No. 131300

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Whether the trial court erred in denying Terry Collins' motion to dismiss where the issue preclusion doctrine barred the State from prosecuting Collins for the severed weapons count because the ultimate issue of fact–whether Collins knowingly carried a gun–had previously been resolved by a jury that acquitted Collins of unlawful possession of a weapon.

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STATEMENT OF FACTS

On February 8, 2022, Terry Collins was charged in a four-count indictment with two counts of aggravated unlawful use of a weapon (Counts I-II), one count of possession of a firearm not eligible for a FOID card (Count III), and one count of unlawful possession of a weapon by a felon (Count IV). (C. 34-37) Before trial, the State dismissed one of the aggravated unlawful possession of a weapon ("AUUW") counts (Count II), and defense counsel moved to sever the unlawful possession of a weapon by a felon ("UPWF") count. (R. 81-83) The State agreed that this count should be severed, and the case proceeded to a jury trial on the UPWF charge. (R. 83, 157)

Jury Trial

The State called Kane County Detective Luke Weston as its first witness. (R. 369-372) On September 25, 2021, Weston drove an unmarked squad car on I-90 between Hampshire and Huntley, Illinois. (R. 373-374) After observing a White BMW with Minnesota license plates commit two minor traffic violations, Weston conducted a traffic stop on the vehicle. (R. 372-375) Weston approached the stopped vehicle from the passenger side and had the occupants roll down the windows. (R. 375-377) Three men were inside the car, two sitting in the front and one in the back. (R. 377) Weston identified Jimmy Barker as the driver, William Heart as the front seat passenger, and Collins as the passenger in the back. (R. 377-378) After identifying the vehicle's occupants, Weston discovered that all three were convicted felons. (R. 393)

While Weston was at the car, he smelled the odor of burnt and raw cannabis.

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(R. 378-379) Weston had Barker exit the vehicle and move to the front passenger seat of the squad car. (R. 378-379) Barker appeared nervous and seemed to be in a hurry to leave the scene. (R. 416, 419-420) Weston called Deputy Benson for backup after putting Barker in the squad car. (R. 378-379)

When Benson arrived, Weston placed Collins in the squad car's back seat, and Benson moved Heart to his squad car. (R. 381) Before Weston searched the vehicle, Collins indicated nothing illegal was in the car. (R. 424) Collins explained that they were driving to see Barker's grandmother in the hospital. (R. 394) Weston searched Collins' person but did not find anything illegal. (R. 425) After interacting with Collins, Weston obtained Barker's permission to search the car. (R. 381-382) Weston left Barker and Collins in the squad car and assisted Benson in searching the vehicle. (R. 383, 426)

During the search, Benson found a half-burnt cannabis blunt in the front center console area and recovered a blunt roller from the front compartment of the car. (R. 384) Because the car was a hatchback, the trunk could be accessed from the rear passenger seats of the vehicle. (R. 384-385) The officers folded down the rear passenger seats and located a black handbag in the trunk. (R. 385) Inside the bag was a grey polymer80 firearm with a full magazine inserted and one bullet in the chamber. (R. 385, 389-390)

After discovering the firearm, Weston returned to the squad car to speak with Barker and Collins. (R. 434) Weston placed Barker in handcuffs and told him that everything found in the car was his. (R. 433-434) Weston left the squad car and returned to the stopped car to examine the firearm. (R. 433-434) Weston

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had a narcotics dog search the car, but no drugs were found other than the small amount of cannabis recovered by Benson. (R. 444-445)

Once Weston secured the firearm, he spoke with Collins. (R. 439) Collins indicated that he did not know that there was a gun in the car. (R. 440) Weston advised Collins and Barker that all of the occupants were "looking at going down with a gun, [because] you guys are all convicted felons." (R. 440) After this, Collins told Weston that he could "just say" the gun was his because Barker needed to go see his grandmother, who was dying. (R. 393, 440)

After speaking with Collins, Weston talked to Barker and Heart. (R. 440) Barker permitted Weston to search his cell phone. (R. 442) Weston found a picture of a man wearing a mask holding a gun to someone's head in the phone. (R. 442-443) After looking through Barker's phone, Weston returned to Collins. (R. 394)

Weston told Collins that the gun recovered was a polymer80. (R. 397, 446) Collins indicated that he purchased the gun from a website for a couple of hundred dollars. (R. 397, 446) He described the bag the gun was found in as being of a regular size and black. (R. 398) Collins failed to mention that the handbag had a camouflage pocket. (R. 446-447) Weston asked if Collins had put the gun in the trunk when he initiated the traffic stop, and Collins nodded his head. (R. 446)

Weston placed Collins under arrest, and Barker and Heart were told that they were free to leave. (R. 447) Before Barker and Heart were released from custody, Benson confirmed with one of Barker's family members that his grandmother was in the hospital. (R. 447-448)

At the close of the State's case, the parties entered a stipulation that "on

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March 31, 2011, the defendant, Terry Collins, was convicted of a felony." (R. 631-632)

At closing argument, the State told the jury that "[t]he only thing that matters in this case for you to decide is whether or not this defendant possessed this handgun." (R. 480) The State explained that whether Collins is a convicted felon is not in dispute; instead, "the only dispute here is the first proposition, whether the defendant knowingly possessed that firearm." (R. 481-482) Defense counsel conceded that the State had proven Collins' felon status and told the jury that this case centers around whether the State proved beyond a reasonable doubt that Collins knowingly possessed the firearm. (R. 490)

Following closing argument, the jury returned a not-guilty verdict for the UPWF charge. (R. 537)

Motions to Dismiss

On September 12, 2023, defense counsel filed a motion to dismiss the remaining weapons counts on double jeopardy and collateral estoppel grounds. (C. 150)[1] After a hearing on the motion, the court granted the motion in part and denied in part. (C. 157) Specifically, the court dismissed the possession of a firearm no valid FOID card count, but denied the motion as to the remaining AUUW count. The court explained that the jury necessarily determined that Collins did not knowingly possess the gun when it acquitted him of the UPWF charge. (R. 668-669) That jury finding barred the State from prosecuting the FOID card charge because

[1]This Court has recognized that "collateral estoppel" is now more commonly known as "issue preclusion." *People v. Jefferson*, 2024 IL 128676, ¶ 2, n. 1. Given this Court's preference for issue preclusion over collateral estoppel, this brief employs the modern phrase except when used in a quotation.

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that charge required proof of the same knowing possession element. (R. 668-669) The court further determined that the State was not barred from prosecuting the AUUW charge because that charge required the State to prove that Collins "knowingly carried" a firearm, which the court concluded was a different element than knowing possession. (R. 668)

Following the court's ruling, the State and defense counsel both filed motions to reconsider. (C. 159, 183) Defense counsel's motion argued that the court erred in failing to dismiss the AUUW charge, because the question of whether Collins knowingly possessed a firearm encompassed the question of whether he knowingly carried the same firearm. (C. 183-185) The State's motion argued that the court erred in granting the motion to dismiss the FOID card charge because Collins waived all double jeopardy protections by moving to sever the related weapons charges before trial. (C. 161-164)

On December 8, 2023, the trial court denied both motions to reconsider, and both parties appealed. (C. 188, 191; Sup. C. 4)

Appeal

The appellate court decided the appeals separately. In the defense appeal, No. 2-24-0005, the appellate court unanimously reversed the circuit court's order denying defendant's motion to dismiss with respect to the AUUW charge. *People v. Collins*, 2024 IL App (2d) 240005.

The appellate court first considered whether, after the first jury found that Collins did not knowingly possess the firearm, the issue preclusion doctrine prohibited the State from prosecuting Collins for AUUW, on the theory that he

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knowingly carried a firearm. *Collins*, 2024 IL App (2d) 240005, ¶ 25-38. Citing this Court's language in *People v. Jones*, 207 Ill.2d 122, 139 (2003), the appellate court noted that a party seeking to invoke issue preclusion must show that "(1) the issue sought to be precluded was raised and litigated in a previous proceeding, (2) the determination of the issue was a critical and necessary part of the final judgment in a prior trial, and (3) the issue is the same one decided in the previous trial." 2024 IL App (2d) 240005, ¶ 25.

In applying the *Jones* test to the instant case, the appellate court concluded that the circuit court erred in determining that the knowingly-carried element required for AUUW presented a different question than whether a defendant knowingly possessed a firearm as required for UPWF. 2024 IL App (2d) 240005, ¶ 33-37. Citing dictionary definitions of "possess" and "carry," and the terms' interchangeable use in the AUUW statute, the appellate court concluded that the elements covered the same conduct because "a person cannot carry a weapon without also possessing it." 2024 IL App (2d) 240005, ¶ 35. As such, the court concluded that "[b]ecause the issue sought to be precluded–that defendant knowingly carried a firearm–was rejected by the jury at the first trial (*i.e.*, it rejected that defendant knowingly possessed the firearm), the State is precluded from prosecuting defendant on the theory that he knowingly carried a firearm." 2024 IL App (2d) 240005, ¶ 38.

The appellate court also addressed the State's argument that *Currier v. Virginia*, 585 U.S. 493 (2018), foreclosed the application of the issue preclusion doctrine, in this case, because Collins moved to sever charges before trial. The

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appellate court acknowledged that Justice Gorsuch rejected the idea that the double jeopardy clause prevents the parties from retying any issue or introducing evidence about a previously tried issue. The appellate court noted that Justice Gorsuch concluded that issue preclusion principles from civil cases had not been imported into the double jeopardy clause. However, citing this Court's opinion in *People v. Jefferson*, 2024 IL 128676, ¶ 37, the appellate court noted that the portion of *Currier* addressing the scope of the issue preclusion doctrine did not contain a majority opinion. The appellate court also pointed out that Justice Gorsuch's plurality opinion acknowledged that, "in narrow circumstances, the retrial of an issue can be considered tantamount to the retrial of an offense." 2024 IL App (2d) 240005, ¶ 30 (quoting *Currier v. Virginia*, 585 U.S. at 506).

The appellate court did not reach Collins' double jeopardy argument, as it resolved the case on the issue preclusion question. 2024 IL App (2d) 240005, ¶ 39.

The appellate court utilized the same reasoning in its decision in No. 2-23-0584, where it affirmed the circuit court's order dismissing the FOID card charge pursuant to issue preclusion principles. *People v. Collins*, 2024 IL App (2d) 230584-U.[2]

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

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ARGUMENT

The trial court erred in denying Terry Collins' motion to dismiss where the issue preclusion doctrine barred the State from prosecuting Collins for the severed weapons count because the ultimate issue of fact–whether Collins knowingly carried a gun–had previously been resolved by a jury that acquitted Collins of unlawful possession of a weapon by a felon.

Based on the discovery of a firearm during a search of a stopped vehicle, the State charged Terry Collins with two counts of aggravated unlawful use of a weapon (Counts I-II), one count of possession of a firearm not eligible for a FOID card (Count III), and one count of unlawful possession of a weapon by a felon (Count IV). (C. 34-37) Before trial, the State dismissed one of the aggravated unlawful possession of a weapon counts (Count II), and defense counsel moved to sever the unlawful possession of a weapon by a felon ("UPWF") count. (R. 81-83) The State agreed that this count should be severed, and the case proceeded to a jury trial on the UPWF charge. (R. 157)

At trial, the parties stipulated to Collins' prior felony conviction. (R. 526) Therefore, the only question left for the jury to decide was whether Collins knowingly possessed a firearm. In fact, during closing arguments, the State told the jury that the only question they had to decide was "whether or not this defendant possessed this handgun." (R. 480) Similarly, defense counsel conceded that the State had proved Collins' felon status, and noted that the sole element in dispute was whether the State proved that Collins knowingly possessed a firearm. (R. 490) The jury found Collins not guilty of UPWF. (R. 536-537)

After the trial, the defense moved to dismiss the two remaining charges–possession of a firearm not eligible for a FOID card ("PFNFC") and

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aggravated unlawful use of a weapon ("AUUW")–on double jeopardy and collateral estoppel grounds. (C. 150) After a hearing on the motion, the court dismissed the PFNFC charge but denied the motion regarding the AUUW charge. (C. 157) In denying the motion to dismiss, the court found that, at the first trial, the jury resolved the issue of whether Collins possessed a firearm in Collins' favor. (R. 687-688, 668-669) However, the court did not dismiss the AUUW charge because it believed that the issue of whether Collins possessed a firearm was not pertinent to the AUUW charge. (R. 668) Specifically, the court indicated that at a trial on AUUW, the State would need to prove that Collins "carried in a motor vehicle an uncased or loaded handgun," which the court found was different than whether Collins possessed a firearm. (R. 668)

The appellate court unanimously reversed the trial court's ruling and held that, pursuant to the issue preclusion doctrine, the State is precluded from prosecuting Collins on the theory that he knowingly carried a firearm. *People v. Collins*, 2024 IL App (2d) 240005, ¶ 38. This ruling should be affirmed. Issue preclusion prevents the relitigation of a previously rejected theory of criminal liability. Here, it is not possible to present evidence that Collins knowingly carried a firearm without also presenting evidence that he knowingly possessed it, which is an issue that has already been resolved in Collins' favor at the first trial. Therefore, issue preclusion bars the relitigation of this issue in a subsequent trial on the AUUW charge.

The application of issue preclusion presents a question of law, which is reviewed *de novo*. *People v. Christian*, 2016 IL App (1st) 140030, ¶ 80; *People v.*

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Bellmyer, 199 Ill.2d 529, 537 (2002).

In this case, the State urges this Court to reverse the appellate court's judgment for two primary reasons. First, the State contends that a defendant who requests or consents to separate trials on related charges cannot invoke statutory or common law principles of issue preclusion to bar a subsequent trial based on the invited error doctrine. (St. Op. Br., p. 16-19) Next, the State asserts that under the Supreme Court's holding in *Currier v. Virginia*, 585 U.S. 493 (2018), Collins cannot invoke the issue-preclusion component of the federal and state constitutions' double jeopardy clauses because he agreed to the severance of charges before trial. (St. Op. Br., p. 12-16) For the reasons below, this Court should reject the State's arguments.

A. The issue preclusion doctrine barred the State from prosecuting Collins for the severed weapons count because the ultimate issue of fact had previously been resolved by a jury that acquitted Collins finding that he never knowingly possessed a firearm.

The appellate court correctly reversed the trial court's denial of Collins' motion to dismiss, where, because the issue sought to be precluded–that Collins knowingly possessed a firearm–was rejected by the jury at the first trial**,** the State is precluded from prosecuting Collins on the theory that he knowingly carried a firearm.

On appeal, the State does not challenge several aspects of the appellate court's judgment. First, the State does not argue that Collins failed to satisfy the three *Jones* factors required to invoke issue preclusion principles. *People v. Jones*, 207 Ill.2d 122, 139 (2003) (listing three elements that a party seeking to invoke issue preclusion principles must show). Second, the State acknowledges that there

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exists a non-constitutional civil doctrine of issue preclusion, independent of the double jeopardy clause, that this Court has applied to criminal cases in the past. (St. Op. Br., p. 11) Nor does the State argue that this non-constitutional civil doctrine is foreclosed by the Supreme Court's holding in *Currier v. Virginia*, 585 U.S. 493 (2018). (St. Op. Br., p. 16-19). Accordingly, the sole issue the State places in dispute regarding the civil issue preclusion doctrine is whether Collins is barred from invoking it due to the invited error rule.

i The civil issue preclusion doctrine is distinct from the Double Jeopardy Clause.

To understand the State's arguments, it is first necessary to understand the distinction between the civil issue preclusion doctrine and the issue preclusion component of the double jeopardy clause.

Under the issue-preclusion doctrine, when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. *See People v. Tenner*, 206 Ill.2d 381, 396 (2002) (noting that issue preclusion bars the litigation of an issue that was decided in a prior case). Issue preclusion shields litigants from the burden of retrying the same issue and enhances judicial economy by prohibiting repetitive litigation. *People v. Bone*, 82 Ill.2d 282, 286 (1980). In *Hoffman v. Hoffman*, 330 Ill. 413, 417-419 (1928), this Court defined the civil issue preclusion doctrine as follows:

> Where some controlling fact or question material to the determination of both causes has been adjudicated in the former suit by a court of competent jurisdiction and the same fact or question is again at issue between he same parties, its adjudication in the first cause will, if properly presented,

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> be conclusive of the same question in the later suit, irrespective of the question whether the cause of action is the same in both suits or not. This is sometimes denominated as an 'estoppel by verdict.'

For over a century, this Court has consistently applied the doctrine of issue preclusion to civil cases. *See Hoffman*, 330 Ill. at 417-419; *Public Utilities Commission v. Smith*, 298 Ill. 151, 160-163 (1921); *Board of Directors of Chicago Theological Seminary v. People ex rel. Raymond*, 189 Ill. 439, 442-455 (1901). However, in *People v. Haran*, 27 Ill.2d 229, 230 (1963), this Court, for the first time, explicitly held that the doctrine of issue preclusion applies to both criminal and civil proceedings. *See also People v. Williams*, 59 Ill.2d 557, 560-561 (1975) (noting that in *Haran*, this Court determined that the doctrine of issue preclusion applies to criminal cases).

In *Haran*, the defendant was charged with rape, along with two co-defendants. 27 Ill.2d at 230. The co-defendants were convicted, but the defendant was acquitted. However, the same defendants were also indicted for a "crime against nature," against the same victim, based on the same incident. At the second trial, the victim was permitted to testify a second time that the defendant had forced her to submit to an act of intercourse, and the defendant was convicted of that offense. 27 Ill.2d at 230.

This Court held that the issue was not double jeopardy *per se* since it was "clear that the State was entitled to bring the defendant to trial on the second indictment since the acts in question constituted different crimes." *Haran*, 27 Ill.2d at 231. Instead, the question was "whether the doctrine of estoppel by verdict

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precluded the State from introducing any evidence of the act of intercourse at the second trial." 27 Ill.2d at 231.[3]

After distinguishing some of the authorities cited by the State, this Court noted that the prior acquittal of the defendant on the rape charges necessarily "amounted to a determination by the jury that the defendant did not have intercourse" with the victim. 27 Ill.2d at 235. It held "that the State was estopped by this verdict from introducing evidence at the present trial that the defendant had intercourse with her," and that the defendant's conviction must be reversed and the cause remanded for a new trial. 27 Ill.2d at 235-236. The State was not barred from prosecuting the new *charge*, but it was barred from introducing evidence on the *issue* of whether the defendant had intercourse with the victim.

Since *Haran*, this Court and the appellate court have applied issue preclusion principles in criminal cases numerous times and in various contexts. *See, e.g.*, *Williams*, 59 Ill.2d at 558-562 (1975) (after a motion to suppress was granted regarding one indictment, the State was barred from relitigating the same motion to suppress in regard to a second, separate indictment); *People v. Borchers*, 67 Ill.2d 578, 588 (1978) (where a defendant had been found not guilty by a federal jury on charges of mail fraud, the State was barred from charging the defendant with theft where both cases involved the same factual question of whether the defendant had an intent to commit a fraud).

The doctrine of issue preclusion as it has evolved in Illinois jurisprudence

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[3] "Estoppel by verdict" is an older term for issue preclusion. *See People v. Borchers*, 67 Ill.2d 578, 583 (1978).

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was stated by this Court in *People v. Jones*, 207 Ill.2d 122, 139 (2003): "The party seeking to invoke collateral estoppel must show that: (1) the issue was raised and litigated in a previous proceeding; (2) that the determination of the issue was a critical and necessary part of the final judgment in a prior trial; and (3) the issue sought to be precluded in a later trial is the same one decided in the previous trial." This Court added that "the collateral estoppel rule requires a court to examine the record of the prior proceeding and determine whether a rational jury could have grounded its verdict on an issue other than the one which the defendant seeks to foreclose from consideration." *Jones*, 207 Ill.2d at 139.

In addition to the civil issue preclusion doctrine, the federal double jeopardy clause also contains an issue preclusion component. The issue preclusion component of the double jeopardy clause was first recognized by the United States Supreme Court in *Ashe v. Swenson*, 397 U.S. 436 (1970). In *Ashe*, three or four armed masked men broke into a basement and robbed six victims. *Ashe*, 397 U.S. at 437. The defendant was first tried for armed robbery on the charge of robbing one of the victims. 397 U.S. at 438. There was no question that an armed robbery had occurred and that the named victim was one of the victims. 397 U.S. at 438. However, the evidence that the defendant was one of the robbers was weak. 397 U.S. at 438. The jury was instructed that the State did not have to prove that the defendant personally robbed this particular victim to sustain a conviction as long as it found that he was one of the participants in the armed robbery. 397 U.S. at 439. The jury found the defendant not guilty. 397 U.S. at 439. The State then brought him to trial a second time on charges of committing armed robbery with respect to

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a second victim. 397 U.S. at 439.

At the second trial, the State presented different witness testimony that more strongly identified the defendant as one of the robbers and declined to call one of the victims whose identification testimony was harmful to its case. After the second trial, the defendant was convicted. *Ashe*, 397 U.S. at 439-440. He then filed a federal *habeas corpus* petition, claiming that the second prosecution had violated his right not to be twice put in jeopardy. 397 U.S. at 439-440.

The district court denied the petition, and the Eighth Circuit affirmed. Yet, the United States Supreme Court reversed. *Ashe*, 397 U.S. at 440-41, 447. It noted that "'[c]ollateral estoppel'. . . stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." 397 U.S. at 443. Applying the doctrine "requires a court to 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.'" 397 U.S. at 444. The Court held that:

> Straightforward application of the federal rule to the present case can lead to but one conclusion. For the record is utterly devoid of any indication that the first jury could rationally have found that an armed robbery had not occurred, or that Knight [the first victim] had not been a victim of that robbery. The single rationally conceivable issue in dispute before the jury was whether the petitioner had been one of the robbers. And the jury by its verdict found that he had not. The federal rule of law, therefore, would make a second prosecution for the robbery of Roberts [the second victim] wholly impermissible.

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397 U.S. at 445. The Court added that the doctrine of issue preclusion was embodied in the Fifth Amendment guarantee of double jeopardy. 397 U.S. at 445.

Additionally, the Illinois statutory prohibition against double jeopardy also includes an issue preclusion component. *See* 720 ILCS 5/3-4(b)(2) (2022); *People v. Mueller*, 109 Ill.2d 378, 383 (1985) (noting that Section 3-4 codifies the rules of double jeopardy); *see also People v. Thomas*, 216 Ill.App.3d 469, 472 (1st Dist. 1991) (indicating that Criminal Code section 3-4(b)(2) embodies the common law doctrine of issue preclusion). Indeed, Section 3-4(b)(2) provides that if a defendant is prosecuted for one offense, a subsequent prosecution for a different offense is barred if the former prosecution "was terminated by a final order or judgment… that required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution." 720 ILCS 5/3-4(b)(2).

Importantly, while similar, the civil doctrine of issue preclusion exists independently of the Double Jeopardy Clause, even when applied to criminal cases. As the *Haran* Court explained, the issue preclusion doctrine is not necessarily double jeopardy *per se*. 27 Ill.2d at 231. Unlike the right against a second trial for the same offense, issue preclusion prevents relitigation of a previously rejected *theory* of criminal liability without necessarily barring a successive *trial*. Put another way, the issue preclusion doctrine works to secure the issue preclusive effect of a prior final judgment, whereas the double jeopardy clause protects against multiple trials.

Accordingly, the civil issue preclusion doctrine and the Double Jeopardy Clause are not coextensive. The appellate court in the instant case recognized

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this distinction. *Collins*, 2024 IL App (2d) 240005, ¶¶25, 39. Even the State, in its brief before this Court, acknowledges that a non-constitutional civil doctrine of issue preclusion, independent of the Double Jeopardy Clause, exists and has been applied by this Court to criminal cases. (St. Op. Br., p. 11) Moreover, this Court has recently found that the civil doctrine of issue preclusion, when applied in the criminal context, exists independently of the Double Jeopardy Clause. *People v. Jefferson*, 2024 IL 128676, ¶ 43 (utilizing the civil doctrine of issue preclusion after discussing *Currier* and *Ashe* and reserving the question regarding the scope of issue preclusion as incorporated into the Double Jeopardy Clause).

ii The invited error doctrine does not apply here.

As discussed above, the State does not allege that the appellate court erred in concluding that Collins satisfied all of the requirements for applying the issue preclusion doctrine in this case. Instead, the State claims that the appellate court erred in applying issue preclusion principles because non-constitutional principles of issue preclusion may not be invoked by a defendant who requested or consented to the severance of related charges. (St. Op. Br., p. 17)

Central to the State's invited error argument is that, by moving to sever charges, Collins necessarily consented to a second trial. According to the State, by gaining the issue preclusive effect of an acquittal, Collins is "short-circuit[ing] the very procedure he requested. (St. Op. Br., p. 18) The State maintains that Collins cannot request to proceed in one manner and then later contend that the requested course of action is prohibited. (St. Op. Br., p. 17-19)

However, the State's position lacks merit as the State misapprehends what

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issue preclusion actually prohibits. As explained above, issue preclusion is not synonymous with double jeopardy. Unlike the constitutional prohibition against a second trial for the same offense, issue preclusion simply prevents relitigation of an *issue* that has already been resolved by a valid and final judgment–even if a successive *trial* proceeds. This distinction was illustrated in *Haran*, where the State was not barred from prosecuting the new charge, but was instead barred from introducing evidence on the *issue* of whether the defendant had intercourse with the victim, as a prior jury had already decided that issue. 27 Ill.2d at 235-236.

Since *Haran*, Illinois courts have continually recognized that issue preclusion may have the effect of barring the State from pursuing a particular theory of the case while not necessarily barring the State from conducting a successive trial altogether. For example, in *People v. Carrillo*, 164 Ill.2d 144, 146 (1995), one of two co-defendants ("Stacey") was convicted of home invasion and burglary on an accountability theory but was acquitted of attempted murder, armed robbery, aggravated battery, and armed violence. After the victim died, however, Stacey was re-indicted for murder. 164 Ill.2d at 146.

By acquitting the defendant of attempt murder, the trial court had already determined that there was reasonable doubt that Stacey had the requisite intent to kill or cause great bodily harm to the victim. Accordingly, this Court concluded "that the murder charges based upon intent to kill or do great bodily harm are foreclosed as against Stacey based upon principles of collateral estoppel." *Carrillo*, 164 Ill.2d at 152. However, it further held that she could still be charged and tried for *felony* murder, based upon home invasion and burglary, as well as murder

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based upon the *knowledge* that her actions created a strong possibility of death or great bodily harm – because she had not been acquitted of the elements of murder under those theories. 164 Ill.2d at 152.

Similarly, in *People v. Fort*, 2017 IL 118966, ¶34, this Court held that "[w]hen a defendant is charged with first degree murder but convicted of second degree murder, the State is prohibited by collateral estoppel from later retrying the defendant for first degree murder." Likewise, in *People v. Brown*, 2015 IL App (1st) 134049, ¶¶ 45-46, the doctrine of issue preclusion precluded first-degree murder conviction "on the theory" that the defendant knew that his acts created a strong probability of death or great bodily harm, but did not foreclose subsequent prosecution for felony murder.

Here, issue preclusion acts to bar the State from prosecuting Collins on the theory that he knowingly possessed a firearm, as the jury already decided that exact issue at the first trial. If, hypothetically, the State were able to somehow prosecute Collins on the AUUW offense without having to ask a second jury to determine whether Collins possessed a gun, the State would not be precluded from doing so. However, because the only element in dispute at a trial on AUUW would be whether Collins carried a gun, the application of issue preclusion, in this particular case, effectively prohibits a second trial.

In short, issue preclusion does not operate, as double jeopardy does, to bar successive trials altogether. Rather, issue preclusion bars only the relitigation of decided issues. As such, Collins' consenting to a second trial is not inconsistent with–and therefore does not foreclose–him gaining the issue-preclusive effect of

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an acquittal.

Additionally, the cases the State cites in support of its invited error argument are easily distinguishable. In *People v. Harvey*, 211 Ill.2d 368, 383-387 (2004), this Court found that the rule of invited error applied where the defendant requested and agreed to mere-fact impeachment at trial, and then argued on appeal that the trial court's use of mere-fact method of impeachment was error. In *Stephens v. Taylor*, 207 Ill.2d 216, 222-223 (2003), this Court held that the rule of invited error estopped a litigant who requested and was granted a new trial from claiming that the order granting the new trial was error.

Here, unlike in *Harvey* and *Stephens*, Collins does not complain of an error which he induced the court to make or to which he consented. In this case, Collins requested that the weapons charges be severed. On appeal, Collins has made no argument that the trial court erred in granting his motion to sever the weapons charges. Nor has Collins claimed that the severance of charges was an error, or that it infected the proceedings with any error. Instead, Collins is merely seeking to gain the issue-preclusive effect of his acquittal. As explained above, invoking issue preclusion principles to bar the relitigation of a specific theory of criminal liability is in no way inconsistent with previously consenting to separate trials. Indeed, the fact that the State is precluded from prosecuting Collins on a theory of liability that has already been rejected is not due to *any* action taken by Collins. Rather, it is because after being provided a full and fair opportunity to prosecute Collins for the possession of a firearm, the State failed to obtain a conviction on that theory. As such, this Court should reject the State's invited error argument.

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Finally, the State briefly suggests that issue preclusion claims must "undoubtedly" be subject to the same rules as double jeopardy claims. (St. Op. Br., p. 18-19) This is incorrect. Simply because the issue preclusion doctrine is "embodied in" the double jeopardy clause, *Ashe*, 397 U.S. at 445, issue preclusion claims are not necessarily subject to the same rules as double jeopardy claims.

In *United States v. Bailin*, 977 F.2d 270, 275 (7th Cir. 1992), the Seventh Circuit rejected an argument that asked the Court to "hold that collateral estoppel can never apply in circumstances where double jeopardy does not." The Court pointed out that "[a] criminal defendant has no need for the benefits of issue preclusion if his entire prosecution is barred by double jeopardy; if double jeopardy bars the entire prosecution, then a court need not consider whether particular issues are precluded from relitigation." As such, the Court held that the double jeopardy clause does not limit the application of issue preclusion to only cases in which double jeopardy applies. *Balin*, 977 F.2d at 275; *see also United States v. Shenberg*, 89 F.3d 1461, 1479 (11th Cir. 1996) ("We agree with the Seventh Circuit and hold that the Double Jeopardy Clause does not limit the application of collateral estoppel to only cases in which double jeopardy applies."); *Bone*, 82 Ill.2d at 283-289 (analyzing an issue under the doctrine of issue preclusion in a case where double jeopardy cannot apply).

In sum, the appellate court correctly held that the issue preclusion doctrine barred the State from prosecuting Collins on the *theory* that he knowingly carried a gun. Because the jury already rejected such a theory in determining that Collins never possessed a gun, the State could secure a conviction for AUUW only by asking

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a second jury to come to a different conclusion on that same issue. As the State cannot prove that Collins carried a gun without also proving he possessed the gun, the State is barred from prosecuting Collins for AUUW. To hold otherwise would be in direct conflict with the Illinois courts' understanding of the issue preclusion doctrine, as the State would be allowed to relitigate an issue already decided in an earlier proceeding. Therefore, a straightforward application of the rules of issue preclusion requires this Court to affirm the judgment of the appellate court.

B. *Currier v. Virginia* is not a dispositive interpretation of the Illinois Constitution's Double Jeopardy Clause.

The Second District did not reach Collins' double jeopardy argument, as the court resolved the case on the issue preclusion question. *Collins*, 2024 IL App (2d) 240005, ¶ 39. Because the issue preclusion doctrine precludes the State from prosecuting Collins for AUUW on the theory that he knowingly carried a firearm, this Court also need not reach the State's double jeopardy argument. However, because the State dedicates a substantial portion of its brief to the argument, Collins will address that argument here. As much of the State's double jeopardy argument is premised on the Supreme Court's opinion in *Currier*, it is helpful to review that decision.

In *Currier v. Virginia*, 585 U.S. 493 (2018), the United States Supreme Court considered the viability of *Ashe*-based double jeopardy claims in cases where a defendant chooses to sever certain charges before trial. In *Currier*, the defendant was charged with burglary, grand larceny, and unlawful possession of a firearm by a convicted felon, all stemming from a residential break-in where a safe

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containing firearms was taken. The defendant and the State agreed to sever the felon-in-possession charge and asked the court to try the burglary and larceny charges first, followed by a second trial on the felon-in-possession charge. 585 U.S. at 493.

At the first trial, the defendant was acquitted. Following trial, the defendant argued that the jury's acquittal resolved the question of whether he had participated in the burglary and theft, so that the State was barred from introducing any evidence of his alleged involvement in those crimes. Because the felon-in-possession charge required proof of that participation, the defendant asserted that a second trial on that charge would amount to double jeopardy. The defendant contended that the second trial was barred under the collateral estoppel principles recognized in *Ashe*. 585 U.S. at 493.

The Court rejected the defendant's argument, holding that, because the defendant chose to sever the multiple charges against him, his second trial and resulting conviction did not violate the Double Jeopardy Clause. 585 U.S. at 493-495. The Court distinguished *Ashe* by pointing out that even if the defendant's second trial could be classified as a retrial of the same offense under *Ashe*, he consented to it. 585 U.S. at 494.

The Court explained that the decision in *Jeffers v. United States*, 432 U.S. 137 (1977), was instructive. In *Jeffers*, the question before the Court involved a trial on a greater offense after an acquittal of a lesser-included offense. 432 U.S. at 152. The *Jeffers* Court held that if a single trial on multiple charges would be sufficient to avoid a double jeopardy violation, there cannot be a double jeopardy

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issue when the defendant seeks two separate trials and persuades the trial court to grant the request. 432 U.S. at 152. In accordance with *Jeffers*, the Court in *Currier* concluded that "[i]f a defendant's consent to two trials can overcome concerns lying at the historic core of the Double Jeopardy Clause, so too we think it must overcome a double jeopardy complaint under *Ashe*." *Currier*, 585 U.S. at 501.

The Court also addressed the defendant's claim that he had "no real choice but to seek two trials." *Currier*, 585 U.S. at 502. Specifically, the defendant maintained that without severing the charges, evidence of his prior convictions would be introduced to the jury, which would be unduly prejudicial. 585 U.S. at 502-503. The defendant noted that Virginia law guarantees a severance in cases like his unless the defendant and prosecution agree to a single trial. 585 U.S. at 502-503. The Court rejected the defendant's argument, noting that he was not forced to give up one constitutional right to secure another, as the Constitution permitted Virginia to try all three charges simultaneously with appropriate cautionary instructions. 585 U.S. at 502-503. The Court recognized that the defendant faced a "hard choice," but explained that "litigants every day face difficult decisions." 585 U.S. at 502-503. As such, the Court concluded that difficult strategic choices like that are not the same as no choice, and the Constitution does not forbid a litigant from making them. 585 U.S. at 502-503.

Accordingly, relying on *Currier*, the State maintains that because Collins moved to sever the UPWF charge from the other weapons charges, he consented to multiple trials. (St. Op. Br., p. 12-16) As such, the State asserts that Collins has waived all double jeopardy protections. (St. Op. Br., p. 12-16) For the reasons

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discussed below, this Court should reject the State's argument and find that *Currier* is not dispositive of Collins' double jeopardy claim.

i *Currier* is distinguishable from the instant case.

First, *Currier* is distinguishable from the case at hand. Here, unlike in *Currier*, the Court's holding would create a scenario where Collins would be forced to give up one constitutional right to secure another. *Currier*, 585 U.S. at 502-503. Circumstances such as these, where criminal defendants are put to a Hobson's choice[4] of sacrificing one important right to preserve another, have long been rejected by appellate courts.

Nearly fifty years ago, the United States Supreme Court found it "intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons v. United States*, 390 U.S. 377, 394 (1968). In *Simmons*, the lower court held that the defendant's testimony at a suppression hearing could later be used against him at trial. 390 U.S. at 380-383. The Supreme Court reversed, holding that the defendant could not be put to the choice "either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination." 390 U.S. at 393-395. The Court rejected the assertion that the defendant's voluntary choice to obtain the benefit of testifying to protect his Fourth Amendment rights waived his right against self-incrimination. 390 U.S. at 393-395.

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[4]A Hobson's choice is an apparently free choice when there is no real alternative. *See People v. Phipps*, 238 Ill.2d 54, 67-68 (2010); Merriam-Webster Dictionary, Merriam-webster.com/dictionary/Hobson%27s%20choice (last visited April 22, 2024)

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Since *Simmons*, the United States Supreme Court has repeatedly rejected putting defendants to a Hobson's choice of sacrificing one important right to secure another. *See Lefkowitz v. Cunningham*, 431 U.S. 801, 808 (1977) (rejecting a law requiring an officer of a political party to either waive his right against self-incrimination and testify in response to a subpoena or else be barred from political office, thereby forgoing his First Amendment right to "participate in private, voluntary political associations."); *United States v. Jackson*, 390 U.S. 570, 581-582 (1968) (holding that defendants could not be forced to "choose" between either contesting guilt at trial or avoiding a death penalty charge). Federal courts of appeals have likewise rejected putting defendants to a Hobson's choice of giving up one right to preserve another. *See Greene v. Brigano*, 123 F.3d 917, 921 (6th Cir. 1997) (impermissible to offer a defendant access to a free trial transcript for appeal only if he chooses to be represented by court-appointed appellate counsel); *United States v. Scott*, 909 F.2d 488, 493 (11th Cir. 1990) (defendant cannot be forced to choose between either waiving his right to testify at trial or forgoing legal representation).

In accordance with *Simmons*, Illinois courts have also rejected or prevented circumstances where defendants are forced to choose between sacrificing one important right to preserve another. For instance, in *People v. Williams*, 204 Ill.2d 191 (2003), this Court espoused a new rule regarding the speedy trial computations in cases where the State files new and additional charges against a defendant to prevent defendants from being forced to give up one right to preserve another. Specifically, this Court recognized that without such a rule, "[w]hen the State

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filed the more serious charges, the defendant would face a Hobson's choice between a trial without adequate preparation and further pretrial detention to prepare for trial." 204 Ill.2d at 207.

Similarly, in *People v. Falls*, 235 Ill.App.3d 558 (1st Dist. 1992), the defense attorney requested leave to withdraw because of unpaid legal fees, admitting that he could not "sit at counsel table and concentrate" with his client still owing him money. 235 Ill.App.3d at 563. With $6,000 already paid in Falls' bond, the judge refused to appoint a public defender but said the bond money could be revoked and used as payment for counsel. 235 Ill.App.3d at 563. Counsel said that $6,000 was still insufficient payment, but the court denied the withdrawal request, leaving the attorney and Falls no option but to proceed together. 235 Ill.App.3d at 563. The appellate court reversed for a new trial, holding that it was error for Falls to be left with a "Hobson's choice of either agreeing to pay his attorney out of the bond proceeds or face revocation of the bond and incarceration or proceeding with a new lawyer, if the defendant was able to hire one, who would not be given an opportunity to prepare." 235 Ill.App.3d at 567.

Therefore, it is well-established that a defendant cannot be put to the "choice" of waiving one constitutional right to assert another, as it is "intolerable" and should thus be avoided. *See Simmons*, 390 U.S. at 395. In *Currier*, the Court held that the defendant was not faced with a choice of waiving one constitutional right to secure another because there was no dispute that "the Constitution permitted Virginia to try all three charges at once with appropriate cautionary instructions." 585 U.S. at 502-503. Accordingly, the defendant in *Currier* faced "a lawful choice

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between two courses of action that each bore potential costs and rationally attractive benefits." 585 U.S. at 502-503. Conversely, Collins would be forced to waive one constitutional right to secure another in this case.

Every criminal defendant in Illinois has a constitutional right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution and the Illinois Constitution. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8; *Strickland v. Washington*, 466 U.S. 668, 685-686 (1984); *People v. Albanese*, 104 Ill.2d 504, 525-526 (1984). Counsel is "expected to use established rules of evidence and procedure to avoid, when possible[,] the admission of incriminating statements, harmful opinions, and prejudicial facts." *People v. Lucious*, 2016 IL App (1st) 141127, ¶ 32 (citations omitted). Indeed, the constitutional guarantee of effective assistance of counsel assumes that counsel, in fulfilling his or her duty, will "engage evidentiary rules to shield [the defendant] from a decision based on unreliable evidence, and will appreciate and understand the legal principles applicable to the case." *People v. Watson*, 2012 IL App (2d) 091328, ¶22 (citations omitted).

The introduction of a defendant's criminal history at trial is inherently prejudicial, and "counsel [is] required to take some action to minimize the prejudice to defendant that would arise from the introduction of his prior convictions." *People v. Utley*, 2019 IL App (1st) 152112, ¶ 49. Accordingly, Illinois courts have found that, absent some reasonable strategic purpose, counsel's failure to file a motion to sever can constitute ineffective assistance of counsel. *See, e.g., People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 28; *but see People v. Johnson*, 2013 IL App (2d)

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110535, ¶55 (finding counsel ineffective for failing to move to sever UPWF from domestic battery causing the jury to learn of defendant's felon status in the domestic battery case); *People v. Karraker*, 261 Ill.App.3d 942, 953 (3rd Dist. 1994) (finding counsel ineffective for failing to sever charges, as no strategy would allow for counsel's decision).

The case of *People v. Utley*, 2019 IL App (1st) 152112, illustrates how a defendant can be denied his constitutional guarantee of effective assistance of counsel by counsel's failure to seek severance. In *Utley*, the defendant argued that trial counsel had provided ineffective assistance by failing to file a motion to sever charges of armed habitual criminal and UPWF from drug charges. 2019 IL App (1st) 152112, ¶ 39. The State argued that the decision not to sever the charges should be seen as "trial strategy." 2019 IL App (1st) 152112, ¶ 43. The First District rejected that argument, explaining that no particular "strategy" was served by the decision not to sever. 2019 IL App (1st) 152112, ¶ 48. The appellate court also held that counsel's error was prejudicial because the admission of the prior convictions may have led the jury to infer that the defendant was guilty of the drug charges. 2019 IL App (1st) 152112, ¶ 52.

Similarly, the Double Jeopardy Clauses of the United States and Illinois Constitutions protect a criminal defendant from repeated prosecutions for the same offense. U.S. Const., amend. V; Ill. Const. 1970, art. I, §10. In criminal cases, issue preclusion is a component of the Double Jeopardy Clause. *Carrillo*, 164 Ill.2d at 150. Thus, criminal defendants also have the constitutional right to double jeopardy and issue preclusion protections.

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Therefore, adopting the holding in *Currier* would force criminal defendants in Illinois who are charged with a felon-in-possession crime in addition to other offenses to face the sort of Hobson's choice that the United States Supreme Court has deemed to be "intolerable." *Simmons*, 390 U.S. at 395. On the one hand, if Collins had chosen a single trial of all charges, an ineffective assistance of counsel claim would likely exist as the jury would then learn of Collins' prior conviction, unduly prejudicing him with respect to the substantive charges. On the other hand, if Collins had chosen to sever the UPWF charge, he would "waive" all double jeopardy protections, and if, as happened here, the first jury acquits, allow the State another attempt at prosecuting him for the same conduct. In either event, Collins is put in the untenable position of sacrificing one constitutional right to preserve another.

As such, unlike in *Currier*, Collins had two choices: (1) surrender his right to effective assistance of counsel, or (2) waive his double jeopardy rights if the first jury acquits. Under these circumstances, neither choice can constitute a valid waiver of such an important constitutional right. Therefore, this Court should find that the instant case is distinguishable from *Currier*. Accordingly, because the holding in *Currier* is not controlling, this Court should find that Collins has not surrendered his double jeopardy rights and hold that a subsequent prosecution for AUUW is barred under the issue preclusion component of the Illinois Constitution's Double Jeopardy Clause.

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ii The holding in *Currier* should not be applied to this case, and the interpretation of the Fifth Amendment of the United State's Constitution espoused in *Currier* should not be incorporated into Article I section 10 of the Illinois Constitution.

Finally, to the extent *Currier* is not distinguishable, the State's request to relitigate the issue of Collins' possession of the firearm violates Article I, Section 10, of the Illinois Constitution, even if it does not violate the Fifth Amendment of the United States Constitution.

In *People v. Caballes*, 221 Ill.2d 282, 314 (2006), this Court adhered to a "limited lockstep" approach to analyzing cognate provisions of the Illinois Constitution of 1970 and the United States Constitution. Under the lockstep doctrine, the Illinois Supreme Court must adopt the United States Supreme Court's interpretations of the United States Constitution as its own interpretation of similar provisions in the Illinois Constitution, unless certain criteria are met. *Caballes*, 221 Ill.2d at 307-312. Specifically, this Court will construe our constitution as providing greater protection than its federal counterpart only when the Court finds "in the language of our constitution, or in debates and the committee reports of the constitutional convention" something that indicates that the provisions of our constitution are intended to be construed differently than similar provisions in the federal constitution. 221 Ill.2d at 297 (citations and quotations omitted). Importantly, under a "limited lockstep" approach, flawed analysis and unpersuasive reasoning do not qualify as grounds for refusing to adopt the United States Supreme Court's interpretation of the United States Constitution as a binding interpretation of a parallel provision of the Illinois Constitution.

However, in this case, this Court should depart from the limited lockstep

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doctrine. As discussed further below, there is growing support for doing so, particularly where the continued adherence would compel this Court to adopt a flawed and problematic interpretation of our state constitutional rights that undermines the very constitutional protections the Illinois Constitution is intended to safeguard.

Article I, Section 10 of the Illinois Constitution states, "[n]o person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense." In *People v. McCauley*, 163 Ill.2d 414, 424 (1994), this Court held that Article I, Section 10 of the Illinois Constitution differs significantly from the Fifth Amendment to the United States Constitution. Specifically, in *McCauley*, this Court was tasked with reviewing the trial court's order suppressing the defendant's custodial statements. 163 Ill.2d at 420. This Court noted that binding United States Supreme Court precedent established that the interrogation did not violate the Fifth Amendment. 163 Ill.2d at 421-424. However, this Court indicated that three Illinois Supreme Court decisions, "along with the 1970 Constitutional Convention proceedings, demonstrate that requirements under our State Constitutional guarantee differ substantially from the Federal and support suppression of defendant's statements under the circumstances presented here." 163 Ill.2d at 424-425. This Court recognized that "in the context of deciding State guarantees, Federal authorities are not precedentially controlling; they merely guide the interpretation of State law." 163 Ill.2d at 436. This Court concluded that while the suppression of defendant's statements was not supported by the Fifth Amendment to the Federal Constitution,

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the suppression was supported under Article I, Section 10 of the Illinois Constitution. 163 Ill.2d at 436-440.

Despite this Court's holding in *McCauley*, the Illinois Supreme Court has repeatedly held that "the double jeopardy clause of our state constitution is to be construed in the same manner as the double jeopardy clause of the federal constitution." *In re P.S.*, 175 Ill.2d 79, 91 (1997); *People v. Levin*, 157 Ill.2d 138 (1993). However, as the *Currier* majority's interpretation of the Fifth Amendment to the United States Constitution is antithetical to the purpose of the double jeopardy clause, this Court should not be obliged to make the same error in interpreting our state constitution's double jeopardy clause.

Illinois courts should not be bound to adopt a flawed and problematic interpretation of our state constitutional rights every time a five-justice majority of the United States Supreme Court espouses an incorrect interpretation of a federal constitutional provision. Our Supreme Court should be able to reject United States Supreme Court decisions, such as *Currier,* based on their flawed analysis or unpersuasive reasoning. As such, to adequately preserve a criminal defendant's constitutional rights to double jeopardy protections, the lockstep doctrine should be abandoned in this case.

Tellingly, there is growing support for the position that Illinois should depart from the lockstep doctrine in circumstances like those present here. Several Illinois Supreme Court Justices have already expressed their belief that the lockstep doctrine should be rejected. Aside from the majority in *McCauley* and the three Justices who dissented in *Caballes*, at least six other justices of the Illinois Supreme Court

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have rejected the lockstep doctrine over the years.

For instance, in *People ex rel. Daley v. Joyce*, 126 Ill.2d 209, 223 (1988), Justice Clark concurred, noting that no evidence in the history of the Illinois Constitution indicates that the drafters intended to have the United States Supreme Court finally determine the meaning of the Illinois Constitution. Justice Heiple emphasized the Court's "nondelegable duties" as the final interpreter of the Illinois Constitution, and Justices Nickels and Goldenhersh similarly disagreed with the lockstep doctrine. *See People v. Mitchell*, 165 Ill.2d 211, 234 (1995) (Heiple, J., dissenting,); *In re P.S.*, 175 Ill.2d at 96-97 (Nickels, J., dissenting, joined by Heiple, C.J.); *People v. Exline*, 98 Ill.2d 150, 157 (1983) (Goldenhersh, J., dissenting, joined by Simon, J.). Justice Simon explained that "when a majority of the United States Supreme Court has adopted an interpretation of the Bill of Rights that we believe is insufficiently ample to effectively implement those guarantees, we are not frozen by it in interpreting the comparable provisions of our State Constitution." *People v. Rolfingsmeyer*, 101 Ill.2d 137, 145-147 (1984) (Simon, J., specially concurring).

More recently, Justice Neville argued for the rejection of the lockstep doctrine. *See People v. Sneed*, 2023 IL 127968, ¶¶ 133-168 (Neville, J., dissenting). Justice Neville noted that numerous legal commentators have argued that the lockstep doctrine improperly prevents the Court from interpreting the Illinois Constitution. *Sneed*, 2023 IL 127968, ¶¶ 148-155 (Neville, J., dissenting). Justice Neville persuasively argued,

> As the *Caballes* dissenters noted, and as Justices Simon, Clark, Heiple, Goldenhersh, and Nickels argued, we must not abdicate our responsibility as final interpreters of the Illinois Constitution. We must not apply United States Supreme Court

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> interpretations of constitutional rights whenever a five-justice majority of the United States Supreme Court adopts an incorrect interpretation of a federal constitutional provision that parallels an Illinois Constitutional provision. This case falls within the limited class of cases where this court should not apply *stare decisis*. [citations omitted] We must not permit our usual adherence to prior decisions to bar us from partially overruling *Caballes* insofar as it adopted the limited lockstep doctrine.

Sneed, 2023 IL 127968, ¶ 168 (Neville, J., dissenting).

By departing from the limited lockstep approach, this Court will no longer be obligated to follow a flawed and problematic interpretation of our state constitutional rights every time a majority of the United States Supreme Court espouses an incorrect interpretation of a federal constitutional provision. Here, the *Currier* Court's interpretation of the federal constitution's double jeopardy clause presents such a situation.

The holding and analysis in *Currier* are flawed in several respects. First, the holding in *Currier* puts criminal defendants in an untenable position, requiring them to surrender one important right to secure another. As discussed above, if *Currier* is adopted, criminal defendants in this State would be forced to choose between receiving effective assistance of counsel or preserving their double jeopardy rights. Similarly, it would require defendants to consent to the admission of unduly prejudicial evidence of a prior felony at a first trial, even to have the opportunity to assert their double jeopardy rights at a subsequent trial.

Furthermore, the holding in *Currier* is antithetical to the Double Jeopardy Clause. The "underlying idea" of the Double Jeopardy Clause is that "the State with all its resources and power should not be allowed to make repeated attempts

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to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity." *Green v. United States*, 355 U.S. 184, 187 (1957). Similarly, because issue preclusion principles are embodied in the constitutional guarantee against double jeopardy, "an issue of ultimate fact, if determined by a valid and final judgment, may not be relitigated in a future proceeding." *People v. Blue*, 207 Ill.2d 542, 549 (2003).

The Court in *Ashe* recognized that issue preclusion helps prevent the unfairness of allowing the prosecution a practice run of trying a defendant more than once. Yet, according to the majority in *Currier*, if a defendant moves for severance in an attempt to secure a fair trial, he waives all double jeopardy protections. Indeed, the State can try to persuade a second jury to reach a different conclusion than the first jury in the event of an acquittal. This removes the finality and sanctity of acquittals, which is "[p]erhaps the most fundamental rule in the history of double jeopardy jurisprudence," and risks encouraging the practice of overcharging defendants. *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 569 (1977).

For example, when a defendant is charged with a felon-in-possession offense, the State is suddenly put in an extremely advantageous position. This is because the defendant has two choices. One, the defendant could choose a single trial of all charges, allowing the jury to learn of his prior conviction and unduly prejudicing him with respect to the substantive charges. *See People v. Placek*, 184 Ill.2d 370, 385 (1998) (noting that other-crimes evidence is highly prejudicial because it may

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convince the jury to convict because it feels that the defendant is a bad person who deserves punishment). Or, the defendant could choose to sever charges and allow the State to utilize the first trial as a dry run, where it secures the right to prosecute the defendant at a subsequent trial regardless of outcome. In such a scenario, the State would be afforded the opportunity to have a practice run where it gets to learn about the strengths of the defense case and the weaknesses of its own. Both situations present scenarios that are fundamentally unfair to defendants.

Therefore, Collins maintains that this Court should depart from the limited lockstep doctrine and find that prosecuting Collins for AUUW when the ultimate issue of whether he possessed a firearm was fully litigated and decided by the jury at the first trial violates Article I, Section 10, of the Illinois Constitution. A straightforward application of the rules of issue preclusion, embodied within the state double jeopardy clause, requires the reversal of the trial court's ruling in this case.

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CONCLUSION

For the foregoing reasons, Terry Collins, defendant-appellee, respectfully requests that this Court affirm the judgment of the appellate court. In addition, this Court should deny the State's PLA in *People v. Collins*, No. 2-23-0584.

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 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 39 pages.

/s/Zachary Wallace
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Assistant Appellate Defender

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No. 131300

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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Ms. Jamie Mosser, Kane County State's Attorney, 37W777 Route 38, Suite 300, St. Charles, IL 60175-7535, dechristopherchristy@co.kane.il.us;

Mr. Terry Collins, 931 41st St NW Apt 209, Rochester, MN 55901

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 9, 2025, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Elgin, 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/Adriana Concha
LEGAL SECRETARY
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(847) 695-8822
Service via email will be accepted at
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SUBMITTED - 34825783 - Adriana Concha - 10/9/2025 2:00 PM