No. 125392

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

JAMES E. CHADD
State Appellate Defender

THOMAS A. KARALIS
Deputy Defender

STEVEN VAREL
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLEE

ORAL ARGUMENT REQUESTED

E-FILED
10/27/2020 1:11 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

ISSUES PRESENTED FOR REVIEW

I. Whether the plain language of the UPWF statute indicates that it only applies to situations where a felon possesses a firearm either (1) on or about his person, (2) on his land, or (3) in his own abode or fixed place of business, such that it does not apply to situations where a firearm in a vehicle was not, at some point, within arm's reach of the defendant.

II. Whether, if this Court deems it necessary to look beyond the plain language of the statute, the principles of statutory construction, as well as other indications of legislative intent, support the appellate court's interpretation of the UPWF statute as creating a requirement that a firearm possessed in a vehicle be within arm's reach before a person may be convicted of UPWF.

STATEMENT OF FACTS

Any facts in addition to those described in the State's brief that are necessary for an understanding of the issues presented in this appeal will be included, together with appropriate record references, in the argument portion of this brief.

ARGUMENT

I. Because the plain language of the UPWF statute indicates that it only applies to situations where a felon possesses a firearm either (1) on or about his person, (2) on his land, or (3) in his own abode or fixed place of business, this Court should affirm the appellate court's judgment reversing Charles Wise's conviction of UPWF without looking beyond the plain language of the statute, where the State's evidence showed that the firearm Charles was alleged to constructively possess in his minivan was not within his reach at any time while he was driving through the State of Illinois.

In 1984, through Public Act 83–1056, the legislature imposed a clear and unambiguous blanket ban on the possession of firearms by felons. However, it did not do so through the statute at issue in this case. Rather, it did so through Section 24–3.1(a)(3) of the Criminal Code, which provided that a person commits the Class A misdemeanor offense of unlawful possession of firearms and firearm ammunition (UPFFA) if "[h]e has been convicted of a felony . . . and has any firearm or firearm ammunition in his possession." Ill. Rev. Stat. 1984, ch. 38, ¶ 24–3.1(a)(3), (b); P.A. 83–1056 (eff. July 1, 1984).[1] That provision tracked the language that the legislature had previously used to impose blanket bans on the possession of firearms for classes of people including: persons under 21 convicted of misdemeanors or adjudged delinquent, "narcotic addict[s]," persons who had been "a patient in a mental hospital" within the last five years, and persons with intellectual disabilities. That is to say, the language used in each of those blanket bans was that a person of that class commits the offense of UPFFA if he "has any firearms or firearm ammunition in his possession," language which is still used in the UPFFA statute today. 720 ILCS 5/24–3.1(a)(2)–(5) (2020); Ill. Rev. Stat. 1984, ch. 38, ¶ 24–3.1(a); P.A. 82–538 (eff. Jan. 1, 1982).

[1] That provision was repealed by Public Act 85–669 (eff. Jan. 1, 1988). *See* Ill. Rev. Stat. 1988, ch. 38, ¶ 24–3.1(a).

In *the same Public Act* through which the legislature enacted the 1984 blanket ban on possession of firearms by felons in the UPFFA statute, the legislature also enacted Section 24–1.1 of the Criminal Code, the unlawful possession of a weapon by a felon (UPWF) statute at issue here. P.A. 83–1056 (eff. July 1, 1984). In that statute, the legislature used starkly different language than the language that it had consistently used in blanket bans on the possession of firearms in Section 24 of the Criminal Code. More specifically, both then and now, Section 24–1.1(a) provides: "It is unlawful for a person to knowingly possess *on or about his person or on his land or in his own abode or fixed place of business* any . . . firearm or any firearm ammunition if the person has been convicted of a felony . . . ." 720 ILCS 5/24–1.1(a) (2014) (emphasis added); Ill. Rev. Stat. 1984, ch. 38, ¶ 24–1.1(a) (emphasis added); P.A. 83–1056 (eff. July 1, 1984). UPWF has always been a Class 3 felony, and it now carries a mandatory minimum prison term of 2 years and a maximum prison term of 10 years. 720 ILCS 5/24–1.1(e) (2014); Ill. Rev. Stat. 1984, ch. 38, ¶ 24–1.1(d); P.A. 83–1056 (eff. July 1, 1984).

The plain and unambiguous language of the UPWF statute indicates that, in order to establish a defendant's guilt of that offense, the State must prove that the defendant possessed a firearm or other prohibited weapon either (1) on or about his person, (2) on his land, or (3) in his own abode or fixed place of business. *People v. Wise*, 2019 IL App (3d) 170252, ¶ 20. As this Court has recognized, "statutory interpretation is not a tool to be utilized by courts attempting to remedy apparent oversights by rewriting statutes in ways that contravene their clear

and unambiguous language." *People v. Bywater*, 223 Ill. 2d 477, 485 (2006).[2] Consequently, "[t]here is no rule of construction which allows the court to declare that the legislature did not mean what the plain language of the statute imports." *People v. Woodard*, 175 Ill. 2d 435, 443 (1997). Thus, "[w]here statutory language is clear, it will be given effect without resorting to other aids for construction," *People v. Zaremba*, 158 Ill. 2d 36, 40 (1994), as it must be presumed that "the legislature meant what it said." *People v. Moore*, 69 Ill. 2d 520, 524 (1978) (declining to look beyond the statutory language where it was clear); *see also People v. Bole*, 155 Ill. 2d 188, 197–99 (1993) (same even in case where "this might simply have been an oversight by the legislature" because it was not appropriate for the court to "rewrit[e]" the statute to "correct" the suspected oversight "under the guise of statutory interpretation"); *In re Davontay A.*, 2013 IL App (2d) 120347, ¶¶ 24–27 (finding it unnecessary to consider the cannons of statutory interpretation, or the State's argument that it was "absurd" to assess a fine against minors who pleaded guilty to sexual assault but not those who were adjudicated delinquent of the same offense after a trial, where the language of the statute was clear).

Further, the meaning of "on or about his person" is just as clear and unambiguous. In accord with what any person reading that phrase would understand it to mean, this Court has long held that it means "in such close proximity that it can be readily used as though on the person," or within arm's reach. *People v. Liss*, 406 Ill. 419, 422 (1950); *People v. Niemoth*, 322 Ill. 51, 52 (1926); *see also*

---

[2] The majority in *Bywater* reaffirmed this proposition. In its brief, the State mistakenly cites the dissenting opinion—which would have accepted the State's argument in that case that the legislature "acquiesced" to the judicial construction of the statute at issue—as if it were the majority opinion (St. br. at 15). *See Bywater*, 223 Ill. 2d at 492 (Freeman, J., dissenting).

People v. Smith, 191 Ill. 2d 408, 412 (2000); *People v. Harre*, 155 Ill. 2d 392, 397, 399–400 (1993); *People v. Condon*, 148 Ill. 2d 96, 109–10, 112 (1992). Other courts have done so as well. *Henderson v. United States*, 687 A.2d 918, 922 & n.9 (D.C. Ct. App. 1996) (compiling cases from multiple jurisdictions); *People v. Shelato*, 228 Ill. App. 3d 622, 625 (4th Dist. 1992) (firearm not "on or about" a defendant's person where it was located about 10 ten feet away from where he was sitting); *People v. King*, 155 Ill. App. 3d 363, 365, 370 (3d Dist. 1987). Notably, as the appellate court observed, the legislature chose to use that language in the UPWF after this Court had already explained the plain meaning of that language. *Wise*, 2019 IL App (3d) 170252, ¶ 21 (citing *Liss* and *Niemoth*).

Here, as the State recognizes, while Charles Wise was driving a minivan that he borrowed from his brother through the State of Illinois, the firearm at issue was inside a glove in the third-row backseat of the minivan near two passengers (St. br. at 4). As the appellate court observed, Illinois State Police Trooper Edwin Shamblin testified that he did not believe it was possible for Charles to reach the firearm from his position in the driver's seat (R76). *Wise*, 2019 IL App (3d) 170252, ¶¶ 4, 22. As the appellate court also recognized, to the extent that Charles may have been sitting in the backseat within arm's reach of the firearm at some point prior to entering the State of Illinois during the drive from Louisville, Kentucky to Cedar Rapids, Iowa, Illinois courts would not have jurisdiction over any such conduct that occurred out of state. *Wise*, 2019 IL App (3d) 170252, ¶ 23 (citing 720 ILCS 5/1–5(a)(1) (2014)); *see also People v. Holt*, 91 Ill. 2d 480, 487–89, 492 (1982); *People v. Blanck*, 263 Ill. App. 3d 224, 227 (2d Dist. 1994). Accordingly, this Court should conclude, as the appellate court did, that the evidence was

insufficient to prove Charles guilty beyond a reasonable doubt of UPWF because the plain language of that statute required the State to prove, under the circumstances of this case, that the firearm was "on or about" Charles's person and it failed to do so. *Wise*, 2019 IL App (3d) 170252, ¶¶ 19–24.

The State argues that it was not required to prove that Charles had the firearm "on or about his person" because the UPWF statute imposes a blanket ban on all possession of firearms by felons regardless of where the firearm is possessed or whether the possession is actual or constructive. However, all of the State's arguments essentially invite this Court to look beyond the plain language of the UPWF statute in order to find reasons to rewrite the statute (St. br. at 7–21). Because the plain language of the UPWF statute is clear, this Court should decline the State's invitation to do so. *See Bywater*, 223 Ill. 2d at 485; *Woodard*, 175 Ill. 2d at 443; *Zaremba*, 158 Ill. 2d at 40–41; *Bole*, 155 Ill. 2d at 197–99; *Moore*, 69 Ill. 2d at 524; *see also Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1747, 1749–51, 1753–54 (2020) (observing that "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration," the Court found irrelevant to its analysis of an unambiguous statute extratextual considerations including (1) what the legislature intended the statute to mean (either when the statute was enacted or when the legislature subsequently passed an amendment to the statute that did not change the pertinent language after decades of consistently incorrect judicial construction of the statute), and (2) the potential for any undesirable policy consequences flowing from interpreting the statute according to its plain language); *Blount v. Stroud*,

232 Ill. 2d 302, 325 (2009) ("[W]here the meaning of the statute is unambiguous, we will give little weight to the fact that the legislature did not amend the statute after appellate opinions interpreting the same."); *In re Davontay A.*, 2013 IL App (2d) 120347, ¶ 27 (finding that the State's argument that the defendant's interpretation of the statute was "absurd" was "nothing more than an attempt, under the guise of statutory interpretation, to remedy an apparent legislative oversight by rewriting" a clear statute). If this Court agrees, it may affirm the appellate court's judgment reversing Charles's conviction of UPWF without addressing the remaining arguments of the State or the responsive arguments below.

II. Should this Court find it necessary to address any of the State's arguments that invite this Court to look beyond the plain language of the statute, it should find them to be unpersuasive, since axiomatic principles of statutory construction, as well as other indications of legislative intent, support the appellate court's interpretation of the UPWF statute as creating a requirement that a firearm possessed in a vehicle be within arm's reach before a person may be convicted of UPWF.

Should this Court find it necessary to address any of the State's arguments inviting it to look beyond the plain language of the UPWF statute (St. br. at 7–21), it should not find the State's arguments to be persuasive. The State's arguments fail because axiomatic principles of statutory construction support the appellate court's interpretation of the UPWF statute as creating a requirement that a firearm possessed in a vehicle be within arm's reach before a person may be convicted of UPWF. Additionally, contrary to the State's position, the appellate court's interpretation of the statute is neither absurd nor contrary to the legislative intent. Further, the State's attempt to rely on post-enactment legislative history is unavailing and, in any event, would not be sufficient to overcome all of the other

principles of statutory construction that run against the State argument. Finally, at minimum, the statute is at least equally capable of the interpretation offered by the appellate court as that offered by the State, and therefore the rule of lenity requires that the appellate court's more lenient interpretation be accepted.

A. Axiomatic principles of statutory construction support the appellate court's interpretation that the language "on or about his person or on his land or in his own abode or fixed place of business" creates a requirement that a firearm possessed in a vehicle be within arm's reach before a person may be convicted of UPWF.

Several axiomatic principles of statutory construction, principles of which the legislature was well aware, support the appellate court's interpretation of the statute. First, "the use by the legislature of certain language in one instance and wholly different language in another indicates that different results were intended." *Nelson v. Union Wire Rope Corp.*, 31 Ill. 2d 69, 100 (1964). Here, as discussed in point I, the legislature chose to use different language in the UPWF statute than it has used in any of the provisions of Section 24 of the Criminal Code in which it has enacted blanket bans.[3] Most tellingly, in *the same Public Act* in which the legislature enacted the UPWF statute, it enacted in the UPFFA statute a blanket ban on the possession of firearms by felons without using the language "on or about his person or on his land or in his own abode or fixed place of business."

[3] In addition to the UPFFA statute, several other statutes in Section 24 of the Criminal Code show that the legislature *never* uses language like it did in the UPWF statute when it enacts blanket bans on either possession by certain classes of people or on possession of certain types of firearms or ammunition. *See, e.g.*, 720 ILCS 5/24–1.7(a) (2014) ("A person commits the offense of being an armed habitual criminal if he or she . . . possesses . . . any firearm after having been convicted a total of 2 or more times of [enumerated offenses]."); Ill. Rev. Stat. 1982, ch. 38, ¶ 24–2.1(a) ("A person commits the offense of unlawful use of metal piercing bullets when he knowingly . . . possesses . . . any metal piercing bullet.").

The legislature's use of different language in the UPWF statute than in other statutes imposing blanket bans indicates that it intended a different result.

Second, where possible, a statute should be construed "so that no term is rendered superfluous or meaningless." *People v. Maggette*, 195 Ill. 2d 336, 350 (2001); *People v. Lutz*, 73 Ill. 2d 204, 212 (1978). However, the State's argument would render a *19-word* portion of the UPWF statute, "on or about his person or on his land or in his own abode or fixed place of business," entirely superfluous. If the legislature intended the UPWF statute to create a blanket ban, it would have either used the same language it used in the UPFFA statute or simply omitted that 19-word portion of the UPWF statute so that the UPWF statute stated, "It is unlawful for a person to knowingly possess any firearm or any firearm ammunition if the person has been convicted of a felony."

Third, "the enumeration of certain things in a statute implies the exclusion of all others." *In re Estate of Leichtenberg*, 7 Ill. 2d 545, 552 (1956). If the legislature had intended the UPWF statute to create a blanket ban, it would not have listed specific locations where that statute applied. As the appellate court recognized, since the list the legislature provided excludes situations where a defendant constructively possesses a firearm outside of arm's reach within a vehicle, the UPWF statute does not apply under circumstances like those in this case. *Wise*, 2019 IL App (3d) 170252, ¶ 20.

Fourth, using the same language in one statute as in a different statute previously interpreted indicates an intent for the same result. *People v. Grant*, 2017 IL App (1st) 142956, ¶ 23. As the appellate court observed, the legislature's choice to use the same "on or about his person" language in the UPWF statute

that this Court had already interpreted in other statutes to mean within arm's reach indicates that the legislature intended that same result. *Wise*, 2019 IL App (3d) 170252, ¶ 21 (citing *Liss* and *Niemoth*).

The State's main argument seems to be that the legislature included the language "on or about his person or on his land or in his own abode or fixed place of business," in the UPWF statute in order to negative exceptions in the unlawful use of weapons (UUW) and aggravated unlawful use of a weapon (AUUW) statutes that allow for possession on a person's land, in his abode, or at his fixed place of business (St. br. at 7–10, 17–18). 720 ILCS 5/24–1 (2014); 720 ILCS 5/24–1.6 (2014). However, as this Court has repeatedly explained, each of those statutes define "a separate, distinct offense." *People v. Zimmerman*, 239 Ill. 2d 491, 500 (2010) (AUUW is "an entirely different crime" than UUW); *People v. Gonzalez*, 151 Ill. 2d 79, 88 (1992) (UPWF is "a separate, distinct offense" from UUW). The UPWF statute is independent of, and does not share exceptions with, the UUW or AUUW statutes. So it was not necessary for the legislature to include language in the UPWF statute in order to negative the exceptions in those other statutes. *People v. Legoo*, 2020 IL 124965, ¶¶ 18–27 (declining to read an exception from one statute pertaining to sex offenders into another). The legislature undoubtedly understands this, as it did not attempt to negative the exceptions in the UUW or AUUW statutes in *any* of the multiple other statutes in Section 24 of the Criminal Code that impose blanket bans.

In any event, as the State acknowledges, the 19 words of the UPWF statute at issue in this case do not even negative all of the exceptions in the current versions of the UUW and AUUW statutes, as those statutes include an exception for

possession "on the land or in the legal dwelling of another person as an invitee with that person's permission," that the UPWF statute does not negative (St. br. at 18–19). This undermines the State's position that the 19 words at issue here were included in the UPWF statute in order to create a blanket ban by negativing all of the exceptions in the UUW and AUUW statutes.

The State also argues that if the UPWF statute's language "on or about his person" means within arm's reach, that would render certain language of *other statutes*—namely the immediate accessibility requirement of the UUW and AUUW statutes—superfluous (St. br. at 11). This Court should not allow this argument to distract it from the issue at hand, which is interpretation of the separate and distinct UPWF statute.

The State goes on to argue that, through examining the UUW and AUUW statutes, which use language such as "on or about his person or in any vehicle" in their prohibitions, it becomes apparent that the legislature treats the phrase "on or about his person" to mean the same thing as "in any vehicle." The State therefore asks this Court to find that the language "on or about his person" in the UPWF statute "necessarily includes" a prohibition on possession "in any vehicle," despite the absence of the "in any vehicle" language in the UPWF statute (St. br. at 10–11). Under the State's theory, rather than reading a statute's language according to its plain meaning, courts would have to use multiple other statutes to construct something like a Rosetta Stone that would allow readers to decipher statutory language. However, courts should not assume that statutes are written in such a way as to require a secret code to grasp their meaning. Here, it is possible to interpret the UPWF statute according to its plain language without rendering any language of the UPWF statute superfluous, and this Court should do so.

In any event, the State's position is inconsistent with the legislature's use of those phrases in the unlawful possession of a firearm by a street gang member statute. In that statute, the legislature created two alternative elements of the offense, one where a street gang member possesses 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) (2014), and another where such a person possesses a firearm without a FOID card "in any vehicle" if the firearm is "immediately accessible," 720 ILCS 5/24–1.8(a)(2) (2014). The State's argument would render one of those provisions superfluous.

Thus, axiomatic principles of statutory construction support the appellate court's interpretation of the statute. Accordingly, in the event that this Court somehow finds that the statute is ambiguous enough to even require applying those principles, it should apply them and conclude that the appellate court's judgment should be affirmed. *In re Davontay A.*, 2013 IL App (2d) 120347, ¶¶ 25–28 (assuming the statute at issue was ambiguous enough to require even addressing the principles of statutory construction, application of the principle that "the expression of one thing is the exclusion of another" meant that the statute requiring a fine for those who either "plead[ed] guilty" or were "convicted" of sexual assault did not apply to minors who, rather than pleading guilty, were adjudicated delinquent after a trial).

B. The appellate court's interpretation of the UPWF statute is neither absurd nor contrary to the intent of the legislature.

Contrary to the State's position (St. br. at 12–13), the appellate court's interpretation of the UPWF statute is neither absurd nor contrary to the intent of the legislature. In enacting the UPWF statute, the legislature chose to use the same "on or about his person" operative language that it had previously used in

the armed violence statute. Enacted in 1967, the armed violence statute prohibits a person from being "armed with a dangerous weapon" while committing certain felonies. 720 ILCS 5/33A–2(a) (2014). A definitions section of the armed violence statute states: "A person is considered armed with a dangerous weapon . . . when he or she carries *on or about his or her person* or is otherwise armed" with a dangerous weapon. 720 ILCS 5/33A–1(c)(1) (2014) (emphasis added); Ill. Rev. Stat. 1984, ch. 38, ¶ 33A–1(a); P.A. 80–1099 (eff. Feb. 1, 1978). In holding that only possession within arm's reach could meet that requirement, this Court explained that any other interpretation would actually frustrate the legislature's intent:

> The intended purpose of the armed violence statute is to deter felons from using dangerous weapons so as to avoid the deadly consequences which might result if the felony victim resists. That deterrent purpose is not served under the circumstances of this case [where the defendant was in the kitchen and the firearms at issue were in different rooms of the same house].
>
> A felon with a weapon at his or her disposal is forced to make a spontaneous and often instantaneous decision to kill without time to reflect on the use of such deadly force. Without a weapon at hand, the felon is not faced with such a deadly decision. Hence, we have the deterrent purpose of the armed violence statute. Thus, for this purpose to be served, it would be necessary that the defendant have some type of *immediate access to* or *timely control over* the weapon.

People v. Condon, 148 Ill. 2d 96, 109–10 (1992) (internal citations omitted); *see also Smith*, 191 Ill. 2d at 412–13 (it would "frustrate" intent of legislature to hold that armed violence statute applied to situation where firearm was not within arm's reach of felon). This Court observed that the danger the statute addressed of a felon being forced to make an instantaneous decision on whether to use firearms is "nonexistent" if the firearms are not within arm's reach. *Condon*, 148 Ill. 2d at 110.

Contrary to the State's position (St. br. at 20), this Court did not suggest anything different in *Harre*. Indeed, in finding the evidence in that case to have been sufficient to prove the defendant guilty of armed violence, this Court noted that not only did officers provide direct evidence that the defendant could have

reached a firearm on a car seat by reaching through a partially open car window, but the circumstantial evidence showed that the defendant had been riding in the car "with [the] weapon *inches* from his grasp" moments before. *Harre*, 155 Ill. 2d at 397, 399–400 (emphasis added). Thus, it was consistent with the legislative intent as described in *Condon* for the defendant's conviction to be affirmed in *Harre*.

The decision of the legislature to use the same "on or about his person" language in the UPWF statute that it used in the armed violence statute indicates that it had the same intent. It was not absurd for the legislature to intend this result. To the contrary, if, as this Court has found, it was perfectly logical for the legislature to determine that the armed violence statute does not apply to people who constructively possess firearms *while they are actually in the process of committing felonies* so long as they do not have the firearm within arm's reach, then it is certainly just as logical for the legislature to determine that the severe penalties of the UPWF statute do not apply to felons in vehicles who do not have firearms within arm's reach *at a time when they are not committing any other offense.*

Charles notes that, just because a person is not guilty of a more serious offense with more severe penalties such as armed violence or UPWF, that does not mean that his or her conduct of being in constructive possession of a firearm is lawful. Quite the contrary, a felon who constructively possesses a firearm may be convicted of violating Section 2 of the Firearm Owner's Identification Card (FOID) Act, which prohibits "possess[ing] any firearm" without a FOID—something that Section 8 of that statute generally prohibits felons from obtaining. 430 ILCS 65/2(a)(1), 8(c), 14 (2014); *People v. Schweihs*, 2015 IL 117789, ¶¶ 13–14 (in contrast to the offense of AUUW, which applies only to possession of a firearm in certain locations if it is immediately accessible, "to prove a violation of the FOID Card

Act, the State need only prove possession of a firearm without a FOID card"); *People v. Williams*, 2015 IL 117470, ¶ 14 (in contrast to the AUUW statute, "the FOID Card Act does not have a location requirement"). So the question here is not, as the State suggests, whether felons may "lawfully possess firearms in vehicles" (St. br. at 13), but rather whether they are guilty of the more serious offense of UPWF, and therefore subject to the more severe penalties that statute imposes, which now include a mandatory prison term of 2–10 years, even where they do so without ever having the firearm within arm's reach while in the State of Illinois.

The State argues that there could be no logical reason for the legislature to write the UPWF statute so that it applies to situations where a felon constructively possesses a firearm on his or her property but not to situations where a felon constructively possesses a firearm inside a vehicle traveling on public roads (St. br. at 13). However, there are logical reasons for the legislature to have a different requirement concerning possession in a vehicle that may travel between states than possession in a fixed location within Illinois such as a defendant's land, home, or "fixed" place of business. A person in a vehicle may simply be a nonresident passing through the State of Illinois, as Charles was in this case. The legislature may have wished to write the UPWF statute in a way that would avoid imposing the harsh penalties for that offense upon such people, especially since differences in state laws could mean that a person with a prior felony conviction who is driving through Illinois could be moving all of their possessions from a state that does not place any special restrictions on their ability to possess firearms to another state that also does not do so.

Under Illinois law, the penalties associated with the prohibitions of the UPWF statute apply to all persons with a prior felony conviction, unless and until

they successfully petition for relief. There is no guarantee that any particular felon will ever be granted relief, since the decision to grant or deny relief is ultimately left to the discretion of either the Director of the Illinois State Police or the Illinois circuit court. 720 ILCS 5/24–1.1(a) (2014); 430 ILCS 65/10(c) (2014). That is not necessarily the case in other states, though. For example, as of at least 2011, Vermont had no state law that banned possession of firearms by felons. Jay Buckey, *Firearms for Felons? A Proposal to Prohibit Felons from Possessing Firearms in Vermont*, 35 Vt. L. Rev. 957, 957 (2011). The laws of other states, including New Hampshire (until at least 2010), only place restrictions on felons who have committed certain felony offenses. Deborah Bone, *The Heller Promise Versus the Heller Reality: Will Statutes Prohibiting the Possession of Firearms by Ex-Felons Be Upheld After Britt v. State?*, 100 J. Crim. L. & Criminology 1633, 1647 (2010) [hereinafter Bone]. The laws of other states, such as Oregon (until at least 2010), create restrictions for those with felony convictions that automatically lapse a certain number of years after the completion of their sentence. Bone, 1646. And legislation proposed in at least one state, North Carolina, would have created "hunting rights" that would allow felons to possess certain kinds of firearms but not others. Bone, 1656. Finally, there are other states that are like Illinois in requiring felons to petition for the restoration of any rights they may have lost, *see* Bone, 1657, but those states may have different standards for granting relief, or leave the decision to the discretion of the authorities in that state. That, of course, means that their petitions might be granted in one state but not another.

Obviously, the laws of the various states concerning possession of firearms by felons may vary considerably and can be changed at any time. In light of that, the legislature could have reasonably determined that crafting the UPWF statute so that its severe penalties would only apply to the most potentially dangerous

situations in which felons inside a vehicle have a firearm within arm's reach was the best way to strike a balance between protecting public safety and respecting the rights of nonresidents.

The legislature's decision to limit liability under the UPWF statute to situations where a defendant has a firearm within arm's reach may also have been motivated by a desire to reduce the risk of wrongful convictions that comes with a theory of constructive possession. A person may be convicted under a theory of constructive possession if he "lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing." Illinois Pattern Jury Instructions, Criminal, No. 4.16. But cases where a firearm in not within arm's reach or even in sight of a defendant, and multiple people are riding with the defendant inside the same vehicle, can present "tough factual questions" as to knowledge and intent to exercise control that "may be difficult to answer." Benjamin C. McMurray, *Hands Off the Gun! A Critique of United States v. Jameson and Constructive Possession Law in the Tenth Circuit*, 85 Denv. U. L. Rev. 531, 556, 561 (2008) [hereinafter McMurray]. Requiring a fact finder to do so creates an inherent risk that sometimes a fact finder will make a finding that, although rational enough to be affirmed on appeal under the extremely deferential standard of review for the sufficiency of evidence (*see People v. Collins*, 106 Ill. 2d 237, 261 (1985)), is in reality incorrect. It would not be unreasonable for the legislature to have concluded that requiring a firearm inside a vehicle to be within arm's reach was desirable because it decreases the risk of wrongful convictions for a serious offense like UPWF that now carries a mandatory prison sentence. McMurray, 564 (due to the risk of punishment that is "disproportionate to a defendant's conduct," courts

"should narrow rather than expand liability" under statutes providing enhanced penalties for the possession of firearms by felons).

Moreover, the mere desire to provide some measure of lenity to a person driving through the State of Illinois who never came within arm's reach of a firearm while passing through the state, and did not ever intend to do so, is a non-absurd reason for the legislature to have limited liability under the UPWF statute. McMurray, 569 (constructive possession by a defendant who "never intended even to touch the gun should be punished less severely"). This case illustrates how harsh the requirement of a mandatory prison sentence can be in some cases.

Here, Charles's only prior felony conviction occurred in Iowa in 1995 when he was 25 (C58, 60). He served about 3 years in actual prison time for that offense, which was the only time in his whole life that he spent in prison even as of today (C60). The incident alleged to be UPWF in this case occurred 20 years later in 2015, when Charles was 45 (C58, 96). As the trial judge observed, now Charles is on disability, "has poor health," and is on "multiple medication[s]" (R197; C66). He has diabetes, high blood pressure, arthritis, and chronic back pain due to breaking a bone in his back in 2014 (R126; C66). He has to use a cane to walk and wears a back brace for support (C66). Noting (at a sentencing hearing well before the COVID-19 health crisis started) the risk that "being incarcerated would endanger [Charles's] medical conditions," and "the lack of serious criminal offenses for quite some time," the trial judge said, "I'll be blunt—if this was probationable, that would have been something I would have considered . . . but it's just not" (R195, 198–99). The trial judge imposed the mandatory minimum 2-year prison term for the offense, and then granted Charles an appeal bond (R199–200; C92–93, 96). Charles posted bond that same day (C94).

Now Charles is 51 years old and remains out of custody, having evidently complied with all of the conditions of his appeal bond, including weekly phone check ins, random testing for illegal drug or alcohol use, and otherwise complying with the law (R201–02; C92–93). Particularly in light of his poor mobility, Charles did not pose a threat to anyone as he was driving through the State of Illinois on the day in question with a firearm inside a glove in the third row backseat of the minivan and therefore well out of his reach. Further, though he has been out of custody all but two days since the date of his alleged UPWF offense (C3–5), he has evidently complied with all of the conditions of his pre- and post-trial release and not violated the law since (the trial judge made the finding at Charles's sentencing hearing that "I know he's not done anything while he's been out of custody (R199)). Also, as the trial judge noted, for some time prior to the alleged offense in this case, Charles had gone a long time without committing any serious criminal offenses. This case therefore illustrates that, far from being absurd, it was entirely reasonable for the legislature to write the UPWF statute in a way that reserves its harsh consequences for the most dangerous situations where a felon inside a vehicle possesses a firearm within arm's reach.

The State cites several cases purporting to describe the intent of the legislature in enacting the UPWF statute (St. br. at 12). Significantly, none of the courts in those cases made any attempt to grapple with any of the indications of legislative intent discussed above. In each case, the court simply pronounced what it believed the legislative intent was without explaining how such an intent could be discerned either from the statutory language or any of the usual methods or sources pertaining to statutory interpretation. Not a single one of those cases

addressed the glaring indications of legislative intent that arise not only from the plain language of the UPWF statute but also from considering that (1) the legislature enacted an unambiguous blanket ban on the possession of firearms by felons in the UPFFA statute in the *same Public Act* as it enacted the UPWF statute using starkly different language and creating a more severe penalty, and (2) the legislature chose to use the same "on or about his person" language it had previously used in the armed violence statute and other statutes, thereby indicating the same intent. Perhaps the reason for this is that those courts were not addressing the issue raised here and therefore had no need to delve into the legislative intent the way this Court is called upon to do in this case. Accordingly, to the extent that the declarations of legislative intent in those cases are inconsistent with the actual indications of legislative intent discussed above, this Court should look to the latter to determine the legislative intent.

Notably, though, the general theories expressed in those cases that the legislature sought to protect the public by imposing enhanced penalties for the possession of weapons by felons are not entirely inconsistent with Charles's argument here. To the contrary, even if this Court agrees with Charles's argument, it will remain clear that the UPWF statute's enhanced penalties may be applied in all cases involving the *actual* possession of firearms by felons, regardless of the place that felons are when they have firearms within arm's reach. The penalties of the UPWF statute may likewise be applied to both actual and constructive possession of a firearm by a felon when the firearm is possessed on his land, in his abode, or in his fixed place of business. Most felons who attempt to possess a firearm despite these restrictions will find themselves in violation of both the

more serious offense of UPWF and of the less serious offense of possession of a firearm without a FOID, and potentially other laws concerning firearm possession. Further, the "on or about his person" requirement of possession within arm's reach within the State of Illinois should be easy to prove through circumstantial evidence in most cases that do not involve defendants who were simply driving through the State of Illinois. *See Harre*, 155 Ill. 2d at 397, 399–400 (affirming conviction of armed violence based, in part, on circumstantial evidence indicating that the defendant would have been within arm's reach of the firearm moments before officers also directly observed the defendant within arm's reach of it).

Thus, there is nothing unreasonable or absurd about the way the legislature wrote the UPWF statute, which serves the interest of protecting the public while also avoiding applications of the UPWF statute that the legislature reasonably determined could result in unjust or problematic results. Accordingly, even if this Court somehow finds that the statute is ambiguous enough to consider the State's argument on these points, it should find that the appellate court's interpretation of the statute is neither absurd nor contrary to the legislative intent.

C. Because subsequent legislative history is a particularly weak basis for discerning legislative intent, this Court should find that any indication of legislative intent that can be discerned from that factor in this case is not sufficient to overcome all of the other above-discussed principles of statutory construction and indications of legislative intent that run against the State argument.

Finally, the State attempts to rely on the post-enactment legislative history of the UPWF statute. Specifically, the State argues that courts have interpreted the UPWF statute to impose a blanket ban, and that the legislature's failing to

change the "relevant language"[4] in subsequent amendments to the statute indicates a legislative intent in accord with court interpretations of the statute (St. br. at 14–17).

Initially, Charles notes that the recent U.S. Supreme Court decision in *Bostock* calls into doubt the premise of the State's argument that the legislature should be found to have "acquiesced" to the judicial interpretation of a statute simply because the legislature failed to change the pertinent language of the statute in subsequent amendments making other changes to the statute. In that case, the Court held that employment discrimination against persons because of their sexual orientation or transgender identity is discrimination "because of . . . sex" under Title VII. *Bostock*, 140 S. Ct. at 1737–38. The Court did so even though (1) for over 50 years after Title VII was enacted, every single court that had interpreted that same language of Title VII had reached the opposite conclusion, and (2) the legislature had failed to change the pertinent language of the statute in an amendment to the statute passed subsequent to a number of those court decisions. *Bostock*, 140 S. Ct. at 1757, 1777–78 (Alito, J., dissenting); 42 U.S.C. § 2000e–2(a)(1) (enacted in 1964 and amended in 1972 and 1991). The Court reasoned that "speculation about why a later Congress declined to adopt new legislation offers a particularly dangerous basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt." *Bostock*, 140 S. Ct. at 1747 (internal quotation marks omitted). The Court went on to cite with approval

[4] The State does not offer any suggestions as to how the legislature could have amended the language "on or about his person or on his land or in his own abode or fixed place of business" in order to make it more clear that that language means precisely what it says.

a portion of a concurring opinion by Justice Scalia in another case in which he stated: "'Arguments based on subsequent legislative history . . . should not be taken seriously, not even in a footnote.'" *Bostock*, 140 S. Ct. at 1747 (quoting *Sullivan v. Finkelstein*, 496 U.S. 617, 632 (1990) (Scalia, J., concurring)).

The *Bostock* Court found—as Charles asks this Court to find in point I above as to the statute in this case—that the statutory language was clear so that it did not need to look beyond the plain language of the statute. *Bostock*, 140 S. Ct. at 1743, 1749. It that sense, *Bostock* is in accord with this Court's view that the principle of legislative "acquiescence" may not be used as a mechanism to defeat the plain language of a statute. *Blount*, 232 Ill. 2d at 325. The State's point III argument here does not seem to directly contradict the holdings of *Bostock* or *Blount*, as the State's position here seems to be that the idea of legislative "acquiescence" is to be used as an indication of legislative intent that should only be considered "[t]o the extent that [the UPWF statute] is deemed ambiguous" (St. br. at 12, 14–17).[5] To the extent that the State's position here is that the UPWF statute is ambiguous, that is a factor that it could potentially use to distinguish its argument from the argument directly rejected in *Bostock* and *Blount*.

However, for the reasons argued in point I above, the language of the UPWF statute at issue here is hardly ambiguous. Therefore, this Court should reject the State's attempt to use the principle of legislative "acquiescence" to defeat the plain language of the statute.

In any event, the *Bostock* Court's reasoning teaches that subsequent legislative history is a particularly weak indicator of legislative intent. So even

---

[5] To be sure, Charles notes that the State does not cite any case in which this Court, or any court, applied the principle of judicial "acquiescence" to defeat the plain language of a statute.

if this Court finds it appropriate to give some consideration to the subsequent legislative history of the UPWF statute, it should nevertheless find that anything that can be gleaned from it is insufficient to overcome all of the above-discussed interpretive tools that counsel in favor of interpreting the statute as creating a requirement that a firearm possessed inside a vehicle be within arm's reach before a person can be convicted of UPWF. In addition to being consistent with the reasoning of *Bostock*, such a conclusion would not be inconsistent with prior decisions of this Court that have treated subsequent legislative history not as a dispositive factor but rather as simply one of several tools of statutory interpretation to be applied to an ambiguous statute. *See Blount*, 232 Ill. 2d at 324–25 (fact that legislature amended statute after judicial construction without changing relevant language is "suggestive of legislative agreement," but "it is not conclusive"); *see also Palm v. Holocker*, 2018 IL 123152, ¶ 31 (case cited on page 14 of the State's brief in which this Court addressed other factors of statutory interpretation before finally citing the principle of legislative "acquiescence" as a *fourth* factor supporting its conclusion); *Moon v. Rhode*, 2016 IL 119572, ¶ 33 (case cited on page 14 of the State's brief in which this Court also addressed legislative "acquiescence" as one factor among others that merely "further supports our statutory interpretation").

Furthermore, the State's attempt to rely on subsequent legislative history here is particularly weak, as the cases pertaining to the UPWF statute that the State cites do not indicate the sort of clear and consistent judicial construction of a statute to which the legislature should be deemed to have acquiesced. The statutory interpretation question at issue here was not even raised in the decisions of this Court upon which the State attempts to rely (St. br. at 16).

In *People v. Moore*, 2020 IL 124538, ¶ 53, the defendant did not dispute the sufficiency of the evidence. Moreover, he could not possibly have done so based

on the argument raised here, as the firearm was clearly within arm's reach of him, since it was in the front center console of the car he was driving. *Moore*, 2020 IL 124538, ¶ 49. Thus, this Court's conclusion that the evidence was sufficient such that there was no double jeopardy bar to retrial is not in any way inconsistent with the argument Charles makes here. Further, the State inaccurately suggests that this Court in *Moore* "applied the framework" from its decision in *Gonzalez*, 151 Ill. 2d 79 (St. br. at 16). Contrary to the State's assertion, this Court in *Moore* did not cite *Gonzalez*, and it did not even list the elements of the offense of UPWF. Though the State claims that this Court in *Moore* concluded that the evidence was sufficient "without addressing whether the firearm was immediately accessible to the defendant" (St. br. at 16), the State's claim is misleading because this Court did not expressly address any of the elements of the offense—instead it summarily concluded that the evidence was sufficient in light of the agreement of the parties on that point. *Moore*, 2020 IL 124538, ¶ 53. The legislature has not, in any event, amended the UPWF statute at any point after this Court's decision in *Moore*.

The only other decision of this Court cited by the State is *Gonzalez*. The only issue raised by the defendant in *Gonzalez* was that the circuit court erred in using a single factor both (1) to satisfy the element of UPWF of a prior felony conviction, and (2) as an aggravating factor justifying an extended-term sentence for that offense. *Gonzalez*, 151 Ill. 2d at 81. The Court easily rejected that argument, since the defendant had two separate prior felony convictions, one of which was used as an element of the offense, and the other to establish extended-term eligibility. *Gonzalez*, 151 Ill. 2d at 86. Although the Court stated that the only elements of the offense of UPWF were a prior felony conviction and possession of a prohibited weapon, it did so in *dictum*. *Gonzalez*, 151 Ill. 2d at 85, 87.

The *Gonzalez* decision provides a good example of why *dictum* should be accorded little, if any, weight as authority. The defendant in that case was in actual possession of a firearm that he pulled out of his waistband. *Gonzalez*, 151 Ill. 2d at 80. Both for that reason, and because it was for all practical purposes irrelevant to the sentencing issue he was raising, the defendant had no incentive to argue that the UPWF statute created a requirement that a firearm be "on or about his person." Moreover, because such an issue was of no real importance to the case, this Court's statement on the elements of the offense was made without any real analysis of the plain language of the statute or any real consideration of the principles of statutory construction or indications of legislative intent discussed above that are crucial to reaching an informed conclusion on the issue. Indeed, the *Gonzalez* Court did not even cite a single one of the previously decided appellate court cases pertaining to the issue (discussed below), nor any case law whatsoever, in support of its *dictum*.

Surely little, if anything, can be gleaned from the legislature's not changing the language of the UPWF statute in response to the *Gonzalez* Court's *dictum*, or in response to any other decisions in which the issue Charles raises here was not actually either raised or directly addressed. *See Bywater*, 223 Ill. 2d at 487 (declining to consider as authority a statement this Court made in *dictum* in a prior case because the statement "was made in the context of a different question of interpretation"); *Woodard*, 175 Ill. 2d at 447 (because another case of this Court was "concerned with issues other than those presented here," this Court declined to rely on its *dictum* as "authority" for the issue it was addressing); *see also Nudell v. Forest Pres. Dist. of Cook Cty.*, 207 Ill. 2d 409, 418–19, 424 (2003) (favoring

the plain language of a statute over this Court's nonprecedential *dictum* in two prior cases in which the issue had not been argued by counsel or "deliberately passed upon by this court"). Apparently recognizing that, the State attempts to rely primarily on the very small number of appellate court decisions in which an issue similar to the issue in this case was actually raised (St. br. at 15–16). However, those decisions ultimately provide inconsistent guidance at best as to the issue addressed here, and therefore do not present the sort of consensus as to judicial interpretation of a statute to which the legislature might be said to "acquiesce."

Indeed, in both *People v. Clodfelder*, 172 Ill. App. 3d 1030 (4th Dist. 1988), and *People v. Woodworth*, 187 Ill. App. 3d 44 (5th Dist. 1989), the court suggested that the "on or about his person" language of the UPWF statute required the State to prove that a firearm possessed in a vehicle was within arm's reach of the defendant. In *Clodfelder*, the court suggested that requirement existed by specifically "hold[ing]" that the firearm at issue in that case was "about [the defendant's] person" where an 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 rising and turning. *Clodfelder*, 172 Ill. App. 3d at 1032–34 (officer testified that "in order for defendant to have reached the rifle *while in the driver's seat* he would have had to rise from his seat and turn," emphasis added). Although a line in *Woodworth* seems to suggest that the court equated possession "on or about his person" with any form of possession, the court in the next line of its opinion stated, "[t]he key is within one's reach. Clearly the firearm on the floor of his car under his seat was within defendant's reach." *Woodworth*, 187 Ill. App. 3d at 46.

In *People v. Rangel*, 163 Ill. App. 3d 730 (1st Dist. 1987), the defendant argued that he could not be convicted of UPWF because officers recovered the

firearm from his car instead of directly from his person. However, because the firearm on the floor beneath the driver's seat where the defendant had been sitting was clearly within arm's reach of the defendant while he was inside the car, the court correctly rejected the defendant's argument as inconsistent with the purpose of the UPWF statute and affirmed the defendant's conviction. *Rangel*, 163 Ill. App. 3d at 733, 738–40.

People v. Jastrzemski, 196 Ill. App. 3d 1037 (1st Dist. 1990), is a 30-year old decision that is probably most supportive of the State's position, as the firearm was discovered under the hood of a car that the defendant had been driving. However, Charles notes that even that case is not identical to the circumstances of this one. Here, the evidence shows that Charles was simply driving through Illinois and that he never had the firearm within arm's reach while he was within the State of Illinois. Contrary to the situation in this case, the *Jastrzemski* court could have potentially relied on a finding that a rational trier of fact could have concluded that the firearm was within arm's reach of the defendant at some point while he was within the State of Illinois. Indeed, the defendant in that case, who was driving in Cook County on a suspended license that was presumably an Illinois driver's license, was the owner of the car and knew that the firearm was in a very peculiar location inside his car (i.e., under the hood), strongly suggesting that he had placed the firearm at that location while he was inside the State of Illinois. *Jastrzemski*, 196 Ill. App. 3d at 1038–40. Notably, to the extent that *Jastrzemski* is construed otherwise and interpreted as holding that a firearm that was not within the defendant's reach was somehow, at the same point in time, "on or about his person," it would be against the "clear weight of authority." *Henderson*, 687 A.2d at 922 n.9 (citing multiple cases that reached a contrary holding and then citing *Jastrzemski* with a "*But see*" signal).

Even assuming that the State is correct that some language of the above cited cases is supportive of its interpretation of the statute, the decisions in those cases are nevertheless not clear or consistent enough that it can be said with any confidence that the legislature's failure to amend the statute in response to those decisions indicates an intent that the UPWF statute be construed as applying to all situations where a felon possesses a firearm in any location, regardless of whether the possession was actual or constructive. Indeed, it could just as easily be maintained that either (1) the legislature's failure to remove the 19-word portion of the statute at issue here in amendments passed after *Clodfelder* and *Woodworth* indicates that it agreed with the portions of those cases suggesting that a defendant who possesses a firearm within a vehicle is only guilty of UPWF if the firearm was, at some point, within arm's reach of the defendant, or (2) the legislature's use of the language "on or about his person" after this Court had already interpreted the meaning of that language in *Liss* and *Niemoth*, in conjunction with the legislature's never changing that language in subsequent amendments after this Court repeatedly provided the same interpretation of that language in the armed violence statute, indicates that the legislature intended that language of the UPWF statute to be interpreted in accord with how it had been construed in those other statutes, *see Grant*, 2017 IL App (1st) 142956, ¶ 23.

Subsequent legislative history is a particularly weak basis for discerning legislative intent both in general and in light of the lack of clear and consistent case law addressing the specific issue raised in this case. Accordingly, this Court should find that any indication of legislative intent that can be discerned from that factor in this case is not sufficient to overcome all of the other above-discussed principles of statutory construction and indications of legislative intent that run against the State argument.

D. At minimum, the UPWF statute is at least equally capable of the interpretation offered by the appellate court as that offered by the State, and therefore the rule of lenity requires that the appellate court's more lenient interpretation be accepted.

If a criminal statute is susceptible to two or more interpretations, the rule of lenity requires courts to "adopt the construction that operates in favor of the accused." *People v. Carter*, 213 Ill. 2d 295, 302 (2004); *see People v. Gaytan*, 2015 IL 116223, ¶ 39 (applying the rule); *see also People ex rel. Gibson v. Cannon*, 65 Ill. 2d 366, 370–71 (1976) ("[b]y well settled principles of law, a criminal or penal statute is to be strictly construed in favor of an accused, and nothing is to be taken by intendment or implication against him beyond the obvious or literal meaning of such statutes," internal quotation marks and citations omitted); *Yates v. United States*, 574 U.S. 528, 548 (2015) ("it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite," internal quotation marks and citations omitted); David S. Romantz, *Reconstructing the Rule of Lenity*, 40 Cardozo L. Rev. 523, 524 (2018) (noting the importance of the rule of lenity in preserving "the constitutional right of fair warning found in due process" and in ensuring "that we do not have to guess as to the breadth and meaning of a penal statute, the application of which could seriously impact our life or liberty"). Here, at minimum, the UPWF statute is at least equally capable of the interpretation offered by the appellate court as that offered by the State. Accordingly, the rule of lenity requires that the appellate court's more lenient interpretation be accepted. This Court should therefore conclude, as the appellate court did, that a firearm inside a vehicle must have been within arm's reach of a defendant before he may be convicted of UPWF.

Conclusion

The plain language of the UPWF statute indicates that a firearm inside a vehicle must be located no further than an arm's reach away from a defendant before he may be convicted of that offense. Because the State failed to prove that Charles was within arm's reach of a firearm inside a glove sitting on the third-row backseat of his minivan at any time while he was driving through the State of Illinois, this Court should affirm the appellate court's judgment reversing his conviction without looking beyond the plain language of the statute.

Even if this Court deems it necessary to address any of the State arguments that invite it to look beyond the plain language of the statute, this Court should find those arguments to be unpersuasive, since axiomatic principles of statutory construction, as well as other indications of legislative intent, are in accord with the appellate court's interpretation of the statute. The appellate court's interpretation of the statute is neither absurd nor contrary to the legislative intent. Furthermore, because subsequent legislative history provides a particularly weak basis for discerning legislative intent both in general and in light of the lack of clear and consistent case law addressing the specific issue raised in this case, this Court should not find that factor sufficient to overcome all of the other factors that counsel in favor of interpreting the statute as the appellate court did.

Accordingly, this Court should find that the appellate court's interpretation of the UPWF statute was correct. It should go on to affirm the appellate court's judgment reversing Charles's conviction of UPWF on the ground that the evidence was insufficient to prove him guilty beyond a reasonable doubt of that offense.

In the alternative, if this Court reverses the appellate court's judgment and affirms Charles's conviction of UPWF, it should either (1) remand his case

for the appellate court to reach an issue concerning his custody credit for time served that it did not originally address due to its reversal of his conviction, *Wise*, 2019 IL App (3d) 170252, ¶ 24, or (2) remand his case directly to the circuit court for the filing of a motion pursuant to Illinois Supreme Court Rule 472. Ill. S. Ct. R. 472(a)(3), (e).

CONCLUSION

For the foregoing reasons, the defendant-appellee, Charles P. Wise, respectfully requests that this Court affirm the appellate court's judgment reversing his conviction of UPWF on the ground that the evidence presented at his trial was insufficient to prove him guilty beyond a reasonable doubt of that offense.

In the alternative, in the event that this Court reverses the appellate court's judgment and affirms his conviction of UPWF, Charles requests that this Court either (1) remand his case for the appellate court to reach an issue concerning his custody credit for time served that it did not originally address due to its reversal of his conviction, or (2) remand his case directly to the circuit court for the filing of a motion pursuant to Illinois Supreme Court Rule 472.

Respectfully submitted,

THOMAS A. KARALIS
Deputy Defender

STEVEN VAREL
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLEE

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 contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 33 pages.

/s/Steven Varel
STEVEN VAREL
Assistant Appellate Defender

No. 125392

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Mr. Matt Schutte, Henry County State's Attorney, 307 W. Center St., Cambridge, IL 61238, stattorney@henrycty.com;

Mr. Charles P. Wise, 838 14th Street SE, Cedar Rapids, IA 52403

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 October 27, 2020, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Esmeralda Martinez
LEGAL SECRETARY
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
Service via email will be accepted at
3rddistrict.eserve@osad.state.il.us