2026 IL App (1st) 240060

No. 1-24-0060

Filed September 16, 2026

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DANIEL GERGER, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 22 CR 2325 Honorable Marc W. Martin, Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court, with opinion.
Justices Rochford and Reyes concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, Daniel Gerger was convicted of reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2022)) and unlawful possession of a firearm in a place licensed to sell intoxicating beverages (*id.* § 24-1(a)(8)). On appeal, he argues the provision of the unlawful use of a weapon (UUW) statute prohibiting the carrying or possession of firearms in any place licensed to sell intoxicating beverages (*id.*) violates both the Illinois and federal constitutions. Gerger also challenges his reckless discharge conviction, arguing the State both failed to prove he

had the requisite mental state and disprove that he acted in self-defense. For the following reasons, we reverse and vacate the convictions.[1]

¶ 2 I. BACKGROUND

¶ 3 Gerger was indicted on five counts of attempted murder, two counts of aggravated battery with a firearm, one count of reckless discharge of a firearm, and one count of unlawful possession of a firearm in a place licensed to sell intoxicating beverages. The charges stemmed from a January 24, 2022, incident in which Gerger shot Sean Kelly and Giovanni Resendez at The Stadium Sports Club and Pizza (The Stadium Club) in Rolling Meadows, Illinois. Gerger filed an answer to the State's request for discovery indicating he would present the affirmative defense of self-defense. The matter proceeded to a bench trial.

¶ 4 Sean Kelly testified he went to The Stadium Club to meet friends for drinks and sat in the bar area. Gerger and a woman—later identified as Jimiya—were seated nearby. Jimiya was making "obnoxious noises," which Kelly described as shrieking. Kelly "politely" asked her to stop several times. Jimiya continued shrieking. Kelly and Gerger "exchanged words." Kelly told Gerger to stop encouraging her. Eventually, Kelly picked up a pitcher full of water and said he would throw water on Gerger and Jimiya if the shrieking continued. He walked toward Gerger and Jimiya and attempted to dump water on them. Gerger pushed Kelly in the chest. Kelly pushed Gerger, knocking him to the floor, and "swatted" Gerger with his foot. Moments later, Gerger shot Kelly in the abdomen. Gerger continued pointing his handgun at Kelly and attempted to fire, but the weapon jammed. Kelly retreated to the kitchen area. Later, he was transported to a hospital, where he was admitted for a month and underwent eight surgical procedures. Kelly suffered injuries to several internal organs. Kelly had two prior battery convictions and faced another battery charge

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

at the time of his testimony. Kelly had also filed a civil suit against The Stadium Club based on the shooting.

¶ 5 Giovanni Resendez testified he went to The Stadium Club to join friends for drinks. He observed Kelly walk toward Gerger and Jimiya and pour water on her. Gerger pushed Kelly. Resendez heard a gunshot. He then saw Gerger on the floor wrestling with two of The Stadium Club's employees. As Resendez attempted to grab the handgun from Gerger, he was shot in the leg near his knee. Resendez wrested the handgun from Gerger and placed it near the bar's entrance. He was later treated for a gunshot wound.

¶ 6 Tony Palumbo was the general manager of The Stadium Club. He testified that The Stadium Club is licensed to sell alcoholic beverages on the premises. The establishment does not allow firearms but there was no sign posted to communicate the prohibition at the time of the shooting. Palumbo was working that night. He observed Kelly walking toward Gerger in an aggressive manner. The look on Kelly's face made Palumbo think "something is about to go down."

¶ 7 The witnesses each authenticated a video recording of the incident obtained from a camera situated inside The Stadium Club and identified themselves and Gerger in the video. The video had no sound but depicts the following. There is a U-shaped bar. Gerger and Jimiya were seated on the right portion of the bottom of the U. Kelly was situated at the top of the left side of the U. Kelly moved quickly toward Jimiya with a pitcher in hand. Gerger, who was seated to Jimiya's right, moved between her and Kelly and raised his hands as Kelly attempted to dump the pitcher onto Jimiya. Kelly immediately knocked Gerger to the floor and kicked him with his right foot. Palumbo attempted to place himself between Kelly and Gerger, but Kelly pushes him away and continues to move toward Gerger. Lying on his back, Gerger drew a handgun from his waist and

fired a shot at Kelly. Palumbo managed to get in between Gerger and Kelly, as Kelly walked away. Gerger kept the handgun pointed at Kelly, turning as Kelly moved across the room. Palumbo bent and reached down toward the gun. Gerger rolled away from Palumbo onto his front, and Palumbo got on top of him. A second person joined Palumbo on top of Gerger. Their backs were to the camera, so it is unclear what was occurring. The second person abandoned the struggle and walked away. A third person replaced him, struggling atop Gerger. Resendez walked over and joined the struggle. The third person stood abruptly and ran. Testimony indicated this was a response to the second shot. Yet another person joined the struggle. Gerger turned and raised his now empty hands. The man who had most recently joined the struggle had his arms around Gerger's neck and punched him in the face multiple times. Resendez stood and raised an arm, holding the handgun. Based on the video time stamp, the struggle lasted approximately one minute from the time Kelly was shot until Resendez raised the handgun. Following that, another individual approached and struck Gerger in the head. Palumbo remained atop Gerger. A pool of blood appeared below Gerger's left hand. A few minutes later, Gerger appeared to lose consciousness. Police officers arrived and attended to him. About 15 minutes later, paramedics arrived and placed Gerger on a gurney.

¶ 8 Gerger testified in his own defense. He went to The Stadium Club to meet his friend Jimiya. While in the bar area, Jimiya was making a "woo" sound, which Gerger described as "just having a good time." Kelly yelled, "Don't f***in do that again!" Jimiya made another "woo." Kelly stood from his seat, grabbed a pitcher from the counter, and walked toward them. Gerger believed that Kelly was going to hit him or Jimiya. He raised his hands to protect Jimiya. Kelly punched Gerger in the face, knocking him onto the floor. Kelly then kicked Gerger in the side of his body. Gerger drew his 9-millimeter handgun from his waistband, pointed it at Kelly, and fired. Kelly was struck

in the abdomen and moved away. Gerger kept the handgun pointed at Kelly, as he feared Kelly might attack him again.

¶ 9 Multiple people "jumped" on Gerger. He heard them say, "I'll kill you mother f***!" and "I'll choke you out!" The men punched and choked him. Gerger attempted to keep ahold of his handgun, fearing they would use it to shoot him. While "[t]here was a struggle for [the] firearm, it discharged again." Resendez was shot in the leg but managed to take the handgun from Gerger. Gerger waved his hands and the men punching and choking him relented. Gerger then lost consciousness for some time.

¶ 10 Gerger was unsure whether he had pulled the trigger when Resendez was shot. He explained, "There were multiple hands on the weapon. By that point, it could have been any one of us." After it discharged, Gerger felt a stinging pain in the back of his left hand. His hand has a scar from the incident.

¶ 11 At the time of the shooting, Gerger possessed a valid firearm owner's identification (FOID) card and a concealed carry license (CCL). He was aware that, even with a CCL, he could not bring a firearm into a "bar that sells alcohol." However, he understood that a CCL holder was permitted to bring a firearm into a restaurant that served alcohol. Gerger believed The Stadium Club was a restaurant that sold alcohol since it has a restaurant section in addition to the bar area.

¶ 12 The trial court made several findings in an oral ruling. As to the attempted murder and aggravated battery counts related to Kelly, the court found Kelly lacked credibility and had a propensity for violence. Kelly was the initial aggressor, as he approached Jimiya quickly and aggressively, wielding a pitcher. Gerger raised his hands defensively, in reasonable apprehension of a battery. Whether characterized as a punch or push, Kelly forcibly knocked Gerger to the floor. Kelly continued to attempt to kick Gerger despite accomplishing his stated objective of pouring

water on Jimiya and having knocked Gerger to the floor. Kelly's attempts to kick Gerger under these circumstances posed a risk of great bodily harm or death. From Gerger's supine position, Gerger reasonably believed his use of force was necessary to prevent great bodily harm or death. After shooting Kelly, Gerger kept pointing his firearm at him, but did not fire as Kelly retreated, consistent with a defensive intent. Based on those findings, the court found Gerger not guilty of the attempted murder counts and the aggravated battery count related to Kelly.

¶ 13 Addressing the remaining counts, the court reasoned that aggravated battery with a firearm and reckless discharge—which were both premised on the second shot that struck Resendez—require different mental states, and therefore, convictions for both could not stand. See *People v. Bush*, 2022 IL App (3d) 190283, ¶ 105 (finding the offenses legally inconsistent). Since the second discharge occurred during a physical struggle between Gerger and three others while Gerger was on the floor, the court determined the State had not proven Gerger knowingly battered Resendez. See 720 ILCS 5/12-3.05(e) (stating the elements of aggravated battery with a firearm). Thus, the court found Gerger not guilty of aggravated battery related to Resendez.

¶ 14 But the court found Gerger guilty of reckless discharge of a firearm. It explained:

> "The Court now assesses Count 9 to determine whether the State has proven the defendant guilty of reckless discharge of a firearm beyond a reasonable doubt. The Court first examines the proof on the required mental state recklessness. This involves proof the defendant consciously disregarding a substantial and unjustifiable risk. Although the defendant was rendered unconscious at a later point there's no doubt he was conscious when the weapon discharged.
>
> Anytime a firearm is introduced into a place where liquor is served, there's a substantial and unjustified risk that the result, here, a discharge of a weapon, will follow.

The defendant brought the firearm into The Stadium Club. Even if the defendant was a conceal carry licensee, he was not justified in bringing a firearm into the bar. Wholly apart from the Firearm Conceal[ed] Carry Act, [the UUW statute] prohibits a person from bringing a firearm into a place licensed to sell intoxicating beverages.

The Court next considers whether the State has proven the *actus reus* beyond a reasonable doubt, that is whether the defendant pressed the trigger.

The firearm at issue is the defendant's weapon. Before Mr. Resendez was struck, the defendant had already pulled the trigger once. Thereafter, the defendant remained in possession and control of the firearm, and pointed it at Mr. Kelly. The defendant even testified that he cleared the weapon after it jammed. This necessarily involved him manipulating the weapon. A struggle ensued over the weapon. The defendant is at the bottom of a pile. The camera angle does not precisely show the weapon during the struggle. Tony Palumbo was on top. Mr. Resendez credibly testified based on close personal observations that the defendant would not let go of the gun and pulled the trigger. The video depicts the defendant vigorously holding on to the gun.

The Court finds beyond a reasonable doubt that the defendant did not lose control of the weapon or the ability to depress the trigger before the weapon discharged and the bullets struck Mr. Resendez.

The Court doesn't believe that Tony Palumbo or the other Tony, or Mr. Resendez had managed to secure control of the firearm, gotten a finger in the trigger area to the exclusion of the defendant. From a dispassionate review of the video, it is clear that Mr. Resendez did not secure control of the weapon from the defendant until after he was shot. Mr. Resendez did not shoot himself in the knee.

> As to the credibility dispute between Mr. Resendez and the defendant who left open the possibility someone else pulled the trigger, the Court finds Mr. Resendez credible.
>
> Although it may not have been the defendant's intent or plan to discharge the weapon a second time, intent or knowledge are not the required mental state.
>
> The State has proven beyond a reasonable doubt that the defendant recklessly discharged his firearm. The required mental state for reckless discharge of a weapon is recklessness. Self-defense, on the other hand, does not encompass reckless conduct.
>
> Rather, self-defense contemplates intentional conduct, *i.e.*, commission of a physical act causing bodily harm which is not criminal because it is justified."

¶ 15 The court also found Gerger guilty of UUW over arguments that, as a CCL licensee, the statute did not apply to him. The court reasoned that the UUW statute did not provide an exemption for CCL licensees and the State elected to charge him with UUW and not a violation of the Firearm Concealed Carry Act (Carry Act) (430 ILCS 66/1 *et seq.* (West 2022)).

¶ 16 The court sentenced Gerger to two years of probation on each conviction, to be served concurrently. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Unlawful Use of a Weapon

¶ 19 Gerger first challenges his conviction under the UUW statute, found in section 24-1(a)(8) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/24-1(a)(8) (West 2022)), which prohibits the knowing possession of a firearm in a place licensed to sell intoxicating beverages. He points out that the Carry Act contains a comparable provision prohibiting a CCL licensee from knowingly carrying a firearm on or into "[a]ny building, real property, and parking area under the control of an establishment that serves alcohol on its premises, if more than 50% of the

establishment's gross receipts within the prior 3 months is from the sale of alcohol." 430 ILCS 66/65(a)(9) (West 2022). A violation of the Carry Act's prohibition is a Class B misdemeanor (*id.* § 70(e)), while a violation of the UUW statute is a Class 4 felony (720 ILCS 5/24-1(b) (West 2022)). The Carry Act, however, provides that a CCL licensee "convicted or found guilty of a violation of [the Carry Act] *** shall only be subject to the penalties under [the Carry Act] and shall not be subject to the penalties under *** paragraph (4), (8), or (10) of subsection (a) of Section 24-1 *** of the Criminal Code." 430 ILCS 66/70(f) (West 2022).

¶ 20 Gerger asserts that a CCL licensee who knowingly carries a firearm on the premises of "an establishment that serves alcohol on its premises, if more than 50% of the establishment's gross receipts within the prior 3 months is from the sale of alcohol"—*i.e.*, a bar, violates both section 65(a)(9) of the Carry Act and section 24-1(a)(8) of the Criminal Code, as such an establishment is also "licensed to sell intoxicating beverages."[2] Gerger argues that section 70(f) demonstrates the legislature intended for a CCL licensee who violates section 65(a)(9) to be subject only to the penalties of the Carry Act and not the penalties for the enumerated provisions of the Criminal Code. But a prosecutor may subvert the legislature's intention, Gerger submits, by only charging a CCL licensee of violating the Criminal Code, thus avoiding section 70(f)'s condition that a licensee be "convicted or found guilty of a violation of [the Carry Act]." Thus, Gerger asserts various constitutional arguments to challenge his conviction, premised on the proportionate penalties clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 11), the right to bear arms protected under the second amendment to the United States Constitution (U.S. Const., amend. II), and a comparable provision of the Illinois Constitution (Ill. Const. 1970, art. I, § 22), as well as constitutional guarantees of due process and equal protection.

[2]No evidence was introduced to establish whether more than 50% of The Stadium Club's gross receipts within the three months preceding the shooting were from the sale of alcohol.

¶ 21 At the time Gerger filed his initial brief, he did not have the benefit of our supreme court's opinion in *People v. Harvey*, 2024 IL 129357, which was decided some months later. According to our research, *Harvey* was the first decision by an Illinois court of review to interpret section 70(f) of the Carry Act. The court observed:

> "In section 70(f) of the Carry Act, the legislature specifically exempted any person who has a valid CCL from prosecution under section 24-1(a)(10) of the UUW statute. It follows, therefore, that the *only* individuals who could potentially face liability under section 24-1(a)(10) of the UUW statute are those persons who do *not* have a valid CCL." (Emphasis in original.) *Id.* ¶ 16.

Harvey only spoke to section 70(f)'s effect on prosecutions of CCL licensees under subsection (a)(10) of the UUW statute. However, only subsection (a)(10) was at issue in that case. And subsection (a)(10) appears in a list of other provisions that, by the plain language of section 70(f) of the Carry Act, should receive the same treatment. Therefore, it logically follows that the effect is the same for the other subsections of the UUW statute listed in section 70(f), which includes subsection (a)(8). See 430 ILCS 66/70(f) (West 2022).

¶ 22 We observe that the *Harvey* court found section 70(f) exempted CCL licensees from prosecution for the listed subsection of the UUW statute despite section 70(f)'s language that could be read to mean a licensee must be first "convicted or found guilty of a violation of [the Carry Act]." Although the *Harvey* court did not discuss that language, its interpretation of section 70(f) implies that being convicted or found guilty of a violation of the Carry Act is not a precondition to section 70(f)'s operation. Requiring a conviction for violating the Carry Act as a precondition would be overly literal and undermines the legislative intent to exempt CCL licensees from prosecution for certain provisions of the Criminal Code. See *People v. Hanna*, 207 Ill. 2d 486, 498

(2003) ("where a plain or literal reading of a statute produces absurd results, the literal reading should yield"). The *Harvey* court's interpretation also prevents a state's attorney from subverting the legislature's intent by electing to only charge CCL licensees under the Criminal Code.

¶ 23 We further observe that the legislature expressed exemptions to the UUW statute for CCL licensees in section 24-2 of the Criminal Code. See 720 ILCS 5/24-2(a-5) (West 2022). Section 24-2 exempts CCL licensees from prosecution under subsections (a)(4) and (a)(10) of the UUW statute. *Id.* No other subsections are included in the exemption. It could be argued that subsection (a)(8)'s omission indicates that the legislature did not intend for CCL licensees to be exempt from prosecution under subsection (a)(8). See, *e.g.*, *People v. Roberts*, 214 Ill. 2d 106, 117 (2005) (discussing the canon of statutory construction known as *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another). But since the legislature expressed its intent to exempt CCL licensees from prosecution under subsection (a)(8) in section 70(f) of the Carry Act, we do not conclude that the legislature intended so. Instead, we presume section 24-2 of the Criminal Code and section 70(f) of the Carry Act, which relate to the same subject, are "governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious." *Uldrych v. VHS of Illinois, Inc.*, 239 Ill. 2d 532, 540 (2011).

¶ 24 In sum, we find *Harvey* controlling. It is undisputed that Gerger had a valid CCL license at the time he was alleged to have violated subsection (a)(8) of the UUW statute. Since that offense is enumerated in section 70(f), Gerger was exempt from prosecution under subsection (a)(8) of the UUW statute. Accordingly, we must vacate his conviction for possession of a firearm in a place licensed to sell intoxication beverages. We do not reduce the conviction to a violation of section 65(a)(9) of the Carry Act since (1) Gerger was not charged with the offense and (2) the State did

not prove that more than 50% of The Stadium Club's gross receipts in the three months preceding this occurrence derived from alcohol sales.

¶ 25 We reject the State's argument that the Carry Act was made irrelevant once Gerger produced his firearm from concealment, exposing Gerger to criminal liability for the offenses exempted by section 70(f). Based on the language in *Harvey*, Gerger's valid CCL alone exempted him from prosecution for those offenses. In addition, we observe that the Carry Act's prohibitions on carrying a firearm in certain places does not distinguish between a concealed or unconcealed firearm. The Carry Act simply states: "A licensee under this Act shall not knowingly carry a firearm on or into" the prohibited areas. See 430 ILCS 66/65(a) (West 2022). Thus, a CCL licensee is subject to the Carry Act's prohibition on carrying a firearm in specified places regardless of whether their firearm remains concealed.

¶ 26 Having resolved this issue by application of section 70(f) of the Carry Act and the *Harvey* decision, we need not reach Gerger's constitutional arguments. "Courts must avoid reaching constitutional issues unless necessary to decide a case." *Noland v. Mendoza*, 2022 IL 127239, ¶ 28.

¶ 27 B. Reckless Discharge

¶ 28 Next, Gerger challenges his conviction for reckless discharge of a firearm. He contends the evidence was insufficient to prove that he possessed the requisite mental state of recklessness.

¶ 29 "When a defendant challenges the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Jackson*, 2020 IL 124112, ¶ 64. "The trial court, as the trier of fact in a bench trial, hears and sees the witnesses and, thus, has the responsibility to judge their credibility, resolve any inconsistencies, determine the weight to give their testimony, and draw reasonable inferences

from all the evidence presented." *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004). "Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses." *Jackson*, 2020 IL 124112, ¶ 64. We will not reverse the trial court's judgment unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.*

¶ 30 Section 24-1.5(a) of the Criminal Code provides: "A person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety of an individual." 720 ILCS 5/24-1.5(a) (West 2022). Thus, to sustain the conviction of reckless discharge of a firearm, the State had to prove that the defendant (1) discharged a firearm in a reckless manner and (2) endangered the bodily safety of an individual. *People v. Grant*, 2017 IL App (1st) 142956, ¶ 10. Recklessness is defined as follows:

> "A person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2022).

A reckless state of mind may be inferred from all the facts and circumstances in the record. *People v. Watkins*, 361 Ill. App. 3d 498, 501 (2005). "When recklessness has been found by the trier of fact, this determination should not be overturned unless inference of the mental state is inherently impossible or unreasonable." *Id.*

¶ 31 The trial court found the State had proven Gerger discharged a firearm in a reckless manner—that he consciously disregarded a substantial and unjustifiable risk—reasoning:

> "Anytime a firearm is introduced into a place where liquor is served, there's a substantial and unjustified risk that the result, here, a discharge of a weapon, will follow.
>
> *** [Gerger] was not justified in bringing a firearm into the bar. Wholly apart from the [Carry Act], [the UUW statute] prohibits a person from bringing a firearm into a place licensed to sell intoxicating beverages."

¶ 32 Gerger's act of bringing a firearm into The Stadium Club did not prove recklessness. The plain language of the reckless discharge statute requires proof that the discharge itself was done in a reckless manner. 720 ILCS 5/24-1.5(a) (West 2022). The court's reasoning separated the mental state from the act. Gerger could not be convicted on this basis. "Criminal liability, with the exception of *** strict liability crimes, is dependent upon the simultaneous occurrence of the defendant's requisite mental state and the criminal act." *People v. Taylor*, 68 Ill. App. 3d 680, 684 (1979). Accordingly, the State needed to prove beyond a reasonable doubt that Gerger consciously disregarded a substantial and unjustifiable risk at the moment the second shot fired.

¶ 33 The trial court's erroneous reasoning, however, does not resolve the issue. "[I]t might be that the trial court reached the correct judgment but for the wrong reason. We review the trial court's judgment, not its reasoning." *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 60. And "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original and internal quotation marks omitted.) *Id.* ¶ 40.

¶ 34 We find the evidence so unsatisfactory as to create a reasonable doubt that Gerger acted recklessly. When the second discharge occurred, Gerger had just been attacked and knocked to the floor. He then shot Kelly, which the court found was in self-defense. Afterward, a chaotic struggle ensued. Gerger was immediately set upon by multiple people, who kept him pinned to the floor

and struck him repeatedly. Although the trial court found that Gerger had control of the handgun when it discharged, control was fiercely contested. Resendez's and Palumbo's hands were tangled with Gerger's. All were grappling for control of the handgun. Under these circumstances, we cannot conclude that any rational trier of fact would have found beyond a reasonable doubt that Gerger consciously pulled the trigger. It is evident that he was trying to maintain possession of the handgun while others attempted to forcibly wrest it from him. Gerger's finger remained next to the trigger, as he had just fired it at Kelly, which was found to be justified as self-defense. Those contesting for control of the handgun could have easily applied sufficient force against Gerger's finger or the firearm itself to cause the discharge. Given multiple hands on the firearm during a one-minute struggle, the probability of an accidental discharge was substantial, preserving reasonable doubt as to recklessness. "An accident is not to be equated with recklessness." *People v. Olivieri*, 2016 IL App (1st) 152137, ¶ 28.

¶ 35 For these reasons, we find the State failed to prove a reckless mental state beyond a reasonable doubt and reverse Gerger's conviction for reckless discharge of a firearm.

¶ 36 III. CONCLUSION

¶ 37 Based on the foregoing, we reverse the judgment of the circuit court.

¶ 38 Reversed.

***People v. Gerger*, 2026 IL App (1st) 240060**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 22-CR-2325; the Hon. Marc W. Martin, Judge, presiding.
Attorneys for Appellant:	Stacey Shonkwiler, of Leland Grove Law LLC, of Flossmoor, for appellant.
Attorneys for Appellee:	Eileen O'Neill Burke, State's Attorney, of Chicago (John E. Nowak, Brian A. Levitsky, and Adam C. Motz, Assistant State's Attorneys, of counsel), for the People.