or land. Thus, the legislature was compelled to clarify that UUWF barred felons from possessing in *all* locations. *See supra* Section I.A; *see also* Peo. Br. 8-11.

Moreover, defendant does not contest that his construction would render language elsewhere in the statutory scheme redundant (specifically, the limitation on unlawful possession of immediately accessible firearms). *See supra* p. 4; Def. Br. 11; *see also Casas*, 2017 IL 120797, ¶ 18 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous."). Defendant asserts that

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the redundancy his construction would create in the UUW and AUUW statutes is not "the issue at hand," Def. Br. 11, but this Court's task is to interpret the UUWF statute in the context of the statutory scheme as a whole, and creating redundancy in that scheme cannot be dismissed as a problem for another day. *See supra* pp. 1-2. That context, including the history of the UPPFA statute, makes clear that the UUWF statute bans felons from possessing firearms in all locations.

C. The statutes prohibiting armed violence and unlawful possession of a firearm by a street gang member do not support defendant's interpretation.

The longstanding construction of the UUWF statute's "on or about" language to prohibit constructive possession in a vehicle is also consistent with the way "on or about" has been interpreted in the armed violence statute. *See* Peo. Br. 20. *People v. Harre*, 155 Ill. 2d 392 (1993), held that a defendant was guilty of armed violence when he was standing outside a closed car door and firearms were on the front seat of the car. *Id.* at 400-01. *Harre* explained that the defendant was guilty because "armed violence occurs if a defendant commits a felony while having on or *about* his person a dangerous weapon or if a defendant is *otherwise* armed." *Id.* at 401 (emphasis in original). The Court emphasized that "[w]e would completely eviscerate the deterrent purpose of the armed violence statute if we were to require police officers to wait to announce their presence and effect an arrest until a defendant's access and control over a readily available weapon had

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ripened into the temptation to take actual physical possession, which would invite rather than deter violence." *Id.*

Defendant points out that in *Harre* there was circumstantial evidence that the defendant was inches from the weapon at an earlier time. Def. Br. 13-14. But that does not change the fact that this Court found sufficient the direct evidence that Harre was "only a moment from opening the car door, which would have removed any possible remaining obstruction to defendant's unfettered access to and unrestricted control over such weapons." 155 Ill. 2d at 400-01. Under *Harre*, therefore, the weapon does not need to be within arm's reach for it to be "on or about" the defendant's person.

Defendant's reliance on *Henderson v. United States*, 687 A.2d 918 (D.C. 1996), also fails. There, the District of Columbia Court of Appeals determined that a statute providing that "'[n]o person shall carry . . . either openly or concealed on or about their person" a pistol did not apply to a pistol in the trunk of Henderson's car. *Id.* at 920 (quoting D.C. Code § 22-3204(a)). But *Henderson* relied on the distinction between "carry" and "possess," explaining that if the statute had used the latter term, then it would have prohibited constructive possession in a vehicle. *Id.* at 921. Unlike the law at issue in *Henderson*, Illinois's UUWF statute uses "possess." Moreover, the District of Columbia Court of Appeals clarified two years later that the dispositive fact in *Henderson* was that the pistol was in the trunk. *See White v. United States*, 714 A.2d 115, 120 (D.C. 1998). Indeed, *White* identified a

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violation of the statute under circumstances where the defendant would have had to stand up and walk to the back of his ice cream truck to access the gun. *Id.*

Similarly unavailing is defendant's argument that the People's construction would render superfluous language in the statute prohibiting unlawful possession of a firearm by a street gang member, 720 ILCS 5/24-1.8. *See* Def. Br. 12. That statute makes it a violation for a street gang member to either possess a firearm "on or about his or her person" in certain public locations without a FOID card, 720 ILCS 5/24-1.8(a)(1), or possess a firearm without a FOID card "in any vehicle" if the firearm is "immediately accessible," 720 ILCS 5/24-1.8(a)(2). Contrary to defendant's position, however, section 24-1.8(a)(2) provides additional confirmation that possession "on or about" one's person includes constructive possession in a vehicle and, in addition, that the General Assembly knew how to limit liability to cases where the firearm is immediately accessible when it wanted to. Section 24-1.8(a)(2) makes clear that when the weapon is in the car, a defendant will be in violation of the street gang member statute only if the weapon is "immediately accessible." But according to defendant's proposed interpretation of the UUWF statute, "on or about his person" already applies to immediately accessible weapons in a vehicle—*i.e.*, adding weapons immediately accessible in a vehicle adds nothing to weapons on or about one's person. So, in fact, it is defendant's argument that would render language in

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the unlawful possession of a weapon by a street gang member statute superfluous.

In sum, the text of the statutes prohibiting armed violence and unlawful possession of a firearm by a street gang member support rather than undermine the People's position that the UUWF statute prohibits constructive possession of a firearm by a felon in a vehicle.

D. The legislature's acquiescence to the judicial construction is meaningful.

Defendant concedes that this Court has long held that legislative acquiescence is an indicator of legislative intent. Def. Br. 23-24. He also cites *Blount v. Stroud*, 232 Ill. 2d 302 (2009), Def. Br. 6, 22, 24, which explains that "[w]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent," though legislative inaction "is not conclusive." *Id.* at 324-35 (internal quotation marks omitted). But defendant fails to rebut the presumption that the General Assembly acquiesced in this Court's judicial construction of the UUWF statute to ban felons from possessing dangerous weapons at all times and in all places, including in vehicles on public roads.

As explained in the People's opening brief, the General Assembly's silence following this Court's decision in *Gonzalez* demonstrated that the legislature acquiesced in this Court's construction of the UUWF statute therein. *See* Peo. Br. 16. Citing *Blount*, defendant argues that this Court

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should discount that silence because the statement in *Gonzalez* on which the People rely purportedly was dicta. Def. Br. 24-27. Defendant is incorrect.

To begin, *Blount* stated merely that the General Assembly's inaction was not conclusive evidence of acquiescence under circumstances where only the appellate court, and not this Court, had interpreted the statute at issue. *Id.* at 320-23. Here, as defendant admits, *this* Court has "stated that the only elements of the offense of U[U]WF were a prior felony conviction and possession of a prohibited weapon." Def. Br. 25 (citing *Gonzalez*). Nevertheless, defendant contends that this Court should disregard *Gonzalez* because that statement purportedly is "dictum." *See* Def. Br. 25.

On the contrary, this Court's description of the elements of the UUWF offense in *Gonzalez* was not dicta because it was necessary to the Court's resolution of the case in two ways. *See Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 277-78 (2009) (dictum is "a remark, an aside, concerning some rule of law or legal proposition that is not necessarily essential to the decision"). First, in *Gonzalez*, the defendant had argued that a single element was improperly used both to establish his UUWF conviction and to justify an extended-term sentence. 151 Ill. 2d at 83-84. To resolve this claim, this Court had to determine the elements of the UUWF offense; it concluded that the only two elements were "(1) the knowing possession of a firearm and (2) a prior felony conviction." *Id.* at 85.

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Second, this Court rejected the defendant's argument that the aggravating factor of a felony conviction could not be applied to him because UUWF was merely an "upgraded" version of UUW. *Id.* at 86. The Court explained that "sections 24-1 and 24-1.1 create separate, independent offenses," because in "enacting section 24-1.1, the legislature determined that it should be a crime for a felon to possess *any* firearm, in *any* situation," while with "section 24-1, the legislature decided that it should be criminal for persons other than those exempted by section 24-2 to possess *certain* weapons in *certain, defined manners*." *Id.* at 87 (emphases in original).

In short, this Court's description of the elements of the UUWF offense in *Gonzalez* was necessary to its rejection of the defendant's arguments, and thus was not dicta. And even if it were dicta, because it involved an issue briefed and argued by the parties, it would be judicial dicta and therefore "entitled to much weight." *Exelon*, 234 Ill. 2d at 278; *see also People v. Williams*, 204 Ill. 2d 191, 206-07 (2003) ("Judicial *dicta* are comments in a judicial opinion that are unnecessary to the disposition of the case, but involve an issue briefed and argued by the parties."). The General Assembly's silence following this Court's construction of the UUWF statute in *Gonzalez* demonstrates its acquiescence to that interpretation.

Nor does *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020), require this Court to abandon its use of legislative acquiescence as an interpretive tool. *See* Def. Br. 22-23. The United States Supreme Court held

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neither that state courts could not use legislative acquiescence as an indicator of legislative intent nor that it never does so; rather, the Court held merely that legislative acquiescence did not carry the day in that particular case. 140 S. Ct. at 1747-50. Indeed, the Supreme Court elsewhere has relied on legislative acquiescence, explaining, for example, that "given the number of appellate court decisions[,] . . . it is obvious that Congress is aware of the prevailing view" yet had not amended the law. *Evans v. United States*, 504 U.S. 255, 269 (1992). In *Bostock*, however, there was no meaningful judicial precedent and "no authoritative evidence" regarding how subsequent legislatures interpreted the law. 140 S. Ct. at 1747. By contrast, here both this Court's decision in *Gonzalez* and clear statements from legislators interpreting the UUWF statute as imposing a blanket ban provide compelling evidence that the People's interpretation is the intended one. *See supra* pp. 6, 12-13.

Defendant's attempts to distinguish appellate court decisions holding that the UUWF statute prohibits constructive possession in a vehicle similarly fail. For example, he concedes that *People v. Jastrzemski*, 196 Ill. App. 3d 1037 (1st Dist. 1990), is "supportive of the State's position, as the firearm was discovered under the hood of a car that the defendant had been driving." Def. Br. 28. Nevertheless, he asserts that the case is not persuasive because it is thirty years old. *See* Def. Br. 28. On the contrary, *Jastrzemski*'s

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vintage shows that for decades the UUWF statute has been interpreted consistently with the People's interpretation.

Petitioner also concedes that *People v. Woodworth*, 187 Ill. App. 3d 44 (5th Dist. 1989), "seems to suggest that the court equated possession 'on or about his person' with any form of possession." Def. Br. 27. Indeed, *Woodworth* could not have been clearer that the offenses of UUWF and the then-existing UPPFA "consisted of the same two elements: possession of a firearm and the possessor being a convicted felon." 187 Ill. App. 3d at 46; *see also id.* ("In this context . . ., 'possessing on or about one's person' is no different than 'having in one's possession' or simply 'possessing.'"). With this context, *Woodworth*'s comment that the firearm was within the defendant's reach*, see* Def. Br. 27, did not suggest that the court was requiring something more than constructive possession in a vehicle to establish a UUWF violation. *See also People v. Rangel*, 163 Ill. App. 3d 730, 739 (1st Dist. 1987) (to sustain a conviction under section 24-1.1, "the State was required to prove defendant's knowing possession of a prohibited firearm and his prior felony conviction").

Nor does *People v. Clodfelder*, 172 Ill. App. 3d 1030 (4th Dist. 1988), stand for the proposition that "on our about his person" in the UUWF statute means "within arm's reach" because the "officer testified that the defendant could have reached a firearm that was only three or four feet behind him in a station wagon if he simply changed positions within the driver's seat by

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rising and turning." Def. Br. 27. The firearm in *Clodfelder* was in the cargo area of a station wagon, three or four feet behind the driver, in a spot at least as difficult to access as the third row seat in a minivan at issue here. 172 Ill. App. 3d at 1033-34. At best, *Clodfelder* establishes that the entire passenger compartment of a vehicle is "within arm's reach." And, in any event, while the officer's testimony helped establish constructive possession, the court did not indicate that the fact that the weapon was within arm's reach was dispositive to its holding.

This Court should not abandon its prior interpretation or depart from the multiple decisions of the appellate court finding that the UUWF statute prohibits felons from constructively possessing firearms in vehicles.

II. Defendant's Proposed Interpretation Is Inconsistent with the UUWF Statute's Purpose.

As this Court has recognized, the "UUWF statute's purpose [is] protecting the public from dangerous persons who are seeking to obtain firearms." *In re N.G.*, 2018 IL 121939, ¶ 62; *see also* Peo. Br. 12 (citing *People v. Starks*, 2019 IL App (2d) 160871, ¶ 32) ("legislative intent . . . is to keep dangerous weapons, including but not limited to firearms, out of the hands of convicted felons in any situation whether it be in the privacy of their own home or in a public place") (internal quotation marks omitted); *People v. Garvin*, 2013 IL App (1st) 113095, ¶ 14 ("The purpose of the UUWF statute is to protect the health and safety of the public by deterring possession of weapons by convicted felons, a class of persons that the legislature has

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determined presents a higher risk of danger to the public when in possession of a weapon.") (internal quotation marks omitted)).

Defendant responds that these cases did not grapple with the UPFFA statute or the armed violence statute. Def. Br. 19-20. But, as discussed, those statutes do not indicate a legislative intent other than to protect the public from the dangers associated with felons possessing firearms. *See supra* Sections I.B, I.C.

Moreover, defendant identifies no alternative intent. Indeed, he argues that his interpretation is "not entirely inconsistent" with the intent to protect the public from felons possessing dangerous weapons because the UUWF statute will still apply to felons possessing firearms within arm's reach in vehicles, as well as felons constructively possessing firearms on their land, in their abodes, and in their fixed places of business. Def. Br. 20. But it is more consistent with the legislative intent to construe the statute as also applying to firearms constructively possessed in vehicles.

Indeed, the notion that the General Assembly intended to prohibit felons from possessing firearms on their land, and in their homes and businesses, but to allow constructive possession in vehicles is absurd. *See* Peo. Br. 13. Defendant postulates that the legislature may have wanted to allow felons who are allowed to possess guns in other States to travel through Illinois while carrying their dangerous weapons. Def. Br. 15-16. But the legislature considered possession of such weapons unsafe for felons who

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reside in Illinois even in their own homes, and it would be just as dangerous for foreign felons to have such weapons passing through Illinois on public roads. In any event, federal law prohibits felons from carrying firearms, *see* 18 U.S.C. § 922(g)(1), so felons are not allowed to legally possess a gun in public in any State. Indeed, the vast majority of, if not all, States prohibit or severely limit possession of firearms by felons. For instance, Iowa, defendant's state of residence, and Kentucky, the state he was visiting, ban felons from possessing firearms. *See* Iowa Code Ann. § 724.26(1) ("A person who is convicted of a felony in a state or federal court . . . who knowingly has under the person's dominion and control possession . . . a firearm . . . is guilty of a class 'D' felony"); Ky. Rev. Stat. Ann. § 527.040(1) ("A person is guilty of possession of a firearm by a convicted felon when he possesses, manufactures, or transports a firearm when he has been convicted of a felony, as defined by the laws of the jurisdiction in which he was convicted, in any state or federal court"). Even Vermont, the State defendant identifies as permitting felons to possess firearms, has banned such possession since the article defendant cites was published. *See* Vt. Stat. Ann. tit. 13, § 4017(a) ("A person shall not possess a firearm if the person has been convicted of a violent crime"). The General Assembly surely did not intend to abet violations of federal law or the laws of other States while empowering foreign felons to possess weapons too dangerous to allow in the hands of similarly situated Illinois residents.

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Similarly unavailing is defendant's argument that the legislature wanted to avoid difficult factual questions related to constructive possession. Def. Br. 17. As defendant admits, under his construction, a felon who constructively possesses a firearm in a vehicle would be guilty of violating Section 2 of the Firearm Owner's Identification Card Act. Def. Br. 14 (citing 430 ILCS 65/2(a)(1), 8(c)). And, as he also admits, under his construction, UWWF would continue to apply to constructive possession of firearms by felons on their land, in their abodes, and in their fixed places of business. Def. Br. 20. Thus, defendant's construction does not avoid theoretical concerns about proving constructive possession.

In the end, the only construction consistent with the UUWF statute's purpose of protecting the public by prohibiting felons from possessing dangerous weapons is one that prohibits constructive possession in vehicles. That construction also comports with the plain language of the UUWF statute when considered in the context of the statutory scheme as a whole, decades of precedent interpreting the statute, and the General Assembly's acquiescence in this construction.

III. The Rule of Lenity Does Not Apply.

Finally, defendant's resort to the rule of lenity is unavailing, as this Court has made clear that the rule "is subordinate to our obligation to determine legislative intent," and thus should not be applied "so rigidly as to defeat legislative intent." *People v. Gutman*, 2011 IL 110338, ¶ 12. Indeed,

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as discussed above, decades of consistent judicial decisions should have made clear to defendant that his conduct violated Illinois law, *see supra* Section I.D; he likewise should have known that his conduct also violated federal law, the laws of his home State, and the State he was visiting, *see supra* Section II.

CONCLUSION

This Court should reverse the judgment of the appellate court.

December 22, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, the Rule 341(c) certificate of compliance, and the certificate of service, is twenty pages.

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 22, 2020, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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