No. 131191

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JAMES BENSON, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-22-1230. There on appeal from the Circuit Court of Cook County, Illinois , No. 22 CR 1006. Honorable James B. Linn, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

Following a bench trial, James Benson was found guilty of one count of reckless discharge of a firearm, one count of unlawful use or possession of a weapon by a felon, and one count of misdemeanor domestic battery. Benson was sentenced to four years in prison.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether, under the new text and historical tradition analysis announced in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, defendants like James Benson can raise an as-applied Second Amendment challenge to the unlawful use of a weapon by a felon statute, 720 ILCS 5/24-1.1(a), by showing that their prior felony conviction – in Benson's case, a prior conviction for possessing a gun without a FOID card – did not establish they were dangerous persons, and how courts should determine dangerousness in this as-applied constitutional context.

STATUTES AND RULES INVOLVED

U.S. Const. amend II, Keeping and Bearing Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

720 ILCS 5/24-1.1 (West 2021) Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of the Department of Corrections Facilities.

(a) 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 weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction. This Section shall not apply if the person has been granted relief by the Director of the Department of State Police under Section 10 of the Firearm Owners Identification Card Act.

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(e) Sentence. Violation of this Section by a person not confined in a penal institution shall be a Class 3 felony for which the person shall be sentenced to no less than 2 years and no more than 10 years. A second or subsequent violation of this Section shall be a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 14 years, except as provided for in Section 5-4.5-110 of the Unified Code of Corrections. Violation of this Section by a person not confined in a penal institution who has been convicted of a forcible felony, a felony violation of Article 24 of this Code2 or of the Firearm Owners Identification Card Act,3 stalking or aggravated stalking, or a Class 2 or greater felony under the Illinois Controlled Substances Act,4 the Cannabis Control Act,5 or the Methamphetamine Control and Community Protection Act is a Class 2 felony for which the person shall be sentenced to not less than 3 years and not more than 14 years, except as provided for in Section 5-4.5-110 of the Unified Code of Corrections. ***

730 ILCS 5/5-4.5-110 (West 2021). Sentencing Guidelines for Individuals with Prior Felony Firearm-Related or Other Specified Convictions.

(a) Definitions. For the purposes of this Section:

"Firearm" has the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act.

"Qualifying predicate offense" means the following offenses under the Criminal Code of 2012:

(A) aggravated unlawful use of a weapon under Section 24-1.6 or similar offense under the Criminal Code of 1961, when the weapon is a firearm;

(B) unlawful use or possession of a weapon by a felon under Section 24-1.1 or similar offense under the Criminal Code of 1961, when the weapon is a firearm;

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(b) Applicability. For an offense committed on or after January 1, 2018 (the effective date of Public Act 100-3) and before January 1, 2024, when a person is convicted of unlawful use or possession of a weapon by a felon, when the weapon is a firearm, or aggravated unlawful use of a weapon, when the weapon is a firearm, after being previously convicted of a qualifying predicate offense the person shall be subject to the sentencing guidelines under this Section.

(c) Sentencing Guidelines.

(1) When a person is convicted of unlawful use or possession of a weapon by a felon, when the weapon is a firearm, and that person has been previously convicted of a qualifying predicate offense, the person shall be sentenced to a term of imprisonment within the sentencing range of not less than 7 years and not more than 14 years, unless the court finds that a departure from the sentencing guidelines under this paragraph is warranted under subsection (d) of this Section.

STATEMENT OF FACTS

James Benson was charged by indictment with one count of aggravated discharge of a firearm, one count of unlawful use or possession of a weapon by a felon (UPWF) – based on a prior conviction for aggravated unlawful use of a weapon (AUUW) for possessing a firearm without registration – and one count of misdemeanor domestic battery stemming from an incident that took place with his live-in girlfriend, Alisha Bradley, on December 24, 2021. (C. 11-13) Following a bench trial, the trial court found Benson guilty of the lesser included offense of reckless discharge of a firearm, concluding that there was not enough evidence to show that Benson pointed the gun at Bradley. (R. 159-61) The court also found Benson guilty of UPWF and domestic battery as charged. (R. 159-61)

At trial, the State called Bradley and her friend, Valencia Johnson, to testify, along with several law enforcement witnesses. Bradley testified that she and Benson were dating and lived together. (R. 25, 28) During the evening of December 23, 2021, she and Johnson were together at the apartment, drinking alcohol. (R. 25-26) Benson came home around 11:30 p.m., a little intoxicated, and fell asleep. (R. 27) Johnson was also "very intoxicated." (R. 29) Bradley noticed Benson's phone and decided to go through it. (R. 29-30) She discovered text messages from other women, and became upset. (R. 30) She went into the closet and took a gun out of a lockbox, and started cocking it back and forth, causing bullets to fall out. (R. 30-31) Bradley began punching Benson, and Benson woke up. (R. 31)

When Bradley confronted Benson about the messages, a verbal altercation ensued. (R. 32-33) Benson grabbed Bradley's clothes and put them in a tote bag, and asked her to leave. (R. 32-33) Bradley refused to leave, and began throwing things at Benson's computer. (R. 32-33) Benson threw a chair in the living room,

breaking it in the process. (R. 33) Bradley admitted at trial that she told the police that Benson retrieved a gun, cocked it, and fired it at her during the course of their argument. (R. 35-38) Additionally, she told the police that Benson had threatened to kill her, and she asked the police to arrest him. (R. 38) At trial, however, Bradley denied that Benson used the gun on her, and claimed that Benson hid the gun when the police arrived. (R. 37) Bradley consented to police officers searching the apartment. (R. 41)

Johnson testified that Bradley started arguing with Benson. (R. 55) Johnson ultimately left, and she denied seeing either Benson or Bradley with a gun. (R. 55-56) Johnson called the police because of the argument. (R. 56-57) Johnson acknowledged telling the police that Bradley woke Benson up, and that Benson came out of the bedroom and began hitting Bradley. (R. 60) She also admitted to telling police that Benson placed a gun on the table, and that during their argument, Benson picked up the gun and started shooting in Bradley's direction. (R. 60-61) On cross examination, Johnson acknowledged that she had been drinking, and that when police arrived she was lying on the sidewalk. (R. 63)

Officer Thomas Kowal responded to the 911 call. (R. 66-67) Officer Kowal characterized Bradley as "frantic" and "upset." (R. 71-72) Both Bradley and Johnson smelled like alcohol, but Kowal denied that either was intoxicated. (R. 71-73) Kowal placed Benson in custody and took him to a police car, then went back into the apartment. (R. 73-74) According to Kowal, Bradley stated that Benson came home intoxicated, and that after sleeping he woke up irate, began hitting her, pulled out a gun and threatened to kill her, and shot at her. (R. 74-75) Bradley directed the officers to the bedroom and gave them permission to search for the firearm, and Kowal saw what he believed to be a bullet hole in the dining room floor. (R.

76-77) A handgun was recovered under the mattress, which Kowal described as a .40 caliber Smith and Wesson semi-automatic handgun. (R. 78)

After Benson's arrest, Detective Douglas Livingstone spoke to him at the police station. (R. 91) According to Livingstone, he *Mirandized* Benson, and Benson agreed to give a statement. (R. 92) Benson admitted that he possessed the gun for two or three weeks. (R. 92) Livingstone did not videotape his conversation with Benson. (R. 92-93) After Livingstone testified, the State entered Benson's 2015 conviction for AUUW into evidence. (Exs., P. Ex. 3; R. 97)

The defense called Thomas Stamps to testify in its case. (R. 114) Stamps testified that he owned the weapon recovered from Benson's apartment, and he also had a Firearm Owner's Identification ("FOID") card. (R. 115-16) According to Stamps, he had been living with Benson and Bradley for a few months around the time of the incident, and he kept the gun in a box in their closet. (R.116-18) He was not present the night of the incident. (R. 118-19) A receipt for the handgun and a copy of his FOID card were admitted into evidence as Defense Exhibits 2 and 3. (R. 119) Stamps denied giving anyone permission to possess his weapon. (R. 121)

Benson testified on his own behalf. (R. 122) Benson stated that he had two prior convictions, one from 2015 for AUUW without a FOID card and a 2018 conviction for attempt to unlawfully possess a weapon. (R. 123) Benson testified that although he was Bradley's boyfriend, Bradley and Johnson were also in a dating relationship. (R. 125) On the evening of December 23, 2021, he was out drinking alcohol with a friend. (R. 125-26) When he returned home, Johnson and Bradley were drinking alcohol in the dining room. (R. 127) Benson slept for awhile. (R. 127)

Benson woke up when Bradley confronted him about a text message on his phone. (R. 128) An argument ensued, and Benson testified that Bradley wanted to fight him. (R. 129) Benson responded by telling Bradley to leave with Johnson. (R. 129) As Benson started packing Bradley's things, Benson heard Bradley state, "[T]his motherf***** thinks I'm playing with him," then heard the sound of her cocking the gun and a round hitting the floor. (R. 129) Benson then grabbed Bradley's phone and started going through it. (R. 131) The two "tussled" over the phone, and when Benson got it out of Bradley's hand, he threw it against the wall. (R. 131-32) Bradley picked up a cup and threw it against the computer, then Benson picked up a chair and threw it. (R. 132) Benson denied hitting Bradley with anything but admitted to arguing with police when he was arrested. (R. 132-33)

Benson testified that the gun belonged to Stamps, and that the only time he possessed it was when he took the gun from Bradley and put it underneath the bed to get it away from her. (R. 130-31) According to Benson, the only time he fired the gun before was at a gun range over the summer. (R. 133-34) Benson testified that he was aware that he could not own a gun, but not that he was unable to go to the gun range or fire a gun. (R. 135-36) He admitted to keeping multiple fired shell casings in the apartment. (R. 134-35) He also admitted that he told the detective that he had the gun for two or three weeks, but claimed he admitted to having the gun only after repeatedly telling the detective that it was not his and that the gun was never fired. (R. 141-42)

The court found Benson guilty of the lesser offense of reckless discharge of a firearm for the purposes of count 1, as well as UPWF and misdemeanor domestic battery. (R. 159-61) At sentencing, the court imposed a three-year term for the reckless discharge conviction, a four-year term for the UPWF count, and a three-year

term for the domestic battery count. (C. 50; R. 171) Benson's motion to reconsider his sentence was denied. (R. 172) Benson timely appealed. (C. 51)

On direct appeal, Benson argued, *inter alia*, that the UPWF statute was either facially unconstitutional under the Second Amendment per *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), or unconstitutional as applied to him. In doing so, he contended that our nation has a historical tradition of imposing temporary or conditional firearm restrictions on dangerous persons. By contrast, he argued, the UPWF statute unconstitutionally imposed a permanent firearm prohibition on persons convicted of any felony, irrespective of dangerousness.

The First District Appellate Court rejected Benson's facial challenge by noting that the United States Supreme Court has recognized that "sufficient historical precedent exists to ban felons from possessing firearms under the second step of the *Bruen* analysis." *People v. Benson*, 2024 IL App (1st) 221230-U, ¶ 49.

Benson's as-applied challenge further highlighted that the predicate felony for his UPWF conviction was a nonviolent offense: possessing a firearm without a FOID card (AUUW). Thus, he argued, that conduct did not establish that he was the type of dangerous individual for whom our nation has historically restricted firearm ownership. *See Benson*, 2024 IL App (1st) 221230-U, at ¶ 51. The appellate court disagreed, reasoning that *Bruen* made no distinction between violent and non-violent felons and that its holding "only applies to laws that regulate the firearm possession of 'law-abiding citizens.'" *Id.* at ¶ 52. This Court granted leave to appeal on January 29, 2025.

ARGUMENT

Under the new text-and-historical-tradition analysis announced by *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, James Benson is one of "the people" protected by the Second Amendment, and the unlawful possession of a weapon by a felon statute, 720 ILCS 5/24-1.1(a), as applied to him, is inconsistent with our nation's historical traditional of firearm regulation.

James Benson's unlawful possession of a weapon by a felon (UPWF) conviction was premised on his prior conviction for possessing a gun without a Firearm Owner's Identification (FOID) card (aggravated unlawful use of a weapon, AUUW). (C. 12, CI. 6) His UPWF conviction is a status-based offense involving conduct quintessentially protected by the Second Amendment. 720 ILCS 5/24-1.1(a). (C. 12, 50) Because Benson was not the type of dangerous individual for whom our nation has historically restricted firearm ownership, and section 24-1.1(a) prohibited and criminalized such ownership for the rest of his life, that provision violates the Second Amendment as applied to him. Under the United States Supreme Court's new test for determining whether firearm regulations pass constitutional muster under the Second Amendment, Benson's UPWF conviction cannot stand. *New York State Rifle & Pistol Ass'n Inc. v. Bruen,* 597 U.S. 1, 17 (2022).

Benson is not advancing a facial challenge to section 24-1.1(a), only an as-applied challenge. An as-applied challenge arises from a defendant's contention that the statute or law as it is applied to him is unconstitutional, and only facts surrounding a defendant's particular circumstances are relevant. *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008); *People v. Garvin*, 219 Ill.2d 104, 117 (2006). This as-applied constitutional challenge may be raised for the first time on appeal. *People v. Baker*, 2023 IL App (1st) 220328, ¶ 35. An as-applied constitutional challenge is reviewed *de novo* because the constitutionality of a statute presents a question of law. *People v. Mosley*, 2015 IL 115872, ¶ 22; *see also People v.*

Thompson, 2025 IL 129965, ¶ 13.

A. The Second Amendment

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. It applies to the states through the Fourteenth Amendment. U.S. Const., amend. XIV; *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 749-50, 778, 791 (2010). The Second Amendment confers upon "all Americans" an individual right to keep and bear arms for self-defense, both at home and in public. *New York State Rifle & Pistol Ass'n Inc. v. Bruen,* 597 U.S. 1, 70 (2022); s*ee District of Columbia v. Heller*, 554 U.S. 570, 580-81, 595, 616, 635 (2008); *see also People v. Aguilar*, 2013 IL 112116, ¶ 21.

Recent United States Supreme Court precedent has clarified that a state restriction on firearm possession is presumptively unconstitutional under the Second Amendment unless the State can demonstrate a consistent historical tradition of "relevantly similar" restrictions. *Bruen*, 597 U.S. at 17-18, 28-30; *see United States v. Rahimi*, 602 U.S. 680, 692 (2024).

In *Bruen*, the United States Supreme Court rejected any "means-end scrutiny" approach "in the Second Amendment context." *Bruen*, 597 U.S. at 17; *Thompson*, 2025 IL 129965, ¶ 26. Instead, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17, 24; *Thompson*, 2025 IL 129965, ¶ 43. In that situation, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. If it cannot, the regulation violates the Second Amendment. *Id.*

In *Rahimi*, the Court clarified that *Bruen* did not "suggest a law trapped

in amber." *Rahimi*, 602 U.S. at 691. "[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 692. "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'applying faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* (cleaned up). That said, while such regulation "need not be a 'dead ringer' or 'historical twin,'" it must still "comport with the principles underlying the Second Amendment." *Id.* (cleaned up).

"When determining whether a modern law is 'relevantly similar' to historical laws, courts must evaluate both 'why' and 'how' the regulation burdens the Second Amendment." *Rahimi*, 602 U.S. at 692. "[I]f laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* But "[e]ven when a law regulates arms-bearing for a permissible reason," that contemporary regulation still "may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* Also, "a court must be careful not to read a principle at such a high level of generality that it waters down the right." *Id.* at 740 (Barrett, J., concurring).

Under the *Bruen* test, courts must therefore (1) conduct a textual analysis of the law focused on whether the regulated activity falls within the normal and ordinary meaning of the Second Amendment's language, and if it does, (2) the government has the burden to prove that the gun law is consistent with this Nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 17. Here, Illinois's UPWF statute imposed a permanent lifetime ban on firearm possession on Benson, and criminalized Benson's simple possession of a gun, based on a prior conviction

for merely failing to obtain a license before possessing a firearm–a Class 4 AUUW. (C. 12; CI. 6; R. 169)

But Benson's possession of a gun inside his home is protected by the plain text of the Second Amendment, and the State will not be able to prove that there is a historical tradition of imposing a lifetime firearm ban, with criminal penalties, on persons convicted of non-dangerous prior conduct. Thus, this Court should conclude that the UPWF statute is unconstitutional as applied to Benson, a person who has never been convicted of a violent offense, and reverse his conviction.

B. The Second Amendment's plain text covers Benson and the UPWF statute, under *Bruen*'s first step.

As noted, the first *Bruen* step asks whether "the Second Amendment's plain texts covers an individual's conduct." *Bruen*, 597 U.S. at 18. Here, there is no real question that Benson's firearm possession, the conduct that violated the UPWF statute, implicates the Second Amendment. 720 ILCS 5/24-1.1(a); *see* U.S. Const., amend. II ("the right of the people to keep and bear Arms, shall not be infringed"); *see also Heller*, 554 U.S. at 582 ("[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms."). And, as an American citizen, Benson is one of "the people" who have Second Amendment rights within the meaning of the Constitution. *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 89; *see also Heller*, 554 U.S. at 580-581; *United States v. Williams*, 113 F.4th 637, 649 (6th Cir. 2024); *Range v. Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (*en banc*).

Benson acknowledges that there is a split in Illinois authority on whether a person who was previously convicted of a felony offense still has Second Amendment rights. *Compare Brooks*, 2023 IL App (1st) 200435, ¶ 89 (felon status

is "irrelevant" to the question of whether the Second Amendment's plain text covers the conduct at issue; it should instead be "evaluated under the second step's historical tradition analysis"); *and People v. Travis,* 2024 IL App (1st) 230113, ¶ 24 (same); *with People v. Baker*, 2023 IL App (1st) 220328, ¶¶ 2, 37 (*Bruen*'s references to "law abiding, responsible" citizens established that the Second Amendment does not apply to persons convicted of a felony under *Bruen's* first step, and therefore no historical analysis was required under *Bruen*'s second step).

However, the United States Supreme Court and the federal Courts of Appeals that have analyzed this question have established that the term "the people" refers to all Americans, without exception. As an initial matter, this first *Bruen* step is a question of textual analysis, not historical interpretation. *See Lara v. Comm'r Pennsylvania State Police*, 125 F.4th 428, 437 (3d Cir. 2025) (the term "the people" should not be ascribed its Founding-era meaning; if it were, "'the people' would consist solely of white, landed men, and that is obviously not the state of the law"); *see also Rahimi*, 602 U.S. at 691-692 ("the reach of the Second Amendment is not limited only to those arms that were in existence at the founding," such as "muskets and sabers"); *Heller*, 554 U.S. at 582 ("the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding").

Furthermore, the United States Supreme Court has never held that felons do not qualify as "the people" for Second Amendment purposes. In fact, the Court has instead long recognized the "strong presumption that the Second Amendment right is exercised individually and belongs to all Americans," "not an unspecified subset." *Heller*, 554 U.S. at 580-581; *see Williams*, 113 F.4th at 649 (making the same point, post-*Rahimi*).

Indeed, the criminal histories of the plaintiffs in the seminal Supreme Court cases *Heller*, *McDonald*, and *Bruen* were not at issue, so any references to their "law-abiding" status were dicta. *Range*, 124 F.4th at 226. *Heller* considered the near-total prohibition on handgun possession in the District of Columbia, 554 U.S. at 574; *McDonald* dealt with a similar ban in Chicago and Oak Park, 561 U.S. at 749; and *Bruen* discussed the right to carry a firearm outside the home for self-defense, 597 U.S. at 10. In all of these cases, the challenged regulation applied regardless of any criminal background. And, in each case, the Court made it clear that its analysis did not extend beyond the facts before it. *See Rahimi*, 602 U.S. at 702 (recognizing that its Second Amendment precedent since *Heller* does not reflect an "exhaustive" analysis of "the full scope of the Second Amendment").

Justices have therefore individually expressed their belief that the Court has never held that any group is presumptively prohibited from possessing a gun. *See Bruen*, 597 U.S. at 72 ("Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun.") (Alito, J., concurring); *Rahimi*, 602 U.S. at 713 (The Court does not "purport to approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem, as the government puts it, 'not "responsible."'") (Gorsuch, J., concurring).

To that point, *Rahimi* explicitly rejected the notion, advanced by the Government, that only "responsible" people qualify for Second Amendment rights. 602 U.S. at 701 ("[W]e reject the Government's contention that Rahimi may be disarmed simply because he is not 'responsible'"). The Court explained:

'Responsible' is a vague term. It is unclear what such a rule would

> entail. Nor does such a line derive from our case law. In *Heller* and *Bruen*, we used the term 'responsible' to describe the class of ordinary citizens who undoubtably enjoy the Second Amendment right. [citations omitted] But those decisions did not define the term and said nothing about the status of citizens who were not 'responsible.' *Id*.

Even in dissent, Justice Thomas agreed that the Government's argument that "the Second Amendment allows Congress to disarm anyone who is not 'responsible' and 'law-abiding'" was an attempt "to rewrite the Second Amendment." *Id*. at 772 (Thomas, J., dissenting). He emphasized that such "argument lack[ed] any basis in our precedents and would eviscerate the Second Amendment altogether." *Id*. at 773. And he highlighted that "[n]ot a single Member of the Court adopt[ed] the Government's theory." *Id*.; *see also Range*, 124 F.4th at 226 (*Heller*'s reference to "law-abiding citizens" should not be read as a limitation on the rights of "the people," meaning "all members of the political community").

Notably, in *Rahimi*, the Supreme Court concluded that Rahimi was part of "the people" and moved straight to the second part of the *Bruen* analysis, despite his history of criminality and a judicial finding that he posed a credible threat to the physical safety of another. *Rahimi*, 602 U.S. at 686-689, 692-693 (Rahimi violated a prior restraining order based on "family violence"; threatened another woman with a gun and was charged with aggravated assault with a deadly weapon; and was identified as a suspect "in a spate of at least five additional shootings," involving drug dealing, reckless driving, and shooting a gun into the air at a restaurant).

Further, interpreting "the people" to refer only to "law-abiding" citizens would mean that the constitutional right to bear arms would change depending on the whims of a legislative body. *See Range*, 124 F.4th at 227-228. Indeed, the

notion that "felons are not among 'the people' protected by the Second Amendment . . . devolves authority to legislators to decide whom to exclude from 'the people.'" *Id.* at 228 (quotation omitted). "[S]uch extreme deference gives legislatures unreviewable power to manipulate the Second Amendment by choosing a label."*Id.*. "And that deference would contravene *Heller*'s reasoning that 'the enshrinement of constitutional rights necessarily takes certain policy choices off of the table.'" *Id.* (quoting *Heller*, 554 U.S. at 636); *see Bruen*, 597 U.S. at 26 (warning against "judicial deference to legislative balancing"); *see also Rahimi*, 602 U.S. at 775 (Thomas, J., dissenting) (using "law-abiding" as a prerequisite "undermines the very purpose and function of the Second Amendment.").

Also, interpreting "the people" to exclude persons convicted of felony offenses would require this phrase to have different meanings throughout the Constitution. Such a distinction would defy *Heller*, which recognized that "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580; *see also Williams*, 113 F.4th at 649 (reasoning that it would be "implausible" for the meaning of "the people" to vary from provision to provision). Indeed, "the people" are referenced in other constitutional amendments – granting, *e.g.*, the rights to assemble peaceably, to practice religion freely, to petition the government for redress, and to be protected against unreasonable searches and seizures – which are not categorically revoked from people with felony backgrounds. *Range*, 124 F.4th at 226; *see also Williams*, 113 F.4th at 649 (noting that First and Fourth Amendment protections apply to felons).

Thus, people with past felony convictions, like other Americans, qualify as members of "the people" within the meaning of the Second Amendment. Illinois

appellate courts and numerous federal Courts of Appeal have therefore rejected prosecutors' arguments that "the people" is limited to "law-abiding citizens." *See*, *e.g.*, *United States v. Jackson*, 138 F.4th 1244, 1252 (10th Cir. 2025) (defendant's "prior criminal convictions do not exclude him from the being a member of the political community"); *United States v. Schnur*, 132 F.4th 863, 867 (5th Cir. 2025) (prior felon "is unequivocally among 'the people' protected by the Second Amendment"); *United States v. Duarte*, 137 F.4th 743, 755 (9th Cir. 2025) ("Duarte's status as a felon does not remove him from the ambit of the Second Amendment; he is one of 'the people' who enjoys Second Amendment rights"); *Lara*, 125 F.4th at 435 (the Second Amendment "covers all adult Americans"); *United States v. Quailes*, 126 F.4th 215, 220 (3d Cir. 2025) (adult citizens who are on parole are among "the people"); *Williams*, 113 F.4th at 646-47 (rejecting the "law-abiding-citizens-only theory"); *Atkinson v. Garland*, 70 F.4th 1018, 1022-1023 (7th Cir. 2023); *see also Kanter v. Barr*, 919 F.3d 437, 445 (7th Cir. 2019); *United States v. Mesa-Rodriguez*, 798 F.3d 664, 669 (7th Cir. 2015); *Cf. People v. Doehring*, 2024 IL App (1st) 230384, ¶6; *Travis,* 2024 IL App (1st) 230113, ¶ 24; *Brooks,* 2023 IL App (1st) 200435, ¶¶ 88-89 (each rejecting the "law abiding citizen" argument at *Bruen*'s first step, before and after *Rahimi*).

As the above makes clear, the text of the Second Amendment covers an American's conduct of possessing a firearm, regardless of whether they are "law-abiding." The extent to which an individual's felon (or other) status affects their right to bear arms is instead a question for *Bruen*'s historical tradition test. *Doehring*, 2024 IL App (1st) 230384, ¶ 6; *Brooks*, 2023 IL App (1st) 200435, ¶¶88-89 (so holding); *see Lara*, 125 F.4th at 437 ("[W]hether the government has the power to disable the exercise of a right *that they otherwise possess*" turns on *Bruen*'s

historical analysis test) (quoting *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting) (emphasis added)).

Here, Benson is an American, so he is one of "the people" covered by the Second Amendment. Benson was convicted of violating Illinois's UPWF statute based on his simple possession of a firearm inside his home, which is conduct protected by the Second Amendment. 720 ILCS 5/24-1.1(a); *Bruen*, 597 U.S. at 17. The State therefore bears the "heavy burden" (*United States v. Daniels*, 124 F.4th 967, 973 (5th Cir. 2025)) to demonstrate that the UPWF statute (720 ILCS 5/24-1.1(a)), as applied to Benson, "is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. It cannot do so.

C. The State cannot carry its burden to prove that the UPWF statute, as applied to Benson, is consistent with the Nation's historical tradition of firearm regulation, under *Bruen*'s second step.

The next question before this Court is whether the State can show that applying the UPWF statute to Benson would be "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. To do so, the State must prove that UPWF "is '*relevantly similar*' to laws that our tradition is understood to permit," in both "[w]hy and how" it burdens the Second Amendment. *Rahimi*, 602 U.S. at 692 (emphasis supplied).

As *Bruen* explained, "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Bruen*, 597 U.S. 34. Thus, for constitutional analyses, "not all history is created equal." *Id*. For the English common law period, evidence nearest to the time of the founding is the most important, and English practices that were anachronistic or abandoned by 1791 are not useful evidence. *Id*. at 34-35. For Reconstruction and later, the

Court would only rely on practices that had survived in an "open, widespread, and unchallenged since the early days of the Republic." *Id*. at 36. Post-Civil War history it is at best "secondary" evidence, and must always yield if it conflicts with the Second Amendment's text. *Id*. at 37.

As discussed below, prosecutors have floated various historical justifications for felon disarmament – none of which are relevantly similar to both "why" and "how" the UPWF statute restricted Benson's firearm rights based on his felon status and irrespective of dangerousness, for the rest of his life.

The only tradition that is plausibly relevantly similar to felon dispossession is the historical practice of preventing dangerous persons from possessing firearms. *See Rahimi*, 602 U.S. at 698 (a person may be temporarily disarmed when he poses "a clear threat of physical violence to another"); *Williams*, 113 F.4th at 660 ("The dangerousness determination will be fact-specific, depending on the unique circumstances of the individual defendant."). But even that historical tradition does not apply in this particular case, as the UPWF statute disarmed Benson based solely on his past nonviolent, nondangerous conduct ("why"), for the rest of his life, with severe criminal penalties ("how"). *See* 720 ILCS 5/24-1.1(a); *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 22 (the purpose of the UPWF statute is "to keep . . . firearms, out of the hands of convicted felons in any situation[,] whether it be in the privacy of their own home or in a public place.") (quoting *People v. Kelly*, 347 Ill. App. 3d 163, 167 (1st Dist. 2004)).

The State therefore cannot show that Illinois's UPWF statute's application to Benson "is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17.

(1) "Why" firearm possession was historically restricted

There is no historical tradition of firearm regulation that is relevantly similar to UPWF's restriction of firearm rights for persons based on their prior conviction of a felony offense, irrespective of dangerousness. The only potentially-comparable tradition of firearm restrictions is based on dangerousness. *Rahimi*, 602 U.S. at 692 (modern laws must be relevantly similar to a historical tradition for "why" they regulate firearm possession).

(a) Unlike UPWF, no relevantly similar historical laws restricted firearm possession based on a person's felon status.

No relevantly similar historical laws restricted firearm possession based on a person's felon status the way UPWF does, nor has the Supreme Court recognized such tradition. A reviewing court "must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'applying faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 602 U.S. at 692. "[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id*.

Much has been made of a single line in *Heller*, which referenced "longstanding prohibitions on the possession of firearms by felons" (and other such prohibitions), and said they were "presumptively lawful." *Heller,* 554 U.S. at 626; *see Rahimi*, 602 U.S. at 699. But *Bruen*'s clarification of *Heller* shows that any assessment of the constitutionality of felon disarmament must still follow *Bruen*'s two-step text-and-history approach. *See Bruen*, 597 U.S. at 20 ("The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical

understanding."). Indeed, treating felon dispossession laws differently from other laws subject to *Bruen*'s historical test would be fundamentally inconsistent with *Bruen*'s analytical framework. *See Bruen*, 597 U.S. at 30-31 (rejecting New York's attempt to characterize its proper-cause requirement as a "longstanding . . . sensitive place" regulation by referencing the same language from *Heller*, as there was no "historical basis" for its argument).

And *Heller* itself confirmed that it did not undertake a historical analysis of felon dispossession laws; it instead anticipated that "[t]here w[ould] be time enough to expound upon the historical justifications for [these and other] exceptions . . . if and when those exceptions come before us." *Heller,* 554 U.S. at 635; *see id.* at 626 (explaining that it did "not undertake an exhaustive historical analysis [ ] of the full scope of the Second Amendment"); *id.* at 636 (its reference to "longstanding" felon dispossession laws and other laws did not "cite to any colonial analogues" because it was not attempting "to clarify the field" of all Second Amendment issues); *see also Williams*, 113 F.4th at 643 (*Heller* suggested that felon bans "required separate 'historical justifications'" but "had no occasion to identify those justifications").

Indeed, even apart from *Heller*, the United States Supreme Court has never performed a historical analysis of felon dispossession laws. *See Thompson*, 2025 IL 129965, ¶ 47 ("the constitutionality of barring felons from possessing firearms was not addressed by *Bruen*"); *see also Rahimi*, 602 U.S. at 702 ("In *Heller*, *McDonald*, and *Bruen*, this Court did not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment. Nor do we do so today.") (quotation and citation excluded).

No such historical justifications exist. Gun violence is a "problem [that]

has persisted [in this country] since the 18th century." *Bruen*, 597 U.S. at 26, 27. And it is indisputable "that the Founders themselves could have adopted" a "flat ban" on firearm possession by persons with criminal convictions "to confront that problem." *Id*. But instead, the "Founding generation had no laws limiting gun possession by . . . people convicted of crimes." Adam Winkler, *Heller's Catch-22*, 56 UCLA Law Rev. 1551, 1563 (2009). In addition, "the definition of a 'felony' was difficult to pin down at the time of the founding." *Kanter*, 919 F.3d at 459 (Barrett, J., dissenting) (citing Will Tress, *Unintended Collateral Consequences: Defining Felony in the Early American Republic*, 57 Clev. St. L. Rev. 461, 465 (2009)). Indeed, "[t]he felony category" at the Founding was "a good deal narrower [then] than now." *See Lange v. California*, 594 U.S. 295, 311 (2021). "Many crimes classified as misdemeanors, or nonexistent, at common law are . . . felonies" today. *Tennessee v. Garner*, 471 U.S. 1, 14 (1985). And possessing a firearm as a felon was not considered a crime until 1938 at the earliest. Federal Firearms Act, Pub. L. No. 75-785, 52 Stat. 1250 (1938) (repealed 1968).

This "lack of a . . . historical regulation" that is relevantly similar to UPWF is therefore strong evidence that UPWF "is inconsistent with the Second Amendment." *Bruen*, 597 U.S. at 27; *see also United States v. Booker*, 644 F.3d 12, 23–24 (1st Cir. 2011) ("the modern federal felony firearm disqualification law . . . is firmly rooted in the twentieth century and likely bears little resemblance to laws in effect at the time the Second Amendment was ratified"); C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009) ("one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I").

Because no historical laws or practices *actually* restricted firearm use based

solely on a person's felon status, irrespective of dangerousness, the State will not be able to identify a historical principle that is relevantly similar to "why" the UPWF statute restricts firearm rights, under *Bruen*.

(b) Historical concepts relating to "virtuous citizens" are not "relevantly similar" to UPWF.

Second, federal and Illinois authority defending "virtuous citizenship" as a criteria for lawful firearm possession is based on an analysis that long preceded *Bruen*, and therefore did not perform its historical comparison test. And even that authority admits that the historical evidence for this position is lacking – or undeveloped, at best. *See United States v. Yancey*, 621 F.3d 681, 684-85 (7th Cir. 2010) ("scholars continue to debate the evidence of historical precedent for prohibiting criminals from carrying arms") (citing *United States v. Vangxay*, 594 F.3d 1111, 1118 (9th Cir. 2010) (this "historical question has not been definitively resolved")).

In addition, the "virtuous-citizen" approach applies to "civic rights only." *Williams*, 113 F.4th at 647. And "[t]hose rights, such as the right to sit on a jury or serve in the militia, were exercised collectively, for the benefit of the community." *Id.*; *see Kanter*, 919 F.3d at 462 (Barrett, J., dissenting). By contrast, the right to bear arms in self-defense does not stem from a "common, community-oriented civic activity that only the virtuous enjoyed." *See Williams*, 113 F.4th at 647. Rather, the right to bear arms is not a collective right, but an *individual* right. *Heller*, 554 U.S. at 595 (distinguishing the two). And although a prior felony conviction can cost a person their collective rights, like the right to vote, they cannot lose individual rights, like the "right to speak freely, practice the religion of their choice, or to a jury trial" – or the right to bear arms. *See Williams*, 113 F.4th at 647

(rejecting the "virtuous citizen" approach).

As there was therefore no consistent historical practice of denying the firearm rights of "unvirtuous" citizens *irrespective of dangerousness*, this Court should reject that argument. *See also Rahimi*, 602 U.S. at 701-702 (rejecting the notion that persons who are not "responsible" could have their gun rights restricted). The "virtuous citizen" approach therefore does not reflect a historical practice of firearm regulation "relevantly similar" to "why" the UPWF statute prohibits firearm possession for felons. *Rahimi*, 602 U.S. at 692.

(c) Historical laws that temporarily banned firearm possession based on politics, race, and religion, are not "relevantly similar" to UPWF.

Next, historical laws that temporarily banned firearm possession based on politics, race, and religion, are not "relevantly similar" to UPWF. It is true that "Founding-era governments disarmed groups they distrusted[,] like Loyalists, Native Americans, Quakers, Catholics, and Blacks[.]" *Range*, 124 F.4th at 229.But "restrictions based on race and religion now would be unconstitutional under the First and Fourteenth Amendments," and "do[ ]nothing to prove that [felons are] part of a similar group today." *Range*, 124 F.4th at 229. Those restrictions had also largely disappeared by the time of the founding. *See Rahimi*, 602 U.S. at 694 (while English law disarmed "political opponents and disfavored religious groups," "state constitutions and the Second Amendment had largely eliminated [that] governmental authority" in the United States "[b]y the time of the founding").

And, in any event, the historical justification for denying firearm rights to these groups was that they were "judged to be a threat to the public safety." *Kanter*, 919 F.3d at 458 (Barrett, J., dissenting). Indeed, these laws were intended to prevent a violent uprising from these groups, whose collective action was believed

to be a threat, despite their marginalized status. *See*, *e.g.*, Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev 1, 29-30 (2024) (reviewing the historical record of discriminatory laws and concluding, "[T]o be consistent with the historical tradition of firearm regulation as required by *Bruen*, a modern-day disarmament law may apply only to dangerous persons"); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons From Possessing Arms*, 20 Wyo. L. Rev. 249, 286 (2020) (historical justification for disarmament laws against various groups shows that Second Amendment rights "could be denied only to mitigate threats posed by dangerous persons"); *see also*; *Rahimi*, 602 U.S. at 680 (favorably citing Greenlee's research); *Bruen*, 597 U.S. at 30 (also favorably citing Greenlee's research); *Duarte*, 137 F.4th at 794-95 (VanDyke, J., concurring in part, dissenting in part) (citing Greenlee's research and other historical sources). And, even at the time they were enacted, they were intended to be temporary measures. *Duarte*, 137 F.4th at 794-95 (VanDyke, J., concurring in part, dissenting in part.) Also, as noted above, persons with prior felony convictions were not counted among these historical groups perceived to pose a collective threat to the public. *See supra,* Part (a); *see also United States v. Connelly*, 117 F.4th 269, 277 (5th Cir. 2024) ("not one piece of historical evidence suggests that, at the time they ratified the Second Amendment, the Founders authorized Congress to disarm *anyone* it deemed dangerous"; instead identifying "discrete groups of persons throughout history" the Founders deemed "legitimately dangerous to the public": "political traitors," "potential insurrectionists," and "those judicially determined to have had a history of violent behavior"). Thus, this rationale does not support the disarmament of every person with a past felony conviction, irrespective of dangerousness.

Historical laws that disarmed persons based on their politics, race, or religion–either unconstitutionally or based on collective dangerousness – are therefore not "relevantly similar" to "why" the UPWF statute prohibits firearm possession for even nonviolent felons. *Rahimi*, 602 U.S. at 692; *Range*, 124 F.4th at 229 (this is "far too broad" an analogy).

(d) The only historical tradition that the United States Supreme Court has recognized is the temporary restriction of firearm possession for presently-dangerous persons.

In general, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700; *see also Williams*, 113 F.4th at 645 (our nation's history and tradition demonstrate that the government "may disarm individuals they believe are dangerous"). There was a public understanding at the time of the founding that Second Amendment rights could be restricted based on a person's actual violence, dangerousness, or rebellion. *United States v. Daniels*, 124 F.4th 967, 978 (5th Cir. 2025) ("the 'undeniable throughline' running through our history suggests that Founding-era governments took away guns from those perceived to be dangerous"); *Kanter*, 919 F.3d at 456-58 (Barrett, J., dissenting) (in the Founding era, "legislatures disqualified categories of people from the right to bear arms only when they judged that doing so was necessary to protect the public safety"). And at the time of the founding, states like Massachusetts, New Hampshire, and Pennsylvania debated including language in federal and state constitutions that focused on present dangerousness, not merely past criminal convictions. *See Williams*, 113 F.4th at 654-55 (Mass.: granting the right to bear arms to "peaceable citizens," meaning "non-dangerous" citizens; New

Hamp.: allowing restrictions for those in "an actual rebellion"; Penn.: allowing restrictions for "crimes" that posed "a real danger of public injury") (citations omitted).

To that point, the United States Supreme Court recently recognized that historical "surety" and "going armed" laws established a historical tradition of restricting firearm possession by individuals who "pose[ ] a clear threat of physical violence to another." *Rahimi*, 602 U.S. at 693-700; *see Bruen*, 597 U.S. at 49-50. Those laws "often offered the accused significant procedural protections," and required "a judge or justice of the peace" to consider evidence and arguments by both the accused and "any person having reasonable cause to fear" them, before determining if a firearm restriction was warranted. *Rahimi*, 602 U.S. at 696-697. *Cf. People v. Noble*, 2024 IL App (3d) 230089-U, ¶ 30 (McDade, dissenting) ("[W]hile there is historical precedence for disarming dangerous and violent individuals, there is no historical analogue for disarming nonviolent offenders"; "historical laws even specifically allowed nonviolent felons to retain their firearms") (citing law review articles and other sources).

Thus, the only historical tradition of firearm regulation the Supreme Court has recognized relates to persons with judicial determinations showing they are presently dangerous. *Rahimi*, 602 U.S. at 676-97, 700.

(2) "How" firearm possession was historically restricted

Unlike UPWF's lifetime ban on firearm possession, historical firearm restrictions were temporary or conditional, and easily lifted. *Rahimi*, 602 U.S. at 692 (modern laws must be relevantly similar to a historical tradition for "how" it regulates firearm possession); *Bruen*, 597 U.S. at 29 (asking "whether modern and historical regulations impose *a comparable burden* on" Second Amendment

rights) (emphasis supplied).

(a) Historical laws that restricted firearm possession did so only temporarily or conditionally.

Historical laws did restrict firearm possession based on a person's current dangerousness. But even so, there was still no historical practice of *permanent* disarmament for anyone, including disfavored groups or persons deemed dangerous.

To the contrary, our nation's historical tradition showed that firearm restrictions were temporary or conditional. For example, individuals had "the opportunity to demonstrate that they weren't dangerous" to retain their gun rights. *See Williams*, 113 F.4th at 660. Members of disfavored groups were permitted to "regain the ability to keep and bear arms after taking the relevant [loyalty] oath." *United States v. Prince*, 700 F. Supp. 3d 663, 671-72 (E.D. Ill. 2023). Restrictions on disfavored groups were also just conditional or temporary. *See Connelly*, 117 F.4th at 276; *Bruen*, 597 U.S. at 29 (the Court's "historical analysis" in *Heller* "show[ed] that the Second Amendment did not countenance a 'complete prohibition' on the use of" firearms); *Duarte*, 137 F.4th at 797 (VanDyke, J., concurring in part, dissenting in part).

Indeed, in *Rahimi*, the United States Supreme Court emphasized that historical going-armed bonds "could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some other legitimate reason." *Rahimi*, 602 U.S. at 697. It likewise pointed out that surety bonds had a "limited duration." *Id.* at 699. And in upholding the constitutionality of the federal law at issue (prohibiting gun possession for "individuals found to threaten the physical safety of another"), the Court emphasized that the "restriction was temporary" in that case: it lasted just "one to two years

after [ ] release from prison." *Id*.

Thus, because historical laws for disfavored groups and dangerous persons imposed only temporary or conditional firearm restrictions, they are also not "relevantly similar" to "how" the UPWF statute permanently prohibits felons from possessing firearms. *Rahimi*, 602 U.S. at 692.

(b) Historical laws imposing sentences of death or estate forfeiture for certain crimes are not "relevantly similar" to UPWF's permanent disarmament of felons.

Some courts have held that because certain historical offenses were punished by "estate forfeiture and capital punishment," governments can constitutionally prohibit even nonviolent felons from possessing firearms. *People v. Macias*, 2025 IL App (1st) 230678, ¶ 33 (citing *United States v. Rice*, 662 F. Supp. 3d 935, 949 (N.D. Ind. 2023)). But that analysis is derived from pre-*Bruen* authority. *Rice*, 662 F. Supp. 3d at 949 (citing *Folajtar v. Att'y Gen.*, 980 F.3d 897, 904-905 (3d Cir. 2020); *cf. Range*, 124 F.4th at 231 (3d Cir. 2024) (disagreeing with that analysis, after *Bruen* and *Rahimi*) (en banc). And the notion that all felons, violent and non-violent alike, were historically put to death or stripped of their estates is not supported by historical research. *Kanter*, 919 F.3d at 458-59 (Barrett, J., dissenting) (finding that premise "shaky" and citing, among other things, 6 Nathan Dane, Digest of American Law 715 (1823) ("[W]e have many felonies, not one punished with forfeiture of estate, and but a very few with death")).

In any event, for capital punishment, "[t]he obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting). Indeed, "[d]ead

men do not speak, assemble, or require protection from unreasonable searches and seizures . . ." *United States v. Jackson*, 85 F.4th 468, 474 (8th Cir. 2023) (Stras, J., dissenting). And yet "[n]o one suggests that [someone with a prior felony conviction] has no right to a jury trial or [to] be free from unreasonable searches and seizures." *Williams*, 113 F.4th at 658. Similarly, "we wouldn't say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding." *Kanter*, 919 F.3d at 461-62 (Barrett, J., dissenting).

Thus, any "Founding-era practice of punishing some nonviolent crimes with death does not suggest that the particular (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies [ ]—is rooted in our Nation's history and tradition." *Range*, 124 F.4th at 231. To the contrary, "in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society." *Id*.

For estate forfeiture, while some Founding-era laws prescribed the forfeiture of a weapon, they did so for a weapon "used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally." *Range*, 124 F.4th at 231. Also, the concept of permanent "civil death" – the complete elimination of civil rights – as a result of a felony conviction historically only applied to the period between the imposition of a death sentence and its execution. *See Kanter*, 919 F.3d at 458-59 (Barrett, J. dissenting) (collecting sources). Even as the number of felonies grew and punishments became more varied, permanent "civil death" applied only to those who received life sentences. *Id.* at 459-60. And when term-of-years sentences began to proliferate, courts coalesced around the idea that civil rights were only ever suspended during the term of the sentence;

such suspension did not continue after the sentence was completed. *Id.* at 461; *see Quailes*, 126 F.4th at 222 (while there is "a longstanding and uninterrupted tradition of disarming convicts still serving a criminal sentence," such historical disarmament lasted only "until they had finished serving their sentences") (quotation and citation omitted).

Thus, historical punishments of estate forfeiture and capital punishment for certain felonies do not reflect a consistent historical practice of firearm regulation "relevantly similar" to "how" the UPWF statute permanently prohibits firearm possession based on any prior felony conviction. *Rahimi*, 602 U.S. at 692.

(3) The State will not be able to demonstrate a historical tradition of permanent disarmament of non-dangerous persons.

In short, our nation's history at most reveals a consistent historical practice of limiting the right to bear arms based on a judicial finding regarding an individual's present dangerousness ("why"), and only doing so temporarily or conditionally ("how"). *See Rahimi*, 602 U.S. at 692 (the "central . . . inquiry" is whether a modern law is "relevantly similar" to both "why" and "how" the right to bear arms was historically restricted; if a right is limited "to an extent beyond what was done at the founding," it "may not be compatible with the right"). As discussed below, applying that historical tradition here, the UPWF statute violates the Second Amendment, as applied to Benson.

That said, it bears emphasizing that the burden is ultimately on the State to present a sufficient historical justification; it does not rest with Benson nor this Court to unearth historical sources to justify or disprove the UPWF statute's constitutionality. *See Thompson*, 2025 IL 129965, ¶ 34 ("The Court explained that it was 'not obliged to sift the historical materials for evidence to sustain' the

challenged law, because that is the government's burden.") (quoting *Bruen*, 597 U.S. at 60). Thus, irrespective of the historical points above, if the State fails to prove to this Court that there is a historical tradition that is relevantly similar to both "why" and "how" the UPWF statute restricted Benson's firearm rights, it may reverse his conviction on that basis alone. *See Rahimi*, 602 U.S. at 689, 692.

D. The UPWF statute violates the Second Amendment, as applied to Benson.

As noted, the first step of the *Bruen* analysis asks whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 17, 24. Here, Benson possessed the firearm in his home, and it should be beyond dispute that this conduct is protected by the Second Amendment. *Id*. This case therefore satisfies the first *Bruen* step. *See* Part B.

The second *Bruen* step requires the State to prove that the challenged law shares a historical analogue that is "relevantly similar" to both "[w]hy and how" it restricts firearm possession. *Rahimi*, 602 U.S. at 692. As discussed, the only tradition that is potentially relevantly similar to UPWF are historical restrictions on firearms based on a judicial finding of a person's present dangerousness ("why"). *See Rahimi*, 602 U.S. at 698 ("[w]hen an individual poses a clear threat of physical violence to another"). But here, the UPWF statute prohibited Benson's firearm possession based on his 2015 felony conviction for merely possessing of a firearm, though without a FOID card. In other words, the prior felony on which Benson's current UPWF conviction rests was just a simple registration error. *See People v. Wolf*, 2025 IL App (5th) 230520-U, ¶¶ 43, 48 (McHaney, J., dissenting in part and concurring in part) (the FOID Card Act created a registration database and

"allows the State to fine or imprison any citizen for possessing a firearm, even privately, without first seeking permission from the government" and paying a fee).

Benson therefore lost his firearm rights based on a conviction for a non-violent offense. (R. 97; CI. 6) Indeed, Illinois courts have long recognized that firearm possession offenses are non-violent offenses. *See People v. Trimble*, 131 Ill. App. 3d 474, 477 (3d Dist. 1985) ("The offense of unlawful use of a weapon prohibits a large number of acts, most of which are nonviolent: possessing, carrying, purchasing, selling or manufacturing certain kinds of weapons."); *People v. Cruzado*, 299 Ill. App. 3d 131, 137 (1st Dist. 1998) ("A charge for unlawful possession of a firearm does not show a propensity for violence."). Apart from that possession offense, before he was charged in this case, Benson had likewise committed only minor, nonviolent offenses: an attempt to possess a weapon in 2018, and driving on a suspended license and retail shoplifting, both misdemeanors from 2008. (CI. 6; R. 123)

Disarming Benson based on his prior conviction for a non-violent offense does not fit into our nation's historical tradition of restricting firearm rights based on a judicial finding of present dangerousness. *See Rahimi*, 602 U.S. at 698. Nor is there any historical practice of prohibiting firearm possession based on years-old nonviolent offenses. *See* Part C. As the State therefore will not identify a relevantly-similar historical tradition for "why" the UPWF statute restricted Benson's firearm rights, this Court should find that it violated the Second Amendment, as applied to him. *See Rahimi*, 602 U.S. at 692 ("When determining whether a modern law is 'relevantly similar' to historical laws, courts must evaluate both 'why' and 'how' the regulation burdens the Second Amendment.").

Moreover, there is no historical practice of *permanently* disarming *any* person, much less for nonviolent offenses. *See Rahimi*, 602 U.S. at 702 (upholding statute disarming dangerous persons by emphasizing the "temporary" nature of the firearm restriction); *Prince*, 700 F. Supp.3d at 673 (no historical analogue for a "*permanent* prohibition on firearm possession by felons"). Thus, UPWF's lifetime ban on firearm possession based on Benson's nonviolent prior convictions is also not relevantly similar to "how" our nation has historically restricted firearm rights. That too establishes that UPWF is unconstitutional as applied. *See Rahimi*, 602 U.S. at 692.

This Court should follow *Range*'s analysis, where the en banc Third Circuit Court of Appeals recently held that a felon disarmament law was unconstitutional as applied to a person because the disarmament was based on their prior conviction for a non-violent offense. In *Range*, the defendant was prohibited from possessing a firearm under the federal felon dispossession statute based on a conviction for "making a false statement to obtain food stamps." 124 F.4th at 222-223; *see* 18 U.S.C. § 922(g)(1). The *Range* court rejected the Government's arguments that the Second Amendment did not apply to Range because of his prior conviction, *Range*, 124 F.4th at 226-228, that *Heller*'s "longstanding prohibition" language justified the statute, *id*. at 228-229, and that the State's suggested historical analogues supported disarmament, *id*. at 229-231 (rejecting comparisons to 1938 and 1961 laws, restrictions based on race and religion, or criminal punishments of death or estate forfeiture).

The *Range* court acknowledged *Rahimi*'s dangerousness analysis, but found that it did not apply to Range because his prior nonviolent offense did not show that he posed a threat of physical danger. 124 F.4th at 227. In doing so, *Range*

rejected the Government's attempt to "stretch dangerousness to cover all felonies," finding such a principle to be "far too broad." *Id*. at 229-230, quoting *Bruen*, 597 U.S. at 31. *See also Daniels*, 124 F.4th at 975-976 (finding federal law criminalizing firearm possession for "marihuana users" was unconstitutional as applied); *Cf. Rahimi*, 602 U.S. at 702 (rejecting as-applied challenge to statute that disarmed persons based on a judicial finding they "present a credible threat of physical violence to another");*Williams*, 113 F.4th at 662 ("Because Williams's criminal record [showing aggravated robbery convictions] shows that he's dangerous, his as-applied challenge fails").

Like *Range*, here Benson's prior nonviolent offenses do not show that he posed a threat of physical danger, yet precluded him from firearm possession. Thus, as in *Range*, this Court should find the felon dispossession statute at issue here (UPWF) violated the Second Amendment as applied.

This Court should therefore find that under the unique facts of this case, the UPWF statute's permanent prohibition on Benson's firearm possession, with criminal penalties for violations ("how"), based on a prior conviction for nonviolent conduct ("why"), was incompatible with our nation's historical tradition, and thus violated the Second Amendment as applied to him.

Although some courts have implied that additional fact-finding may be necessary when reviewing an as-applied challenge to felon dispossession laws, those cases should not be followed here. *See People v. Avery*, 2024 IL App (1st) 230606-U, ¶ 24; *People v. Ivy*, 2023 IL App (4th) 220646-U, ¶ 18 (as-applied *Bruen* challenges raised for the first time on appeal were "premature" due to the lack of "factual findings related to defendant's prior convictions [ ]or how they pertain to his present claim pursuant to *Bruen*"). Indeed, the only fact upon which the

UPWF statute restricts firearm possession is the existence of a prior felony conviction. 720 ILCS 5/24-1.1(a). Thus, the nature of a person's prior felony conviction(s) is the only relevant information required to determine whether a person's Second Amendment rights is unconstitutionally denied in light of our nation's historical tradition, as applied to their particular circumstances. *See Mobley*, 2023 IL App (1st) 221264, ¶ 20 (finding the record sufficient to address as-applied *Bruen* challenge because "the only fact at issue is what conviction the State used as the predicate for U[P]WF"). Furthermore, it would be a waste of judicial resources to require such a hearing in every case, when the fact of a person's prior felony conviction, and the nature of that conviction, is established at every defendant's UPWF trial and sentencing hearing.

In sum, the record of Benson's prior nonviolent convictions is more than sufficient for this Court to find that, considering the particular circumstances of this case, the UPWF statute is incompatible with our nation's historical tradition of firearm regulation, and thus violated the Second Amendment, as applied to him. Yet, if this Court determines that an evidentiary hearing is required to assess the historical record or to determine if Benson's prior convictions establish dangerousness under *Rahimi*, it should remand for such hearing and provide the lower courts with guidance on how to review such as-applied *Bruen* challenges. *See Thompson*, 2025 IL 129965, at ¶ 87 (Overstreet, J., dissenting) (finding that a remand for the lower court to conduct the kind of historical analysis mandated by *Bruen* can be appropriate).

This Court should find that the UPWF statute is unconstitutional as applied to James Benson and reverse his UPWF conviction, or alternatively, remand for a *Bruen* hearing.

CONCLUSION

For the foregoing reasons, James Benson, defendant-appellant, respectfully requests that this Court reverse his conviction for unlawful possession of a weapon by a felon, or in the alternative, remand for a *Bruen* hearing.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

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COUNSEL FOR DEFENDANT-APPELLANT

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 or words contained in 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, is 37 pages.

/s/ Elizabeth Cook
ELIZABETH COOK
Assistant Appellate Defender

APPENDIX TO THE BRIEF

INDEX TO THE RECORD

Sentence to Illinois Department of Corrections **CCG N305**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS

v.

JAMES BENSON
Defendant

Case Number	22CR100601
Date of Birth	10/03/1990
Date of Arrest	12/24/2021
IR Number	1930833 SID Number 11639621

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Years	Months	Class	Consecutive	Concurrent
001	720 ILCS 5/24-1.5(a)	RECK DISCH FIREARM/ENDANGERS	3		4		X
002	720 ILCS 5/24-1.1(a)	FELON POSS/USE FIREARM PRIOR	4		2		X
003	720 ILCS 5/12-3.2(a)(2)	DOMESTIC BTRY/PHYSICAL CONTACT	3		A		X

On Count _____ defendant having been convicted of a class _____ offense is sentenced as a class _ offender pursuant to 730 ILCS 5/5-4.5-95(b).

On Count _____ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of _____ years and 228 days, as of the date of this order. Defendant is ordered to serve 1 years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case numbers(s) _____

AND: consecutive to the sentence imposed under case number(s) _____

IT IS FURTHER ORDERED THAT BOND REVOKED – MITT TO ISSUE

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

Dated August 9, 2022

Certified by: _____ Deputy Clerk S. Sims

_____ Judge Linn, James B 1544 Judge's No.

Verified by: _____

[redacted]

ENTERED
Judge James B. Linn #1544
AUG 09 2022
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

IRIS Y MARTINEZ, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Printed: 3/9/2022 3:02 PM

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TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS	)		
	)		
	)	**Case No:**	**22 CR 0100601**
vs.	)	**Judge:**	**Judge Linn**
	)	**Attorney:**	**APD Juan Ponce de Leon**
JAMES BENSON	)		

NOTICE OF APPEAL

ENTERED
Judge James B. Linn #1544
AUG 09 2022
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME: James Benson
APPELLANT'S ADDRESS: IDOC
APPELLANT'S ATTORNEY: **Office of the State Appellate Defender**
ATTORNEY'S ADDRESS: **203 North LaSalle Street, 24th Floor, Chicago, IL 60601**
ATTORNEY'S EMAIL: **1stDistrict@osad.state.il.us**
OFFENSE(s): Reckless Discharge of a Firearm, Unlawful Use or Possession of a Weapon by a Felon and Domestic Battery
JUDGMENT: Guilty (Dates of Trial: June 28, 2022 and July 5, 2022)
DATE OF JUDGMENT: July 5, 2022
SENTENCE: 4 **years Illinois Department of Corrections (date of sentence:)**
IF NOT A CONVICTION, NATURE OF ORDER APPEALED FROM:

APPELLANT/APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the Appellant; order the Clerk to prepare the Record on appeal, and to appoint the State Appellate Defender as counsel on appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is now unable to pay for the Record or to retain counsel on appeal.

APPELLANT/APPELLANT'S ATTORNEY

ORDER

IT IS ORDERED that the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished to appellant without cost, within 45 days of receipt of this Order.
Dates to be Transcribed: June 28, 2022, July 5, 2022 and August 9, 2022

DATE: _____ ENTER: _____
JUDGE

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
V.)
JAMES BENSON)
Defendant

CASE NUMBER 15C22000501
DATE OF BIRTH 10/03/90
DATE OF ARREST 12/11/14
IR NUMBER 1930833 SID NUMBER 011639621

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
001	720-5/24-1.6(A)(1)	AGG UUW/VEH/FIR LOADED/NO FOI	YRS 002 MOS 00	4
	and said sentence shall run concurrent with count(s) ___ ___ ___ ___			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on.			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on.			
___	_____	_____	YRS ___ MOS ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on.			

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0200 days as of the date of this order Defendant is ordered to serve 0001 years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____ _____ _____ _____
AND: consecutive to the sentence imposed under case number(s)
_____ _____ _____ _____ _____

IT IS FURTHER ORDERED THAT PG/FG TO VOP._____
DAY FOR DAY CREDIT._____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

ENTERED
SEP 04 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

DATED SEPTEMBER 04, 2018
CERTIFIED BY D BOGDAN
DEPUTY CLERK
VERIFIED BY _____

ENTER: 09/04/18
JUDGE HOOD, MICHAEL J 2111

CCG N305

2024 IL App (1st) 221230-U

No. 1-22-1230

October 29, 2024

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 22 CR 1006
	)	
JAMES BENSON,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court judgment is affirmed where (1) the evidence was sufficient to convict defendant of reckless discharge of a firearm, and (2) the unlawful use or possession of a weapon by a felon statute is not unconstitutional on its face or as applied to defendant. We reduce defendant's improper sentence for misdemeanor domestic battery and order correction of his mittimus.

¶ 2 Following a bench trial, defendant James Benson was found guilty of reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2020)), unlawful use or possession of a firearm by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2020)), and misdemeanor domestic battery (720 ILCS 5/12-

3.2(a)(2) (West 2020)). He was sentenced to concurrent terms of three, four, and three years' imprisonment, respectively. On appeal, defendant argues that (1) the evidence was insufficient to prove him guilty of reckless discharge of a firearm; (2) the court sentenced him above the maximum term for misdemeanor domestic battery; and (3) his UUWF conviction is unconstitutional both facially and as applied to him under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). We affirm defendant's convictions, reduce his sentence for domestic battery, and order correction of his mittimus.

¶ 3 Defendant was charged by indictment with one count each of aggravated discharge of a firearm, UUWF, and domestic battery arising from an incident on December 24, 2021.

¶ 4 At trial, Alisha Bradley testified that in December 2021, she lived in an apartment in Chicago with defendant, whom she dated. Late on December 23, 2021, into early December 24, Bradley was in the apartment with a friend, Valencia Johnson. Bradley and Johnson were drinking shots of liquor until defendant arrived at 11 to 11:30 p.m. Defendant was intoxicated, so Bradley put him in bed. Afterward, Bradley and Johnson drove to purchase food.

¶ 5 When they returned, Johnson was "very intoxicated" and wanted to "sober up." She asked Bradley for towels so that she could bathe. While searching for towels, Bradley reviewed defendant's phone and saw text messages that he sent other women. Bradley became "really, really upset" and retrieved a firearm from a lockbox in their bedroom closet. Bradley "cock[ed]" the firearm, causing bullets to fall onto the floor. She punched defendant to wake him and yelled at him. Then, she set down the firearm and defendant hid it from her. Defendant never used the firearm against her. Bradley confronted defendant about the messages, which he claimed were "old." She argued with defendant for a few minutes, then threw cups at his computer. Defendant

broke a chair in the living room and Johnson left the apartment. The police arrived "not too long" later.

¶ 6 Bradley, while crying, informed the police that defendant had a firearm. The officers arrested defendant, and Bradley told them that defendant was "really intoxicated," she and defendant fought, and he hit her with a chair. She also told them that defendant was "very hostile" when she and Johnson returned from the restaurant, and removed a firearm from its holster and cocked it. She stated to the officers that Johnson ran downstairs, and defendant kicked Bradley as she attempted to FaceTime her mother, "got mad," and broke her phone. She informed the officers that defendant asked, "Are you ready to die, b***?" Then, defendant hit her with a chair, breaking it. She also told the officers that as she told defendant to "calm down," he shot at her, and then hid the firearm under the mattress or bed; afterwards, Bradley gave the officers permission to search the apartment.

¶ 7 On cross-examination, Bradley stated that she and Johnson were intoxicated during the events. Bradley showed officers a hole in the floor and informed them it was where defendant discharged the firearm. She testified that it was not a bullet hole.

¶ 8 Johnson testified that late on December 23 and early on December 24, 2021, she was at Bradley and defendant's apartment. Defendant returned home and lay down in the bedroom, and Johnson and Bradley left to get food. Later, Johnson and Bradley sat at the dining room table to eat. Bradley and defendant argued for 10 to 15 minutes. Johnson left the apartment before the fight became physical and did not see Bradley or defendant with a firearm. Johnson went to her vehicle and called the police "because of the arguing."

¶ 9 Johnson acknowledged that, when officers arrived, she told them that Bradley woke defendant, who began to slap Bradley, and he retrieved a firearm from the bedroom, which he placed on the table. Johnson informed officers that during the argument, defendant picked up the firearm and "started shooting" in Bradley's direction. Johnson told the officers that she heard the first gunshot and walked away. In court, Johnson described the firearm as a "[s]mall cop gun," meaning a "regular" firearm without "[t]he little barrel with twirls."

¶ 10 On cross-examination, Johnson agreed that she was "very intoxicated" during the incident. When officers arrived, she was lying on the sidewalk. Later, she experienced "dry heaving or vomiting." Johnson did not know whether defendant and Bradley had relationships with other people.

¶ 11 Chicago police officer Thomas Kowal testified that he responded to the scene, an apartment building with store fronts on the main level. Kowal spoke with Johnson, who was lying on the ground. He believed she was having a panic attack, and that she "had something to drink" but was not intoxicated. Afterward, Kowal walked to the second-floor apartment. There, he saw Bradley, who was frantic and crying but did not appear to be intoxicated. Kowal arrested defendant, placed him in a police vehicle, and returned to the apartment. Bradley reported that defendant struck her, threatened her with a firearm, said he would kill her, and shot at her. Bradley directed Kowal to the bedroom to search for the firearm, and to the dining room, which had a hole in the floor near the window, and to an expended shell casing. Kowal believed the hole was from a bullet. Kowal recovered a loaded semiautomatic firearm from underneath the mattress in the bedroom.

¶ 12 Kowal testified that he activated his body-worn camera while conversing with Bradley and Johnson and searching the apartment, and identified the footage in court. Portions were published without audio, but the following events were narrated by Kowal.

¶ 13 In the video, Bradley leads officers to the windows in the corner of the dining room. Kowal testified that Bradley led them to the hole, but it is not visible in the footage. In another clip, the officers discover a black firearm underneath the mattress in the bedroom.

¶ 14 Chicago police detective Douglas Livingstone testified that he attempted to speak with Bradley after the incident but was unable to contact her. Johnson gave Livingstone her statement, and Livingstone spoke with defendant after he was arrested. After the officers Mirandized defendant, he informed Livingstone that he "possessed" the recovered firearm for two or three weeks prior to the incident.

¶ 15 Chicago police officer Melinda Guillen testified that she responded to the scene with Kowal. Guillen identified footage from her body camera, segments of which were published with audio.

¶ 16 The published footage shows, in relevant part, Guillen's conversation with Johnson outside the apartment. Johnson tells Guillen that defendant was "slapping [Bradley] around," retrieved his firearm from the room, placed it on the table, and then picked it up and shot it in Bradley's direction. Johnson then left.

¶ 17 The State entered into evidence a certified copy of defendant's 2015 conviction for aggravated unlawful use of a weapon (AUUW) premised upon the lack of a Firearm Owners

Identification (FOID) card.[1]

¶ 18 The defense called Thomas Stamps, who testified that he owned a .40-caliber firearm. Stamps had a FOID card, which he obtained on November 2, 2020. Stamps identified his FOID card and receipt for the firearm. Stamps "received" the firearm on April 12, 2020.

¶ 19 In late December 2021, Stamps lived with defendant and Bradley. When Stamps was at work, he kept his firearm in its box on the top shelf of defendant and Bradley's closet. Stamps worked the evening of December 23, 2021. On cross-examination, Stamps stated that he did not know who handled his firearm on December 23, 2021.

¶ 20 Defendant testified that he was convicted of AUUW in 2015 and attempt to unlawfully possess a weapon in 2018. Defendant had been dating Bradley for approximately 1½ years at the time of trial and lived with her in the apartment. Defendant described his relationship with Bradley as "exclusive," but Johnson was "part" of the relationship as she was Bradley's girlfriend.

¶ 21 On December 23, 2021, defendant was out drinking with his friend and became intoxicated. Defendant returned home where he saw Bradley and Johnson in the dining room drinking. Bradley helped defendant into bed and he slept for "a little while," before waking to Bradley hitting him and telling him about seeing a message on his phone. The message was from 2016, but Bradley continued to yell, so they moved into the dining room. Defendant did not want to fight and told her that he could pack her a bag and she could leave with Johnson.

¶ 22 At that point, Bradley said, "this mother*** think I'm playing with him," and cocked a firearm, with a round hitting the floor. Defendant asked Bradley if she would shoot him. He took

[1] The certified copy of conviction notes that defendant entered two guilty pleas for the case on April 6, 2015, and September 4, 2018.

the firearm from Bradley and hid it under the bed. The firearm belonged to Stamps, defendant's friend whom he considered a brother. Defendant had discharged the firearm at the "gun range" and kept the shell casings.

¶ 23 The police arrived and defendant cooperated when they arrested him, although he argued and tried to explain what happened because they did not ask him questions.

¶ 24 On cross-examination, defendant stated that he told the officers that the firearm was not fired that evening and that he did not have a firearm. Defendant told the officers that Bradley was trying to kill him, but he understood that Bradley was just trying to get his attention by cocking the firearm. Bradley never pointed the firearm at him. Defendant told a detective that he possessed the firearm for two to three weeks after the detective did not "listen" when he said that the firearm was not his or Bradley's. Defendant did not own the firearm.

¶ 25 On redirect examination, defendant testified that he told officers multiple times that he took the firearm from Bradley but they did not listen to him.

¶ 26 The court found defendant guilty of the lesser included offense of reckless discharge of a firearm, UUWF, and misdemeanor domestic battery. In ruling, the court commented that Bradley and Johnson told police the same story regarding defendant's actions and asked the officers for assistance. The court acknowledged that events Bradley and Johnson described at trial were "much different," but noted that "[i]t happens frequently" in domestic battery cases. The body camera footage showed that Bradley and Johnson were anxious when speaking with the officers, and Bradley showed them the bullet hole and told them the location of the firearm. The court believed that the original story that Bradley and Johnson told to police was "accurate" and "fresh" and, thus, the court believed the events occurred.

¶ 27 Regarding the aggravated discharge of a firearm count, the court noted that the firearm was likely pointed at Bradley "at one point" and discharged into the ground, which was "certainly scary enough." Thus, the State proved the lesser included offense of reckless discharge of a firearm. The court also commented that defendant possessed the firearm but did not own it.

¶ 28 The court denied defendant's motion for a new trial, finding "no question" that Bradley and Johnson lied on the witness stand, which "happens frequently." It found their prior statements "compelling" and "believable beyond a reasonable doubt."

¶ 29 Defendant's presentence investigative report (PSI) listed four prior convictions from 2000 through 2018, comprising AUUW premised on the lack of a FOID card, a violation of bail bond, driving on a suspended license, and retail theft. After a hearing, the court sentenced defendant to four years' imprisonment for UUWF, concurrent to terms of three years' imprisonment for the reckless discharge and misdemeanor domestic battery offenses. The court denied defendant's motion to reconsider sentence.

¶ 30 On appeal, defendant argues that the evidence was insufficient to prove him guilty of reckless discharge of a firearm because the State did not establish that he endangered the bodily safety of another person. Defendant contends that Bradley's testimony and the location of the bullet hole in the floor of the apartment belies the contention that she was endangered.

¶ 31 The standard of review for a challenge to the sufficiency of the evidence is "whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Internal quotation marks omitted.) *People v. Belknap*, 2014 IL 117094, ¶ 67. The trier of fact resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences from basic facts to ultimate facts.

People v. Brown, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the defendant or substitute its judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses. *Id.* A reviewing court must allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)) and will not reverse a conviction unless the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt" (*People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (internal quotation marks omitted)).

¶ 32 As noted, defendant was charged with aggravated discharge of a firearm and found guilty of the lesser included offense of reckless discharge. To prove reckless discharge of a firearm, the State had to prove beyond a reasonable doubt that defendant discharged a firearm in a reckless manner, which endangered "the bodily safety of an individual." 720 ILCS 5/24-1.5(a) (West 2020).

¶ 33 Defendant does not dispute that he discharged a firearm or acted recklessly. He only challenges the sufficiency of the evidence establishing that he endangered the bodily safety of another person. To endanger a person means that a defendant's conduct "created a dangerous situation—such that an individual was in peril of probable harm or loss." *People v. Collins*, 214 Ill. 2d 206, 215 (2005). Endangerment in this context does not require the discharge of a firearm in the direction of another person. *Id.* at 215-16. Rather, it is sufficient that the defendant discharge the firearm "in such a way as to place a person in danger." *People v. Kasp*, 352 Ill. App. 3d 180, 188 (2004).

¶ 34 Here, the evidence is sufficient to establish that defendant endangered the bodily safety of Bradley. Bradley told the responding police officers that she and defendant argued. Defendant said, "[a]re you ready to die, b***?" and hit her with a chair. Then, he fired in Bradley's direction.

Bradley showed the officers a bullet hole in the floor of the dining room and directed them to the bedroom where defendant hid the firearm underneath the mattress. Bradley and Johnson gave the officers consistent statements, although they both recanted their statements at trial. The State also presented body camera footage from both Kowal and Guillen which included Johnson's statement to Guillen and Bradley showing the officers the bullet hole. Given this record, we cannot say that the evidence was insufficient to establish endangerment.

¶ 35 Defendant nevertheless contends the evidence was insufficient because Bradley's and Johnson's testimonies varied significantly from their statements to officers. Further, both admitted at trial that they had been drinking alcohol that evening, with Johnson intoxicated to the point of lying on the sidewalk outside. Defendant also argues that the location of the bullet hole in the floor is "not consistent with an attempt by [defendant] to endanger Bradley." Defendant additionally contends that no physical evidence established that the hole was from a bullet, and the apartment was above a business with no evidence presented that the business was occupied at the time of the incident.

¶ 36 We reject defendant's interpretation of the evidence. First, the trial judge concluded that those statements were accurate and "fresh," and noted that "frequently" complaining witnesses change their testimonies in domestic battery cases. Given the evidence regarding the initial statements, including Bradley showing officers the bullet hole and general location of the firearm, we will not substitute our judgment for that of the trial court regarding the weight of the evidence or Bradley's and Johnson's credibility. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 37 Additionally, both Bradley and Johnson testified that defendant discharged the firearm in Bradley's direction inside the dining room. The location of the bullet hole suggests that the firearm

was pointed down rather than aimed at Bradley; however, this evidence is sufficient to establish that defendant placed Bradley in danger. See *Kasp*, 352 Ill. App at 188. As noted, endangerment does not require the discharge of a firearm in the direction of another person. See *Collins*, 214 Ill. 2d at 215-16. Accordingly, any rational trier of fact could have found that this evidence established that defendant endangered Bradley's bodily safety. See *Belknap*, 2014 IL 117094, ¶ 67. Consequently, the evidence was sufficient to establish that defendant committed reckless discharge of a firearm.

¶ 38 Defendant further contends, and the State concedes, that the court erred in imposing a three-year prison term for defendant's misdemeanor domestic battery conviction, which carries a maximum sentence of 364 days' imprisonment.

¶ 39 Defendant recognizes that he did not raise his sentencing challenge before the trial court, forfeiting the claim. See *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). However, defendant seeks review under the plain error doctrine, which allows a reviewing court to consider an unpreserved claim where a clear and obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) the error is so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Sebby*, 2017 IL 119445, ¶ 48. Sentencing errors can be reviewed under the second prong of plain error review where, as here, a defendant's substantial rights are affected. See *People v. Myrieckes*, 315 Ill. App. 3d 478, 483 (2000).

¶ 40 Defendant was convicted of misdemeanor domestic battery, which carries a maximum sentence of "less than one year." See 720 ILCS 5/12-3.2(a)(2), (b) (West 2020); 730 ILCS 5/5-4.5-55(a) (West 2020). Thus, we agree with the parties that defendant's three-year sentence for

domestic battery is erroneous, reduce the sentence to 364 days, and order defendant's mittimus be corrected. See Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967).[2] All other convictions and sentences will remain as imposed by the trial court. We further direct the clerk of the circuit court to correct the mittimus to reflect the reduced sentence. See *People v. Kline*, 2024 IL App (1st) 221595, ¶ 91.

¶ 41 Lastly, defendant argues that the UUWF statute is unconstitutional on its face under the second amendment to the United States Constitution because it does not comply with the framework established by the United States Supreme Court in *Bruen*. He also argues that the UUWF statute is unconstitutional as applied to him as his prior conviction for UUWF without a FOID card is not an inherently dangerous offense justifying a permanent ban on firearms possession.

¶ 42 Here, defendant was convicted of UUWF under section 24-1.1(a) of the Criminal Code of 2012, which provides that "[i]t is unlawful for a person to knowingly possess on or about his person *** any firearm *** if the person has been convicted of a felony." 720 ILCS 5/24-1.1(a) (West 2020). Relevant here, defendant was convicted of UUWF premised upon the lack of a FOID card.

¶ 43 The constitutionality of a statute is a matter of law, which we review *de novo*. *People v. Ligon*, 2016 IL 118023, ¶ 11. In analyzing a challenge to the constitutionality of a statute, "we begin with the presumption that the statute is constitutional and that, if reasonably possible, this court must construe the statute so as to affirm its constitutionality and validity." *Id.*

¶ 44 A party raising a facial challenge to the constitutionality of a statute "faces a particularly heavy burden," because "[a] statute will be deemed facially unconstitutional only if there is no set

[2] The website of the Illinois Department of Corrections, which is subject to judicial notice (*People v. Johnson*, 2021 IL 125738, ¶ 54), states defendant's parole date as November 6, 2023.

of circumstances under which the statute would be valid." *People v. Bochenek*, 2021 IL 125889, ¶ 10. Therefore, a facial challenge fails if any situation exists where the statute could be validly applied. *People v. Davis*, 2014 IL 115595, ¶ 25. In contrast, an as-applied challenge "requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *People v. Thompson*, 2015 IL 118151, ¶ 36.

¶ 45 The second amendment provides: "A well regulated Milita, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In 2008, the United States Supreme Court issued its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), holding that the second amendment elevated "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at 635. The second amendment applies to the States through the fourteenth amendment of the United States Constitution. *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).

¶ 46 Under *Heller* and *McDonald*, courts developed a two-step test to assess second amendment challenges to firearm regulations. See *People v. Smith*, 2024 IL App (1st) 221455, ¶ 11. First, the government could justify the regulation by establishing that the regulated activity fell outside the scope of the second amendment as it was originally understood. *Id.* If the conduct fell beyond the second amendment's original scope, it was "categorically unprotected." *Id.* Otherwise, the court would progress to the second step and conduct a "means-end analysis" where the court weighed the severity of the regulation against the ends the government sought to achieve. *Id.*

¶ 47 In *Bruen*, the United States Supreme Court announced a new analytical framework for evaluating the constitutionality of firearm regulations under the second amendment. *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 68 (citing *Bruen*, 597 U.S. at 17). Under *Bruen*, a court must

first determine whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 24; *Brooks*, 2023 IL App (1st) 200435, ¶ 69. If it does, then the Constitution "presumptively protects that conduct" and the government must justify the regulation by showing that it is consistent with the nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 24; *Brooks*, 2023 IL App (1st) 200435, ¶ 69. To make this showing, the government must point to historical precedent which establishes what the founders understood the second amendment to mean. *Bruen*, 597 U.S. at 24-25; *Brooks*, 2023 IL App (1st) 200435 ¶ 70.

¶ 48 Regarding defendant's facial challenge, he has not established that the UUWF statute could not be validly applied to any defendant. This court has interpreted *Bruen* in the context of UUWF and has determined that *Bruen* does not apply to felons, because the holding was limited to laws affecting "law-abiding citizens." See *People v. Baker*, 2023 IL App (1st) 220328, ¶ 37 (rejecting the defendant's as-applied constitutional challenge to the UUWF statute); see also *People v. Mobley*, 2023 IL App (1st) 221264. As the UUWF statute could be validly applied to the defendants in *Baker* and *Mobley*, defendant's facial challenge to the statute must also fail. See *Bochenek*, 2021 IL 125889, ¶ 10; *People v. Burns*, 2024 IL App (4th) 230428, ¶¶ 18-22 (rejecting the defendant's facial challenge to the UUWF statute using the reasoning in *Baker*).

¶ 49 Defendant requests we depart from our holding in *Baker*, and instead follow the reasoning in *Brooks*, 2023 IL App (1st) 200435, ¶ 89, where we found that a defendant's status as a felon is irrelevant under the first step of the *Bruen* analysis and "is more properly evaluated under the second step's historical tradition analysis." Under *Brooks*, the first step of the *Bruen* analysis addresses an individual's conduct, and "does not contemplate the actor or the subject" and, thus, a defendant's possession of a firearm is "presumptively constitutional." See *Brooks*, 2023 IL App

(1st) 200435, ¶ 89. However, even if we did follow *Brooks*, sufficient historical precedent exists to ban felons from possessing firearms under the second step of the *Bruen* analysis. See *id.* ¶¶ 100-105 ("[T]he legislature's ability to impose status-based restrictions disqualifying certain categories of people from possessing firearms is consistent with the historical tradition of firearm regulation."); *People v. Travis*, 2024 IL App (3d) 230113, ¶¶ 27-33 (finding that the UUWF statute was "consistent with this nation's history of preventing potentially dangerous individuals from exercising the right to bear arms," and so was facially constitutional).

¶ 50 Regarding defendant's as-applied challenge, the State argues that defendant forfeited the issue because he raises it for the first time on direct appeal. See *People v. Holman*, 2017 IL 120655, ¶ 32 *overruled on other grounds by People v. Wilson*, 2023 IL 127666 ("[A] defendant must present an as-applied constitutional challenge to the trial court in order to create a sufficiently developed record.").

¶ 51 Normally, "as-applied constitutional challenges are dependent on the specific facts and circumstances of the challenging party and, therefore, it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review." (Internal quotation marks omitted.) *People v. House*, 2021 IL 125124, ¶ 27. Here, defendant premises his as-applied challenge on the contention that the founders permitted disarmament only for persons who were presently dangerous, not for persons who were mere felons. He argues his conviction for UUWF was predicated upon a conviction for possession of a firearm without a FOID card, which is not "inherently dangerous" to justify a permanent ban on firearm possession. Defendant also argues that his as-applied challenge is "legal in nature," and so the trial record is sufficient to review the issue. See *People v. Gross*, 2024 IL App (2d) 230017-U, ¶ 18 (the question of whether

it is constitutionally permissible to restrict a person from possessing a firearm if previously convicted of a felony which does not have a violent act as an element is legal in nature).[3] We agree with defendant and, accordingly, reach the merits of the issue.

¶ 52 Here, the facts and circumstances of defendant's case do not support his contention that the UUWF statute is unconstitutional as applied to him. See *Thompson*, 2015 IL 118151, ¶ 36. Although defendant, in applying *Bruen*, contends that the founders intended permanent disarmament only for *violent* felons, *Bruen* does not make any such distinction. As noted, this court has interpreted *Bruen* in the context of UUWF and has determined that *Bruen* only applies to laws that regulate the firearm possession of "law-abiding citizens." See *Baker*, 2023 IL App (1st) 220328, ¶ 37. This court has also found *Bruen* inapplicable to a constitutional challenge to the FOID Card Act, a violation of which was the basis for defendant's underlying AUUW conviction. See *People v. Gunn*, 2023 IL App (1st) 221032, ¶ 19 (noting that the *Bruen* court "explicitly acknowledged that background checks, which are the cornerstone of the FOID Card Act, are permissible").

¶ 53 In sum, we do not find that the UUWF statute is unconstitutional on its face or as applied to defendant.

¶ 54 For the reasons stated, we reduce defendant's sentence for misdemeanor domestic battery to 364 days' imprisonment and correct the mittimus to reflect the correct sentence. We otherwise affirm the judgment of the circuit court of Cook County.

¶ 55 Affirmed as modified; mittimus corrected.

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[3] Under Illinois Supreme Court Rule 23(e)(1) (eff. Feb. 1, 2021), unpublished orders entered on or after January 1, 2021, may be cited for persuasive purposes.

No. 131191

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JAMES BENSON, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-22-1230. There on appeal from the Circuit Court of Cook County, Illinois , No. 22 CR 1006. Honorable James B. Linn, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 27, 2025, 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-appellant in an envelope deposited in a U.S. mail box in Chicago, 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.

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