No. 131300

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. TERRY T. COLLINS, Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-24-0005 There on Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois, No. 21 CF 1729 The Honorable David Paul Kliment, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

After officers found a gun in a car in which defendant was a passenger, defendant was charged with three offenses based on his possession of the weapon: one count each of aggravated unlawful use of a weapon (AUUW) and violating the Firearm Owner's Identification (FOID) Card Act, each based on his lack of a FOID card, and one count of unlawful possession of a weapon by a felon (UPWF). At defendant's request, the circuit court severed the UPWF charge, and the People elected to try that charge first. At trial, the parties stipulated that defendant had a prior felony conviction, and the jury returned a not-guilty verdict.

Defendant then moved to dismiss the remaining charges. In light of the stipulation concerning his prior felony conviction, he argued, the jury must have found that he did not knowingly possess the gun found in the car. Therefore, he argued, the federal and state double jeopardy clauses' issue-preclusion component barred the People from relitigating that common element at a second trial on the other charges. The circuit court granted the motion in part, dismissing the FOID card charge but not the AUUW charge.

In separate decisions, the appellate court affirmed the dismissal of the FOID card charge in No. 2-23-0584 and reversed the denial of the motion to dismiss the AUUW charge in No. 2-24-0005. This Court allowed the People's

petition for leave to appeal (PLA) from the appellate court's judgment in No. 2-24-0005.[1] No issue is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether a defendant who requests separate trials on related charges and is acquitted of the charge tried first may invoke the issue-preclusion component of the federal and state constitutions' double jeopardy clauses — or statutory or common law principles of issue preclusion — to prohibit a trial on the remaining charges.

JURISDICTION

This Court allowed the People's PLA on March 26, 2025. This Court's jurisdiction lies under Supreme Court Rules 315 and 612(b)(2). The appellate court had jurisdiction under Supreme Court Rule 604(f), which allows for an appeal of "the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy." Ill. S. Ct. R. 604(f).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part, that no person "shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const., amend. V.

Article I, section 10 of the Illinois Constitution provides, in relevant part, that no person "shall be . . . twice put in jeopardy for the same offense." Ill. Const. 1970, art. I, § 10.

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[1] The People's PLA from the appellate court's judgment in No. 2-23-0584 remains pending. *People v. Collins*, No. 131298 (petition filed Dec. 10, 2024).

Section 3-4(b) of the Criminal Code provides, in relevant part, that a "prosecution is barred if the defendant was formerly prosecuted for a different offense . . . if that former prosecution . . . was terminated by a final order or judgment . . . that required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution." 720 ILCS 5/3-4(b)(2).

STATEMENT OF FACTS

A. Defendant is charged with three gun-possession offenses.

In September 2021, a Kane County sheriff's officer stopped a car on I-90 for changing lanes without signaling and following the car in front of it too closely. R372-74.[2] The car had three occupants: the driver; a front-seat passenger; and defendant, the sole passenger in the back seat. R377. Upon approaching the car, the officer smelled raw and burnt cannabis. R375-76.

After two other officers arrived, they removed everyone from the car and searched it. R380-81. In the front center console, an officer found a half-burnt marijuana blunt and rolling paraphernalia. R382. And in the hatchback-style trunk, which was accessible from the back seats, another officer found a zippered bag containing a fully loaded Polymer80 handgun. R385.[3]

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[2] "R," "C," "SC," and "A" refer, respectively, to report of proceedings, common law record, supplemental common law record, and this brief's appendix.

[3] Polymer80 is an online company that sells weapons parts kits that buyers assemble. The end product — a "ghost gun" — has no serial number. R391-92; *see Bondi v. VanDerStok*, 145 S. Ct. 857, 866-67 (2025).

Defendant initially denied that the gun was his and that he knew it was in the trunk. R393, 440. But after an officer told him that all three occupants, as convicted felons, were "looking at going down with a gun," R440, defendant said he would "take ownership for [the gun] because [the driver] was on his way to see his grandma who was dying," R393. Defendant later told police that he bought the gun online and had put the bag containing it in the trunk when the car was pulled over. R397-98.

Defendant was charged with three offenses — AUUW, a violation of the FOID Card Act, and UPWF — based on his possession of the gun without a valid FOID card and after having been convicted of a felony. The AUUW count alleged that defendant "knowingly carried" a firearm without having "been issued a currently valid [FOID] [c]ard." C34; *see* 720 ILCS 5/24-1.6(a)(1), (3)(C). The FOID card count alleged that defendant "possessed" a firearm "without having in his possession a [FOID] [c]ard." C36; *see* 430 ILCS 65/2(a)(1). And the UPWF count alleged that defendant "knowingly possessed" a firearm after having "been convicted of a felony." C37; *see* 720 ILCS 5/24-1.1(a).

B. Defendant moves to sever the felon-in-possession charge and is acquitted of that charge following trial.

Because only the UPWF charge required the People to prove defendant was a convicted felon, defendant moved to sever that charge from the others, arguing that "trying these matters together would result in prejudice" by permitting the jury considering the AUUW and FOID card charges to learn of

defendant's felon status, a fact not relevant to those charges. R81; *see* 725 ILCS 5/114-8(a) ("If it appears that a defendant or the State is prejudiced . . . by joinder of separate charges . . . the court may order separate trials"). The circuit court granted the motion without objection, and the People elected to try the UPWF count first. R83-85.

At trial, the officers who conducted the traffic stop testified about the discovery of the gun and defendant's statements at the scene. R369-455, 566-606. In addition, the parties stipulated that defendant was "convicted of a felony" in 2011. R631. In closing argument, the parties agreed that the only disputed issue was whether defendant knowingly possessed the gun found in the car. R480-82, 489-90. The jury found defendant not guilty. R537.

C. Defendant moves to dismiss the other charges under the doctrine of issue preclusion.

Following his acquittal on the UPWF charge, defendant moved "to bar the prosecution" of the AUUW and FOID card charges, invoking "the doctrine of collateral estoppel and the guarantee against double jeopardy provided by the Illinois and United States Constitutions." C150.[4]

Under the "collateral estoppel . . . component of the [constitutional] guarantee[s] against double jeopardy," defendant noted, "'when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future

[4] As this Court has recognized, "collateral estoppel" is now more commonly known as "issue preclusion." *People v. Jefferson*, 2024 IL 128676, ¶ 2, n.1. Except when used in a quotation, this brief employs the modern phrase.

lawsuit.'" C152 (quoting *Ashe v. Swenson*, 397 U.S. 436, 443 (1970)). Here, given that the parties had stipulated to his felon status, defendant argued that the not-guilty verdict on the UPWF charge must have rested on a jury finding that the People had failed to prove the only other element of that offense: that defendant knowingly possessed the gun found in the car. C151-52. And because that issue of ultimate fact was also an essential element of the AUUW and FOID card charges, defendant argued, "the doctrine of collateral estoppel and the state and federal constitutional guarantees against double jeopardy . . . precluded [the People] from" relitigating the issue of his knowing possession of the gun and hence from "prosecuting" the AUUW and FOID card charges. C152-53.

The circuit court granted the motion in part. C157. First, concluding that the jury necessarily determined that defendant did not knowingly possess the gun when it acquitted him of the UPWF charge, it held that that jury finding barred the People from prosecuting the FOID card charge because that charge required proof of the same knowing-possession element. R668-69. But the court further held that the People were not barred from prosecuting the AUUW charge because that charge required the People to prove that defendant "knowingly carried" a firearm, which the court concluded was "a different element" than knowing possession. R668.

Both parties moved to reconsider. C159, 183. Defendant argued that the court erred in denying his motion to dismiss with respect to the AUUW

charge because knowing possession and knowing carriage are not materially different elements. C184. And the People argued that the court erred in granting the motion with respect to the FOID card charge because *Currier v. Virginia*, 585 U.S. 493, 499-502 (2018), precludes a defendant who requested separate trials on related charges from using an acquittal on one charge at his first trial to bar a subsequent trial on the other charges under the double jeopardy clause's issue-preclusion component. C161-62. The court denied both motions to reconsider, C188, and both parties appealed, C191, SC4.

D. The appellate court holds that the doctrine of issue preclusion bars a trial on the other charges.

The appellate court decided the appeals separately. In defendant's appeal, No. 2-24-0005, the appellate court reversed the circuit court's order denying defendant's motion to dismiss with respect to the AUUW charge. A1-15.

The appellate court held that the circuit court erred in construing the UPWF statute's knowing-possession element and the AUUW statute's knowingly-carried element as different for issue-preclusion purposes. A12-14, ¶¶ 33-37. Citing dictionary definitions of "possess" and "carry," and the terms' apparently interchangeable use in the AUUW statute, the appellate court concluded that the respective elements covered the same conduct because "a person cannot carry a weapon without also possessing it." A13, ¶ 35.

The appellate court further held that *Currier* did not foreclose defendant's reliance on issue-preclusion principles, A11, ¶ 30, offering two grounds for that conclusion. First, while the appellate court recognized that Justice Gorsuch's opinion in *Currier* announced that a defendant who consents to severing factually related charges cannot use an acquittal at the first trial to bar a trial on the remaining charges under the double jeopardy clause's issue-preclusion component, *see* A7, ¶ 20, it erroneously read that portion of Justice Gorsuch's opinion as a non-binding plurality opinion rather than the opinion of the Court, A11, ¶ 30.

Second, the appellate court seems to have determined that regardless of whether defendant could invoke the double jeopardy clause's issue-preclusion component to bar trial on the AUUW and FOID card charges, he could invoke an unidentified issue-preclusion doctrine that is not tethered to the double jeopardy clause, reasoning that "issue preclusion . . . is not co-extensive with double jeopardy." A8, ¶ 24; *see* A15, ¶ 39 (stating that court "need not reach defendant's double jeopardy argument" given its "resolution of the issue preclusion question").

The appellate court took the same approach in its decision in No. 2-23-0584, where it affirmed the circuit court's order dismissing the FOID card charge. *See People v. Collins*, 2024 IL App (2d) 230584-U (A16-26). Without addressing the People's argument that defendant's request for separate trials foreclosed his claim under *Currier*, *see* A26, ¶ 26, the appellate court held

that "issue preclusion applied to bar prosecution" of the FOID card charge because it "shared a common element that was litigated and decided in defendant's favor at UPWF trial," A16, ¶ 1.[5]

STANDARD OF REVIEW

Whether defendant's request for separate trials on factually related charges precludes him from relying on an acquittal on one charge at the first trial to bar the subsequent trial on the remaining charges under principles of issue preclusion "involves the application of law to uncontested facts," which this Court reviews *de novo*. *People v. Bellmyer*, 199 Ill. 2d 529, 537 (2002).

ARGUMENT

Because Defendant Requested Two Trials on Related Charges, He Cannot Use an Acquittal at the First Trial to Bar the Second Trial.

Defendant is not entitled to invoke issue-preclusion principles to bar a trial on the AUUW and FOID card charges that were severed from the UPWF charge at his request.

Defendant had several options for avoiding the prejudice that could arise at a joint trial from the introduction of evidence of his prior conviction, which was admissible only with respect to the UPWF charge. He could have proceeded to trial on all charges and stipulated to his felon status (as he ultimately did at the UPWF trial, R631), thereby preventing the People from introducing the name and nature of the prior offense. *People v. Walker*, 211

[5] As noted, *see supra* p. 2 n.1, the People's PLA from this decision is pending in *People v. Collins*, No. 131298.

Ill. 2d 317, 338 (2004). Likewise, defendant could have proceeded to trial on all charges and requested (as he also did at the UPWF trial, R467-68, 524) that the court instruct the jury to consider the prior conviction only for the limited purpose of establishing the UPWF charge's felon-status element. *See Spencer v. Texas*, 385 U.S. 554, 562-64 (1967) (prior-conviction evidence does not violate due process where limiting instruction is available).

Alternatively, defendant was permitted to request, as he did here, that the UPWF charge be tried separately from the AUUW and FOID card charges. *See* 725 ILCS 5/114-8(a); *People v. Edwards*, 63 Ill. 2d 134, 139-40 (1976). Because defendant chose this latter option, he cannot now complain that the procedure he requested — sequential trials on related charges — is prohibited by principles of issue preclusion.

In the criminal context, the doctrine of issue preclusion is a component of the constitutional protection against double jeopardy. *See People v. Fort*, 2017 IL 118966, ¶ 34. But that constitutional guarantee is designed to "guard[ ] against [g]overnment oppression," not to "relieve a defendant from the consequences of his voluntary choice." *United States v. Scott*, 437 U.S. 82, 99 (1978). For that reason, in *Currier v. Virginia*, the United States Supreme Court held that a defendant's "consent[ ] to two trials . . . precludes any constitutional violation associated with holding a second trial," including under the double jeopardy clause's issue-preclusion component. 585 U.S. 493, 502 (2018).

Contrary to the appellate court's belief, that part of Justice Gorsuch's opinion in *Currier* garnered a majority of the Court and is binding precedent. Accordingly, *Currier* squarely forecloses any claim that the issue-preclusion component of the federal double jeopardy clause — or, under this Court's "lockstep doctrine," the state double jeopardy clause, *People v. Colon*, 225 Ill. 2d 125, 153 (2007) — precludes the People from prosecuting defendant on the AUUW and FOID card charges that were severed from the UPWF charge at his request.

Nor, contrary to the appellate court's suggestion, can defendant rely on nonconstitutional principles of issue preclusion to bar or limit a trial on the AUUW and FOID card charges. Like the constitutional double jeopardy clauses, Illinois's statutory protection against double jeopardy includes an issue-preclusion component that prohibits the relitigation of an issue of ultimate fact that was resolved in a defendant's favor at an earlier trial. 720 ILCS 5/3-4(b)(2). And, on at least one occasion, this Court has applied a broader principle of issue preclusion, derived from civil litigation, to limit the scope of a criminal trial on one charge after a defendant's earlier acquittal on a related charge. *See People v. Haran*, 27 Ill. 2d 229, 235-36 (1963). But under this Court's well-established "rule of invited error or acquiescence," *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004), a defendant who requests or consents to separate trials on related charges cannot then invoke these nonconstitutional issue-preclusion principles as a sword to "frustrate society's

interest in enforcing its criminal laws," *People v. Milka*, 211 Ill. 2d 150, 171 (2004).

A. The issue-preclusion component of the federal and state constitutions' double jeopardy clauses does not apply when a defendant requests or consents to separate trials on related charges.

The federal and state constitutions' double jeopardy clauses protect a defendant from being "tried more than once for the same offense." *People v. Kimble*, 2019 IL 122830, ¶ 28; *see* U.S. Const., amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy[.]"); Ill. Const. 1970, art. I, § 10 ("No person shall be . . . twice put in jeopardy for the same offense."). Because this Court interprets the federal and state double jeopardy clauses "identically," *Kimble*, 2019 IL 122830, ¶ 28; *see also Colon*, 225 Ill. 2d at 153, this brief refers to the clauses collectively as "the double jeopardy clause," unless otherwise noted.

The double jeopardy clause affords defendants three basic protections: it "protects against a second prosecution for the same offense after acquittal," "a second prosecution for the same offense after conviction," and "multiple punishments for the same offense." *Ohio v. Johnson*, 467 U.S. 493, 498 (1984) (internal quotation marks omitted). To determine whether two offenses are the "same offense" for double jeopardy purposes, courts generally apply the "same-elements test." *United States v. Dixon*, 509 U.S. 688, 696 (1993); *see People v. Sienkiewicz*, 208 Ill. 2d 1, 5-6 (2003). Under that test, two offenses are the same offense unless "each offense contains an element

not contained in the other." *Dixon*, 509 U.S. at 696. Put differently, if all the elements of one offense are shared by another offense, the offenses are the same offense for double jeopardy purposes. *See Brown v. Ohio*, 432 U.S. 161, 168 (1977) (greater and lesser-included offenses are same offense because lesser-included offense has no element not contained in greater offense). As the same-elements test reflects, the double jeopardy clause embodies a form of "claim preclusion," which "foreclos[es] successive litigation of the very same claim." *Bravo-Fernandez v. United States*, 580 U.S. 5, 9 (2016).

A second way that two offenses may be deemed the "same offense" for double jeopardy purposes is under the clause's "guarded[ly] appli[ed]" issue-preclusion component. *Id.* at 10. First recognized in *Ashe v. Swenson*, 397 U.S. 436, 443-46 (1970), the issue-preclusion component provides that when an "issue of ultimate fact" is "necessarily decided" in a defendant's favor at one trial, further "prosecution for any charge for which that [fact] is an essential element" is barred. *Yeager v. United States*, 557 U.S. 110, 123 (2009). In those circumstances, any relitigation of the ultimate fact decided in the defendant's favor at the first trial "would be tantamount to the forbidden relitigation of the same offense resolved at the first trial," even when the offenses would otherwise be considered distinct under the same-elements test. *Currier*, 585 U.S. at 499.

Both double jeopardy clause components shield a defendant from the "embarrassment, expense and ordeal" of "repeated attempts" by "the State[,]

with all its resources and power[,] . . . to convict an individual for an alleged offense." *Green v. United States*, 355 U.S. 184, 187 (1957). But they are not meant to "create an insuperable obstacle to the administration of justice [where] there is no semblance of the type of oppressive practices at which the double-jeopardy prohibition is aimed." *Wade v. Hunter*, 336 U.S. 684, 688-89 (1949).

For that reason, as *Currier* held, a defendant's "consent[ ] to two trials when one would have avoided a double jeopardy problem precludes any constitutional violation associated with holding a second trial." 585 U.S. at 502. As the Court explained, when a defendant "elects to have [related] offenses tried separately," the resulting sequential trials cannot be attributed to "prosecutorial . . . overreaching." *Id.* at 500-01 (internal quotation marks omitted). Thus, because the double jeopardy clause exists to "guard[ ] against [g]overnment oppression," rather than to "relieve a defendant from the consequences of his voluntary choice," *Scott*, 437 U.S. at 99, "a defendant's consent to two trials . . . must overcome a double jeopardy complaint under [the issue-preclusion component recognized in] *Ashe*," *Currier*, 585 U.S. at 501; *see Evans v. Michigan*, 568 U.S. 313, 326 (2013) (clause does not bar second trial when "defendant consents to a disposition that contemplates reprosecution"). *Currier* therefore squarely establishes that, after voluntarily severing the UPWF charge from the related AUUW and FOID card charges, defendant may not wield the double jeopardy clause's issue-preclusion

component as a sword to prevent the separate trial that he requested on the latter charges.

The appellate court erroneously concluded that it was not bound this clear holding because it mistook the operative portion of Justice Gorsuch's opinion (Part II) in *Currier* as a non-binding plurality opinion rather than the holding of the Court. A11, ¶ 30. Justice Gorsuch's opinion is divided into three parts. Part I recites the case's factual and procedural history. *See Currier*, 585 U.S. at 496-98. Part II contains the relevant holding that "a defendant's consent to two trials . . . overcome[s] a double jeopardy complaint under *Ashe*." *Id.* at 501. And Part III urges a narrow application of *Ashe* even in cases where a defendant did *not* consent to separate trials. *See id.* at 503-10. As both the syllabus and the opinion's introductory paragraph make clear, Part II of Justice Gorsuch's opinion was "the opinion of the Court," in which Chief Justice Roberts and Justices Kennedy, Thomas, and Alito concurred. *Id.* at 493-95. And while Justice Kennedy did not also join Part III, he wrote separately to underscore his concurrence in Part II, which he viewed as having "resolve[d] th[e] case in a full and proper way" on the ground that "when a defendant's voluntary choices lead to a second prosecution he cannot later use the Double Jeopardy Clause, whether thought of as protecting against multiple trials or the relitigation of issues, to forestall that second prosecution." *Id.* at 511-12 (Kennedy, J., concurring in part).

Thus, the United States Supreme Court squarely held in *Currier* that "a defendant's consent to two trials . . . overcome[s] a double jeopardy complaint" based on the issue-preclusion doctrine recognized in *Ashe*. *Currier*, 585 U.S. at 501. That holding is binding on this Court under the federal constitution's supremacy clause, U.S. Const., art. VI, cl. 2; *see People v. Hood*, 2016 IL 118581, ¶ 22, and forecloses defendant's attempt to avoid a trial on his AUUW and FOID card charges under the issue-preclusion component of the federal double jeopardy clause after having requested that those charges be tried separately from the UPWF charge. And under this Court's established lockstep approach to construing the state double jeopardy clause, *see Colon*, 225 Ill. 2d at 153, *Currier* similarly dooms defendant's state constitutional claim.

B. A defendant who requests or consents to separate trials on related charges cannot invoke statutory or common law principles of issue preclusion to avoid standing trial on all charged offenses.

The appellate court also seemed to suggest that defendant's AUUW and FOID card charges were subject to dismissal under nonconstitutional issue-preclusion principles. *See* A15, ¶ 39 (finding it unnecessary to "reach defendant's double jeopardy argument" given its "resolution of the issue preclusion question"). That too was error. While the court did not identify the source of the nonconstitutional issue-preclusion principles on which it relied, there are two possibilities — statutory and common law. But neither

statutory nor common law principles of issue preclusion may be invoked by a defendant who requested or consented to separate trials on related charges.

Start with Illinois's statutory double jeopardy protections. Section 3-4 of the Criminal Code, 720 ILCS 5/3-4, "codif[ies] the rules of double jeopardy." *People v. Mueller*, 109 Ill. 2d 378, 383 (1985). It includes an issue-preclusion component, which provides that if a defendant is prosecuted for one offense, a subsequent prosecution for "a different offense" is barred if the first prosecution "was terminated by a final order or judgment . . . that required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution." 720 ILCS 5/3-4(b)(2). But as with the constitution's issue-preclusion doctrine, a defendant who requests or consents to separate trials on related charges and is acquitted of the charge tried first cannot then wield statutory issue-preclusion as a sword to bar a subsequent trial on the remaining charges. *See Milka*, 211 Ill. 2d at 170-71 ("statutory and constitutional bars against double jeopardy . . . should not be applied mechanically when the interests they protect are not endangered and when their mechanical application would frustrate society's interest in enforcing its criminal laws").

A contrary conclusion would violate the settled "rule of invited error or acquiescence," which prevents a party from "attack[ing] a procedure to which he agreed, even [where] that acceptance may have been grudging." *In re Det. of Swope*, 213 Ill. 2d at 217. As this Court has explained, the invited-error

rule rests on the understanding that it "would offend all notions of fair play" to allow a party to "request to proceed in one manner and then later contend . . . that [his requested] course of action" is prohibited. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004) (internal quotation marks omitted); *see Stephens v. Taylor*, 207 Ill. 2d 216, 222 (2003) (litigant who "requested . . . and was granted [a] new trial . . . cannot [later] claim the order granting the new trial was error"). Accordingly, a defendant's "invitation or agreement to" separate trials on related charges "goes beyond mere waiver," *Harvey*, 211 Ill. 2d at 385 (internal quotation marks omitted), to preclude him from later invoking section 3-4(b)(2)'s issue-preclusion doctrine to short-circuit the very procedure he requested.

The same holds true for any common law issue-preclusion principle derived from civil litigation that may apply in criminal cases to limit the evidence that may be presented at a defendant's trial on one charge following an earlier acquittal on a factually related charge. *See Haran*, 27 Ill. 2d at 235-36 (doctrine of "estoppel by verdict" barred People from presenting evidence of sexual assault for which defendant was acquitted at later trial charging defendant with different act of sexual assault against same victim). Even assuming that civil issue-preclusion principles apply in the criminal context, *but see People v. Jefferson*, 2024 IL 128676, ¶ 43 (reserving the question), they undoubtedly would be subject to the same proviso applicable to the constitutional and statutory preclusion principles discussed above,

namely, that a defendant who requests or consents to separate trials on related charges may not wield issue-preclusion principles as a sword to bar or limit the People's ability to prosecute him on all charges, *see People v. Carrillo*, 164 Ill. 2d 144, 151 (1995) (because "collateral estoppel . . . is a component of the double jeopardy clause," exception prohibiting application of double jeopardy principles "similarly bars . . . collateral estoppel assertions").

* * *

For all these reasons, the appellate court erred in holding that issue-preclusion principles prevent the People from prosecuting defendant on the AUUW and FOID card charges that were severed from the UPWF charge at his request.

This Court should thus reverse the appellate court's judgment in No. 2-24-0005, which addressed the AUUW charge. And because the appellate court's judgment in No. 2-23-0584, which addressed the FOID card charge, presents the same issue arising from the same factual and procedural history, this Court should either allow the pending PLA in No. 131298 and reverse the appellate court's underlying judgment or enter a supervisory order directing the appellate court to vacate its judgment and reconsider in light of this Court's decision in the present appeal.

CONCLUSION

This Court should reverse the appellate court's judgment and remand to the circuit court for trial on the AUUW charge. In addition, the Court should either (1) allow the People's PLA in No. 131298, reverse the appellate court's judgment in No. 2-23-0584, and remand to the circuit court for trial on the FOID card charge, or alternatively (2) issue a supervisory order directing the appellate court to vacate its judgment in No. 2-23-0584 and reconsider in light of this Court's eventual decision in the present appeal.

August 6, 2025

Respectfully submitted,

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RULE 341(C) CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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(a), is 20 pages.

/s/ Eric M. Levin
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APPENDIX

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No. 2-24-0005
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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 21-CF-1729
TERRY T. COLLINS,	)	Honorable David Paul Kliment,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices Birkett and Kennedy concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Terry T. Collins, was indicted for two counts of aggravated unlawful use of a weapon (AUUW) (counts I and II) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5); (a)(2), (a)(3)(C) (West 2020)), possession of a firearm-not eligible for a Firearm Owner's Identification (FOID) card (count III) (430 ILCS 65/2(a)(1) (West 2020)), and unlawful possession of a weapon by a felon (UPWF) (count IV) (720 ILCS 5/24-1.1(a) (West 2020)). The trial court granted defendant's motion to sever count IV from the remaining counts. The State dismissed count II and elected to proceed to trial first on count IV.

¶ 2 At trial, the parties stipulated that defendant had been convicted of a felony on March 31, 2011. The jury returned a general verdict, finding defendant not guilty of UPWF. Defendant then

moved to bar prosecution of the remaining counts based upon collateral estoppel/issue preclusion[1] and double jeopardy. The trial court granted the motion in part, dismissing count III and denying the motion as to the AUUW count (count I). The parties each filed motions to reconsider, which the court denied. Defendant appeals (Ill. S. Ct. R. 604(f) (eff. Apr. 15, 2024) (allowing appeal by defendant from denial of motion to dismiss on grounds of former jeopardy)) from the denial of his motion to bar prosecution of the AUUW count and the denial of his motion to reconsider.[2] He argues that the court erred in denying his motion to bar prosecution of the AUUW count, where (1) issue preclusion barred the State from prosecuting him for AUUW, because the ultimate issue of fact—whether he knowingly carried a gun—had previously been resolved by a jury that acquitted him of UPWF, and (2) defendant did not surrender his double jeopardy rights when he chose to sever the UPWF charge. We reverse.

¶ 3 I. BACKGROUND

¶ 4 On February 8, 2022, the State charged defendant in a four-count indictment with two counts of AUUW, possession of a firearm-not eligible for a FOID card, and UPWF. Before trial, the State dismissed one AUUW count, and defendant moved to sever the UPWF count (on the basis that proof that he was previously convicted of a felony, which was required for the UPWF count, could prejudice him as to the remaining counts). The State did not object to severing the

[1]We hereinafter use "issue preclusion" instead of "collateral estoppel." *People v. Jefferson*, 2024 IL 128676, ¶ 2 n.1 (noting the Supreme Court's preference for issue preclusion over collateral estoppel in the double jeopardy context).

[2]In appeal No. 2-23-0584, the State appeals from the dismissal of count III.

charge, and the trial court granted defendant's motion to sever. The State elected to proceed to trial on the UPWF charge (count IV) first.

¶ 5 The jury trial on count IV commenced on August 21, 2023. Kane County sheriff's detective Luke Weston testified that, on September 25, 2021, at about 8:30 p.m., he was patrolling on I-90 between Hampshire and Huntley and observed a white BMW X5 with Minnesota license plates commit two traffic violations: changing lanes without signaling and following another vehicle dangerously close. Weston conducted a traffic stop. He testified that the BMW took a "long time" to pull over. Weston approached the vehicle at the rear passenger side, and the back seat occupant—defendant—rolled down the window. The driver was Jimmy Barker, and the front-seat passenger was William Heart. Weston smelled a strong odor of burnt and raw cannabis coming from the vehicle. He called for backup.

¶ 6 Deputy Steven Benson arrived. The officers moved the occupants to their squad cars and searched the BMW after obtaining Barker's consent. Benson located a burnt cannabis blunt in the front center console and a cannabis blunt roller in the front compartment. The vehicle was a hatchback; thus, the officers could access the trunk from the rear passenger seats. They folded the rear passenger seat and located a black bag in the trunk. Inside the bag was a grey Polymer80 firearm with a full magazine and one bullet in the chamber. Weston explained that the rear seat did not completely block access to the trunk area when it was upright, and a person in the rear seat could reach back to the trunk area. The Polymer80 is a "ghost gun" with no serial number that can be purchased, unassembled, off the Internet. Deputy Jeremy Jorgensen arrived at the scene.

¶ 7 After Weston gave defendant *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)), defendant initially denied to Weston that the gun was his. However, afterward, he stated that he would take ownership of it because Barker was on his way to see his grandmother, who

was dying. According to defendant, they intended to stay a couple of days, but Weston did not locate any clothing for defendant in the BMW, defendant had no identification, and defendant advised he had no cell phone. Weston advised defendant that all three occupants were felons and that it was not his intention to charge the wrong person "with the gun." Subsequently, defendant stated that he purchased the gun online for a couple of hundred dollars and had put the gun in the trunk when Weston pulled over the BMW. Defendant described the bag that contained the gun (black with the word "cookies" on it but did not mention there was camouflage on it), the gun itself (contained a full magazine), and the ammunition (silver).

¶ 8 Weston further testified that Barker seemed in a hurry to leave, appeared nervous, and stated that he was on parole/probation and had not advised his parole/probation officer that he was leaving Minnesota. Barker's phone contained a picture of a man with a mask, holding a gun to someone's head.

¶ 9 Weston testified that he asked defendant questions to ensure that defendant was not taking the blame for someone else. Weston saw defendant fall at one point, and Benson helped defendant get up and escorted him to Jorgensen's squad car. Defendant was cooperative during the interaction. Barker had about $1700 or $1800 on his person, and Heart had about $1000 on him. Defendant was arrested for possessing a firearm. Barker and Heart were released from custody. A family member of Barker's confirmed that a relative was in the hospital.

¶ 10 Based on his training and experience, Weston testified that I-90 is a drug corridor between Minnesota and Chicago. He believed that the story—about going to a hospital in Chicago without knowing its address—was similar to his experiences with drug smugglers.

¶ 11 Deputy Benson testified that he responded to the stop and saw defendant in the back seat of the BMW. Benson smelled the odor of burnt and raw cannabis emanating from the passenger

side of the vehicle, and Heart showed him a blunt "they" had been smoking. During the search, Benson located in the center console area where Heart had been a blunt roller, a blunt, and a small amount of leafy substance that appeared to be cannabis. While Benson spoke to defendant, defendant yawned, stated he felt dizzy, and fell to the ground. Defendant stated he did not need an ambulance and was having a back spasm.

¶ 12 Deputy Jorgensen testified that he arrived at the scene at about 9:14 p.m. He saw defendant fall to the ground. Defendant declined an ambulance, explaining he had a back spasm. Defendant told Jorgensen that he had drilled holes in the firearm where the retaining pins are placed. Jorgensen testified that Weston mentioned Polymer80 before defendant did.

¶ 13 A joint stipulation, People's exhibit No. 13, was admitted into evidence. It stated, "On March 31, 2011, [defendant] was convicted of a felony." During closing arguments, the prosecution noted that it was required to prove beyond a reasonable doubt both elements of UPWF (*i.e.*, knowingly possessing a firearm and having a prior felony conviction) but, as to the felony-conviction element, stated that "[t]his has already been done away with." "The defense stipulates and the evidence has been received that the defendant is a convicted felon. This has been met by agreement of both parties." Thus, the "second proposition, [is] not in dispute. The only dispute here is the first proposition, whether the defendant knowingly possessed that firearm." Similarly, defense counsel addressed the felony-conviction element and stated that defendant and his attorneys "all agree that the State has proven, we've all signed that stipulation the State read to you saying yes, [defendant]—you heard the stipulation, it said—you heard it—said and admitted that in 2011 he was convicted of a felony. This is off your plate." Counsel also noted that defendant told police that he was a convicted felon. The jury was instructed that the State was required to

prove both elements of the offense beyond a reasonable doubt: (1) "That the defendant knowingly possessed a firearm," and (2) that he "had previously been convicted of a felony."

¶ 14 On August 22, 2023, the jury found defendant not guilty. Subsequently, on September 12, 2023, defendant moved to bar prosecution of counts I (AUUW) and III (possession of a firearm-not eligible for FOID card), arguing that issue preclusion and the guarantee against double jeopardy precluded their prosecution. Defendant noted the joint stipulation and argued that the ultimate issue decided by the jury was whether defendant knowingly possessed a firearm, which was also an element in both counts I and III.

¶ 15 As relevant here, the trial court denied defendant's motion to bar prosecution of the AUUW charge. It determined that the jury resolved only the possession issue at the UPWF trial, as the parties had stipulated to the felony-conviction element of that offense. AUUW, the court found, involved a different element—to knowingly *carry* a firearm—rather than to knowingly *possess* one. "So it's a different element, it's not the same element."

¶ 16 Defendant moved to reconsider, arguing that a person cannot knowingly carry a firearm without knowingly possessing that same firearm and, thus, because the jury determined that the State had failed to prove that defendant knowingly possessed a firearm, the issue of whether he knowingly carried that firearm was foreclosed and could not again be put to a jury, as it was barred by double jeopardy and issue preclusion. The court denied defendant's motion. Defendant appeals.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues that the trial court erred in denying his motion to bar prosecution of AUUW (count I). He asserts that prosecution of that charge is barred based on both issue preclusion and double jeopardy grounds. We agree with defendant that issue preclusion bars prosecution of the AUUW count.

¶ 19 A. Jurisdiction

¶ 20 We preliminarily address our jurisdiction over this case. Before briefing in this appeal, the State moved to dismiss this appeal for lack of jurisdiction, and we denied its motion. The State asks us now to reconsider our decision. It argues that Illinois Supreme Court Rule 604(f) (eff. Apr. 15, 2024), upon which defendant relies, permits a defendant to appeal from "the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy." The judgment from which defendant attempts to appeal, the State first argues, is not based on former jeopardy, as that theory is unavailable. *Currier v. Virginia*, 585 U.S. 493, 501-02 (2018) (plurality opinion) (a defendant who chooses to sever charges cannot later argue that the second trial violates double jeopardy clause). Next, the State contends that issue preclusion, the trial court's basis for denying defendant's motion, does not provide the grounds for interlocutory appeal under Rule 604(f), which, in its view, is limited to double jeopardy.

¶ 21 Defendant responds that we have jurisdiction because his motion to bar prosecution was premised on both double jeopardy and issue preclusion, and he asserts both doctrines on appeal. He asserts that the availability of double jeopardy goes to the merits of his arguments, not to our jurisdiction. He also contends that issue preclusion, in the criminal context, is a component of the double jeopardy clause and, therefore, his appeal is properly sought under Rule 604(f).

¶ 22 We conclude that we have jurisdiction over this appeal. In the trial court, defendant raised both double jeopardy and issue preclusion as bases for barring prosecution of the remaining counts in the indictment. The trial court based its ruling primarily on issue preclusion, but defendant's appeal addresses both double jeopardy and issue preclusion. In any event, as defendant notes, in the criminal context, issue preclusion is a component of the double jeopardy clause. Thus, this appeal is properly brought under Rule 604(f). This conclusion is consistent with case law that has

addressed Rule 604(f) appeals involving issue preclusion. See, *e.g.*, *People v. Zegiel*, 179 Ill. App. 3d 649, 650-52 (1989).

¶ 23 B. Issue Preclusion

¶ 24 Turning to the merits, defendant argues first that the trial court erred in denying dismissal of the AUUW charge. He contends that prosecution of AUUW is barred under the issue preclusion doctrine, which is not co-extensive with double jeopardy. Issue preclusion, defendant notes, secures the issue preclusive effect of an acquittal, whereas double jeopardy protects against multiple trials. He contends that he met all the requirements for applying issue preclusion: the issue of whether he knowingly possessed the gun was raised and litigated at the first trial, the jury's determination of that issue was a critical and necessary part of the final judgment in the first trial, and the issue sought to be precluded in the AUUW count is the same one decided in the first trial. Further, while he concedes that issue preclusion does not necessarily prevent a new trial, he argues that, in this case, the one issue that was previously decided encompasses the issue the State would be forced to prove to secure a conviction at the second trial. That is, it is not possible to present evidence that he knowingly carried a firearm without also presenting evidence that he knowingly possessed it, which is an issue that has already been resolved in his favor. Thus, defendant argues, because the State is precluded from prosecuting him on the theory that he possessed a gun, we should reverse the trial court's denial of his motion to dismiss the AUUW charge.

¶ 25 Issue preclusion, "in the criminal context, is a component of the double jeopardy clause." *People v. Fort*, 2017 IL 118966, ¶ 34; *People v. Carrillo*, 164 Ill. 2d 144, 147-52 (1995) (separately analyzing double jeopardy and issue preclusion arguments). Under the issue-preclusion doctrine, when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. *Ashe v. Swenson*, 397

U.S. 436, 443 (1970); see also *People v. Tenner*, 206 Ill. 2d 381, 396 (2002) (noting that issue preclusion bars the litigation of an issue that was decided in a prior case). The party seeking to invoke issue preclusion must show that (1) the issue sought to be precluded was raised and litigated in a previous proceeding, (2) the determination of the issue was a critical and necessary part of the final judgment in a prior trial, and (3) the issue is the same one decided in the previous trial. *People v. Jones*, 207 Ill. 2d 122, 139 (2003). Where a defendant claims that a previous acquittal bars a subsequent prosecution for a related offense, issue preclusion requires a court to examine the record of the prior proceeding and determine whether a rational jury could have grounded its verdict on an issue other than the one that the defendant seeks to foreclose from consideration. *Ashe*, 397 U.S. at 444. The application of issue preclusion presents a question of law that we review *de novo*. *People v. Christian*, 2016 IL App (1st) 140030, ¶ 80.

¶ 26 A person commits UPWF if he or she "knowingly *possess[es]* on or about his [or her] person *** any firearm *** if the person has been convicted of a felony under the laws of this State or any other jurisdiction." (Emphasis added.) 720 ILCS 5/24-1.1(a) (West 2022). Thus, the State must prove that (1) defendant has a prior felony conviction and (2) defendant knowingly possessed a firearm. A person commits AUUW, where, as charged here, he or she knowingly "*[c]arries* *** in any vehicle *** any pistol, revolver, stun gun or taser or other firearm *** [and] the person *possessing* the firearm has not been issued a currently valid [FOID] Card." (Emphases added.) *Id.* § 24-1.6(a)(1), (a)(3)(C). Thus, the State must establish that defendant (1) knowingly "carrie[d]" in any vehicle a firearm and (2) so "possess[ed]" the firearm without having been issued a currently valid FOID card. *Id.*

¶ 27 Here, the trial court found that the jury resolved only the possession issue at the UPWF trial, as the parties had stipulated to the felony-conviction element of that offense. AUUW, the

court found, involves a different element—to knowingly *carry* a firearm—rather than to knowingly *possess* one. "So it's a different element, it's not the same element."

¶ 28 Defendant argues that the single issue in the first trial was whether he knowingly possessed the gun. He asserts that the jury, in finding him not guilty, must have found that he did not possess a gun, as that was the only question before it. Thus, the record in the first trial supports the trial court's finding that the jury's determination of whether defendant possessed a gun was the only rational basis for the not-guilty verdict. He asserts that a trial on the AUUW charge would require a second jury to determine the same ultimate question that the first jury already decided in defendant's favor.

¶ 29 The State takes the position that we cannot speculate as to the grounds for the jury's acquittal in the first trial. See *People v. Barnard*, 104 Ill. 2d 218, 227 (1984) (a "finding of not guilty of armed violence based on murder is not a finding that the defendant did not commit murder"); *People v. Rollins*, 140 Ill. App. 3d 235, 242 (1985) ("finding of not guilty of armed violence based on aggravated battery is not a finding that the defendant did not commit aggravated battery"). The State notes that the trial court instructed the jury that it needed to find that the prosecution proved all elements of the offense beyond a reasonable doubt, including whether defendant had previously been convicted of a felony; the jury was given a general verdict form; and there was no specific finding on any specific issue. The State argues that a verdict of not guilty on the UPWF count does not equate to a finding that defendant did not carry a gun in a vehicle for AUUW. Because there was only a general verdict form, it contends, we cannot speculate as to why the jury returned a not guilty verdict or even if it returned a not guilty verdict for impermissible reasons. Thus, it argues, the AUUW charge should proceed to trial. The State also contends issue preclusion does not apply, as *Currier* forecloses its application.

¶ 30 We first address the State's reliance on *Currier*. In arguing this point, the State relies on Justice Gorsuch's opinion, which noted that identity of offenses is the paramount consideration and rejected the proposition that retrial of an issue can be considered tantamount to retrial of an offense when a defendant consents to separate trials. *Currier*, 585 U.S. at 506 (opinion of Gorsuch, J., joined by Roberts, CJ., and Thomas and Alito, JJ.). However, the portion of *Currier* addressing issue preclusion does not contain a majority opinion; therefore, it is not binding on us. See *People v. Jefferson*, 2024 IL 128676, ¶ 37 (observing that, in *Currier*, "eight of the justices addressed the scope of the issue preclusion doctrine and the Court's holding in *Ashe*, and on this question, they were evenly divided"); *cf. Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247, 269 (2007) (recognizing that plurality opinions are not binding precedent); see also *United States v. Gonzalez-Lauzan*, 437 F.3d 1128, 1139 n.8 (11th Cir. 2006) (plurality opinions are not binding and are merely persuasive); *Marks v. United States*, 430 U.S. 188, 193 (1977) (noting that, in fragmented decisions with no rationale receiving the assent of five Justices, the Court's holding " 'may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds' " (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (opinion of Stewart, J., joined by Powell, and Stevens, JJ.))). Further, Justice Gorsuch's opinion acknowledged that, "in narrow circumstances, the retrial of an issue can be considered tantamount to the retrial of an offense." *Currier*, 585 U.S. at 506 (opinion of Gorsuch, J., joined by Roberts, CJ., and Thomas and Alito, JJ.)

¶ 31 As noted, the jury here returned a general verdict.

> "When a jury returns a general verdict, it can be difficult to ascertain which facts the jury found to be unproved; the difficulty, however, is not insuperable. *People v. Ward*, 72 Ill. 2d 379, 383 ***(1978). The court must ' "examine the record of [the] prior

> proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." ' *Ashe*, 397 U.S. at 444 ***, quoting D. Mayers & F. Yarbrough, *Bis Vexari: New Trials and Successive Prosecutions*, 74 Harv. L. Rev. 1, 38-39 (1960). *** The court may not find, for instance, that the jury ' "disbelieved substantial and *uncontradicted* evidence of the prosecution on a point the defendant did not contest." ' *Ashe*, 397 U.S. at 444 n.9 ***, quoting 74 Harv. L. Rev. at 38. The court must set its inquiry 'in a practical frame' (*Ashe*, 397 U.S. at 444 ***) and assume that the jury did not reach its verdict through ' "mental gymnastics" ' (*People v. Borchers*, 67 Ill. 2d 578, 589 ***(1977), quoting *Johnson v. Estelle*, 506 F.2d 347, 352 (5th Cir. 1975))." (Emphasis added.) *People v. Wharton*, 334 Ill. App. 3d 1066, 1078 (2002).

¶ 32 The trial court found that, in the first trial, the only issue for the jury to resolve was whether defendant possessed a weapon, as the parties had stipulated to the felony-conviction element of UPWF. We conclude that the court did not err in its assessment. It is highly unlikely, and we cannot determine, that the jury ignored the stipulation that defendant was a convicted felon, especially in light of the parties' closing arguments that the only issue for the jury to decide was whether defendant possessed a weapon. Thus, the court correctly found that the jury resolved only the issue of whether defendant possessed a weapon, and it found that the State had not met its burden to prove that element.

¶ 33 Defendant next addresses the court's finding that the ultimate issue in the AUUW trial would be different than the issue decided at the UPWF trial. He disagrees with the court's determination that whether he "carried" a handgun, as required for AUUW, is a different question

than whether he "possessed" a firearm, as required for UPWF. Defendant notes that the terms "possess" and "carry" are not defined in the statute. He takes the position that the issue of whether he possessed a firearm encompasses the question of whether he carried said firearm. That is, defendant believes, one cannot carry a weapon without possessing it. "Carry," defendant notes, means "[t]o possess and convey (a firearm) in a vehicle, including the locked glove compartment or trunk of a car." Black's Law Dictionary (11th ed. 2019). "Possess" means "[t]o have in one's actual control; to have possession of." *Id.*; see *People v. Thompson*, 2023 IL App (1st) 220429-U, ¶¶ 30-32 (relying on dictionary definitions and rejecting argument that burden to prove possession of a firearm is higher than possession of firearm in a vehicle); see also *People v. Johnson*, 237 Ill. 2d 81, 97-98 (2010) (applying one-act, one-crime rule and vacating UPWF conviction; holding that convictions for UPWF and AUUW, as charged, were premised on same physical act of possessing a handgun on or about defendant's person). He also notes that the AUUW statute appears to use the terms "carry" and "possess" interchangeably, where it references knowing carry and that the person possessing the firearm does not have a valid FOID card. 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2020).

¶ 34 The State disagrees with defendant's assertion that carrying a gun in a car is the same as possession for the AUUW count. The jury, it posits, could determine that actual control entails more ownership than mere carrying. The State also asserts that the question in the trial on UPWF was whether defendant knowingly possessed a firearm and had actual control. Here, the question will be whether defendant was carrying the gun in the vehicle.

¶ 35 We agree with defendant that a person cannot carry a weapon without also possessing it. "Carry" is defined as "[t]o possess and convey (a firearm) in a vehicle, including the locked glove compartment or trunk of a car." Black's Law Dictionary (12 ed. 2024) (citing *Muscarello v. United*

States, 524 U.S. 125, 126-27, 132, 134 (1998) (noting that the term " 'carry' implies personal agency and some degree of possession"; holding that the phrase "carries a firearm" in a federal sentencing enhancement statute is not limited to carrying of firearms on the person but includes knowingly possessing and conveying firearms in a vehicle, including in a locked glove compartment or car trunk)). The term "possess" is defined as "[t]o have in one's actual control; to have possession of." Black's Law Dictionary (12 ed. 2024). "Possession" is defined as "[t]he fact of having or holding property in one's power; the exercise of dominion over property" and "[t]he right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object." Black's Law Dictionary (12 ed. 2024). In defining possession, the jury instructions here referred to having "immediate and exclusive control" over a thing.

¶ 36 Our conclusion is consistent with the court's statements in *Thompson*, observing that "the legal definition of the term 'carry' involves possession" and "the terms 'carry' and 'possess' relate to the same action when involving a firearm. And the language of the AUUW statute bears out the same conclusion." *Thompson*, 2023 IL App (1st) 220429-U, ¶ 32 (citing 720 ILCS 5/24-1.6 (West 2018)).

¶ 37 We also note that our conclusion is supported by the statutory language, which, as defendant notes, appears to use the terms "carry" and "possess" interchangeably. The AUUW statute provides that a person commits that offense when he or she "*[c]arries* *** in any vehicle *** any *** firearm [and] the person *possessing* the firearm" does not have a valid FOID card. (Emphases added.) 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2022).

¶ 38 Because the issue sought to be precluded—that defendant knowingly carried a firearm—was rejected by the jury at the first trial (*i.e.*, it rejected that defendant knowingly possessed the

firearm), the State is precluded from prosecuting defendant on the theory that he knowingly carried a firearm.[3]

¶ 39 In summary, the trial court erred in denying defendant's motion to bar prosecution of the AUUW count (count I). Given our resolution of the issue preclusion question, we need not reach defendant's double jeopardy argument.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we reverse the judgment of the circuit court of Kane County.

¶ 42 Reversed.

[3]We note that the Supreme Court of Iowa held that a defendant did not waive his issue preclusion protection, and it affirmed the dismissal of a charge of failure to affix a drug tax stamp, where the defendant was previously acquitted of a severed charge of possession with intent to deliver a controlled substance and where possession was an element of both offenses. *State v. Butler*, 505 N.W.2d 806, 808-10 (Iowa 1993). The court reasoned that the defendant was attempting to use issue preclusion as a shield to prevent the prosecution from relitigating the issue of possession, which was decided at the prior trial. *Id.* at 810.

2024 IL App (2d) 230584-U
No. 2-23-0584
Order filed November 12, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. TERRY T. COLLINS, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 21-CF-1729 Honorable David Paul Kliment, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Birkett and Kennedy concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing possession-of-a-firearm count after defendant had severed, and was acquitted of, UPWF charge, where issue preclusion applied to bar prosecution, as both offenses shared a common element that was litigated and decided in defendant's favor at UPWF trial. Affirmed.

¶ 2 Defendant, Terry T. Collins, was indicted for two counts of aggravated unlawful use of a weapon (AUUW) (counts I and II) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5); (a)(2), (a)(3)(C) (West 2020)), possession of a firearm-not eligible for a Firearm Owners Identification (FOID) card (count III) (430 ILCS 65/2(a)(1) (West 2020)), and unlawful possession of a weapon by a felon (UPWF) (count IV) (720 ILCS 5/24-1.1(a) (West 2020)). The trial court granted defendant's

motion to sever the UPWF charge from the remaining charges. The State dismissed count II and elected to proceed to trial first on the UPWF charge.

¶ 3 At trial, the parties stipulated that defendant had been convicted of a felony on March 31, 2011. The jury returned a general verdict, finding defendant not guilty of UPWF. Defendant then moved to bar prosecution of the remaining counts based upon collateral estoppel/issue preclusion[1] and double jeopardy. The trial court granted the motion in part, dismissing count III and denying the motion as to the AUUW count (count I). The parties each filed motions to reconsider, which the court denied. The State appeals (Ill. S. Ct. R. 604(a)(1) (eff. Apr. 15, 2024)), arguing that the court erred in dismissing count III, as prosecution of the charge is not barred by either double jeopardy or issue preclusion, where the remaining counts were severed on defendant's own motion and each contain different elements.[2] We affirm.

¶ 4 I. BACKGROUND

¶ 5 On February 8, 2022, the State charged defendant in a four-count indictment with two counts of AUUW, possession of a firearm-not eligible for a FOID card, and UPWF. Before trial, the State dismissed one AUUW count, and defendant moved to sever the UPWF count (on the basis that proof that he was previously convicted of a felony, which was required for the UPWF count, could prejudice him as to the remaining counts). The State did not object to severing the

[1]We hereinafter use "issue preclusion" instead of "collateral estoppel." *People v. Jefferson*, 2024 IL 128676, ¶ 2 n.1 (noting the Supreme Court's preference for issue preclusion over collateral estoppel in the double jeopardy context).

[2]In appeal No. 2-24-0005, defendant appeals from the denial of his motion as to the AUUW charge.

charge, and the trial court granted defendant's motion to sever. The State elected to proceed to trial on the UPWF charge (count IV) first.

¶ 6 The jury trial on count IV commenced on August 21, 2023. Kane County sheriff's detective Luke Weston testified that, on September 25, 2021, at about 8:30 p.m., he was patrolling on I-90 between Hampshire and Huntley and observed a white BMW X5 with Minnesota license plates commit two traffic violations: changing lanes without signaling and following another vehicle dangerously close. Weston conducted a traffic stop. He testified that the BMW took a "long time" to pull over. Weston approached the vehicle at the rear passenger side, and the back seat occupant—defendant—rolled down the window. The driver was Jimmy Barker, and the front-seat passenger was William Heart. Weston smelled a strong odor of burnt and raw cannabis coming from the vehicle. He called for backup.

¶ 7 Deputy Steven Benson arrived. The officers moved the occupants to their squad cars and, after obtaining Barker's consent, searched the BMW. Benson located a burnt cannabis blunt in the front center console and a cannabis blunt roller in the front compartment. The vehicle was a hatchback; thus, the officers could access the trunk from the rear passenger seats. They folded the rear passenger seat and located a black bag in the trunk. Inside the bag was a grey Polymer80 firearm with a full magazine and one bullet in the chamber. Weston explained that the rear seat did not completely block access to the trunk area when it was upright, and a person in the rear seat could reach back to the trunk area. The Polymer80 is a "ghost gun" with no serial number that can be purchased off the Internet unassembled. Deputy Jeremy Jorgensen arrived at the scene.

¶ 8 After Weston gave defendant *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)), defendant initially denied to Weston that the gun was his. However, afterward, he stated that he would take ownership of it because the driver was on his way to see his grandmother, who

was dying. According to defendant, they intended to stay a couple of days, but Weston did not locate any clothing for defendant in the BMW, defendant had no identification, and defendant advised he had no cell phone. Weston advised defendant that all three occupants were felons and that it was not his intention to charge the wrong person "with the gun." Subsequently, defendant stated that he purchased the gun online for a couple of hundred dollars and had put the gun in the trunk when Weston pulled over the BMW. Defendant described the bag that contained the gun (black with the word "cookies" on it but did not mention there was camouflage on it), the gun itself (contained a full magazine), and the ammunition (silver).

¶ 9 Weston further testified that Barker seemed in a hurry to leave, appeared nervous, and stated that he was on parole/probation and had not advised his parole/probation officer that he was leaving Minnesota. Barker's phone contained a picture of a man with a mask, holding a gun to someone's head.

¶ 10 Weston testified that he asked defendant questions to ensure that defendant was not taking the blame for someone else. Weston saw defendant fall at one point, and Benson helped defendant get up and escorted him to Jorgensen's squad car. Defendant was cooperative during the interaction. Barker had about $1700 or $1800 on his person, and Heart had about $1000 on him. Defendant was arrested for possessing a firearm. Barker and Heart were released from custody. A family member of Barker's confirmed that a relative was in the hospital.

¶ 11 Based on his training and experience, Weston testified that I-90 is a drug corridor between Minnesota and Chicago. He believed that the story—about going to a hospital in Chicago without knowing its address—was similar to his experiences with drug smugglers.

¶ 12 Deputy Benson testified that he responded to the stop and saw defendant in the back seat of the BMW. Benson smelled the odor of burnt and raw cannabis emanating from the passenger

side of the vehicle, and Heart showed him a blunt "they" had been smoking. During the search, Benson located in the center console area where Heart had been a blunt roller, a blunt, and a small amount of leafy substance that appeared to be cannabis. While Benson spoke to defendant, defendant yawned, stated he felt dizzy, and fell to the ground. Defendant stated he did not need an ambulance and was having a back spasm.

¶ 13 Deputy Jorgensen testified that he arrived at the scene at about 9:14 p.m. He saw defendant fall to the ground. Defendant declined an ambulance, explaining he had a back spasm. Defendant told Jorgensen that he had drilled holes in the firearm where the retaining pins are placed. Jorgensen testified that Weston mentioned Polymer80 before defendant did.

¶ 14 A joint stipulation, People's exhibit No. 13, was admitted into evidence. It stated, "On March 31, 2011, [defendant] was convicted of a felony." During closing arguments, the prosecution noted that it was required to prove beyond a reasonable doubt both elements of UPWF (*i.e.*, knowingly possessing a firearm and having a prior felony conviction) but, as to the felony-conviction element, stated that "[t]his has already been done away with." "The defense stipulates and the evidence has been received that the defendant is a convicted felon. This has been met by agreement of both parties." Thus, the "second proposition, [is] not in dispute. The only dispute here is the first proposition, whether the defendant knowingly possessed that firearm." Similarly, defense counsel addressed the felony-conviction element and stated that defendant and his attorneys "all agree that the State has proven, we've all signed that stipulation the State read to you saying yes, [defendant]—you heard the stipulation, it said—you heard it—said and admitted that in 2011 he was convicted of a felony. This is off your plate." Counsel also noted that defendant told police that he was a convicted felon. The jury was instructed that the State was required to

prove both elements of the offense beyond a reasonable doubt: (1) "That the defendant knowingly possessed a firearm," and (2) that he "had previously been convicted of a felony."

¶ 15 On August 22, 2023, the jury found defendant not guilty. Subsequently, on September 12, 2023, defendant moved to bar prosecution of counts I (AUUW) and III (possession of a firearm-not eligible for FOID card), arguing that issue preclusion and the guarantee against double jeopardy precluded their prosecution. Defendant noted the joint stipulation and argued that the ultimate issue decided by the jury was whether defendant knowingly possessed a firearm, which was also an element in both counts I and III.

¶ 16 As relevant here, the trial court granted defendant's motion as to count III, finding that both count III and the UPWF count had an identical element: knowingly possessing a firearm. It further noted that the UPWF count also included the element that defendant is a convicted felon (which was stipulated to at the first trial) and that count III included the element that defendant did not have, and was not eligible to have, a valid FOID card. As to the FOID-card element, the court noted that it was a different element than the element that was stipulated to but determined that the State would not "have any difficulty proceeding, so the defendant essentially will go on trial again in count [III] and the jury will have to determine for [a] second time whether he knowingly possessed a firearm." The court found that this was "wrong and is barred" and granted defendant's motion with respect to count III. The State moved to reconsider, and the trial court denied the State's motion, noting that count III was dismissed based on issue preclusion. It also found that the "language is different. The jury instruction would be different. The jury could find differently." The State appeals.

¶ 17 II. ANALYSIS

¶ 18 The State argues that the trial court erred in dismissing the possession-of-a-firearm-not-eligible-for-a-FOID-card charge (count III). It contends that the counts in the indictment were severed on defendant's motion and that each of the counts contain separate elements. Supreme Court and related precedent, it asserts, instruct that double jeopardy and issue preclusion are not available to bar prosecution of count III. For the following reasons, we conclude that issue preclusion bars prosecution of count III and, accordingly, affirm the trial court's ruling.

¶ 19 The application of issue preclusion also presents a question of law that we review *de novo*. *People v. Sutherland*, 223 Ill. 2d 187, 197 (2006); *People v. Christian*, 2016 IL App (1st) 140030, ¶ 80.

¶ 20 As charged here, a person commits UPWF (count IV) if he or she "knowingly possess[es] on or about his [or her] person *** any firearm *** if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2020). Thus, the State must prove that defendant: (1) has a prior felony conviction; and (2) knowingly possessed a firearm. A person commits possession of a firearm-not eligible for FOID card (count III) when he or she "acquire[s] or possess[es] any firearm *** without having in his or her possession a [FOID] Card." 430 ILCS 65/2(a)(1) (West 2020). Thus, both charges require the State to prove that defendant possessed a firearm.

¶ 21 The State argues that issue preclusion also cannot be applied against it here because we cannot speculate as to the findings underlying the jury's not-guilty verdict on count IV. It notes that the jury was instructed that it needed to find that the prosecution proved beyond a reasonable doubt all the elements of UPWF, including whether defendant had previously been convicted of a felony. It further notes that the jury was given a general verdict form, and there was no specific finding on any specific issue. A finding of not guilty, the State argues, cannot be equated to a

finding that defendant did not possess a weapon. See *People v. Barnard*, 104 Ill. 2d 218, 227 (1984) (a "finding of not guilty of armed violence based on murder is not a finding that the defendant did not commit murder"); *People v. Rollins*, 140 Ill. App. 3d 235, 242 (1985) ("finding of not guilty of armed violence based on aggravated battery is not a finding that the defendant did not commit aggravated battery"). This court cannot speculate, the State suggests, as to why the jury returned a not guilty verdict or even if it returned a not guilty verdict for impermissible reasons. Thus, the State reasons, a finding of guilty on count III cannot be barred by a prior finding related to count IV (where defendant was found not guilty) and count III should be reinstated.

¶ 22 Defendant responds that the parties stipulated to his prior felony conviction and, thus, the only question for the jury to decide was whether he knowingly possessed a firearm. The State's theory was that the firearm found inside the vehicle belonged to defendant; and the defense argued that the gun did not belong to defendant and suggested that he eventually took responsibility for the firearm so that the driver could get to the hospital to visit his dying grandmother. The not-guilty verdict, defendant argues, indicated that the jury rejected the State's evidence that defendant possessed a gun. Both counts III (possession of a firearm-not eligible for FOID card) and IV (UPWF) involve the same element—the knowing possession of a firearm. Because count III was based on the same incident, he argues, a trial on that charge would require a second jury to resolve the same question of whether defendant possessed the gun that was already decided in his favor at the first trial. Thus, defendant asserts, issue preclusion bars the relitigation of this issue in a subsequent trial on count III.

¶ 23 Issue preclusion, "in the criminal context, is a component of the double jeopardy clause." *People v. Fort*, 2017 IL 118966, ¶ 34. Under the issue preclusion doctrine, when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be

litigated between the same parties in any future lawsuit. *Ashe v. Swenson*, 397 U.S. 436, 443 (1970); see also *People v. Tenner*, 206 Ill. 2d 381, 396 (2002) (noting that issue preclusion bars the litigation of an issue that was decided in a prior case). The party seeking to invoke issue preclusion must show that (1) the issue sought to be precluded was raised and litigated in a previous proceeding, (2) the determination of the issue was a critical and necessary part of the final judgment in a prior trial, and (3) the issue is the same one decided in the previous trial. *People v. Jones*, 207 Ill. 2d 122, 139 (2003). Where a defendant claims that a previous acquittal bars a subsequent prosecution for a related offense, issue preclusion requires a court to examine the record of the prior proceeding and determine whether a rational jury could have grounded its verdict on an issue other than the one that the defendant seeks to foreclose from consideration. *Ashe*, 397 U.S. at 444.

¶ 24 As noted, the jury here returned a general verdict.

> "When a jury returns a general verdict, it can be difficult to ascertain which facts the jury found to be unproved; the difficulty, however, is not insuperable. *People v. Ward*, 72 Ill. 2d 379, 383 (1978). The court must ' "examine the record of [the] prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." ' *Ashe*, 397 U.S. at 444 (quoting D. Mayers & F. Yarbrough, Bis Vexari: New Trials and Successive Prosecutions, 74 Harv. L. Rev. 1, 38-39 (1960)). *** The court may not find, for instance, that the jury ' "disbelieved substantial and *uncontradicted* evidence of the prosecution on a point the defendant did not contest." ' *Id.* n.9 (quoting 74 Harv. L. Rev. at 38). The court must set its inquiry 'in a practical frame' (*id.* at 444) and assume that the jury did not reach its

verdict through ‘ “mental gymnastics” ’ (*People v. Borchers*, 67 Ill. 2d 578, 589 (1977) (quoting *Johnson v. Estelle*, 506 F.2d 347, 352 (5th Cir.1975)).” (Emphasis added.) *People v. Wharton*, 334 Ill. App. 3d 1066, 1078 (2002).

¶ 25 We conclude that the State’s argument is unavailing. People’s exhibit No. 13, the joint stipulation, was admitted into evidence and provided that, “On March 31, 2011, [defendant] was convicted of a felony.” During closing arguments, the prosecution noted that it was required to prove both elements beyond a reasonable doubt but, as to the felony-conviction element, stated that, “This has already been done away with.” “The defense stipulates and the evidence has been received that the defendant is a convicted felon. This has been met by agreement of both parties.” Thus, the “second proposition, [is] not in dispute. The only dispute here is the first proposition, whether the defendant knowingly possessed that firearm.” Similarly, defense counsel addressed the felony-conviction element and stated that defendant and his attorneys “all agree that the State has proven, we’ve all signed that stipulation the State read to you saying yes, [defendant]—you heard the stipulation, it said—you heard it—said and admitted that in 2011 he was convicted of a felony. This is off your plate.” Defense counsel also noted that defendant told police that he was a convicted felon. Of course, the jury was instructed that the State was required to prove *both* elements of the UPWF offense: “That the defendant knowingly possessed a firearm”; and that he “had previously been convicted of a felony.” The jury was not required to find in defendant’s favor on the second element; however, given the stipulation, it is highly unlikely the jury ignored that it was undisputed that defendant was a convicted felon. *Wharton*, 334 Ill. App. 3d at 1078. Given this posture, including the State’s position at closing that the jury needed to determine *only* the knowing-possession element and notwithstanding the fact that the jury signed a general verdict form (although the better practice would have been to seek special interrogatories), we can only

conclude that the jury found defendant not guilty based on its determination that the State did not meet its burden to prove that he knowingly possessed a firearm. Accordingly, as the issue of whether defendant knowingly possessed a firearm was litigated in the first trial, the State is precluded from relitigating that issue at a trial on count III (unlawful possession of a firearm-no valid FOID card). Further, as it cannot litigate one of the elements of count III, the trial court did not err in dismissing the entire count.

¶ 26 Given our resolution of the issue preclusion issue, we need not address the State's double jeopardy argument.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 29 Affirmed.

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 6, 2025, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

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