No. 125954

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- DAVID CARTER, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0803. There on appeal from the Circuit Court of Cook County, Illinois No. 16 CR 4639. Honorable Arthur F. Hill, Jr., Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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E-FILED
1/4/2021 10:48 AM
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NATURE OF THE CASE

David Carter was found guilty of armed habitual criminal after a bench trial and was sentenced to nine years of imprisonment. The First District Appellate Court affirmed the judgment in a modified opinion denying Carter's petition for rehearing on March 10, 2020. This Court granted Carter's petition for leave to appeal on September 30, 2020.

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

ISSUES PRESENTED FOR REVIEW

I. Whether the State failed to prove David Carter guilty beyond a reasonable doubt of armed habitual criminal because the trial evidence did not affirmatively show that the predicate aggravated battery convictions were either enumerated offenses under the armed habitual criminal statute or forcible felonies required to support the charge.

II. Whether David Carter's convictions must be reversed because the trial court erred by denying his motion to quash arrest and suppress evidence obtained as the fruit of a *Terry* stop not supported by reasonable suspicion in violation of the Fourth Amendment.

STATUTES INVOLVED

720 ILCS 5/24-1.7 (West 2016) Armed habitual criminal.

(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:

> (1) a forcible felony as defined in Section 2-8 of this Code;
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> (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05; or
>
> (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.

(b) Sentence. Being an armed habitual criminal is a Class X felony.

720 ILCS 5/2-8 (West 2016) Forcible felony.

"Forcible felony" means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.

STATEMENT OF FACTS

Following David Carter's arrest based on information provided by an anonymous 911 caller, a Cook County grand jury charged him with one count of armed habitual criminal (count 1), four counts of unlawful use of a weapon by a felon (counts 2-5), and four counts of aggravated unlawful use of a weapon (counts 6-9) for possessing one handgun and one bullet. (C. 30-38).[1] The armed habitual criminal count specified the two predicate offenses as an armed robbery conviction in Will County case number 10-CF-367 and aggravated battery convictions in Will County case number 09-CF-2251. (C. 30; E. 3-6). The unlawful use of a weapon by a felon and aggravated unlawful use of a weapon counts specified the predicate offense as the armed robbery conviction in Will County case number 10-CF-367. (C. 31-38).

Hearing on the defense's motion to quash arrest

Defense counsel filed a motion to quash arrest and suppress evidence, specifically the handgun, bullet, and Carter's post-arrest inculpatory statement. (C. 62). Chicago Police Officer Robert Luzadder provided the following testimony at the hearing held on October 31, 2016. (SUP R. 6). Officer Luzadder and his partner, Officer Anthony Brown, were on patrol in a squad car on March 9, 2016, at about 11:50 p.m., when they received an Office of Emergency Management and Communications (OEMC) dispatch stating a "person who wished to remain anonymous was a call [*sic*] of a person with a gun that was walking with two

[1] (C) refers to the common law record; (E) refers to the record of the trial exhibits; (R) refers to the report of proceedings; and (SUP R) refers to the supplemental volume of the report of proceedings (125954_SUPP3(1)).

females. Two female whites were walking with a male white wearing a black jacket, hoodie, and he was swinging at the females and that he has a gun on him." (SUP R. 12).[2] The caller said the group was near the intersection of 33rd and Wallace Streets. (SUP R. 13).

Officer Luzadder arrived at the intersection two or three minutes after receiving the call, but he did not see anyone matching the individuals described by the anonymous caller. (SUP R. 13, 16). Another OEMC dispatch relayed information from the caller that the people now were walking near 3100 South Lowe Avenue, approximately two blocks to the north. (SUP R. 13, 16). At that location, Officer Luzadder saw Carter walking east in the south alley of 31st Street with his hand on his waist, but Luzadder did not say he observed the two women described by the caller. (SUP R. 14). Carter matched the description provided by the anonymous caller. (SUP R. 14). Officer Luzadder did not have an arrest or search warrant for Carter nor did he see Carter violate any laws. (SUP R. 9). Officer Luzadder's 22 years working as a police officer and his hundreds of observations of individuals carrying firearms in their clothing led him to conclude that Carter was concealing a firearm underneath his clothing. (SUP R. 14-15). On cross-examination, Officer Luzadder admitted he had seen people holding their waistbands for innocent purposes, and the police had not recovered guns or other contraband in those cases. (SUP R. 19).

With a hand on his service weapon, Officer Luzadder instructed Carter to raise his hands, approach the squad car, and place his hands on the car. (SUP R.

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[2] The City of Chicago's Office of Emergency Management and Communications (OEMC) provides 911 service for police, fire, and emergency medical services and coordinates emergency responses.

10, 15, 17-18). He had performed pat downs on individuals armed with weapons hundreds of times during his career. (SUP R. 15). Officer Luzadder patted down Carter for safety because the call concerned a firearm, and he detected what years of experience told him was the handle of a handgun. (SUP R. 15, 17). Officer Luzadder lifted Carter's shirt and only then saw a nickel plated revolver in his waistband. (SUP R. 15-16, 19). Officer Luzadder then formally arrested Carter, and Carter thereafter made a statement related to the gun. (SUP R. 11, 16).

The OEMC record listed a telephone number from which the call was placed. (SUP R. 12). Officer Luzadder did not attempt to contact the anonymous caller. (SUP R. 20). He did not know the caller's name or whose telephone number was connected to the call. (SUP R. 20).

In argument on the motion, defense counsel contended that under *Florida v. J.L.*, 529 U.S. 266 (2000), the anonymous tip and observation of Carter walking with his hand on his waist did not provide Officer Luzadder with a lawful basis to stop Carter, as many innocent explanations exist for a person walking with their hand on their waist. (SUP R. 21-22, 24-25). The prosecutor argued that the totality of the circumstances showed the stop was valid. (SUP R. 24).

The trial court denied the motion as follows:

> Okay. I have heard the testimony. I have heard the arguments of the lawyers. A few comments and then I'm going to rule.
>
> It appears as though Officer Luzadder and his partner were on duty on this particular day of March 9th of 2016 about 11:30 or 11:36 when they received information. Specifically Officer Luzadder received information from OEMC from using quotes, air quotes, an anonymous caller. There was a telephone number attached to the inquiry there that was received by

> OEMC that gave a description of a man with a gun with two other females in a certain location.
>
> The officers went to that location and did not see anyone matching that description at that first location. There was follow-up information given through OEMC, which was that the individual was now near 3100 South Lowe, and the officers went to that location and in the alley observed the defendant walking east matching the description.
>
> He also indicated and testified that the defendant was holding his waistband. Based on the officer's experience and training he surmised that the defendant was trying to conceal a handgun or some kind of weapon underneath his clothing. The officer acted upon that and essentially stopped the defendant and ordered the defendant to come to the officer's squad car. The defendant placed his hands on the squad car, and upon a pat down the officer discovered what he believed to be the butt or a handle of a gun, and sure enough it turned out to be a weapon.
>
> So a gun was recovered. There was a statement allegedly given by the defendant to the officers. I find no offense to the 4th Amendment here. Respectfully, I'm going to deny the motion to quash arrest and suppress evidence. (SUP R. 26-27).

Trial proceedings

On February 14, 2017, Carter waived his right to a jury trial, and the trial court granted the State's motion to *nolle prosequi* two of the unlawful use of a weapon by a felon counts (counts 4 and 5). (R. 29, 33). The trial court admitted into evidence the transcript from the hearing on the defense's motion to quash arrest and suppress evidence after the parties stipulated to its content. (R. 33-34).

Officer Luzadder provided the following trial testimony. (R. 35). Officer Luzadder recounted stopping and searching Carter, seizing the handgun, and arresting Carter. (R. 35-36). Officer Luzadder also testified that Carter

spontaneously told him, "I'm a 2-6, I'm on parole and I use this for protection against the SDs." (R. 37). At the station, Officer Luzadder inventoried the handgun, a five-shot revolver loaded with one live round. (R. 36).

Following Officer Luzadder's testimony, the prosecutor moved for the admission of certified copies of two prior convictions as proof of the predicate felonies for the charges:

> Your Honor, the People do have -- do have what I've marked People's Exhibit No. 1 and People's Exhibit No. 2. People's Exhibit No. 1 is a certified copy of conviction for David Carter under Case No. 2010 CF 367, for the offense of armed robbery. And that is a two-page exhibit.
>
> I also have what I've marked as People's Exhibit No. 2. It is a certified copy of conviction for David Carter for Case No. 2009 CF 2251, for aggravated battery. This is a three-page document, and they are both from Will County, Illinois. (R. 39-40; E. 3-6).

The parties also stipulated that on the date of his arrest Carter did not possess either a Firearm Owners Identification Card or a permit under the Illinois Concealed Carry Act. (R. 40).

The defense rested without presenting any evidence. (R. 40).

In argument, defense counsel contended, "I would adopt argument that has previously been made during the motion and just reiterate that this is a circumstance which falls squarely under the purview of Florida versus JL in which there was an anonymous tip." (R. 43). The prosecutor recited the trial evidence and noted Carter's prior convictions and his failure to possess a license that would have allowed him to lawfully possess the handgun. (R. 44-45).

The trial court found Carter guilty as follows,

> In totality, the testimony in this case included the officers responding to a call that first led them to 33rd and Wallace. They got to that location, did not see anyone that matched the description. They got additional information after that, which brought them, eventually, to 3100 South Lowe. They saw the defendant walking east in the south alley. They noted that he matched the description they had received. Officer Luzadder testified during the course of the motion to quash arrest and suppress evidence and adopted during the course of this trial that he observed the defendant as he was in that south alley hold his right waistband. That led the officer to approach the defendant, asked the defendant to come to their car. Defendant put his hands on the car that led to the protective pat-down, which led to the discovery of the gun, including one round of live ammunition. There was, of course, according to the testimony here, the spontaneous statement of the defendant.
>
> I do find that the State has met their burden of proof of beyond a reasonable doubt. There's findings of guilty on Counts 1, 2, 3 and then 6, 7, 8 and 9. (R. 45-46).

Prior to sentencing, the trial court denied the defense's motion for a new trial, which claimed, *inter alia*, that the trial court erroneously denied the motion to quash arrest and suppress evidence. (C. 75-76; R. 52-54). The trial court heard evidence and argument in mitigation and aggravation before imposing a nine-year sentence on the armed habitual criminal count and merging the other counts. (C. 85-86; R. 70).

Appellate proceedings

On appeal, Carter argued that the trial court erred by denying his motion to quash arrest and suppress evidence, and his armed habitual criminal conviction should be reversed because the State's evidence did not affirmatively show that

the predicate aggravated battery convictions caused great bodily harm or permanent disability or disfigurement and thus were not qualifying offenses for that count. *People v. Carter*, 2019 IL App (1st) 170803, ¶ 1. Carter included in the appendix of his opening brief the indictment in his aggravated battery case, which showed he was charged in case number 2009 CF 2251 with aggravated battery causing "insulting or provoking" contact with a dangerous weapon and on a public way. *Carter*, 2019 IL App (1st) 170803, ¶ 43. Carter asked the appellate court to take judicial notice of the indictment, which showed that he was not charged in that case with aggravated battery based on great bodily harm or permanent disability or disfigurement. *Carter*, 2019 IL App (1st) 170803, ¶ 43.

On October 22, 2019, the First District Appellate Court affirmed. *People v. Carter*, 2019 IL App (1st) 170803. The appellate court held that Carter's case was distinguishable from *Florida v. J.L.*, 529 U.S. 266 (2000), because the tip about the firearm was corroborated by the police officer's observation that Carter had a hand on his hip. *Carter*, 2019 IL App (1st) 170803, ¶ 26.

The appellate court rejected Carter's reasonable doubt argument even though the opinion admitted that "[t]here is no dispute that the aggravating factor or factors underlying defendant's aggravated battery conviction were not specified in the certified copy of conviction presented to the circuit court." *Carter*, 2019 IL App (1st) 170803, ¶ 40. The appellate court refused to take judicial notice of the indictment, but nevertheless quoted the indictment's language in the opinion and noted Carter "evidently stabbed and punched his victim." *Carter*, 2019 IL App (1st) 170803, ¶ 43. The appellate court concluded,

> Ultimately, given the lack of information contained in the record on appeal pertaining to

> defendant's prior aggravated battery conviction that was used to satisfy the armed habitual criminal statute's predicate offense requirement, including the indictment, plea hearing, as well as the mittimus entered in that case, we necessarily reject his sufficiency of the evidence claim and affirm his armed habitual criminal conviction. *Carter*, 2019 IL App (1st) 170803, ¶ 45.

The appellate court stated Carter could collect this evidence and challenge his armed habitual criminal conviction in post-conviction proceedings. *Carter*, 2019 IL App (1st) 170803, ¶ 45.

Carter filed a petition for rehearing arguing that the appellate court's holding violated the core constitutional principle that the prosecution has the burden of proof in a criminal case and improperly placed the burden of proof on Carter to show that his prior aggravated battery convictions did not cause great bodily harm or permanent disability or disfigurement. *People v. Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion). On March 10, 2020, the appellate court denied rehearing and issued a modified opinion in which the court rejected the "argument advanced by defendant in his petition for rehearing that this result relieves the State of its burden of proving his guilt beyond a reasonable doubt and improperly shifts the burden to him to establish his innocence." *Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion).

Carter filed a timely petition for leave to appeal, and this Court granted the petition on September 30, 2020.

ARGUMENT

I. This Court should reverse David Carter's armed habitual criminal conviction because the State's evidence did not affirmatively show that the predicate aggravated battery convictions were either enumerated offenses under the armed habitual criminal statute or forcible felonies required to support the charge.

The armed habitual criminal statute requires the State to prove beyond a reasonable doubt that the defendant unlawfully possessed a firearm and had two or more qualifying prior convictions. 720 ILCS 5/24-1.7(a) (West 2016); *People v. White*, 2015 IL App (1st) 131111, ¶ 28. These qualifying prior convictions are either enumerated in the armed habitual criminal statute or must be "forcible felonies" defined by 720 ILCS 5/2-8 (West 2016) (definitional statute for forcible felony). 720 ILCS 5/24-1.7(a)(1), (2), (3) (West 2016); *White*, 2015 IL App (1st) 131111, ¶ 28. David Carter was found guilty of armed habitual criminal for possessing a firearm after having been convicted of armed robbery and aggravated battery. (C. 30; R. 39-40, 45-46). Armed robbery is a forcible felony. *People v. Kelly*, 347 Ill.App.3d 163, 165 (1st Dist. 2004). However, aggravated battery, except for aggravated battery involving a child or a firearm, is not among the enumerated offenses in the armed habitual criminal statute and thus must fit the definition of a forcible felony in order to support an armed habitual criminal charge. 720 ILCS 5/24-1.7(a)(1), (2) (West 2016). Aggravated battery is a forcible felony only if the offense resulted in "great bodily harm or permanent disability or disfigurement." 720 ILCS 5/2-8 (West 2016).

No evidence presented at Carter's trial showed that his prior aggravated battery convictions involved a child or a firearm or resulted in great bodily harm

or permanent disability or disfigurement. (R. 39-40; E. 4-6). Therefore, the State's evidence failed to show that Carter had at least two qualifying prior convictions required to support the armed habitual criminal count. *People v. Ephraim*, 2018 IL App (1st) 161009, ¶ 19 (reversing the defendant's armed habitual criminal conviction because the defendant's prior aggravated battery conviction was not an enumerated offense or a forcible felony). Despite this lack of evidence, the appellate court refused to reverse the conviction and instead asserted Carter was required to challenge his conviction in post-conviction proceedings. *People v. Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion). This Court should reverse Carter's armed habitual criminal conviction and remand his case for sentencing for unlawful use of a weapon by a felon, an offense that was merged at the sentencing hearing. Illinois Supreme Court Rule 615(b)(1) (West 2021); (R. 70).

A. Standard of review.

Whether Carter's aggravated battery convictions are qualifying offenses for the purposes of the armed habitual criminal count is a question of law, and questions of law are reviewed *de novo*. *People v. Reed*, 2020 IL 124940, ¶ 20 (issues involving a question of law are reviewed *de novo*); *People v. Smith*, 191 Ill.2d 408, 411 (2000) (review is *de novo* when a defendant's guilt is a question of law).

B. The armed habitual statute specifies what prior convictions are qualifying offenses, but the State's proof failed to satisfy the statute's requirements.

The legislature enacted "the armed habitual criminal statute to help protect the public from the threat of violence that arises when repeat offenders possess firearms." *People v. Davis*, 408 Ill.App.3d 747, 750 (1st Dist. 2011); 720

ILCS 5/24-1.7 (West 2016). The legislature intended armed habitual criminal, a Class X offense requiring proof of two or more specific prior convictions, to be a more serious offense than unlawful use of a weapon by a felon, which requires proof of any single prior felony conviction. *Davis*, 408 Ill.App.3d at 750; 720 ILCS 5/24-1.7(b) (West 2016) (armed habitual criminal); 720 ILCS 5/24-1.1(e) (West 2016) (unlawful use of a weapon by a felon). The armed habitual criminal statute provides:

> (a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:
>
> > (1) a forcible felony as defined in Section 2-8 of this Code;
> >
> > (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05; or
> >
> > (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.
>
> (b) Sentence. Being an armed habitual criminal is a Class X felony. 720 ILCS 5/24-1.7(a)(1), (2), (3) (West 2016)

Armed habitual criminal thus requires proof beyond a reasonable doubt of two or more qualifying prior convictions and the unlawful possession of a firearm. *People v. Adams*, 404 Ill.App.3d 405, 412 (1st Dist. 2010).

As proof of the armed habitual criminal count's prior qualifying convictions at Carter's trial, the State presented certified copies of convictions for armed robbery in Will County case number 10-CF-367 and aggravated battery in Will County case number 09-CF-2251. (C. 30; R. 39-40; E. 3-6). Carter does not dispute that his prior armed robbery conviction is a forcible felony. *Kelly*, 347 Ill.App.3d at 165; (armed robbery is a forcible felony); 720 ILCS 5/24-1.7(a)(1) (West 2016); (C. 30; R. 39-40; E. 3-4). However, the certified copy of Carter's aggravated battery convictions in case number 09-CF-2251, the sole trial evidence regarding these convictions, showed only: (1) Carter was indicted on two counts of Class 3 aggravated battery on October 8, 2009; (2) Carter pled guilty to the two counts of aggravated battery and was sentenced to 24 months of probation on December 18, 2009; and (3) the probation was revoked and Carter was sentenced on count 1 to three years of imprisonment on July 27, 2010. (R. 45-46; E. 5-6).

Carter's prior aggravated battery convictions are not among the offenses specified in subsection (a)(3) of the armed habitual criminal statute, namely, "any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher." 720 ILCS 5/24-1.7(a)(3) (West 2016). Thus, Carter's aggravated battery convictions could serve as predicate offenses for the purposes of armed habitual criminal only if they involved a child or a firearm (720 ILCS 5/24-1.7(a)(2) (West 2016)) or were forcible felonies (720 ILCS 5/24-1.7(a)(1) (West 2016)).

No evidence showed Carter's prior aggravated battery convictions involved a child or a firearm, and thus these convictions are not qualifying offenses specified in subsection (a)(2) of the armed habitual criminal statute, namely, "unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm." 720 ILCS 5/24-1.7(a)(2) (West 2016); (R. 45-46; E. 4-6).

The State also presented no proof that the aggravated battery convictions qualified as forcible felonies because no evidence showed they involved great bodily harm or permanent disability or disfigurement, and thus these convictions could not support the armed habitual criminal count. *Ephraim*, 2018 IL App (1st) 161009, ¶ 19; 720 ILCS 5/2-8 (West 2016); (R. 45-46; E. 5-6). This is so because in 1990 the legislature enacted Public Act 86–291, which amended the forcible felony statute by adding "the phrase 'resulting in great bodily harm or permanent disability or disfigurement' after 'aggravated battery.' " *People v. Schmidt*, 392 Ill.App.3d 689, 696 (1st Dist. 2009), *petition for leave to appeal denied* 234 Ill.2d 545 (Nov. 25, 2009). A forcible felony is currently defined as follows:

> [T]reason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.
> 720 ILCS 5/2-8 (West 2016).

The plain text of this statute indicates that only aggravated batteries involving great bodily harm or permanent disability or disfigurement may qualify as forcible felonies, a conclusion reached in several reported cases. For example, in *Schmidt*, 392 Ill.App.3d at 696, the appellate court considered whether any of the defendant's three prior aggravated battery convictions (use of a deadly weapon, knowledge that the victim is a police officer, and battery on a public way) were forcible felonies that could support the defendant's conviction for felony murder. The appellate court concluded that aggravated battery convictions that do not involve great bodily harm or permanent disability or disfigurement are not forcible felonies:

> Defendant contends that the aggravated battery underlying the felony-murder conviction was not a forcible felony because it did not result in great bodily harm or disability to [Officer] Yzaguirre. The State concedes that the aggravated battery did not result in great bodily harm or disability to Yzaguirre but claims that it falls within the residual clause for "any other felony which involves the use or threat of physical force or violence against any individual." 720 ILCS 5/2-8 (West 2004).
>
> We agree with defendant, however, that by using the word "other" after listing 14 specific felonies, the legislature clearly intended the residual category to refer to felonies not previously specified. Where the statute specifically enumerated aggravated battery resulting in great bodily harm or permanent disability or disfigurement, "other felony" must refer to felonies other than aggravated battery. While the State argues that section 2-8 defines "forcible felony" as "any felony involving the threat or use of physical force or violence against any individual," this argument ignores the phrase "any other felony."
>
> The 1990 amendment to the forcible-felony statute supports defendant's position. Before 1990, the forcible felony statute provided that all aggravated batteries constituted forcible felonies. In 1990, the

> legislature enacted Public Act 86-291, which added the phrase "resulting in great bodily harm or permanent disability or disfigurement" after "aggravated battery." Pub. Act 86-291, eff. January 1, 1990. Therefore, while the earlier definition included all aggravated batteries, after the amendment, only those aggravated batteries "resulting in great bodily harm or permanent disability or disfigurement" were among the enumerated forcible felonies. We agree with defendant that, by enacting the 1990 amendment, the legislature expressed its intent to limit the number and types of aggravated batteries that would qualify as forcible felonies. *Schmidt*, 392 Ill.App.3d 695-96.

Schmidt's reasoning reflects the canon of statutory construction that "[a] statute should be interpreted so that no part is rendered meaningless or superfluous." *People v. Simpson*, 2015 IL 116512, ¶ 29.

Schmidt's holding has been followed by several reviewing courts. *See Ephraim*, 2018 IL App (1st) 161009, ¶ 19 (reversing the defendant's armed habitual criminal conviction because the defendant's prior aggravated battery conviction was not an enumerated offense or a forcible felony); *People v. Crosby*, 2017 IL App (1st) 121645, ¶ 13 (defendant's prior conviction for aggravated battery was not a forcible felony and thus was not a qualifying predicate offense for armed habitual criminal); *People v. Smith*, 2016 IL App (1st) 140496, ¶ 11 (prior conviction for aggravated battery was not a forcible felony and did not support the defendant's Class 2 unlawful use of a weapon by a felon conviction); *White*, 2015 IL App (1st) 131111, ¶ 40 (defendant's prior domestic battery conviction did not constitute a forcible felony to support an armed habitual criminal conviction); *In re Rodney S.*, 402 Ill.App.3d 272, 287 (4th Dist. 2010) (aggravated battery that did not result in great bodily harm or permanent disability or disfigurement was not a forcible felony for purposes of determining permissible length of probation under

the Juvenile Court Act); *In re Angelique E.*, 389 Ill.App.3d 430, 433 (2nd Dist. 2009) (juvenile was adjudicated delinquent for an aggravated battery that was not a forcible felony and thus was not subject to a mandatory five-year term of probation).

Before *Schmidt* was decided but after the 1990 amendment to the forcible felony statute, a panel of the Third District Appellate Court determined in *People v. Jones*, 226 Ill.App.3d 1054, 1056 (3rd Dist. 1992), that the statute's residual clause meant that "any aggravated battery that involved the use of physical force or violence against an individual" is a forcible felony. *See also People v. Hall*, 291 Ill.App.3d 411, 418 (1st Dist. 1997) (aggravated battery that involved the use or threat of physical force or violence was a forcible felony). However, the interpretation of the amendment advanced in *Jones*, 226 Ill.App.3d at 1056, makes the amendment meaningless because all batteries involve "the use of physical force or violence against an individual" but not all batteries involve "great bodily harm or permanent disability or disfigurement." 720 ILCS 5/2-8 (2016). As another appellate court panel wrote, "[T]he *Jones* court makes a fatal error: it ignored the disjunctive term 'other' in the final residual clause of section 2-8 and conflated the 'aggravated battery resulting in great bodily harm or permanent disability or disfigurement' with the residual clause for other felonies." *People v. Harmon*, 2015 IL App (1st) 122345, ¶ ¶ 71, 81 (holding that the defendant's conviction for aggravated battery on a public way was not a forcible felony).

All this shows that in order to prove Carter guilty beyond a reasonable doubt of armed habitual criminal, the State was required to show that he possessed a firearm and had been convicted of two offenses that were

enumerated in the armed habitual statute and/or that qualified as forcible felonies. 720 ILCS 5/24-1.7(a)(1), (2), (3) (West 2016); *White*, 2015 IL App (1st) 131111, ¶ 28. The generic aggravated battery convictions proffered by the State to support the armed habitual criminal count were insufficient because this evidence failed to affirmatively show that these prior convictions were either enumerated offenses under the armed habitual criminal statute or forcible felonies. *Ephraim*, 2018 IL App (1st) 161009, ¶ 19; (C. 30; R. 39-40, 45-46; E. 4-6). Thus, the State's evidence failed to support the charge, and the appellate court should have reversed Carter's armed habitual criminal conviction.

C. The appellate court's published opinion contradicts bedrock constitutional law and criminal procedure and should be reversed.

The appellate court did not apply this straightforward analysis, but instead affirmed by resorting to conclusory factual assertions that did not appear in the appellate record, misapplying the reasonable doubt standard, and improperly shifting the burden of proof to Carter in violation of the core constitutional principle that the prosecution has the burden of proof in a criminal case. U.S. Const., amend. XIV; *In re Winship*, 397 U.S. 358, 364 (1970); *Coffin v. United States*, 156 U.S. 432, 461 (1895); Ill. Const. 1970, art. I, § 2; *Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion).

Citing *People v. Webb*, 2018 IL App (3d) 160403, ¶ 17, in which the trial court confirmed prior to trial that the defendant's prior aggravated battery conviction was a forcible felony that supported the armed habitual criminal count, the appellate court wrote, "we note that whether a conviction constitutes a 'forcible felony' is a question of law for the circuit court to decide," thereby

insinuating the trial court made such a finding in Carter's case. *Carter*, 2019 IL App (1st) 170803, ¶ 44 (modified opinion). In *Webb*, 2018 IL App (3d) 160403, ¶ 4, the State–before trial–provided the trial court with the indictment, which specifically stated that the defendant was charged with aggravated battery causing great bodily harm, and the State further informed the court that the defendant had been convicted of that offense. The trial court ruled, based on this information, that the defendant's prior aggravated battery convictions qualified as forcible felonies because they resulted in great bodily harm. *Webb*, 2018 IL App (3d) 160403, ¶ 17. Unlike *Webb*, the appellate record contains no showing that the trial court found that Carter's prior aggravated battery convictions were enumerated in the armed habitual criminal statute or involved great bodily harm or permanent disability or disfigurement. (R. 39-40; E. 4-6).

The appellate court also stated "[w]here, as here, a defendant is challenging the sufficiency of the evidence to sustain a criminal conviction, a reviewing court must view the evidence in the light most *favorable* to the prosecution and determine whether *any* rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt." *Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion) (emphasis in the original). The appellate court misapplied this standard because no fair and rational trier of fact could conclude Carter's prior aggravated battery convictions were valid predicate convictions because the State presented no evidence, and the trial court made no finding, that the offenses were specified in the armed habitual criminal statute or resulted in great bodily harm or permanent disability or disfigurement. (R. 39-40; E. 4-6). Indeed, the appellate court refused to reverse this conviction even while

admitting that "[t]here is no dispute that the aggravating factor or factors underlying defendant's aggravated battery conviction were not specified in the certified copy of conviction presented to the circuit court. The certified copy of conviction presented by the State simply showed defendant pled guilty to the offense of aggravated battery in case number 09-CF-2251." *Carter*, 2019 IL App (1st) 170803, ¶ 40 (modified opinion).

The appellate court alternatively claimed the appellate record was not sufficient for it to determine whether Carter's prior aggravated battery convictions caused great bodily harm or permanent disability or disfigurement. *Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion). However, in such an instance, the appellate court was obligated to reverse the armed habitual criminal conviction as the State clearly failed to meet its burden of proof. *Smith*, 185 Ill.2d at 545 ("If [the State] fails to meet this burden, a defendant is entitled to a finding of not guilty. No defendant is required to prove his innocence").

The appellate court also erroneously asserted the State proved the aggravated battery convictions were forcible felonies because defense counsel did not object when the trial court admitted the convictions into evidence. *Carter*, 2019 IL App (1st) 170803, ¶ 40 (modified opinion). However, defense counsel did not stipulate that the convictions were forcible felonies. (R. 39-40). In addition, defense counsel's actions are irrelevant to this reasonable doubt claim because it was the State's burden to prove at trial that Carter's aggravated battery convictions supported the armed habitual criminal count. U.S. Const., amend. XIV; *Winship*, 397 U.S. at 364; *Coffin*, 156 U.S. at 461; Ill. Const. 1970, art. I, § 2.

Further, a challenge to the sufficiency of the trial evidence is not subject to forfeiture. *People v. Cregan*, 2014 IL 113600, ¶ 16.

The appellate court also rejected Carter's request to take judicial notice of the indictment in case number 09-CF-2251, which had been included in his opening brief's appendix to reassure the reviewing court that he was entitled to relief because he had not been charged in that case with aggravated battery causing bodily harm or permanent disability or disfigurement. *Carter*, 2019 IL App (1st) 170803, ¶ 43 (modified opinion). Nevertheless, the appellate court relied on the indictment to deny relief by speculating that Carter *might* have caused great bodily harm or permanent disability or disfigurement in that case. *Carter*, 2019 IL App (1st) 170803, ¶ 43 (modified opinion, emphasis added). However, the indictments charging Carter with aggravated battery using a dangerous weapon and aggravated battery on a public way do not show these offenses qualify as proper predicate offenses under the armed habitual criminal statute because both counts alleged that Carter caused "insulting or provoking" contact and not "great bodily harm or permanent disability or disfigurement." 720 ILCS 5/24-1.7(a)(2) (West 20016); 720 ILCS 5/2-8 (West 2016); *Carter*, 2019 IL App (1st) 170803, ¶ ¶ 41, 42 (modified opinion).

Finally, the appellate court rationalized that it must affirm the armed habitual criminal conviction because Carter failed to provide "the indictment, plea hearing, as well as the mittimus entered in the case." *Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion). The State had the burden to provide the trial court with these documents if it hoped to prove the prior aggravated batteries were enumerated offenses or forcible felonies, and there is no record evidence

indicating the State provided them to the trial court or the trial court ruled these convictions were qualifying offenses for the armed habitual criminal count. U.S. Const., amend. XIV; *Winship*, 397 U.S. at 364; *Coffin*, 156 U.S. at 461; Ill. Const. 1970, art. I, § 2; *Webb*, 2018 IL App (3d) 160403, ¶ 17; (R. 39-40, 45-46). Thus, the appellate court's opinion improperly placed the burden of proof on Carter to show that his prior aggravated battery convictions did not support the armed habitual criminal conviction–when it was apparent on the face of the appellate record that the trial evidence failed to show that these prior convictions were either enumerated offenses under the armed habitual criminal statute or forcible felonies. U.S. Const., amend. XIV; *Winship*, 397 U.S. at 364; *Coffin*, 156 U.S. at 461; Ill. Const. 1970, art. I, § 2; *Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion).

D. Carter's armed habitual criminal conviction should be reversed and his case remanded for sentencing on the merged unlawful use of a weapon by a felon counts.

The State failed to prove beyond a reasonable doubt that Carter had "two or more" qualifying convictions, and thus the State did not prove every essential element of armed habitual criminal. 720 ILCS 5/24-1.7 (West 2016); *Adams*, 404 Ill.App.3d at 412 (armed habitual conviction requires proof beyond a reasonable doubt at least two qualifying prior convictions and the unlawful possession of a firearm). Accordingly, this Court should reverse Carter's armed habitual criminal conviction and remand the case for resentencing. Illinois Supreme Court Rule 615(b)(1) (West 2021).

Reversing Carter's armed habitual criminal conviction will result in resentencing on either the merged unlawful use of a weapon by a felon counts or

aggravated unlawful use of a weapon counts. (R. 70). In *People v. Johnson,* 237 Ill.2d 81, 99 (2010), this Court concluded Class 3 unlawful possession of a weapon by a felon was a less serious offense than aggravated unlawful use of a weapon. However, the sentencing range for Carter's Class 2 unlawful use of a weapon by a felon, predicated on his prior armed robbery conviction, a forcible felony, is "not less than 3 years and not more than 14 years" (720 ILCS 5/24-1.1(e) (West 2016)), while the sentencing range for Class 2 aggravated unlawful use of a weapon is "not less than 3 years and not more than 7 years" (720 ILCS 5/24-1.6(d)(3) (West 2016)). Further, both of these Class 2 offenses carry the same mandatory supervised release period of two years. 730 ILCS 5/5-8-1(d)(2) (West 2016). Thus, this Court should remand Carter's case to the trial court for resentencing on the two unlawful use of a weapon by a felon counts for possessing a firearm and a bullet. *People v. Almond*, 2015 IL 113817, ¶ 50 (possessing a loaded gun involves the act of possessing the gun and the separate act of possessing the ammunition); (C. 31, 32; R. 36, 46).

II. David Carter's convictions should be reversed because the trial court erred by denying his motion to suppress evidence obtained as the fruit of a *Terry* stop not supported by reasonable suspicion in violation of the Fourth Amendment.

The trial court erred by denying David Carter's motion to quash arrest and suppress evidence, specifically, the handgun, bullet, and inculpatory statement that support the convictions for armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. (C. 62, 85-86; R. 36-37, 46). The loaded handgun was obtained as a result of Carter's unlawful detention by Officer Robert Luzadder, who based the seizure on an insufficiently corroborated anonymous tip in violation of *Florida v. J.L.*, 529 U.S. 266, 271 (2000). Information provided by an anonymous 911 caller led Officer Luzadder to Carter. (SUP R. 12). This tip was not sufficiently reliable to provide Officer Luzadder with reasonable suspicion that Carter was engaged in criminal activity because: (1) the information provided by the anonymous caller did not provide either the basis of the caller's knowledge or predictive assertions that would allow the police to test the caller's credibility; (2) a significant portion of the tip–a man assaulted two women–was not corroborated by the police investigation, which called into question the reliability of the tip's assertion the man also was armed with a firearm; and (3) Carter's act of walking with his hand on his hip did not sufficiently corroborate the tip to justify the seizure. This Court should reverse the trial court's denial of the motion to suppress, suppress the handgun, bullet, and Carter's statement, and reverse Carter's convictions for armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon because, without this evidence, the State cannot prove that he possessed the firearm and bullet. Illinois Supreme Court Rule 615(b)(1) (West 2021).

A. Standard of review.

The trial court's denial of Carter's motion to quash arrest and suppress evidence is reviewed under the standard announced in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Ringland*, 2017 IL 119484, ¶ 12; *People v. Harris*, 228 Ill.2d 222, 230 (2008). Under this standard, the trial court's factual findings are upheld unless they are against the manifest weight of the evidence, but the ultimate legal question of whether suppression is warranted is reviewed *de novo*. *Ringland*, 2017 IL 119484, ¶ 12; *Harris*, 228 Ill.2d at 230.

B. The anonymous caller's tip was not sufficiently reliable to provide Officer Luzadder with reasonable suspicion that Carter was committing a crime, and Officer Luzadder's observation that Carter was walking with his hand on his hip did not adequately corroborate the tip to justify a *Terry* stop.

The United States and Illinois Constitutions guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. I, § 6; *People v. Krueger*, 175 Ill.2d 60, 74 (1996). An arrest of an individual requires the police to show probable cause that the individual committed a crime. *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949); *People v. Jones*, 215 Ill.2d 261, 274 (2005); 725 ILCS 5/107-2(1)(c) (West 2016). "Probable cause exists where the arresting officer has knowledge of facts and circumstances that are sufficient to justify a reasonable person to believe that the defendant has committed or is committing a crime." *Jones*, 215 Ill.2d at 273-74.

A lesser standard permits police officers to investigate suspicious conduct. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). *Terry* provides police officers with a "narrowly drawn authority" to detain people and search for weapons where they

reasonably believe that "criminal activity may be afoot" and that the person seized "may be armed and presently dangerous." *Terry*, 392 U.S. at 27. "Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context." *Terry*, 392 U.S. at 20. Thus, a seizure, short of an arrest, is justified only when the police officer is able "to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. This reasonable suspicion standard requires an officer to articulate more than an "inchoate and unparticularized suspicion or 'hunch.' " *Terry*, 392 U.S. at 27. Once seized, the individual may be frisked if an officer "reasonably suspect[s] that the person stopped is armed and dangerous." *Terry*, 392 U.S. at 27. The validity of the initial stop constitutes a necessary precondition to the validity of any later search. *Terry*, 392 U.S. at 26-27. The Illinois Code of Criminal Procedure provides that a peace officer, after having identified themselves as such, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit, or has committed a criminal offense. 725 ILCS 5/107-14 (West 2016).

These principles apply to investigative seizures based on information from anonymous tips. *J.L.*, 529 U.S. at 270; *Alabama v. White*, 496 U.S. 325, 332 (1990); *Navarette v. California*, 572 U.S. 393, 395 (2014).

In *J. L.*, the police detained and frisked J.L. based on an anonymous tip that a young black male wearing a plaid shirt, standing at a bus stop, was carrying a gun. *J.L.*, 529 U.S., at 268. The tipster did not explain the basis for their

belief that the man was armed. *J.L.*, 529 U.S. at 268. Thus, prior to the seizure the police had no basis for believing "that the tipster ha[d] knowledge of concealed criminal activity." *J.L.*, 529 U.S. at 272. Furthermore, the tipster provided no predictions of the man's future conduct that the police could use to assess the tipster's credibility. *J.L.*, 529 U.S. at 271. The Supreme Court concluded that the tip was insufficiently reliable to justify a stop and frisk. *J.L.*, 529 U.S. at 274.

On the other hand, in *White*, 496 U.S. at 332, the Supreme Court held that an anonymous tip that provided predictions about the movements of a woman who allegedly was in possession of narcotics provided reasonable suspicion to justify a seizure. In that case, an anonymous caller informed the police that a woman transporting cocaine in a briefcase would drive from a particular apartment building to a particular motel in a brown station wagon with a broken right tail light. *White*, 496 U.S. at 327. The police monitored the woman's movements, corroborated the tip, stopped the station wagon before it reached the hotel, and found marijuana in a briefcase and cocaine in the woman's purse. *White*, 496 U.S. at 327. By accurately predicting the woman's behavior, the tipster demonstrated "a special familiarity with respondent's affairs," which in turn implied that the tipster had "access to reliable information about that individual's illegal activities." *White*, 496 U.S. at 332. The Supreme Court also recognized "that because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity." *White*, 496 U.S. at 331 (citing *Illinois v. Gates*, 462 U.S. 213, 244 (1983)).

In *Navarette*, 572 U.S. at 395, an anonymous 911 caller reported that a pickup truck had run her off the road. She provided the make, model, license plate number, the mile marker, and the direction of the truck's travel. *Navarette*, 572 U.S. at 395. About 15 minutes later, an officer spotted the truck and pulled it over. *Navarette*, 572 U.S. at 395. Officers detected the odor of marijuana emanating from the truck. *Navarette*, 572 U.S. at 395. The officers searched the truck, found 30 pounds of marijuana, and arrested the driver and passenger. *Navarette*, 572 U.S. at 395-96. The Supreme Court noted the 911 caller was anonymous but had firsthand knowledge of the incident, unlike the caller in *J.L. Navarette*, 572 U.S. at 399-400. The Supreme Court also found the tip was reliable based on the tipster's detailed description of the truck and the officers' observation of the truck near the reported incident. *Navarette*, 572 U.S. at 399-400. Finally, the Supreme Court found reliability of the tip was bolstered because it was reported through the 911 system, which permitted authorities to identify the caller. *Navarette*, 572 U.S. at 400-01. However, the Supreme Court described *Navarette*'s fact pattern as a " 'close case.' " *Navarette*, 572 U.S. at 404 (quoting *White*, 496 U.S. at 332).

The determination of whether an investigatory stop was justified requires a consideration of the totality of the circumstances. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *People v. Timmsen*, 2016 IL 118181, ¶ 9. The facts surrounding Carter's seizure were as follows. Chicago Police Officers Robert Luzadder and Anthony Brown were on patrol in a squad car in the late evening of March 9, 2016. (SUP R. 8). The officers were in uniform with duty belts and service weapons. (SUP R. 8, 18). At about 11:50 p.m. and just as their shift began, they received information from the Office of Emergency Management and

Communications (OEMC). (SUP R. 13). The information from OEMC stated a "person who wished to remain anonymous was a call [sic] of a person with a gun that was walking with two females. Two female whites were walking with a male white wearing a black jacket, hoodie, and he was swinging at the females and that he has a gun on him." (SUP R. 12). The caller further stated the group was walking near the intersection of 33rd and Wallace Streets. (SUP R. 13).

Officers Luzadder and Brown drove to that intersection two or three minutes later but did not see the individuals described by the caller. (R SUP. 13, 16). A few minutes later, the officers received additional information from OEMC that the anonymous caller further reported "[t]hat they were now walking at 3100 South Lowe." (SUP R. 13, 17). The officers drove two blocks north and one block west to that location. (SUP R. 13, 16). There, they did not see the two women, but they saw a person, Carter, wearing a black hoodie and walking "east in the south alley of 31st Street." (SUP R. 9, 13-14, 17). Carter matched the caller's description. (SUP R. 14). Officer Luzadder testified that Carter was holding the right side of his waistband. (SUP R. 14). Officer Luzadder had been a police officer for 22 years, he had seen observed individuals concealing firearms in their clothing hundreds of times, and he believed Carter was "attempting to conceal a firearm." (SUP R. 14). Officer Luzadder also had seen people who held their waistbands and were not concealing guns. (SUP R. 19).

Officer Luzadder did not see Carter commit a crime, and he was not aware that Carter was the subject of any arrest or search warrant. (SUP R. 9). When he saw Carter, Officer Luzadder placed his hand on his service weapon and "advised him to approach me." (SUP R. 10). Carter complied. (SUP R. 10). Luzadder "told

him to raise his hands, approach me, and after he put his hands on my squad car I conducted a pat down." (SUP R. 10). Officer Luzadder felt the handle of a handgun and seized a loaded nickel plated revolver from Carter's waistband. (SUP R. 10, 15-16). Officer Luzadder then arrested Carter. (SUP R. 16). At trial, Officer Luzadder testified that Carter spontaneously told him, "I'm a 2-6, I'm on parole and I use this for protection against the SDs." (R. 37).

Officer Luzadder at some point reviewed the OEMC event log for this case. (SUP R. 12). The event log recorded a telephone number for the source of the call. (SUP R. 12). Officer Luzadder did not contact the anonymous caller, he did not know the caller's name, and he did not know whose telephone number was used to place the calls. (SUP R. 20).

The tip provided by the anonymous caller was not sufficiently reliable to provide Officer Luzadder with a reasonable suspicion that Carter was engaged in criminal activity to justify a *Terry* stop because: (1) the anonymous caller's information did not provide the basis of the tipster's knowledge that Carter was violating the law or predictions of Carter's behavior that would allow the officers to test the tip's reliability; (2) the caller's report about the assault of the two women was not corroborated by the police investigation, calling into question the reliability of the tip about the firearm; and (3) Carter's act of walking with his hand on his hip did not sufficiently corroborate the tip to justify the seizure.

First, the source of the information provided by OEMC to Officers Luzadder and Brown was an anonymous 911 caller, and such an informant is generally considered less reliable than a confidential informant working directly with the police or an individual who flags down an on-duty police officer and provides

information to that officer. *See Adams v. Williams*, 407 U.S. 143, 146 (1972) (information provided by a known informant presents a "stronger case than obtains in the case of an anonymous telephone tip"); *In re A.V.,* 336 Ill.App.3d 140, 141 (1st Dist. 2002) (information provided by several teens to a police officer was more reliable than if the source was an anonymous tip). Anonymous tips pose the danger that the source's true aim is to use the police to harass the targeted individual. police. *See Navarette*, 572 U.S. at 413-14 (Scalia, J., dissenting).

In Carter's case, the informant refused to provide their name, but OEMC did record a telephone number. (SUP R. 12). The caller evidently used a mobile telephone because they reported that Carter was in two locations that were blocks apart. (SUP R. 12-13). The appellate court suggested that 911 callers "should not be considered to be 'truly anonymous' and should be viewed with less skepticism even if the caller does not specifically identify himself or herself because such callers are likely aware that authorities have the means to ascertain the phone number from which the call was placed." *People v. Carter*, 2019 IL App (1st) 170803, ¶ 45 (modified opinion) (citing *Navarette*, 572 U.S. at 401). That reasoning may be true if the caller is not using a prepaid mobile telephone that has no subscriber data or a "spoofing" application that conceals the caller's telephone number or a disposable telephone number such as is available through Google Voice and other similar applications. *See* David Murphy, *How to Buy a Burner Phone*, Lifehacker, June 4, 2020, *available at* https://lifehacker.com/how-to-buy-a-burner-phone-1843905326 (last visited Dec. 30, 2020); Joe Hindy, *5 best spoof call apps and fake call apps for Android*, Android Authority, Sept. 20, 2020, *available at*

https://www.androidauthority.com/best-spoof-call-apps-android-1038299/ (last visited Dec. 30, 2020); Jon Knight, *Use Google Voice as a 'Burner' Number*, Gadget Hacks, Feb. 6, 2018, *available at* https://smartphones.gadgethacks.com/how-to/use-google-voice-as-burner-number-0182662/ (last visited Dec. 30, 2020). Further, several Illinois cases concern the prosecution of an individual for making a false 911 call, but none of these cases involve the prosecution of an individual who anonymously made the call.* *See People v. Klepper*, 234 Ill.2d 337, 341 (2009); *People v. Steger*, 2018 IL App (2d) 151197, ¶ 13; *People v. Billups*, 384 Ill.App.3d 844, 845 (2008).[3]

Whether or not the caller's use of the 911 system bolstered the caller's credibility, the information provided by the caller was questionable because, like the caller in *J.L.,* 529 U.S. at 271, the caller did not explain how they knew Carter was in possession of a firearm. (R SUP. 12). The caller simply said there was a "person with a gun" and "he has a gun on him." (SUP R. 12). Furthermore, the caller provided no predictions about Carter's future conduct that the officers could use to assess the tip's reliability. *J.L.*, 529 U.S. at 271. The caller also did not describe the firearm, which again called into question the caller's basis of knowledge. *J.L.*, 529 U.S. at 271. Thus the anonymous caller's information was unlike the tips in *White*, 496 U.S. at 327, and *Navarette*, 572 U.S. at 395, which described in detail the vehicles involved in the reported crimes and thereby supported the tips' reliability. The caller also did not state where Carter concealed

[3] The unpublished decisions are *People v. Oleszczak*, 2018 IL App (1st) 153642-U, ¶ 4; *People v. Justin*, 2017 IL App (2d) 161059-U, ¶ 4; *People v. Dailey*, 2015 IL App (1st) 134013-U, ¶ 5* (a police officer witnessed the intoxicated defendant make what turned out to be a false 911 call); *People v. Wright*, 2014 IL App (1st) 121165-U, ¶ 8; *People v. Gaskins*, 2011 IL App (2d) 100416-U, ¶ 4.

the firearm, which again cuts against an inference that the caller had actual knowledge that Carter was in possession of a firearm. Finally, the caller did not state that Carter was not licensed to carry a firearm in Illinois. *See* 430 ILCS 66/1 *et seq*. (West 2016) (Firearm Concealed Carry Act).

Thus, "all the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about [Carter]." *J.L.*, 529 U.S. at 266. Further, "[a]n accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity." *J.L.*, 529 U.S. at 272. Tips, such as the one at issue, that simply claim an identifiable person is in possession of a firearm are not reliable enough to support a seizure. *J.L.*, 529 U.S. at 272; *People v. Holmes*, 2019 IL App (1st) 160987, ¶ 58 (a tip from an unknown individual that a five-and-a-half feet tall black man wearing a purple shirt and black jeans was in a park and had a gun did not justify the seizure of a man matching the description); *People v. Rhinehart*, 2011 IL App (1st) 100683, ¶ 18 (tip from an individual who flagged down a police officer and stated a black male at a certain location wearing a white shirt and yellow pants was armed with a gun did not provide reasonable suspicion for a seizure); *People v. Carlson*, 313 Ill.App.3d 447, 449 (1st Dist. 2000) (tip from 911 caller that a suicidal subject, possibly in possession of a gun, was at a specific pay phone did not provide reasonable suspicion for the seizure).

Second, in Carter's case, the anonymous caller's information was not corroborated by the police investigation, unlike the tipsters in *White*, *Navarette,* and even *J.L.* Indeed*, White*, 496 U.S. at 332, and *Navarette*, 572 U.S. at 399-400, stressed that police corroboration of an anonymous tip was critical to a determination of the tip's reliability. The anonymous caller in Carter's case stated a white man wearing a black jacket or hoodie was swinging at two women. (SUP R. 13). The tipster added the man "ha[d] a gun on him." (SUP R. 12). The tipster initially stated the group was near the intersection of 33rd and Wallace Streets, but Officers Luzadder and Brown did not see them at that location. (SUP R. 13). The tipster next reported "[t]hat they were now walking at 3100 South Lowe." (SUP R. 13, 17). When the officers arrived at that location minutes later, they did not see the two women who supposedly had been assaulted. (SUP R. 13-14). Thus, the tip's reliability was undermined because the tip alleged two potential crimes–the assault of the two women and the possession of a firearm–and the assault was not corroborated by the police investigation. After all, if a tipster is not credible about some things, they may not be telling the truth about other things, "including the claim that the object of the tip is engaged in criminal activity." *White*, 496 U.S. at 331.

Third, reasonable suspicion must be measured by what the officers knew before they seized the defendant. *J.L.*, 529 U.S. at 271; *People v. Thomas*, 198 Ill.2d 103, 109 (2001). At the moment Officers Luzadder and Brown arrived at the 3100 block of South Lowe, the credibility of the anonymous caller was questionable because the two victims of the alleged assault were nowhere to be seen. (SUP R. 13-16). The tip's claim about the assault of the two women

amounted to nothing, leaving the claim that the white man wearing a black jacket or hoodie was armed and walking near 3100 South Lowe Avenue. (SUP R. 9, 12-14, 17). This tip was not reliable enough to support a seizure. *J.L.*, 529 U.S. at 272; *Holmes*, 2019 IL App (1st) 160987, ¶ 58; *Rhinehart*, 2011 IL App (1st) 100683, ¶ 18; *Carlson*, 313 Ill.App.3d at 449. Further, reasonably cautious police officers would have been concerned that the anonymous caller had fabricated the report about the assault–and the allegation related to the firearm as well–to use the police to harass Carter. *Navarette*, 572 U.S. at 413-14 (Scalia, J., dissenting).

The information provided by the anonymous caller allowed the officers to identify Carter because he is a white man and was wearing a black hoodie while walking in an alley near 3100 South Lowe Avenue. (SUP R. 12, 14). However, the sole corroboration of the caller's assertion that Carter was committing a crime was that Officer Luzadder saw Carter walking with his hand on his waistband. (SUP R. 14). Officer Luzadder had seen people use their hands to secure firearms as well as innocent items in their waistbands. (SUP R. 14, 19). Indeed, there are any number of innocent reasons for a person to walk with a hand on their waist. For example, many smartphones do not easily fit into pants pockets. *See* John D. Sutter, *When phones are too big for pockets*, CNN, July 29, 2010, *available at*, http://www.cnn.com/2010/TECH/mobile/07/29/5.inch.dell.streak/ (last visited Dec. 30, 2020); Jack Morse, *Dear smartphone manufacturers, your phablets are too damn big*, Mashable, June 2, 2017, *available at*, https://mashable.com/2017/06/02/smartphone-phablet-too-big-iphone-size/#FIYyd5iGKSqG (last visited Dec. 30, 2020). Officer Luzadder explained that his 22 years of experience working as a police officer led him to believe Carter had his hand on

his hip in order to conceal a firearm. (SUP R. 14). However, the questionable tip led Officer Luzadder to Carter, and Officer's Luzadder's assertion that Carter's act of walking with his hand on his hip was indicative of criminal activity was essentially a hunch as Officer Luzadder himself admitted that the very same conduct could be completely innocent. (SUP R. 14, 19). "That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for . . ." believing Carter was committing a crime. *J.L.*, 529 U.S. at 271. The anonymous caller's tip did not provide Officer Luzadder with a reasonable suspicion that Carter was engaged in criminal activity, and the police investigation did not sufficiently corroborate the tip to justify a *Terry* stop. *J.L.*, 529 U.S. at 271. Thus, the trial court erred in denying Carter's motion to quash arrest and suppress evidence.

C. Evidence of the revolver, bullet and Carter's inculpatory statement should be suppressed, and, absent this evidence, his convictions should be reversed outright.

Officer Luzadder lacked reasonable suspicion that Carter had committed a crime at the point the officer seized Carter when he placed his hand on his service weapon and "advised" Carter to approach the squad car. (SUP R. 10, 12, 17-18). A reasonable person in Carter's position would not have felt free to ignore Officer Luzadder's command. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (a seizure occurs when a reasonable person would have believed that they were not free to terminate the encounter with the police); *Florida v. Bostick*, 501 U.S. 429, 439 (1991); *People v. Cosby*, 231 Ill.2d 262, 273 (2008).

Officer Luzadder's detention of Carter violated the prohibitions on unreasonable seizures in the United States and Illinois Constitutions, and the trial

court should have granted Carter's motion to suppress both the loaded gun and Carter's inculpatory statement. (C. 62). In order to enforce the Fourth Amendment and deter police misconduct, courts must suppress evidence obtained through an illegal search or detention. *Wong Sun v. United States*, 371 U.S. 471, 485 (1963); *Krueger*, 175 Ill.2d at 74. This includes police testimony concerning what was observed during an unlawful seizure as well as evidence obtained through "exploitation" of an illegal seizure. *Wong Sun*, 371 U.S. at 487-88. The violation of Carter's right to be free from unreasonable searches and seizures requires the suppression of the officer's testimony about the seizure of the gun, the bullet, and Carter's statement. (R. 35-37). Officer Luzadder discovered the loaded gun by frisking Carter for weapons, and the frisk resulted from the improper *Terry* stop. *Terry*, 392 U.S. at 26-27; *People v. Sorenson*, 196 Ill.2d 425, 432-33 (2001). Furthermore, absent the discovery of the gun, the police would not have been justified in arresting Carter, and Carter would not have made the inculpatory statement to Officer Luzadder. (R. 37). The trial court erred by failing to grant Carter's motion to suppress this evidence as the fruit of Officer Luzadder's improper *Terry* stop.

Reversing the denial of Carter's motion to quash arrest and suppress evidence requires the reversal of his convictions for armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. *People v. Relerford*, 2017 IL 121094, ¶ 76 (the Supreme Court has the authority to vacate sentenced and unsentenced convictions); (R. 45-46). In this case, absent the police testimony concerning the discovery of the loaded gun and Carter's statement, there would have been no admissible evidence connecting Carter to a

loaded gun. Possession of a gun or ammunition are essential elements of all the charged offenses. 720 ILCS 5/24-1.7 (West 2016) (armed habitual criminal); 720 ILCS 5/24-1.1 (West 2016) (unlawful use of a weapon by a felon); 720 ILCS 5/24-1.6 (West 2016) (aggravated unlawful use of a weapon); (C. 30-38). Consequently, absent the trial court's failure to suppress this evidence, no rational trier of fact could have found every element of the charged offenses beyond a reasonable doubt, making a conviction legally impossible. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill.2d 237, 261 (1985).

For these reasons, this Court should reverse outright Carter's convictions for armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon.

CONCLUSION

For the foregoing reasons, David Carter, petitioner-appellant, respectfully requests that this Court reverse his armed habitual criminal conviction and remand his case for resentencing (Issue I) or reverse outright his convictions for armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon (Issue II).

Respectfully submitted,

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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 41 pages.

/s/Sean Collins-Stapleton
SEAN COLLINS-STAPLETON
Assistant Appellate Defender

APPENDIX TO THE BRIEF

David Carter No. 125954

INDEX TO THE RECORD

Report of Proceedings ("R")

Supplemental Report of Proceedings (S.R.)

Exhibit

	Direct	Cross	Redir.	Recr.
Supplement ROP and PDF Exhibit				
October 31, 2016				
Defendant's Motion to Quash Arrest and Suppress Evidence				
Defense Witness				
Ofc. Luzadder	Sup R 7	Sup R 11	Sup R 18	
Defense Rest				Sup R 21
Closing Arguments				
Ms. Deyoe - Defense				Sup R 21
Mr. Bashirian - State				Sup R 23
Ms. Deyoe - Defense				Sup R 24
Defendant's Motion to Quash Arrest and Suppress Evidence - Denied				Sup R 27

State App Defender

2019 IL App (1st) 170803
No. 1-17-0803

SECOND DIVISION
October 22, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DAVID CARTER, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 16CR4639 The Honorable Arthur F. Hill, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court, with opinion.
Presiding Justice Fitzgerald Smith and Justice Coghlan concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant, David Carter, was convicted of the offense of armed habitual criminal and was sentenced to nine years' imprisonment. On appeal, defendant challenges his conviction, arguing that the circuit court erred in denying his pretrial motion to quash his arrest and suppress evidence and that the State failed to prove his guilt of the offense beyond a reasonable doubt. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 2 BACKGROUND

¶ 3 On March 9, 2016, during the course of an encounter with Chicago police officers, a handgun was recovered from defendant's person. Defendant was subsequently charged with a number of weapons offenses, including armed habitual criminal, aggravated unlawful use of weapon by a felon, and aggravated unlawful use of a weapon.

¶ 4 Following his arrest, defendant filed a motion to suppress the gun and quash his arrest, in which he argued that the officers' warrantless search and seizure of his person was unlawful. Specifically, he argued that when the officers stopped him, they lacked reasonable suspicion or probable cause to believe that he had committed or was about to commit a criminal offense and thus the search and seizure of his person violated his constitutional rights. The trial court subsequently presided over a hearing on defendant's motion.

¶ 5 At the hearing, Chicago Police Officer Robert Luzadder testified that on March 9, 2016, at approximately 11:36 p.m., he and his partner, Officer Lee Anthony Brown, were on routine patrol when they received a message from the Office of Emergency Management and Communication (OEMC) about an emergency call placed by a "person who wished to remain anonymous." The unidentified caller had reported observing a white male wearing a black "hoodie" in the vicinity of 33rd and Wallace Streets. According to the unidentified caller, the man was in possession of a gun and was "swinging at" two white females. Approximately two to three minutes after receiving the OEMC message, the officers arrived at the location specified by the caller; however, they did not observe anyone matching the description of the man provided by the caller. Approximately two to four minutes later, the officers received additional information from OEMC that the same unknown caller was now reporting that the man and the two women were walking in the vicinity of 3100 South Lowe Avenue. In response, the officers relocated to the new location, which was approximately two blocks away.

¶ 6 Once there, Officer Luzadder observed defendant, who matched the description of the man provided by the unknown caller. Defendant was holding the right side of his waistband as he was walking. Based on his 22 years of experience in law enforcement, Officer Luzadder believed that the manner in which defendant was walking suggested that he was "attempting to conceal a firearm underneath his clothing." As a result, he addressed defendant and requested him to approach the squad car with his hands raised. Defendant complied with his request and placed his hands on the squad car. Because the anonymous caller had reported that defendant was armed with a firearm and because defendant had been walking with his right hand on his waist, Officer Luzadder performed a protective pat down of defendant's person. During the course of the pat down, he felt what he believed to be "the handle of a firearm" near defendant's waist. When he raised defendant's shirt, Officer Luzadder confirmed that defendant had been concealing a firearm in his waistband. He recovered the "loaded nickel revolver" and placed defendant into custody. Officer Luzadder never drew his weapon on defendant or activated his vehicle's emergency equipment during the encounter. He admitted, however, that he did put his hand on his own police issued firearm as defendant approached the police car. He did not know whether his partner had drawn his weapon.

¶ 7 Officer Luzadder also admitted that he never saw defendant with a firearm until he recovered it from his waistband during the protective pat-down. Moreover, at the time that he encountered defendant, he had not been issued a search warrant or an arrest warrant and had not observed defendant violating any state or federal laws. He also conceded that not everyone who holds their waistband in the manner that he had observed defendant doing is concealing a firearm. Finally, Officer Luzadder admitted that he never had any contact with the unknown caller. Although OEMC had recorded the phone number the caller was using to place the

emergency calls, Officer Luzadder did not know the identity of the person who placed those calls.

¶ 8 Following Officer Luzadder's testimony, the parties delivered their respective arguments regarding the merit of defendant's suppression motion. After hearing those arguments and briefly recounting the evidence presented, the court denied defendant's motion to suppress, "find[ing] no offense to the 4th Amendment here." The cause then proceeded to a bench trial.

¶ 9 At trial, the parties stipulated to the testimony that Officer Luzadder had provided at the earlier suppression hearing. Thereafter, the State called upon him to provide additional live testimony about his encounter with defendant on the evening of March 9, 2016. Consistent with the testimony he provided at the suppression hearing, Officer Luzadder testified that he and his partner first observed defendant near 3110 South Lowe and that he recovered a "loaded five shot revolver pistol" from defendant during the protective pat-down of his person. In addition, Officer Luzadder further testified that as he was recovering the weapon, defendant "made a spontaneous statement stating *** I'm a 2-6, I'm on parole and I use this from [*sic*] protection against the SDs." He subsequently inventoried the gun in accordance with department protocol.

¶ 10 On cross-examination, Officer Luzadder admitted that he did not memorialize defendant's spontaneous statement for him to sign; however, he did include the statement in the case report that he completed of the incident. He acknowledged that defendant had not been read his *Miranda* rights prior to making that statement.

¶ 11 Following Officer Luzadder's testimony, the State presented evidence of defendant's criminal history. Specifically, the State presented a certified copy of conviction under case No. 10-CF-367 for the offense of armed robbery and a certified copy of conviction in case No. 09-CF-2251 for the offense of aggravated battery.

¶ 12 The parties then stipulated that defendant did not possess a valid Firearm Owner's Identification (FOID) card or a concealed carry license on the date that Officer Luzadder recovered a firearm from his person.

¶ 13 After presenting the aforementioned evidence, the State rested its case-in-chief. Defendant elected not to testify, and the defense rested without calling any witnesses. The parties then delivered closing arguments. After hearing those arguments and recounting the evidence presented, the court concluded that "the State has met [its] burden of proof beyond a reasonable doubt" and found defendant guilty of armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. Defendant's posttrial motion was denied and the cause proceeded to a sentencing hearing where the court, after hearing the evidence presented in aggravation and mitigation, sentenced defendant to nine years' imprisonment for the offense of armed habitual criminal. The other counts were merged. This appeal followed.

¶ 14 ANALYSIS

¶ 15 Motion to Quash Arrest and Suppress Evidence

¶ 16 On appeal, defendant first argues that the circuit court erred in denying his pretrial motion to quash his arrest and suppress evidence. He argues that the loaded handgun that formed the basis for his arrest and conviction "was obtained as a result of [his] unlawful detention by Officer Robert Luzadder, who based the seizure on an uncorroborated anonymous tip in violation of *Florida v. J.L.*, 529 U.S. 266, 271 (2000)." Because the gun and his subsequent incriminating statement were both obtained in contravention of his fourth amendment rights, defendant argues that the court's failure to grant his motion to suppress warrants reversal of his armed habitual criminal conviction.

¶ 17 The State, in turn, submits that the circuit court properly denied defendant's motion to quash arrest and suppress evidence because Officer Luzadder's observations and experience as a police officer "combined with the information provided by [OEMC] gave [him] a reasonable basis to perform a protective pat-down of defendant" during which the firearm was recovered.

¶ 18 On a motion to suppress, a defendant bears the burden of proving that the search and seizure were unlawful. *People v. Clark*, 394 Ill. App. 3d 344, 347 (2009). If a defendant makes a *prima facie* showing that he was doing nothing unusual or suspicious to justify a warrantless search and seizure of his person, the burden then shifts to the State to present evidence to justify the search and seizure. *People v. Wise*, 2019 IL App (2d) 160611, ¶ 56; *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009). A circuit court's ruling on a motion to suppress is subject to a bifurcated two-prong standard of review. See *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). Pursuant to this standard, a reviewing court will afford great deference to the circuit court's factual findings and will disregard those findings only where they are against the manifest weight of the evidence. *Johnson*, 237 Ill. 2d at 88; *People v. Lopez*, 2013 IL App (1st) 111819, ¶ 17. "This deferential standard of review is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony." *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). The circuit court's ultimate legal finding as to whether suppression is warranted, however, is subject to *de novo* review. *People v. Colyar*, 2013 IL 111835, ¶ 24; *People v. Bartelt*, 241 Ill. 2d 217, 226 (2011). Accordingly, "[a] court of review 'remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted.' " *People v. Gherna*, 203 Ill. 2d 165, 175-76 (2003) (quoting *People v. Crane*, 195 Ill. 2d 42, 51

(2001)). When conducting this analysis, a reviewing court may consider the evidence presented at trial in addition to the evidence presented during the earlier suppression hearing. *People v. Almond*, 2015 IL 113817, ¶ 55.

¶ 19 The right to be free from unlawful searches and seizures is protected by both the federal and state constitutions. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *Bartelt*, 241 Ill. 2d at 225-26. "The 'essential purpose' of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266-67 (2010) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). This constitutional guarantee "applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *People v. Thomas*, 198 Ill. 2d 103, 108 (2001).

¶ 20 To be reasonable, a search and seizure "generally requires a warrant supported by probable cause." *Id.* However, in its seminal ruling in *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court created a limited exception to the probable cause requirement and held that a police officer "may conduct a brief, investigatory stop of a citizen [unsupported by probable cause] when the officer has a reasonable, articulable suspicion of criminal activity and such suspicion amounts to more than a mere 'hunch.' " *McDonough*, 239 Ill. 2d at 268; *Terry*, 392 U.S. at 27.

> "Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990).

Accordingly, to justify a *Terry* stop, an officer must simply "be able to point to specific and articulable facts which, taken together with rational inferences from those facts," supports the conclusion that an individual has committed or is about to commit a crime. *Terry*, 392 U.S. at 21; *People v. Magallanes*, 409 Ill. App. 3d 720, 725 (2011). "The determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior, and due weight must be given to the reasonable inferences the officer is entitled to draw from the facts in light of his experience." *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 19; see also *Prado Navarette v. California*, 572 U.S. ___, ___, 134 S. Ct. 1683, 1690 (2014) (noting that reasonable suspicion depends upon the commonsense "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" (internal quotation marks omitted)). Ultimately, whether an investigatory stop is reasonable is judged by the totality of the circumstances (*People v. Jackson*, 348 Ill. App. 3d 719, 729 (2004)) using an objective standard, and only the facts known to the officer at the time of the stop may be considered (*Linley*, 388 Ill. App. 3d at 749).

¶ 21 Although a police officer's personal observations may provide the officer with the reasonable suspicion necessary to effectuate a lawful *Terry* stop, reasonable suspicion is not *limited* to the information derived from an officer's personal observations. *Adams v. Williams*, 407 U.S. 143, 147 (1972) (rejecting the argument that reasonable suspicion for an investigative stop can only be based upon an officer's personal observations). Indeed, an officer may also obtain reasonable suspicion and initiate a *Terry* stop based upon information provided by members of the public, including a known or unknown informant, a victim, an eyewitness, or a concerned citizen. *People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007); *Jackson*, 348 Ill. App. 3d at 730. Because third-party tips "vary greatly in their value and reliability" (*Adams*, 407 U.S. at

147), courts have recognized that there is a "spectrum upon which tips are classified" (*People v. Sanders*, 2013 IL App (1st) 102696, ¶ 19). For example, information provided by a concerned citizen is generally considered to be more credible than that provided by a confidential informant who provides information in exchange for payment or another form of personal gain. *Linley*, 388 Ill. App. 3d at 750; *Nitz*, 371 Ill. App. 3d at 752. Similarly, information gleaned from a known individual is generally considered to constitute stronger evidence than that provided by one who is anonymous. See *Nitz*, 371 Ill. App. 3d at 751. Indeed, courts have recognized that anonymous tips alone seldom provide law enforcement officers with the reasonable suspicion necessary to initiate a lawful investigatory stop because such tips generally fail to "demonstrate[ ] the informant's basis of knowledge or veracity." *White*, 496 U.S. at 329. In such cases, an officer's corroboration of information contained in the anonymous tip becomes "especially important." *Nitz*, 371 Ill. App. 3d at 751; see also *Linley*, 388 Ill. App. 3d at 750. Nonetheless, even " 'when information comes from a named witness, it remains the case that a minimum of corroboration or other verification of the reliability of the information is required.' " *Nitz*, 371 Ill. App. 3d at 751-52 (quoting *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 851 (2003)); see also *Jackson*, 348 Ill. App. 3d at 730 (recognizing that " 'the mere fact that a citizen is identified will not automatically impart credibility and reliability to his statement' " (quoting *People v. Ertl*, 292 Ill. App. 3d 863, 873 (1997))). When it comes to the corroboration of third-party tips, courts have recognized that the "[c]orroboration of innocent details or of information that is readily known or knowable is of little value," whereas "a showing that an informant is able to predict a defendant's future behavior lends credence to the tip." *Nitz*, 371 Ill. App. 3d at 752. Ultimately, the issue of whether the information contained in a tip is sufficient to support an investigatory

stop is dependent upon the totality of the circumstances, not a rigid test. *Linley*, 388 Ill. App. 3d at 750; *Nitz*, 371 Ill. App. 3d 751.

¶ 22 Keeping these principles in mind, we find that Officer Luzadder's search and seizure of defendant did not run afoul of the fourth amendment. The record establishes that Officer Luzadder encountered defendant after an unknown caller placed two separate 911 calls. In the first call, the caller reported that a white male wearing a black hoodie was in possession of a gun and was "swinging at" two white females. The caller relayed that the three individuals were near the intersection of 32nd and Wallace Streets. In the second call, placed minutes later, the caller provided an updated location where the individuals could be found: 3100 South Lowe Avenue. The updated location was approximately two blocks north of the first location identified by the caller.

¶ 23 Although there is no dispute that the identity of the caller is unknown, there is some authority that a tip conveyed through an emergency number should not be considered to be "truly anonymous" and should be viewed with less skepticism even if the caller does not specifically identify himself or herself because such callers are likely aware that authorities have the means to ascertain the phone number from which the call was placed. *Linley*, 388 Ill. App. 3d at 750 (citing *People v. Shafer*, 372 Ill. App. 3d 1044, 1050-51 (2007)); see also *Prado Navarette*, 572 U.S. at ___, 134 S. Ct. at 1689 (finding that an unknown caller's use of the 911 emergency system was an "indicator of veracity" because the system "has some features that allow for identifying and tracing callers, and thus provides some safeguards against making false reports with immunity"). Indeed, in this case, the phone number from which the caller placed the two calls at issue was recorded. Ultimately, regardless of how the caller is categorized, there is no dispute that Officer Luzadder was required to engage in some corroboration or other verification

of the information provided by the tipster prior to initiating the stop. See *Nitz*, 371 Ill. App. 3d 751-52.

¶ 24 Based on the record, it is evident that Officer Luzadder did so. At the suppression hearing, Officer Luzadder testified that he observed defendant, who matched the physical description provided by the unknown caller, at the updated location that the caller had provided, within minutes of the second call being placed. Although it is true that Officer Luzadder did not mention observing defendant in the presence of two Caucasian females, defendant does not dispute that he matched the description of the man discussed by the caller or that he was found in the specific location identified by the caller. More importantly, in addition to corroborating the location and physical description of the person identified by the caller, Officer Luzadder also observed defendant walking in a manner that suggested that he was concealing a firearm, which served to further corroborate the tipster's account that he had swung at two females while armed with a firearm. Specifically, Officer Luzadder testified that he observed defendant holding the right side of his waistband as he was walking, which based on his 22 years of experience in law enforcement, suggested that he was "attempting to conceal a firearm underneath his clothing." Moreover, Officer Luzadder's reasonable suspicion that defendant was armed with a firearm justified the protective pat-down of his person to ensure his own safety and the safety of others. See *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001) ("when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others, the officer may conduct a pat-down search to determine whether the person is in fact carrying a weapon" (citing *Terry*, 392 U.S. at 24)); see also *People v. Richardson*, 2017 IL App (1st) 130203-B, ¶ 27 (finding that the defendant's "furtive movements" supported the officer's belief that the defendant was " 'most likely' "

hiding a firearm and justified a pat-down search during the course of a *Terry* stop). Because the firearm was recovered during a lawful search and seizure of defendant, we conclude that the circuit court did not err in denying his motion to suppress.

¶ 25 In so finding, we are unpersuaded by defendant's argument that the United States Supreme Court's ruling in *Florida v. J.L.*, 529 U.S. 266 (2000), compels a different result. In that case, an anonymous telephone caller[1] informed police that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. When officers arrived at the bus stop identified by the caller, they observed three black males, including J.L., who was the only individual wearing a plaid shirt. *Id.* The officers did not observe a firearm on J.L.'s person and did not observe him make any "threatening or otherwise unusual movements." *Id.* Nonetheless, one of the officers ordered J.L. to raise his hands in the air, frisked him, and ultimately recovered a handgun from J.L.'s pocket. *Id.* On review, the United States Supreme Court concluded that the seizure and search of J.L.'s person was improper because the anonymous tip lacked the requisite indicia of reliability to provide the officers with reasonable suspicion that J.L. was carrying a firearm and because the only evidence corroborated by the officers before initiating the seizure were innocent details. *Id.* at 271-74. With respect to the call itself, the court noted that the caller "provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility"; rather, "[a]ll the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." *Id.* at 271. Although officers did corroborate that an individual matching

[1]Although there is no dispute that the tip at issue was made via a phone call, there is no evidence that the anonymous caller in *J.L.* used an emergency phone number to make the tip.

the caller's description was present at the specific bus stop identified by the caller, the court reasoned that:

> "An accurate description of a subject's readily observable location and appearance is of course reliable in [a] limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* at 272.

Ultimately, because the officers failed to corroborate that the tip was reliable in its assertion of illegality, the court concluded that the search and seizure were unlawful.

¶ 26 Here, in contrast, Officer Luzadder's corroboration was not limited to innocuous details of the unknown caller's tips to an emergency phone number. Not only did he encounter defendant in the location provided by the caller and wearing clothing described by the caller, but he also independently observed behavior that suggested that defendant was concealing a firearm, which the caller had stated was in his possession as he swung at two females. That is, he observed defendant walking in a manner, which in Officer Luzadder's extensive experience as a law enforcement officer, suggested that he was attempting to conceal a firearm underneath his clothing. Ultimately, because Officer Luzadder engaged in corroboration of the assertion of illegality provided by the tipster and possessed reasonable suspicion that defendant was engaged in criminal activity at the time of the *Terry* stop, this case is distinguishable from *J.L.* Moreover, because Officer Luzadder's corroboration of the caller's tip led him to believe that that defendant was armed with and concealing a firearm, he was justified in performing a protective pat-down of defendant's person. See *Richardson*, 2017 IL App (1st) 130203-B, ¶ 27 (upholding a

protective pat-down search where the defendant's "furtive movements" led the officer to conclude that he was " 'most likely' " concealing a weapon).

¶ 27 Sufficiency of the Evidence

¶ 28 Defendant next contests the sufficiency of the evidence. Specifically, he contends that the State failed to meet its burden of proving him guilty of the offense of armed habitual criminal because it failed to establish that he had previously been convicted of two qualifying predicate offenses as required by the armed habitual criminal statute.

¶ 29 The State, in turn, responds that support for defendant's claim is not found within the four corners of the record on appeal, and as such, his "conviction for armed habitual criminal must be affirmed on direct appeal."

¶ 30 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, the court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 58; *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). This standard is applicable to all criminal cases regardless of the nature of the evidence at issue. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). In a bench trial, the trial court is responsible for evaluating the credibility of the witnesses, resolving conflicts and inconsistencies in the evidence, and determining the weight to afford, and the inferences to be drawn, from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court may not substitute its judgment for that of the trier of fact on such matters (*People v. Campbell*, 146 Ill. 2d 363, 375 (1992)) and will not reverse a defendant's

conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*People v. Bradford*, 2016 IL 118674, ¶ 12).

¶ 31 Section 24-1.7 of the Criminal Code of 2012 (Code) sets forth the offense of armed habitual criminal and provides, in pertinent part, as follows:

> "§ 24-1.7. Armed habitual criminal.
>
> (a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:
>
> (1) a forcible felony as defined in Section 2-8 of this Code;
>
> (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child ***; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm ***; or
>
> (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher." 720 ILCS 5/24-1.7(a) (West 2016).

¶ 32 Pursuant to the plain language of the statute, in order to sustain a conviction for the offense of armed habitual criminal, it is thus incumbent upon the State to prove not only that the defendant received, sold, possessed, or transferred a firearm but that he was previously convicted of two qualifying predicate offenses. *Id.*; *People v. White*, 2015 IL App (1st) 131111, ¶ 28 ("qualifying convictions are elements of the offense" of armed habitual criminal).

¶ 33 In this case, the information charging defendant with armed habitual criminal cited his knowing possession of a firearm after having been convicted of the following two predicate

offenses: "the offense of armed robbery, under case number 10[-]CF-367, and the offense of aggravated battery, under case number 09[-]CF-2251." At trial, in order to prove defendant had two predicate offenses necessary to support a finding of guilt of the offense of armed habitual criminal, the State presented certified copies of his prior convictions for armed robbery and aggravated battery.

¶ 34 Given that neither armed robbery nor aggravated battery is included in the list of offenses specifically enumerated in subsections (a)(2) or (a)(3) of the armed habitual criminal statute, those offenses must constitute "forcible felonies" in order to qualify as predicate offenses for purposes of the armed habitual criminal statute. See *People v. Ephraim*, 2018 IL App (1st) 161009, ¶ 12 (in order for a crime not specifically delineated in subsections (a)(2) or (a)(3) of the armed habitual criminal statute to constitute a qualifying offense under the statute, it must be considered a "forcible felony" as defined by statute).

¶ 35 Pursuant to section 2-8 of the Code, a "forcible felony" is defined as

> "treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, *aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.*" (Emphasis added.) 720 ILCS 5/2-8 (West 2016).

¶ 36 Initially, we note that defendant does not dispute that his armed robbery conviction was a proper qualifying predicate offense for purposes of the armed habitual criminal statute. The offense of armed robbery occurs when a person commits a robbery, which entails taking another's property "*by the use of force or by threatening the imminent use of force*" (emphasis

added) (*id.* § 18-1(a)) while being armed with a firearm or other dangerous weapon (*id.* § 18-2). The offense of armed robbery, by definition, thus necessarily contemplates the use or threat of physical force or violence against the victim and, as such, constitutes a forcible felony under 2-8 of the Code. *Id.* §§ 18-1, 18-2; see also *People v. Belk*, 203 Ill. 2d 187, 196 (2003) (recognizing that the fact that an individual is armed "necessarily implies that [he] contemplated that the use of force or violence against an individual might be involved and that [he was] willing to use such force or violence" during the commission of an offense, such that the crime constitutes a forcible felony pursuant to section 2-8 of the Code (emphasis omitted)). Given that there is no dispute that armed robbery is inherently a forcible felony, the basis for defendant's challenge to the sufficiency of the evidence solely pertains to his prior conviction for aggravated battery.

¶ 37 The offense of aggravated battery contains many categories. See 720 ILCS 5/12-3.05 (West 2016). Indeed, an offender will be charged with the offense of aggravated battery when he commits a battery, which involves inflicting bodily harm on another or making physical contact of an insulting or provoking nature with another person (*id.* § 12-3), and one or more aggravating factor is present. *Id.* § 12-3.05. The aggravating factor may include the severity of the injury inflicted on the victim, such as great bodily harm or permanent disfigurement (*id.* § 12-3.05(a)); the location where the conduct occurred, such as a public way, sports venue, or domestic violence shelter (*id.* § 12-3.05(c)); the status of the victim, such as a child, a peace officer, an elderly victim, or one who is pregnant (*id.* § 12-3.05(b), (d)); and the use of a firearm or other weapon or device during the battery (*id.* § 12-3.05(e), (f)).

¶ 38 Although there are many types of aggravated batteries, the forcible felony definition contained in section 2-8 of the Code only includes "aggravated battery resulting in great bodily harm or permanent disability or disfigurement." *Id.* § 2-8. This court has repeatedly recognized

that not every aggravated battery is one that results in great bodily harm or permanent disability or disfigurement of the victim and that aggravated batteries that are based on other aggravating factors are not included in the definition of forcible felonies set forth in section 2-8 of the Code. See, *e.g.*, *Ephraim*, 2018 IL App (1st) 161009, ¶ 14 (finding that the "defendant's conviction for aggravated battery to a peace officer without proof that the underlying battery resulted in great bodily harm or permanent disability or disfigurement does not qualify as a forcible felony under section 2-8"); *People v. Smith*, 2016 IL App (1st) 140496, ¶ 11 (concluding that "where [the] defendant's prior conviction of aggravated battery to a peace officer was not based on great bodily harm or permanent disability or disfigurement, we find that it was not within the statutory definition of a forcible felony").

¶ 39 This court has further held that aggravated batteries that are based on aggravating factors other than great bodily harm or permanent disability or disfigurement do not fall within the forcible felony definition's residual clause, which includes "any other felony which involves the use or threat of physical force or violence against any individual." 720 ILCS 5/2-8 (West 2016). See, *e.g.*, *Ephraim*, 2018 IL App (1st) 161009, ¶ 15; *Smith*, 2016 IL App (1st) 140496, ¶ 11; *People v. Schmidt*, 392 Ill. App. 3d 689, 695-96 (2009). As we explained in *Schmidt*,

> "by using the word 'other' after listing 14 specific felonies [in the forcible felony definition], the legislature clearly intended the residual category to refer to felonies not previously specified. Where the statute specifically enumerated aggravated battery resulting in great bodily harm or permanent disability or disfigurement, 'other felony' must refer to felonies other than aggravated battery." *Schmidt*, 392 Ill. App. 3d at 695.

We found further support for our conclusion by reviewing the legislative history of the forcible felony statute, which prior to 1990, provided that *all* aggravated batteries were forcible felonies.

Id. at 696. In a 1990 amendment to the statute, however, the legislature added the phrase " 'resulting in great bodily harm or permanent disability or disfigurement' " after " 'aggravated battery.' " *Id.* (quoting Pub. Act 86-291 (eff. Jan. 1, 1990) (amending Ill. Rev. Stat. 1987, ch. 38, § 2-8)). We reasoned that "by enacting the 1990 amendment, the legislature expressed its intent to limit the number and types of aggravated batteries that would qualify as forcible felonies." *Id.*

¶ 40 Based on the foregoing authorities, defendant's aggravated battery conviction will only constitute a forcible felony and satisfy the armed habitual criminal statute's predicate offense requirement if his conduct resulted in great bodily harm or permanent disability or disfigurement to his victim. There is no dispute that the aggravating factor or factors underlying defendant's aggravated battery conviction were not specified in the certified copy of conviction presented to the circuit court. The certified copy of conviction presented by the State simply showed that defendant pled guilty to the offense of aggravated battery in case number 09-CF-2251. At trial, Defense counsel did not dispute the certified copy of conviction or argue that defendant's aggravated battery conviction was not based on his infliction of great bodily harm or permanent disability or disfigurement on his victim.

¶ 41 On appeal, however, in an effort to support his contention that his aggravated battery conviction did not in fact result in great bodily harm or permanent disability or disfigurement to his victim, defendant has attached to the appendix of his appellate brief, a document that appears to be an authentic bill of indictment returned by a grand jury in 2009 indicting him with two counts of aggravated battery. The first count alleged:

> "[D]efendant, in committing a Battery, in violation of the Illinois Compiled Statutes, Chapter 720, Section 5/12-3, without legal justification and by use of a deadly weapon, to wit: a knife, knowingly made physical contact of an insulting or provoking nature with

Eric Field, in that defendant stabbed Eric Field about the body with a knife, in violation of Chapter 720, Section 5/12-4(b)(1), of the Illinois Compiled Statutes, 2009, contrary to Statute and against the peace and dignity of the same People of the State of Illinois."

¶ 42 The second count, in turn, alleged:

"[D]efendant, in committing a Battery, in violation of the Illinois Compiled Statutes, Chapter 720, Section 5/12-3, without legal justification and by use of a deadly weapon, to wit: a knife, knowingly made physical contact of an insulting or provoking nature with Eric Field, in that [he] punched Eric Field about the body while Eric Field was on a public way, namely: Mallard Street at or near Skylark, Joliet, Will County, Illinois, in violation of Chapter 720 5/12-4(b)(8) of the Illinois Compiled Statutes, 2009, contrary to Statute, and against the peace and dignity of the same People of the State of Illinois."

¶ 43 Defendant did not supplement the record on appeal with a copy of the indictment or the mittimus entered in case number 09-CF-2251, even though could have done so. See, *e.g.*, *Smith*, 2016 IL App (1st) 140496, ¶ 7 (noting that the defendant, who was arguing on appeal that his prior conviction for aggravated battery of a police officer did not constitute a forcible felony, had supplemented the record with a copy of "the indictment and mittimus entered in that case"). Instead, he urges this court to take judicial notice of the copy of the indictment he included in the appendix of his brief. Moreover, he asks this court to presume that the victim of his aggravated battery did not suffer great bodily harm or disfigurement even though he evidently stabbed and punched his victim because the indictment does not specifically mention that the stabbing and punching caused his victim to suffer great bodily harm or permanent disability or disfigurement. We decline to do so.

¶ 44 Initially, we note that whether a conviction constitutes a "forcible felony" is a question of law for the circuit court to decide. *People v. Webb*, 2018 IL App (3d) 160403, ¶ 17. Moreover, it is well established that defendant, as the appellant, " 'has the burden of providing a sufficiently complete record on appeal so that the reviewing court is fully informed regarding the issues to be resolved' " and " 'in the absence of a complete record on appeal, it is presumed that trial court's judgment conforms to the law and has a sufficient factual basis.' " *People v. Moore*, 377 Ill. App. 3d 294, 300 (2007) (quoting *People v. Odumuyiwa*, 188 Ill. App. 3d 40, 45-46 (1989)). It is likewise well established that "[t]he inclusion of evidence in an appendix is an improper supplementation of the record with information *dehors* the record." *People v. Wright*, 2013 IL App (1st) 103232, ¶ 38. This is particularly true, whereas here, the document that is affixed to the appendix is an essential component to evaluate the specific argument raised on appeal. *Cf. People v. McGregory*, 2019 IL App (1st) 173101, ¶ 3 n.1 (finding that the State's inclusion of an indictment in its appendix, though improper, was harmless "[b]ecause the contents of the indictment [were] not relevant to the issues on appeal").

¶ 45 Ultimately, given the lack of information contained in the record on appeal pertaining to defendant's prior aggravated battery conviction that was used to satisfy the armed habitual criminal statute's predicate offense requirement, including the indictment, plea hearing, as well as the mittimus entered in that case, we necessarily reject his sufficiency of the evidence claim and affirm his armed habitual criminal conviction. In doing so, we note that defendant is not foreclosed from seeking relief via other avenues. See generally *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990) (recognizing that issues that require consideration of matters outside of the record are more appropriately addressed in petitions for postconviction relief than on direct appeal).

¶ 46 CONCLUSION

¶ 47 The judgment of the circuit court is affirmed.

¶ 48 Affirmed.

No. 1-17-0803

Cite as:	*People v. Carter*, 2019 IL App (1st) 170803
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 16-CR-4639; the Hon. Arthur F. Hill, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Patricia Mysza, and Sean Collins-Stapleton, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg, Brian A. Levitsky, and Ahmed Islam, Assistant State's Attorneys, of counsel), for the People.

Notice of Appeal (Rev. 11/07/03) CCCR 0603

TO THE _____ COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL BUREAU

PEOPLE OF THE STATE OF ILLINOIS

v.

DAVID CARTER

Case No. 11CR4639
Trial Judge Hill
Court Reporter
Attorney Public Defender
Appeal Check Date
Appeal Bond

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:
Appellant's Name: DAVID CARTER
Appellant's Address: IDOC
Appellant's Attorney: Assistant Public Defender Emily DeYoe
Address: 2150 S. California, 9th Flr, Chicago, IL 60608
Offense: Armed Habitual Criminal, UUW/Felon, Agg UUW
Judgment: Guilty of Armed Habitual Criminal, UUW/Felon, Agg UUW
on a Bench trial
Date: February 14, 2017
Sentence: 9 years IDOC
Date Notice Filed: March 14, 2017

Appellant

VERIFIED PETITION FOR REPORT OF PROCEEDINGS AND COMMON LAW RECORD

Under Supreme Court Rules 605-608 Appellant requests the Court to order; (1) the Official Court Reporter to transcribe an original and the copy of the proceedings, file the original with the Clerk and deliver the copy to the Appellant, or upon Appellant's written request to the Appellant's attorney of record, and (2) the Clerk to prepare the Record on Appeal.

The Appellant, being duly sworn, states that at the time of his/her conviction, s/he was and s/he now is unable to pay for the Record or an appellate lawyer.

Appellant

SUBSCRIBED and SWORN TO before me this _____ day of _____, _____

Notary Public

FILED
MAR 14 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT

ORDER

IT IS ORDERED; 1. State Appellate Defender appointed as counsel on appeal, and 2. the Record and Report of Proceedings be furnished to appellant without fees.

October 31, 2016
February 14, 2017
March 14, 2017

ENTERED
JUDGE ARTHUR FRANCIS HILL-1871
MAR 14 2017
CLERK OF THE CIRCUIT COURT

DATE: March 14, 2017 ENTER: _____ 1871
Judge Judge's No.

I acknowledge receipt: _____
Court Reporter

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

No. 125954

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- DAVID CARTER, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0803. There on appeal from the Circuit Court of Cook County, Illinois , No. 16 CR 4639. Honorable Arthur F. Hill, Jr., Judge Presiding.

NOTICE AND PROOF OF SERVICE

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

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Mr. David Carter, Register No. M15433, Illinois River Correctional Center, P.O. Box 999, Canton, IL 61520

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 January 4, 2021, 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 petitioner-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.

/s/Kelly Kuhtic
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