No. 129357

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Defendant was convicted of misdemeanor unlawful use of a weapon under 720 ILCS 5/24-1(a)(10) and sentenced to 30 days in jail. The appellate court affirmed the judgment of conviction. No question is raised on the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether a rational factfinder could find that defendant committed unlawful use of a weapon where he possessed a gun in a vehicle on a public street, failed to produce a concealed carry license at the traffic stop as required by the Firearm Concealed Carry Act, and admitted to officers that he did not have a concealed carry license, which was corroborated by circumstantial evidence.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court granted leave to appeal on March 29, 2023.

RELEVANT STATUTORY PROVISIONS

720 ILCS 5/24-1. 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, . . . any pistol, revolver, stun gun, or taser or other firearm,

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except that this subsection (a)(10) does not apply to or affect transportation of weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; or

(ii) are not immediately accessible; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or

(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 5/24-2. Exemptions.

* * *

(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.

430 ILCS 66/10. Issuance of licenses to carry a concealed firearm.

* * *

(g) A licensee shall possess a license at all times the licensee carries a concealed firearm . . .

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> (h) If an officer of a law enforcement agency initiates an investigative stop, including, but not limited to, a traffic stop, of a licensee . . ., upon the request of the officer the licensee or non-resident shall disclose to the officer that he or she is in possession of a concealed firearm under this Act, or present the license upon the request of the officer if he or she is a licensee . . . . Upon the request of the officer, the licensee or non-resident shall also identify the location of the concealed firearm and permit the officer to safely secure the firearm for the duration of the investigative stop. During a traffic stop, any passenger within the vehicle who is a licensee . . . must comply with the requirements of this subsection (h).

STATEMENT OF FACTS

Defendant was charged with misdemeanor unlawful use of a weapon under 720 ILCS 5/24-1(a)(10). C17-18.[1]

At the ensuing bench trial, R48-49, Chicago Police Officers Baciu and Cruz testified that they pulled over a Chrysler Town and Country for driving with an obstructed windshield at 11:30 p.m. on February 19, 2021. R50-53 (Baciu's testimony); R60-61 (Cruz's testimony). Defendant, who was in the front passenger seat, "ma[de] a movement towards the floor board of the van." R52. The officers noted the smell of alcohol and asked the driver and defendant to get out of the van. R53. Cruz "recovered a SA1 Springfield XD-9 20 millimeter semi-automatic pistol," which he found "where [defendant] was reaching in between the driver's seat and passenger's seat," a location that was easily accessible to defendant. R53; R58.

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[1] "C_," "Sup C_," "R_," "Def. Br.," and "State App. Br." refer, respectively, to the common law record, the supplemental common law record, the third supplemental volume of the reports of proceedings, defendant's opening brief, and the People's brief filed in the appellate court below.

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Baciu testified that he asked defendant whether he had a Firearm Owner's Identification (FOID) card, *see* 430 ILCS 65/1, *et seq.* (Firearm Owner's Identification Card Act), or a concealed carry license (CCL), *see* 430 ILCS 66/1, *et seq.* (Firearm Concealed Carry Act):

Q. Officer, did you ask whether the defendant had a FOID or CCL?

A. I did.

Q. And what did the defendant respond with?

A. He related that he did not.

Q. Did not?

A. Possess either one.

Q. A FOID or CCL?

A. Correct.

R54.

The circuit court found that defendant possessed the gun given its location and defendant's furtive movement "just as the emergency equipment came on." R72. The court sentenced defendant to 30 days in jail. R73; Sup C6.

On appeal, defendant argued (1) the evidence was insufficient to show that he constructively possessed the firearm; and (2) finding that he lacked a concealed carry license based on his admission violated the *corpus delicti* doctrine. *People v. Harvey*, 2022 IL App (1st) 211242-U, ¶¶ 8, 15. The appellate court affirmed. *Id.* ¶ 20. In rejecting defendant's *corpus delicti*

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argument, the appellate court held that defendant's admission that he lacked a concealed carry license was corroborated by his "furtive movement to conceal the pistol after officers activated their emergency equipment," given that "an individual with a CCL would not have behaved in this manner." *Id.* ¶ 18.

STANDARDS OF REVIEW

To resolve defendant's sufficiency claim, this Court must first construe the unlawful use of a weapon statute, which involves an issue of statutory interpretation that is reviewed *de novo*. *People v. Ramirez*, 2023 IL 128123, ¶ 13.

In evaluating whether the evidence was sufficient to prove each element, this Court construes the evidence in the light most favorable to the People — drawing all reasonable inferences in favor of the prosecution — and determines whether any rational trier of fact could have found each element proven beyond a reasonable doubt. *People v. Cline*, 2022 IL 126383, ¶ 25.

Whether a conviction satisfies the *corpus delicti* rule is a legal issue reviewed de novo. *People v. Lara*, 2012 IL 112370, ¶ 16.

ARGUMENT

Defendant does not contest that he possessed the firearm. Instead, he contends only that the People failed to demonstrate — through evidence apart from his confession — that he had not been issued a valid concealed carry license.

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But defendant's claim fails because evidence that he had not been issued a valid CCL is not required to prove unlawful use of a weapon. Instead, the People proved the offense by proving that defendant failed to produce a CCL at the traffic stop, as required by the Firearm Concealed Carry Act. *See infra* Section I. And because a rational factfinder could convict defendant based on his conduct alone, defendant's *corpus delicti* argument also fails. *See Lara*, 2012 IL 112370, ¶ 17 (offense cannot be proven solely through uncorroborated confession).

In any event, even if the People did bear the burden of proving that defendant had not been issued a valid concealed carry license, a rational factfinder could conclude that defendant had not been issued a CCL based on his admission that he did not have one, which was corroborated by defendant's furtive movements and his failure to produce a concealed carry license during the traffic stop. *See infra* Section II.

I. The People Proved that Defendant Committed Unlawful Use of a Weapon Because He Failed to Produce a Concealed Carry License at the Traffic Stop, as Required by the Firearm Concealed Carry Act.

Under the plain language of the statutory scheme, the People established that defendant was guilty of unlawful use of a weapon because they proved that defendant failed to produce a concealed carry license at the traffic stop. *See infra* Section I.A. This case turns on the proper construction of the unlawful use of a weapon (UUW) statute, its statutory exemption, and

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the requirements of the Firearm Concealed Carry Act. The Court must discern legislative intent, and "[t]he best evidence of legislative intent is the statutory language itself, which must be given its plain and ordinary meaning." *Ramirez*, 2023 IL 128123, ¶ 13. "Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Casler*, 2020 IL 125117, ¶ 24. Similarly, "two or more statutes which relate to the same subject are to be read harmoniously, so that no provisions are rendered inoperative." *Flynn v. Industrial Comm'n*, 211 Ill. 2d 546, 555 (2004). Here, contrary to defendant's argument, neither the plain language of the statute, nor the Second Amendment, *see infra* Section I.B., supports an interpretation of the UUW statute that would require the People to also prove that defendant had never been issued a CCL.

A. Under the plain language of the statute, the People proved unlawful use of a weapon based on defendant's failure to produce a concealed carry license.

The People proved defendant violated the UUW statute when they proved beyond a reasonable doubt that he did not produce a CCL during the traffic stop. A person commits UUW if he "knowingly . . . [c]arries or possesses on or about his or her person, upon any public street . . . any pistol, revolver, stun gun, or taser or other firearm" — and none of the four statutory exceptions renders the possession lawful. 720 ILCS 5/24-1(a)(10). Three exceptions, which are not pertinent here, apply if a weapon is

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(i) "broken down in a non-functioning state"; (ii) "not immediately accessible"; or (iii) transported "unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid [FOID] Card." 720 ILCS 5/24-1(a)(10). The fourth exception — which is at issue here — renders possession lawful if a weapon is "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).

As the People conceded below — and as the appellate court has held — the People bear the burden of disproving this statutory exception. *People v. Rodgers*, 322 Ill. App. 3d 199, 202 (2d Dist. 2002).[2] As a rule, if "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. Laubscher*, 183 Ill.

[2] Although the People conceded that they bore the burden, they did *not* concede defendant's current interpretation of the statutory exception, under which the People must prove that defendant had not been *issued* a valid CCL. *See* State App. Br. 5 (conceding that the People had to "prove that at the time defendant possessed the firearm, he did not *have* a valid license under the Firearm Concealed Carry Act") (emphasis added). In any event, such a concession would not be binding on this Court, as its construction of a statute is guided by legislative intent, unconstrained by the arguments of the parties. *See JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462 (2010) (noting absurdity of constraining statutory construction based on forfeiture because it "would mean that this court's construction of a particular statute could change from case to case," which "obviously cannot be so").

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2d 330, 335 (1998); *see also People v. Tolbert*, 2016 IL 117846, ¶¶ 14-15 (question is whether "the legislature intended the exception to be 'descriptive' of the offense," such that no offense has been committed unless exception is negated). The CCL exception is part of the body of section (a)(10) of the UUW statute, and the appellate court has held that it is the People's burden to disprove the exception because "no defendant can commit UUW merely by carrying or possessing a concealed firearm"; instead, "[i]t is the inapplicability of the exceptions that makes the use of weapons unlawful." *Rodgers*, 322 Ill. App. 3d at 202.

Here, the People disproved the exception when they proved that defendant failed to produce a CCL during the traffic stop. By its plain terms, the statutory exception applies only if defendant (1) "has been issued a currently valid" CCL; *and* (2) possesses the firearm "in accordance with the Firearm Concealed Carry Act." 720 ILCS 5/24-1(a)(10)(iv). In other words, the People may disprove this exception by showing *either* that defendant had not been issued a valid CCL *or* that his possession was not in accordance with the Firearm Concealed Carry Act.

Thus, the People disproved the exception — regardless of whether defendant had been issued a CCL — by showing that he had not complied with the Firearm Concealed Carry Act. The Act mandates that "[a] licensee shall possess a license at all times the licensee carries a concealed firearm" in public that is loaded, accessible, and uncased. 430 ILCS 66/10(g). In the

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event of a traffic stop, a licensee "shall disclose to the officer that he or she is in possession of a concealed firearm under this Act, or present the license upon the request of the officer." 430 ILCS 66/10(h). When defendant possessed an accessible, loaded, uncased gun in a vehicle in public, without producing a CCL at a traffic stop, he did not comply with the Firearm Concealed Carry Act and violated the UUW statute.

After the People proved a violation of UUW in this way, defendant could have demonstrated that he was exempt from criminal liability by showing that he had been issued a currently valid CCL. The statute sets forth, as an exemption, that "24-1(a)(10) do[es] 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." 720 ILCS 5/24-2(a-5). But defendant bears the burden of proof on this exemption. 720 ILCS 5/24-2(h) ("The defendant shall have the burden of proving such an exemption."); *see also People v. Smith*, 71 Ill. 2d 95, 105-06 (1978) ("the State need never negate any exemption" set forth in UUW statute). Defendant did not do so. Instead, the evidence showed that defendant admitted to police that he possessed neither a FOID card nor a CCL.

Defendant's argument that the People were required to show not only that he did not produce a valid CCL at the traffic stop, but also that he lacked a CCL entirely, would render section 24-2(a-5) and part of the statutory

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exception in section 24-1(a)(10)(iv) superfluous. *See Casler*, 2020 IL 125117, ¶ 30 (this Court should avoid constructions that render part of statute "'superfluous or meaningless'") (quoting *Collins v. Bd. of Tr. of Firemen's Annuity & Benefit Fund*, 155 Ill. 2d 103, 116 (1993)).

First, in describing the exception set forth in 720 ILCS 5/24-1(a)(10)(iv), defendant focuses entirely on the requirement that possession be "by a person who has been issued a currently valid license," while ignoring that possession must also be "in accordance with the Firearm Concealed Carry Act." *See* Def. Br. 18-19, 22. Defendant's proposed reading would impermissibly read the latter phrase out of the statute. Second, defendant's interpretation would also render the exemption set forth in 720 ILCS 5/24-2(a-5) meaningless, because if the People must *always* prove that defendant had not been issued a valid CCL, then a defendant would never bear the burden of proving the exemption. This Court should, accordingly, reject defendant's proposed interpretation.

In contrast, the People's reading of the statutory scheme harmonizes these provisions: the People may satisfy the elements of UUW by demonstrating that defendant failed to possess a weapon in the manner required by the Firearm Concealed Carry Act. In such cases, a defendant may avail himself of the exemption by producing evidence that he had been issued a valid CCL. In other words, under the People's reading, each part of the statutory exception and the language of the section 24-2(a-5) exemption

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are given distinct meaning, and none is rendered superfluous, just as the General Assembly intended.

Defendant mistakenly relies on case law interpreting the distinct provisions of the aggravated unlawful use of a weapon (AUUW) statute. *See* Def. Br. 19-20. Certain forms of AUUW do require the People to prove that a defendant has not been issued a license. Unlike UUW, which incorporates a series of exceptions into a single substantive offense, *see* 720 ILCS 5/24-1(a)(10), AUUW criminalizes the knowing possession of a firearm, 720 ILCS 5/24-1.6(a)(1), if an aggravating element is proven, *see* 720 ILCS 5/24-1.6(a)(3) (listing aggravating elements). Its aggravating elements do not strictly mirror the exceptions in the UUW statute, and they are elements that the People must affirmatively prove (in their entirety) rather than exceptions that the People must negate (in at least one respect). *See generally People v. Brooks*, 2022 IL App (3d) 190671, ¶¶ 13-20 (describing differences between UUW and AUUW).

So, for example, in *People v. Holmes*, 241 Ill. 2d 509 (2011) — where this Court addressed a form of AUUW in which the People must prove that "the person possessing the firearm has not been issued a currently valid [FOID] card," 720 ILCS 5/24-1.6(a)(3)(C) — this Court held that it did not suffice for the People to show that the defendant did not *produce* a FOID card: "[t]here is no requirement" under the relevant provision of the AUUW statute "that an individual have his or her FOID card or other similar permit

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in his or her possession" at the time of the offense. *Holmes*, 241 Ill. 2d at 522 (emphasis added); *accord In re Gabriel W.*, 2017 IL App (1st) 172120, ¶¶ 37-40 (holding, based on *Holmes* and People's concession, that People failed to prove AUUW where evidence did not demonstrate that defendant had not been issued FOID card); *In re Manuel M.*, 2017 IL App (1st) 162381, ¶ 15 (same).

But the misdemeanor UUW statute is worded differently, and "by employing certain language in one instance, and entirely different language in another, the legislature indicated that different results were intended." *People v. Ousley*, 235 Ill. 2d 299, 313-14 (2009). The statutory exceptions to UUW can be disproved in multiple ways, and the People disproved the exception in subsection (iv) by showing that defendant's possession was not "in accordance with the Firearm Concealed Carry Act," 720 ILCS 5/24-1(a)(10)(iv). Similarly, the People disproved the exception in 720 ILCS 5/24-1(a)(10)(iii) — which renders possession lawful if a firearm is "unloaded and enclosed in a case[ ] . . . by a person who has been issued a currently valid [FOID] Card" — by showing that the firearm was not unloaded and cased. Defendant does not rely on that exception, nor could he, because the People did not need to also show that defendant had not been issued a FOID card. In other words, to obtain a conviction for UUW, the People did not need to show that defendant had not been issued a valid FOID card or a valid CCL.

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In sum, unlike the AUUW provision analyzed in *Holmes*, the failure to *produce* the CCL is itself a violation of the UUW statute — one that shifts the burden to defendant to prove that he has been issued a currently valid CCL and is therefore exempt under the statutory scheme. In other words, by its plain terms, defendant violated the UUW statute when he failed to produce a CCL as required by the Firearm Concealed Carry Act.

B. The Second Amendment does not require this Court to depart from the plain language of the statute.

Defendant is wrong that enforcing the plain, unambiguous language of the UUW statute and its exemption as written would violate the Second Amendment. Indeed, defendant acknowledges that 720 ILCS 5/24-2(a-5) "arguably requires a defendant to prove that he has a valid CCL," but he contends that imposing this burden on him is unconstitutional. Def. Br. 10-13. Not so. To be sure, "[a] court must construe a statute so as to affirm its constitutionality, if the statute is reasonably capable of such a construction." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290-91 (2003); *see also Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 307 (2008) ("if a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity"); *Ramirez*, 2023 IL 128123, ¶ 26 (construing statute criminalizing possession of defaced firearm "to avoid this provision impermissibly burdening the federal constitutional right to keep and bear arms"). But that principle has no application here because there is no doubt that the UUW

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statute and the exemption set forth in 720 ILSC 5/24-2(a-5) comport with the Second Amendment.

1. *Bruen* does not require an evidentiary "presumption" that a defendant possesses a valid concealed carry license.

Defendant mistakenly suggests that *Bruen* imposed a new evidentiary "presumption" in criminal cases, Def. Br. 11 (claiming that "no State may reverse [*Bruen*'s] presumption" as an evidentiary matter) that requires the State to presume that a defendant who possesses a gun in public has a valid CCL. On the contrary, *Bruen* did not refer to evidentiary presumptions at all, and it does not require the State to presume the existence of a valid concealed carry license that a defendant fails to produce at a valid traffic stop.

Bruen held that "[t]he Second Amendment's plain text . . . presumptively guarantees petitioners . . . a right to 'bear' arms in public for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 33 (2022). To be sure, that presumption applies here: the right to carry a handgun for self-defense outside the home is protected by the Second Amendment. *Id.*; *People v. Aguilar*, 2013 IL 112116, ¶ 20.

But that right is not unfettered. *Bruen*, 597 U.S. at 38 ("the right to keep and bear arms in public has traditionally been subject to well-defined restrictions"); *Aguilar*, 2013 IL 112116, ¶ 21 ("in concluding that the second amendment protects the right to possess and use a firearm for self-defense

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outside the home, we are in no way saying that such a right is unlimited or is not subject to meaningful regulation"). *Bruen* simply requires that where a State seeks to regulate conduct "presumptively" protected by the Second Amendment, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." 597 U.S. at 17. As discussed below, and as defendant concedes, Illinois's Firearm Concealed Carry Act is constitutional under that standard. *See infra* Section I.B.2.

To the extent courts have applied *Bruen* in construing criminal laws, they have interpreted *Bruen* as holding that the knowing possession of a firearm — *without more* — cannot be the basis for criminal liability. *See Ramirez*, 2023 IL 128123, ¶ 26 ("A statute that criminalizes the knowing possession of a firearm, without more, would run afoul of the second amendment."); *Commonwealth v. Guardado*, 206 N.E.3d 512, 522 (Mass. 2023), *vacated in part by* 220 N.E.3d 102 (Mass. 2023) ("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.").[3]

[3] After the filing of defendant's brief, the Massachusetts Supreme Court vacated the portion of the *Guardado* opinion holding that the Commonwealth was barred from retrying defendant. *See Guardado*, 220 N.E.3d at 111.

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But the UUW statute does not criminalize knowing possession without more. Relevant here, it required the People to make the further showing that defendant failed to comply with the Firearm Concealed Carry Act, which, in turn, imposes constitutional restrictions on the possession of firearms in public. Among other things, a licensee must carry his CCL and produce it at a traffic stop. Because the People proved that defendant failed to comply with this requirement, *Bruen* required no additional evidentiary "presumption."

Defendant thus is incorrect in asserting that Illinois's scheme, under the People's interpretation, "treat[s] the possession of a gun as presumptively illegal." *See* Def. Br. 8. The General Assembly's use of an exemption, and its placement of the burden of proof on a defendant, applies only to misdemeanor prosecutions in which the People have already proven that the defendant failed to comply with Illinois's Firearm Concealed Carry Act. *See* 720 ILCS 5/24-1(a)(10)(iv); 720 ILCS 5/24-2(a-5). The Act provides an easy way for any individual to legally carry an accessible, loaded gun in public: he must carry his CCL and present it to law enforcement when stopped by police. 430 ILCS 66/10(g) & (h). This is not a burden of proof; it is simply a requirement for compliance with the Firearm Concealed Carry Act. Moreover, Illinois's statutory scheme in many cases *does* require the People to affirmatively prove that a defendant has not been issued a valid license, particularly to obtain felony AUUW convictions. *See* 720 ILCS 5/24-1.6(a)(3)(A-5) (requiring,

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as one potential aggravating element, that "the person possessing the pistol, revolver, or handgun has not been issued a currently valid license under the Firearm Concealed Carry Act"); *see also* 720 ILCS 5/24-1.6(a)(3)(C) (requiring, as another potential aggravating element, that "the person possessing the firearm has not been issued a currently valid [FOID] Card").

As the Seventh Circuit has observed, Illinois's interest in ensuring that guns are safely carried in public does not end with the *issuance* of a license, and "[t]he State's enforcement authority must bring with it a practical way of monitoring the ongoing fitness of individuals licensed to carry a firearm on a public street." *Culp v. Raoul*, 921 F.3d 646, 655 (7th Cir. 2019). It is only when an individual illegally carries a gun in public by failing to comply with his statutory obligation to carry his license that criminal burdens of proof potentially come into play. And even then, the law readily excuses this failure where the defendant can show that he had been issued a valid CCL at the time of the offense.

Because in Illinois, the People must always prove that a defendant failed to comply with the Firearm Concealed Carry Act in some way, *Guardado*, 206 N.E.3d 512 (Mass. 2023), provides no support for defendant's claim that Illinois's scheme violates *Bruen*. While under the Massachusetts statute, the lack of a license to carry a firearm is an express element of the offense of carrying dangerous weapons, *id.* at 687; *see* MASS. GEN. LAWS ch. 269, § 10, the Massachusetts Supreme Court had created a legal presumption

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that a defendant was *not* licensed and made it an affirmative defense. *Guardado*, 206 N.E.3d at 687. In other words, the only element of the Massachusetts offense that the State had to prove was that the defendant carried a gun in public. In *Guardado*, the Massachusetts Supreme Court concluded that the presumption it had previously created ran afoul of the Second Amendment, and held that, instead, the State bore the burden of proving that the defendant was unlicensed. *Id.* at 690 ("[b]ecause 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").

But the *Guardado* court's reasoning demonstrates that it would have upheld Illinois's scheme. Here, there is an additional factor beyond simple possession: defendant violated the UUW statute because did not produce a CCL at the traffic stop, as Illinois's Firearm Concealed Carry Act requires. In other words, there is "some extenuating factor, such as failure to comply with licensing requirements," in this case — and in all cases prosecuted under the UUW statute — that allows the firearm possession to be punished. Thus, under the reasoning of the Massachusetts Supreme Court in *Guardado*, Illinois's UUW statute comports with the Second Amendment. This Court thus should enforce the plain, unambiguous language of the UUW statute as written.

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2. As defendant concedes, Illinois's Firearm Concealed Carry Act is constitutional under *Bruen*.

Defendant concedes that the Firearm Concealed Carry Act, which imposes the licensure requirements he violated, is constitutional. Def. Br. 9-10 ("[t]he FFCA and the CCL licensing exception that was incorporated into Section 24-1(a)(10)(iv) are precisely what corrected the constitutional infirmity" in Illinois's prior flat ban on public carry). Accordingly, any challenge to the Act at this point would be waived. *See Caulkins v. Pritzker*, 2023 IL 129453, ¶¶ 39-41.[4]

But any argument that it violates the Second Amendment to punish defendant for violating the Firearm Concealed Carry Act would fail, in any event. As the Illinois Appellate Court has held, Illinois's Firearm Concealed Carry Act comports with the Second Amendment under the *Bruen* test. *See People v. Gunn*, 2023 IL App (1st) 221032, ¶¶ 29-32 ("we find no basis under *Bruen* to invalidate the Carry Act" because "Illinois is a *shall-issue* state with clearly defined, objective criteria regarding firearm possession and carry") (emphasis in original); *accord People v. Thompson*, 2023 IL App (1st) 220429-

[4] Notably, had defendant raised such a challenge below, the People could have defended against the constitutional challenge by pointing out, among other things, that his status as a repeat felon, R101-02 (summarizing convictions, including aggravated battery to a peace officer and vehicular hijacking), demonstrates that he is not a "law-abiding citizen" for purposes of the Second Amendment's protections, *see, e.g.*, *People v. Mobley*, 2023 IL App (1st) 221264, ¶¶ 27-29.

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U, ¶¶ 51-60 (rejecting facial challenge to Illinois's concealed carry scheme under *Bruen*), *leave to appeal allowed*, 223 N.E.3d 643 (Ill. 2023) (Table).

These holdings are plainly correct. *Bruen* expressly approved of Illinois's licensure scheme. Under Illinois law, applicants who meet statutory criteria "shall" be granted a license. 430 ILCS 66/10. The Court in *Bruen* struck down New York's "may issue" licensure scheme, which allowed authorities "to deny concealed-carry licenses even when the applicant satisfie[d] the statutory criteria" if they decided that the person lacked "some additional special need" for self-defense." 597 U.S. at 14. The Court found this scheme unconstitutional because in effect it "broadly prohibited" the public carriage of firearms. *Id.* at 70-71.

But New York was one of only seven States that required a showing of special need to obtain a license to publicly carry firearms. *Id.* at 13-15. Forty-three States, including Illinois, are "'shall issue' jurisdictions," in which "authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements." *Id.* at 13 & n.1. And the *Bruen* Court stressed that "nothing in [its] analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which a general desire for self-defense is sufficient to obtain a permit." *Id.* at 38 n.9 (cleaned up); *see also id.* at 76 (Alito, J., concurring) ("reiterat[ing]" that New York's unusual regime was unconstitutional because regime made it "virtually impossible" for "law-abiding people to carry a gun outside the

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home for self-defense"); *id.* at 79-80 (Kavanaugh, J., concurring) ("underscor[ing]" that New York's "may-issue" licensing regime was an "outlier" and "unusually discretionary," and that "[g]oing forward, the 43 States that apply objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so"). In sum, *Bruen* expressly endorsed licensing requirements in shall-issue jurisdictions like Illinois, because those requirements "do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry," but instead "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." *Id.* at 38 n.9 (cleaned up).

Defendant therefore correctly concedes that the Firearm Concealed Carry Act is constitutional. And because Illinois's licensure scheme "must bring with it a practical way" of enforcement, *see Culp*, 921 F.3d at 655, its specific provision requiring a defendant to produce a CCL at a traffic stop is permissible, and subject to prosecution as a violation of the UUW statute. Accordingly, this Court should enforce Illinois's statutory scheme as written.

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II. Even If the People Were Required to Further Prove that Defendant Had Not Been Issued a Valid CCL, They Met That Burden Because Defendant Admitted It, and His Admission Was Corroborated by Circumstantial Evidence.

Even if this Court were to adopt defendant's interpretation of the UUW statute and hold that the People bore the burden of demonstrating that defendant had not been issued a valid CCL, the People's evidence sufficed.

Evidence is constitutionally sufficient if, construing the evidence in the light most favorable to the prosecution, and drawing all reasonable inferences in the People's favor, a rational factfinder could find the elements of the crime established. *Cline*, 2022 IL 126383, ¶ 25. At a bench trial, "the trial court is presumed to know the law and apply it properly." *People v. Howery*, 178 Ill. 2d 1, 32 (1997). Here, a rational factfinder could conclude, based on defendant's admission that he lacked a concealed carry license, that he had not been issued a CCL. *See People v. Grant*, 2014 IL App (1st) 100174-B, ¶¶ 24-26 (in convicting defendant of AUUW, rational factfinder could construe defendant's admission that lacked valid FOID card as proof he had not been issued valid FOID card).[5] To find otherwise would require narrowly construing defendant's admission, but on sufficiency review, "[a]ll reasonable

[5] Contrary to defendant's assertion, Def. Br. 22, *Grant* did not dispute that the People needed to prove that defendant had not been issued a FOID card; rather, it held that the People had proved that element beyond a reasonable doubt, 2014 IL App (1st) 100174-B, ¶¶ 23, 30.

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inferences from the evidence must be drawn in favor of the State." *People v. Jackson*, 2023 IL 127810, ¶ 28.

Defendant asserts that the only way the People can prove that a defendant had not been issued a CCL is by presenting the results of a search of a database of CCL holders. Def. Br. 16-18. But the question on sufficiency review is not whether the People presented all possible evidence or even the best possible evidence. *See, e.g.*, *People v. Hardman*, 2017 IL 121453, ¶¶ 37-45 (rational factfinder could find that building was a school even though People did not present extensive testimony about its operations). The evidence need only be sufficient, not overwhelming. *See People v. Jackson*, 232 Ill. 2d 246, 284 (2009) ("while we agree with the appellate court that there was not overwhelming evidence of defendant's guilt presented in this case, we cannot say that, viewing the evidence in the light most favorable to the State, a rational trier of fact could not have found defendant guilty of first degree murder beyond a reasonable doubt").

Moreover, a defendant may not specify how the People satisfy their burden of proof. Notably, although defendant suggests that the People could have simply introduced a certification, Def. Br. 16, and the dissenting justice opined that "the least the state could do is get a qualified exhibit entered as evidence," *Harvey*, 2022 IL App (1st) 211242-U, ¶ 23 (Pucinski, J., dissenting), the case law suggests that it would not be so simple to introduce the results of a database search into evidence. The very case that defendant

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relies on for the purported ease with which the People could offer such evidence, *People v. Diggins*, 2016 IL App (1st) 142088, ¶¶ 13-17, held that this type of certification is "testimonial" for purposes of the Confrontation Clause and cannot be admitted without cross-examination. Were this Court to adopt defendant's argument, *Diggins* would seemingly require the People to produce a live witness in every case to prove a lack of licensure, even those cases (like this one) in which the defendants have admitted that they are not properly licensed to carry a firearm. It would impose an untenable, and unnecessary, burden on the People to prove a lack of licensure through such evidence in every case.

Moreover, the law does not prohibit the People from relying on a defendant's admission as long as doing so comports with the *corpus delicti* rule. And here, contrary to defendant's contention, *see* Def. Br. 23-26, it did. The *corpus delicti* of an offense (*i.e.*, the fact that an offense has been committed) cannot be proven solely through a defendant's uncorroborated confession. *People v. McKown*, 2022 IL 127683, ¶ 45. But this means only that if a confession forms "part of the *corpus delicti* proof," then "the State must also provide independent corroborating evidence." *Id.* If a confession is corroborated, then it may be considered as part of the evidence proving the crime beyond a reasonable doubt. *Lara*, 2012 IL 112370, ¶ 18.

Here, defendant's admission was corroborated by his furtive movements to conceal the firearm and his failure to act as a lawful licensee

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would have. *Harvey*, 2022 IL App (1st) 211242-U, ¶ 18. Had defendant been issued a concealed carry license, he would have complied with the Firearm Concealed Carry Act by carrying and producing his CCL at the traffic stop. At the very least, he would have told Officer Baciu that he had been issued a CCL that he was not carrying when he was stopped. *See Grant*, 2014 IL App (1st) 100174-B, ¶ 26 (it "defies common sense to accept" that defendant would have "inexplicably passed up an opportunity to explain that he did in fact have a valid FOID card" where "[t]his explanation . . . would have allowed him to extricate himself from what was, clearly, serious trouble for him"); *see also People v. McMichaels*, 2019 IL App (1st) 163053, ¶ 38 (finding probable cause to arrest because "[a] reasonable person who was not committing a crime (*i.e.*, who had the valid licenses) would be expected to tell the officers he was licensed to have and carry a gun"). Accordingly, it was reasonable to infer from defendant's failure to produce a CCL or tell police that he had one, that he did not have a CCL. This, along with defendant's furtive movements, corroborates defendant's admission. And together, that admission along with the corroborating evidence, is sufficient for a rational factfinder to conclude that defendant did not have a currently valid CCL.

Defendant contends that "[i]t 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," Def. Br. 25, but the Firearm Concealed Carry Act dictates that a licensee not merely secure a weapon but

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disclose it to responding officers so they can take steps to ensure their own safety and ensure that the licensee can safely possess a firearm in public, *see* 430 ILCS 66/10(h). Moreover, this Court ruled long ago that the People need not dispel all reasonable hypotheses of innocence to sustain a conviction, even where the evidence is entirely circumstantial. *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). It was at least a reasonable inference that defendant's furtive movements attempting to conceal a firearm that he knew was unlawful evidenced a consciousness of guilt, and this corroborated his admission that he lacked a valid license.

In sum, a rational factfinder could conclude that defendant did not have a validly issued concealed carry license based on defendant's admission that he did not, and his conduct corroborating that admission. The evidence was constitutionally sufficient to support defendant's conviction, and this Court should affirm the appellate court's judgment.

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CONCLUSION

This Court should affirm the appellate court's judgment.

February 28, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 28 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. On February 28, 2024, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on counsel at the following e-mail address:

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