### Publication #4

### FIRARM CASELAW STUDY

### 1.  Guns Save Life, Inc. v. Ali, 2020 IL App (1st) 181846, March 13, 2020

**TAXATION — Parties.** **Firearm** supply retailer failed to establish that county **firearms** tax caused it injury, as necessary for standing to challenge tax's constitutionality.

**Background:** Gun rights organization, firearm supply retailer, and individual resident of county brought action against county and related defendants for declaratory judgment and injunctive relief challenging county ordinance imposing taxes on sale of firearms and certain types of ammunition. Following order dismissing retailer and resident's challenges to firearms tax, the Circuit Court, Cook County, No. 15 CH 18217, David B. Atkins, J., denied plaintiffs' motion for summary judgment and granted summary judgment in favor of defendants. Plaintiffs appealed.

**Holdings:** The Appellate Court held that:

1 resident did not have standing to challenge constitutionality of firearm tax;

2 retailer did not have standing to challenge constitutionality of firearm tax or ammunition tax;

3 ordinance did not impermissibly burden right to bear arms under Second Amendment or state constitution;

4 tax classifications created by ordinance bore reasonable relationship to public policy, and thus was not unconstitutional under uniformity clause; and

5 ordinance was not preempted by Firearm Owners Identification (FOID) Card Act or Concealed Carry Act provisions prohibiting home rule units from regulating firearms and ammunition.

Affirmed.

**COURT’S EXPLANATION:** a. Plaintiffs Guns Save Life, Inc. (GSL), DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range (Maxon), and Marilyn Smolenski (Smolenski) appeal the circuit court's grant of summary judgment in favor of defendants, Zahra Ali (Ali), Thomas J. Dart (Dart), and the County of Cook (the County)1 on their second amended complaint for declaratory judgment and injunctive relief. Plaintiffs sought to challenge the County's ordinance that imposed a tax on firearm sales and two types of ammunition sales (centerfire and rimfire) within the County.

b. Plaintiffs have raised the following issues on appeal: (1) whether the circuit court erred in partially granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion to dismiss because plaintiffs Maxon and Smolenski did not have standing to bring suit to challenge the firearms tax; and (2) whether the circuit court erred in granting summary judgment in favor of defendants on the remaining claims, namely: (a) whether the challenged firearms tax and ammunition tax violate the Second Amendment to the United States Constitution and Section 22 of Article I of the Illinois Constitution; (b) whether the classifications in the ammunition tax violate the Uniformity Clause in Section 2 of Article IX of the Illinois Constitution; and (c) whether the challenged firearms tax and ammunition tax are preempted by the Firearm Owners Identification (FOID) Card Act and the Firearm Concealed Carry Act (Concealed Carry Act).

For the reasons that follow, we affirm the judgment of the circuit court.

**FINDINGS #1:**  Firearm supply retailer failed to establish real injury caused by county ordinances taxing sales of firearms and certain types of ammunition, as necessary for retailer to have standing to challenge constitutionality of tax. **WHY:** *The retailer did not pay taxes in question, its only responsibility was to track sales and remit tax to county, in manner similar to what it was already required to do, and retailer already had system in place that could do required reporting*. **FINDINGS #2:**  County ordinance, which taxed sale of firearms and certain types of ammunition at rate of $25 per firearm and .05$ per round respectively, did not impermissibly burden right to bear arms under Second Amendment or state constitution, and thus ordinance was not facially unconstitutional. U.S. Const. Amend. 2; Ill. Const. art. 1, § 22. **FINDINGS #3:**  Tax classification created by county firearm and ammunitions tax that taxed centerfire ammunition at higher rate than rimfire ammunition bore reasonable relationship to public policy, and thus tax was not unconstitutional under uniformity clause of state constitution; **WHY:** *centerfire ammunition was more lethal than rimfire ammunition and revenue from tax financed medical services provided by county to victims of gun violence*. Ill. Const. art. 9, § 2.

### 2. People v. Martin, 2018 IL App (1st) 152249,  June 22, 2018.

**CRIMINAL JUSTICE — Weapons.** Armed habitual criminal statute was not unconstitutional as-applied to defendant.

**Background:** Defendant was convicted following a bench trial of armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. Defendant appealed, arguing that the armed habitual criminal statute was unconstitutional as applied to him.

**Holdings:** The Appellate Court held that:

1 defendant's as-applied challenge was reviewable on appeal,

2 armed habitual criminal statute did not impose a burden on conduct that was within scope of second amendment's protection at ratification;

3 restrictions imposed by statute fit with public interest justifications; and

4 statute was not unconstitutional as-applied to defendant.

Affirmed.

**COURT’S EXPLANATION:** Following a bench trial, defendant Erick Martin was convicted of (1) armed habitual criminal, (2) unlawful use of a weapon by a felon, and (3) six counts of aggravated unlawful use of a weapon. These convictions were merged into the single offense of armed habitual criminal, and the trial court imposed the minimum six-year term of imprisonment. Defendant's sole contention on appeal is that the armed habitual criminal statute is unconstitutional as applied to him, where his underlying felony offenses were nonviolent and more than 20 years old. For the reasons that follow, we affirm the judgment of the circuit court.

**RULE A:**  The right to bear arms under the second amendment is not unlimited, particularly in regards to felons. U.S. Const. Amend. **RULE B:**  Under intermediate scrutiny used to determine whether a restriction on right to bear arms violates Second Amendment, a court begins with a balance of considerations where the quantity and persuasiveness of the States' evidence required to justify the challenged restrictions varies depending on how much it affects the core Second Amendment right to armed self-defense and whose right it affects. U.S. Const. Amend. 2. **RULE C:**  Rigor of means-end analysis used to determine whether a restriction on right to bear arms violates Second Amendment depends on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right; the closer in proximity the restricted activity is to the core of the Second Amendment right and the more people affected by the restriction, the more rigorous the means-end review. U.S. Const. Amend. 2. **RULE D:**  If the State cannot proffer evidence establishing both the strong public-interest justification for a restriction on right to bear arms and its close fit to this end, the law must be held unconstitutional under the Second Amendment. U.S. Const. Amend. **RULE E:**  The core right protected by the second amendment is the right to self-defense, inside and outside the home. U.S. Const. Amend. 2.

**FINDINGS #1:**  Armed habitual criminal statute, for purposes of defendant's as-applied second amendment constitutional challenge, did not impose a burden on conduct that was understood to be within the scope of the second amendment's protection at the time of ratification; **WHY:** *defendant was a twice-convicted felon, and prohibitions on the possession of firearms by felons were a permissible restriction on the constitutional right to bear arms*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.7(a). **FINDINGS #2:**  Restrictions imposed by armed habitual criminal statute fit with public interest justifications in as-applied constitutional challenge brought by defendant convicted under statute; **WHY:** *government inherently possessed the power to restrain private rights as necessary and appropriate to promote the health, comfort, safety and welfare of society, and armed habitual criminal statute reflected legitimate governmental interest in preventing the danger associated with repeat felons having firearm*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.7(a). **FINDINGS #3:**  Armed habitual criminal statute was not unconstitutional as-applied to defendant. **WHY:** *defendant's constitutional challenge was based on claim that his prior convictions were all nonviolent, however defendant's convictions for manufacture or delivery of a controlled substance, and unlawful use of a weapon, were felonies, and armed habitual criminal statute did not provide any exceptions for a person convicted of nonviolent felonies, and legislature expressly included within the armed habitual criminal statute any violation of the Illinois Controlled Substances Act or the Cannabis Control Act*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.7(a); 720 Ill. Comp. Stat. Ann. 5/24-1.7(a)(3).

### 3. Guns Save Life, Inc. v. Raoul, 2019 IL App (4th) 190334,  December 03, 2019.

**CIVIL RIGHTS — Right to Bear Arms.** Granting gun rights organization's motion for preliminary injunction would change status quo and would not benefit public interest.

**Background:** Gun rights organization filed complaint for declaratory and injunctive relief, on behalf of its members, against attorney general and acting director of state police, in their official capacities, alleging Firearm Owners Identification Card Act (FOID Act) was unconstitutional as a violation of federal and state constitutional right to bear arms. Organization filed motion for temporary restraining order and preliminary injunction seeking to restrain enforcement of FOID Act. After a hearing, the Circuit Court denied the motions. Organization filed interlocutory appeal.

**Holdings:** The Appellate Court held that:

1 organization's complaint for injunctive relief asserted claim that would entitle it to preliminary injunction;

2 organization had associational standing to sue defendants;

3 organization established clearly ascertained legal right in need of protection;

4 organization's members would suffer irreparable injury in absence of injunction to restrain enforcement of FOID Act, injury for which there would be no adequate remedy at law;

5 organization raised fair question about existence of protectable right as it related to likelihood of success on merits to procure preliminary injunction;

6 granting preliminary injunction would change status quo and would not benefit public interest; and

7 it would be reasonable to find that licensing fee in FOID Act had legitimate purpose of defraying expenses incident to administration and enforcement of licensing statute.

**COURT’S EXPLANATION:** In May 2019, plaintiff, Guns Save Life, Inc. (hereinafter “GSL”), filed a complaint for declaratory and injunctive relief, on behalf of its members, against defendants, Kwame Raoul and Brendan Kelly, in their official capacities, alleging the Firearm Owners Identification Card Act (FOID Act) (430 ILCS 65/0.01 et seq. (West 2018)) is unconstitutional as a violation of the federal and state constitutional right to bear arms. Plaintiff claims the FOID Act charges a tax on the rights of Illinois's citizens provided by the second and fourteenth amendments of the United States Constitution (U.S. Const., amends. II, XIV) and article I, sections 2 and 22, of the Illinois Constitution ( \*264 \*\*510 Ill. Const. 1970, art. I, §§ 2, 22) and violates the equal protection clause of the fourteenth amendment by improperly requiring one to pay for a license to own a firearm. Additionally, plaintiff filed a motion for a temporary restraining order and a preliminary injunction seeking to restrain enforcement of the FOID Act as a clear violation of the right to keep and bear arms. In a hearing on the motion, the trial court found plaintiff had not met its burden, and plaintiff filed an interlocutory appeal.

On appeal, plaintiff argues the trial court erred by denying plaintiff's motion for a preliminary injunction. We affirm.

**FINDINGS #1:**  Gun rights organization's complaint for injunctive relief asserted claim that would entitle it to a preliminary injunction, and therefore Appellate Court would consider whether organization established clear right to injunctive relief on its claimed unconstitutionality of Firearm Owners Identification Card Act (FOID Act) or, in alternative, FOID Act's licensing fee; **WHY:** *all four counts of organization's complaint referenced unconstitutionality of FOID Act on its face, in each prayer for relief organization sought declaratory judgment finding FOID Act violated Second and Fourteenth Amendments to United States Constitution, as well as injunctive relief from enforcement of FOID Act, and nowhere in complaint did organization request only the removal of an unconstitutional fee*. U.S. Const. Amends. 2, 14. **FINDINGS #2:**  Gun rights organization had associational standing to sue defendants on its claims for declaratory and injunctive relief against attorney general and acting director of state police, in their official capacities, alleging Firearm Owners Identification Card Act (FOID Act) was unconstitutional as a violation of federal and state constitutional right to bear arms and that fees required by FOID act amounted to unconstitutional tax; **WHY:** *a member of organization would have standing to present, in his or her own right, claim pleaded by organization, organization's interest in seeking to eliminate requirements of FOID Act was clearly germane to its purpose in defending Second Amendment rights of Illinois residents, and neither organization's claim asserted or relief requested required participation of individual members*. U.S. Const. Amends. 2, 14; Ill. Const. art. 1, §§ 2, 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #3:**  Gun rights organization member had standing to present, in his own right, claim pleaded by organization that Firearm Owners Identification Card Act (FOID Act) was unconstitutional as a violation of federal and state constitutional right to bear arms, as required for organization to have standing to bring suit for declaratory and injunctive relief; **WHY:** *claimed injury, that FOID Act was unconstitutional and that firearm license fee equated to unconstitutional tax, was distinct and palpable, injury was fairly traceable to defendant attorney general and acting director of state police, in their official capacities, and, regarding redressability, if FOID Act was held unconstitutional, defendants would have nothing to enforce*. U.S. Const. Amend. 2; Ill. Const. art. 1, § 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #4:**  Gun rights organization, bringing suit on behalf of its members against attorney general and acting director of state police, in their official capacities, asserted in its complaint that its members were directly affected by restrictions imposed by Firearm Owners Identification Card Act (FOID Act), and therefore organization was not required to name specific individuals to establish associational standing in suit for declaratory and injunctive relief; **WHY:** *organization identified a member adversely affected by FOID Act, organization alleged its members paid FOID card fees, had to obtain FOID card in order to possess firearms in homes, and had to continue to renew those cards in order to lawfully purchase or possess firearms or ammunition, and organization alleged its members suffered injuries due to unconstitutionality of FOID Act*. U.S. Const. Amend. 2; Ill. Const. art. 1, § 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS. #5:**  Gun rights organization's interest in seeking to eliminate requirements of Firearm Owners Identification Card Act (FOID Act) that citizens obtain approval to possess firearm in home and pay fee to procure FOID Act card was clearly germane to its purpose in defending Second Amendment rights of Illinois residents, as required for organization to have associational standing to bring suit for declaratory and injunctive relief; **WHY:** *organization's interest was to protect Second Amendment rights, and its claim against attorney general and acting director of state police, alleging FOID Act was unconstitutional as a violation of federal and state constitutional right to bear arms, sought to accomplish that interest*. U.S. Const. Amend. 2; Ill. Const. art. 1, § 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #6:**  In gun rights organization's claim against attorney general and acting director of state police, on behalf of its members, alleging that Firearm Owners Identification Card Act (FOID Act) violated federal and state constitutional right to bear arms, organization's claim and relief requested did not require participation of individual members, and therefore organization satisfied requirement for associational standing that neither its claim asserted nor declaratory and injunctive relief requested require participation of individual members; **WHY:** *no member of organization was indispensable to case and had to participate in order to gain relief, and nothing about organization's claim required significant member participation*. U.S. Const. Amends. 2, 14; Ill. Const. art. 1, §§ 2, 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #7:**  Gun rights organization established a clearly ascertained legal right in need of protection, as required for organization to meet its burden for preliminary injunction in which it sought to restrain enforcement of Firearm Owners Identification Card Act (FOID Act); **WHY:** *organization contended that FOID Act violated its members' constitutional right to own and possess firearms under Second Amendment, and it was that protectable right which it contended was threatened by mere existence of FOID Act*. U.S. Const. Amend. 2; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #8:**  Gun rights organization's members would suffer irreparable injury in absence of preliminary injunction in declaratory judgment action to restrain enforcement of Firearm Owners Identification Card Act (FOID Act), an injury for which there would be no adequate remedy at law; **WHY:** *FOID Act required members to obtain FOID cards and pay fees to legally obtain firearms and, but for these requirements, members would not suffer this deprivation, and their only remedy would be to utilize provisions of FOID Act that they contended were unconstitutional, as such, there would be no other remedy available at law, since continued application of FOID Act would result in continued deprivation of constitutional right for which members could not be adequately compensated with money*. U.S. Const. Amends. 2, 14; Ill. Const. art. 1, §§ 2, 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #9:**  In alleging that Firearm Owners Identification Card Act (FOID Act) was unconstitutional as a violation of federal and state constitutional right to bear arms, gun rights organization raised fair question about existence of protectable right as it related to likelihood of success on merits to procure a preliminary injunction in declaratory judgment action; **WHY:** *because FOID Act did not appear consistent with modern understanding of Second Amendment jurisprudence, it could reasonably be argued it was not within scope of Second Amendment's protection at time of ratification, and government offered no reliable evidence supporting its public safety interests to justify restrictions imposed by FOID Act and to meet the burden required by intermediate scrutiny*. U.S. Const. Amends. 2, 14; Ill. Const. art. 1, §§ 2, 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **FINDINGS #10:**  While gun rights organization demonstrated fair question as to each element required to succeed on its motion for preliminary injunction, granting preliminary injunction would change status quo and would not benefit public interest, and therefore preliminary injunction against enforcement of Firearm Owners Identification Card Act (FOID Act), which organization alleged was unconstitutional as violation of federal and state constitutional right to bear arms, was not warranted in declaratory judgment action; **WHY:** *without FOID Act, State of Illinois would have no system to identify persons not qualified to possess firearms or ammunition, and direct consequence of granting preliminary injunction would be to leave State of Illinois and public without system designed and intended to identify at least some of those persons who should not acquire firearms*. U.S. Const. Amends. 2, 14; Ill. Const. art. 1, §§ 2, 22; 430 Ill. Comp. Stat. Ann. 65/0.01 et seq.

### 4. Evans v. Cook County State's Attorney, 2019 IL App (1st) 182488,  October 28, 2019.

**GOVERNMENT — Weapons.** State law barred applicant with prior felony conviction from obtaining **Firearm** Owner's Identification (FOID) card.

**COURT’S EXPLANATION:** a. State law barred applicant with prior state felony conviction from obtaining Firearm Owner's Identification (FOID) card, although applicant had had his civil rights restored and thus met exception to federal statute barring felons from possession of firearms , where applicant could not satisfy affirmative provision in state law requiring that applicant’s possession of firearm would not violate federal law, since federal law provided that restoration of rights could not occur if restoration of civil rights expressly provided that person may not possess firearms, and state law contained affirmative provision preventing restoration of felons’ right to possess firearms. 18 U.S.C.A. § 921(a)(20); 720 Ill. Comp. Stat. Ann. 5/24-1.1(a).

b. Alfred Evans Jr., who has applied for a Firearm Owner's Identification (FOID) card, finds himself caught in a circuitous commingling of Illinois and federal laws that only the General Assembly can untangle. In the circuit court, Evans contested the Illinois State Police's (ISP) decision to deny his FOID card application. The ISP had cited convictions for two felony drug offenses in 1994, and the related federal statute prohibiting possession of firearms by felons. The Cook County State's Attorney objected on the grounds that issuing Evans a FOID card would violate federal law as well as public interest. The circuit court agreed with the State. We would be inclined to reverse in light of the uncontradicted evidence that Evans has turned his life around. He has had no contact—conviction, arrest, or otherwise—with the criminal justice system since 2008. He is married and active in raising his three children. He owns a business towing repossessed cars. He seeks a gun only for protection, and there is no evidence in the record that he would use a gun for any other purpose. But, as we already have said, Evans has been snagged by an interrelated statutory web. The Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/10(c) (West 2018)) requires the circuit court to consider four factors before granting relief, including whether Evans's possession of a gun would violate federal law, and under ordinary circumstances, it would. Federal law prohibits persons convicted of offenses that carry a possible sentence of more than one year in prison (in Illinois, this means felonies) from possessing firearms. There is, however, a safety valve in the federal law's definition of a “conviction.” A conviction does not count for the purposes of federal law when the law in the relevant jurisdiction (Illinois) has restored Evans's civil rights to him. The State concedes that Illinois has done so. But that federal safety valve comes with a caveat. It does not apply if State law places an affirmative impediment on accessing the FOID card. This returns us to Illinois law, and Illinois law, like the federal law, prohibits firearm possession by persons convicted of felonies. 720 ILCS 5/24-1.1(a) (West 2018). Again, there is a safety valve—a felon can petition the director of ISP for relief from the possessory disability imposed by his or her felony conviction. Id. So far so good, except the safety valve conceals a fatal design flaw, namely, the reliance on the same four-factor test applied in the FOID Card Act, which, as we said, prohibits the issuance of a FOID card if doing so would violate federal law. Sound circular? It is. So we are back at the beginning of an unending statutory loop. We cannot rewrite Illinois law. Unless the General Assembly sees fit to intervene and fix this ill-crafted statutory scheme, the federal prohibition on Evans's possession of a firearm functions as a barricade rather than a bridge, and Evans and others in the same circumstance will never be entitled to relief under section 10(c) of the FOID Card Act. 430 ILCS 65/10(c) (West 2018). We are obligated to affirm.

**RULE:**  Issuing Firearm Owner's Identification (FOID) card to applicant with felony conviction would not have been contrary to public interest, where applicant's convictions were more than 20 years prior to application, felonies were not violent, applicant openly listed convictions on application and applicant had stable family, was married and took an active role in raising his three children, and ran viable business. 430 Ill. Comp. Stat. Ann. 65/10(c).

**FINDINGS:**  State law barred applicant with prior state felony conviction from obtaining Firearm Owner's Identification (FOID) card, although applicant had had his civil rights restored and thus met exception to federal statute barring felons from possession of firearms, **WHY:** *applicant could not satisfy affirmative provision in state law requiring that applicant’s possession of firearm would not violate federal law, since federal law provided that restoration of rights could not occur if restoration of civil rights expressly provided that person may not possess firearms, and state law contained affirmative provision preventing restoration of felons’ right to possess firearms*. 18 U.S.C.A. § 921(a)(20); 720 Ill. Comp. Stat. Ann. 5/24-1.1(a).

### 5. People v. Chairez, 2018 IL 121417, February 01, 2018.

### CIVIL RIGHTS — Right to Bear Arms. Statute prohibiting possession of a firearm within 1000 feet of a public park violated Second Amendment.

**Background:** Defendant was convicted of possessing a firearm within 1000 feet of a public park. Defendant petitioned for postconviction relief, seeking to vacate his conviction on basis that Illinois statute prohibiting a person from carrying or possessing a firearm within 1000 feet of a public park violated Second Amendment. The Circuit Court entered order declaring statute unconstitutional and voiding defendants conviction. State appealed.

**Holdings:** The Supreme Court held that:

1 defendant lacked standing to challenging constitutionality of subsections of UUW under which he was neither charged nor convicted;

2 Supreme Court would apply elevated intermediate scrutiny to determine whether provision of UUW prohibiting possession of a firearm within 1000 feet of a public park violated Second Amendment;

3 provision of UUW prohibiting possession a firearm within 1000 feet of a public park was facially unconstitutional under Second Amendment;

4 unconstitutional provision of UUW prohibiting possession of a firearm within 1000 feet of a park was severable from remaining portions of UUW.

Affirmed in part and vacated in part.

**COURT’S EXPLANATION:** At issue in this appeal is the constitutionality of section 24–1(a)(4), (c)(1.5) of the unlawful use of a weapon (UUW) statute (720 ILCS 5/24–1(a)(4), (c)(1.5) (West 2012) ), which, in pertinent part, prohibits an individual from carrying or possessing a firearm within 1000 feet of a public park.

**FINDINGS #1:**  Provision of statute governing unlawful use of a weapon (UUW) prohibiting possession of a firearm within 1000 feet of a public park was facially unconstitutional under Second Amendment; **WHY:** *restriction did not achieve state's goal of protecting children and vulnerable populations from gun violence, restriction was overly burdensome in that there were vast numbers of locations and public areas that would qualify under the law throughout the state without any notification where the 1000-foot restriction zone started and where it ended, and statute prohibited possession of firearm within the home of a person who lived within 1000 feet of a public park*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4), 5/24-1(c)(1.5). **FINDINGS #2:**  Provision of statute governing unlawful use of a weapon (UUW) prohibiting possession of a firearm within 1000 feet of a public park, which violated Second Amendment, was severable from remaining portions of the UUW; **WHY:** *legislature intended for UUW's ban on carriage of firearms in locations enumerated in the statute to be enforced wholly independently of the ban on carriage within 1000 feet of a public park, and thus removing the public park restriction did not undermine the completeness of the remaining locations, and the remaining specific locations were capable of being executed without the offense of possessing a firearm within 1000 feet of a public park*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4), 5/24-1(c)(1.5).

### 6. Johnson v. Department of State Police, 2020 IL 124213,  January 24, 2020

**CIVIL RIGHTS — Right to Bear Arms.** Right to keep and bear arms was civil right included in “civil rights restored,” within meaning of Gun Control Act.

**Holdings:** The Supreme Court held that:

1 petitioner's conviction for misdemeanor battery of her then-husband was “misdemeanor crime of domestic violence” within meaning of federal Gun Control Act;

2 as matter of first impression, relief granted under FOID Card Act constituted “restoration of civil rights,” within meaning of exception to prohibition from possession of firearm under Gun Control Act for person with conviction for misdemeanor crime of domestic violence;

3 as matter of first impression, right to keep and bear arms was civil right included in “civil rights restored,” within meaning of Gun Control Act; and

4 petitioner had her civil rights restored, and thus, her possession of firearm would not violate federal Gun Control Act, such that reissuance of FOID card would not violate federal law.

Affirmed in part and vacated in part.

**COURT’S EXPLANATION:** This direct appeal involves the interplay of state and federal firearms laws. The Department of State Police (Department) revoked Shawna Johnson's Firearm Owner's Identification (FOID) card under the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/8(n) (West 2012)) due to her conviction for a misdemeanor crime involving domestic violence. That conviction prohibited her from possessing firearms under federal law. Johnson brought a petition in the circuit court of Wabash County seeking relief from the Department's determination. The circuit court held that section 922(g)(9) of the federal Gun Control Act of 1968 (Gun Control Act), as amended (18 U.S.C. § 922(g)(9) (2006)), and several provisions of the FOID Card Act (430 ILCS 65/8(n), 10(b), 10(c)(4) (West 2012)), which incorporate that federal statute, were unconstitutional as applied to Johnson. The circuit court ordered the Department to reinstate and reissue Johnson's FOID card. The Department appealed directly to this court as a matter of right. Ill. S. Ct. R. 302(a) (eff. Oct. 4, 2011). For the following reasons, we affirm the judgment of the circuit court, albeit on different grounds, and we vacate the circuit court's findings that the state and federal statutes are unconstitutional as applied to Johnson.

**RULE A:**  The restoration of civil rights of an individual who would otherwise be disqualified from obtaining a firearm owners identification card under the Firearm Owners Identification (FOID) Card Act due to a criminal conviction for a qualifying offense is a measure by which the government relieves an offender of some or all of the consequences of his conviction, including the inability to own or possess a firearm, and extends to the offender a measure of forgiveness. 18 U.S.C.A. § 921(a)(33)(B)(ii); 430 Ill. Comp. Stat. Ann. 65/8(n). **RULE B:**  The law of the convicting jurisdiction controls the determination whether the civil rights of an individual with a prior conviction for a offense that would disqualify them from possessing a firearm or ammunition, under the federal Gun Control Act, have been restored, for the purposes of the individual's application for a firearm owners identification card, under the Firearm Owners Identification (FOID) Card Act, because Congress sought to accommodate a state's judgment that a particular person is, despite a prior conviction, sufficiently trustworthy to possess firearms; thus, the provision queries whether an offender's legal status has been altered by a state's dispensation of forgiveness. 18 U.S.C.A. §§ 921(a)(33)(B)(ii), 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/2(a)(1), 65/8(n). **RULE C:**  In Illinois, a misdemeanant does not lose the right to hold office or serve on a jury and only loses the right to vote if sentenced to a term of confinement. Ill. Const. art. 3, § 2. **RULE D:**  The words “civil rights restored,” under the statutory exception to the disqualification from the right to bear arms due to a prior conviction for a misdemeanor crime of domestic violence, under the Gun Control Act, do not cover the case of an individual who suffered a conviction but who lost no civil rights. 18 U.S.C.A. §§ 921(a)(33)(B)(ii), 922(g)(9). **RULE E:**  Relief granted under the provisions of the Firearm Owners Identification (FOID) Card Act authorizing the Director of State Police or the circuit court to restore an individual's eligibility for a FOID card, as a prerequisite to the acquisition or possession of a firearm, notwithstanding a prior conviction for a misdemeanor crime of domestic violence that would otherwise disqualify the individual from the right to possess a firearm under the federal Gun Control Act, constitutes a sufficient “restoration of civil rights,” within the meaning of the exception to the Gun Control Act that “[a] person shall not be considered to have been convicted of such an offense... if the conviction ... is an offense for which the person has ... had civil rights restored.” 18 U.S.C.A. § 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/10(c)(4). **RULE F:**  The right to keep and bear arms is a civil right included in the “civil rights restored,” within the meaning of the Gun Control Act's exception to the disqualification of an individual's right to acquire or possess a firearm due to a prior conviction for a misdemeanor crime of domestic violence; the Second Amendment right to bear arms recognized in District of Columbia v. Heller, 554 U.S. 570, is a personal liberty guaranteed by the United States Constitution and the Fourteenth Amendment. U.S. Const. Amend. 2; 18 U.S.C.A. § 921(a)(33)(B)(ii). **RULE G:**  Restoration of firearm rights, under the Firearm Owners Identification (FOID) Card Act, relieves an offender of some of the consequences of a conviction and extends a measure of forgiveness by finding, after an individualized hearing, that the offender no longer poses a risk to public safety. 430 Ill. Comp. Stat. Ann. 65/10(c)(1)-(3).

**FINDINGS #1:**  Petitioner's conviction on guilty plea to misdemeanor battery of her then-husband was “misdemeanor crime of domestic violence” that would render her possession of firearm illegal, under Gun Control Act, for purposes of petitioner's application for reinstatement of firearm owners identification card, under provision of Firearm Owners Identification (FOID) Card Act authorizing Department of State Police to deny application for or revoke FOID card to any person whose acquisition or possession of firearm or ammunition was prohibited “by ... federal law”. **WHY:** *The misdemeanor battery had as element use or attempted use of physical force by current or former spouse, conviction had not been expunged or set aside, and Governor had denied her application for pardon*. 18 U.S.C.A. §§ 921(a)(33)(A), 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/2(a)(1), 65/8(n); 720 Ill. Comp. Stat. Ann. 5/12-3(a)(1). **FINDINGS #2:**  Petitioner who had prior conviction for misdemeanor battery of her then-husband, which was “misdemeanor crime of domestic violence,” under Gun Control Act, had her civil rights restored, including individual right to bear arms, within meaning of Act's exemption from disqualification from possession of firearm “if the conviction ... is an offense for which the person has ... had civil rights restored,” and thus, re-issuance of firearm ID card would not be contrary to federal law, under Firearm Owners Identification (FOID) Card Act; **WHY:** *trial court found that petitioner had not committed forcible felony within 20 years, that she was not likely to act in manner dangerous to public safety, and that re-issuance of FOID card was not contrary to public interest*. U.S. Const. Amend. 2; 18 U.S.C.A. §§ 921(a)(33)(B)(ii), 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/10(c)(1)-(4).

**7.** **People v. Cunningham, 2019 IL App (1st) 160709,  March 29, 2019.**

CIVIL RIGHTS — Right to Bear Arms. Provision in unlawful use of weapons statute barring possession of firearms when visiting public housing was not facially unconstitutional.

COURT’S EXPLANATION: The State charged defendant, Daekwon Cunningham, with unlawful use of a weapon (UUW) and reckless discharge of a firearm. Because defendant allegedly possessed the firearm while in public housing the State sought to have defendant sentenced as a Class 3 felon. Following a bench trial, the circuit court of Cook County convicted defendant of both counts and sentenced him to three years' imprisonment for Class 3-felony UUW and a concurrent two-year term of imprisonment for reckless discharge of a firearm. Defendant appeals his convictions arguing the UUW statute is unconstitutional on its face and, therefore, his conviction for UUW is void; and the State failed to prove every element of reckless discharge of a firearm beyond a reasonable doubt and his conviction must be reversed.

¶ 2 For the following reasons, we affirm in part and reverse in part.

Holdings: The Appellate Court held that:

1 provision in unlawful use of weapons statute barring possession of firearms when visiting public housing was not facially unconstitutional;

2 evidence was insufficient to establish that defendant acted recklessly when he shot himself; and

3 evidence was insufficient to prove that the bodily safety of an individual was threatened when defendant shot himself.

Affirmed in part and reversed in part.

**FINDINGS #1:**  State's aim was to protect vulnerable populations in public housing facilities and it did so with a modest and easily avoidable burden on its citizens' Second Amendment rights, and, therefore, provision in unlawful use of weapons statute barring possession of firearms when visiting public housing was not facially unconstitutional; **WHY:** *burden was not categorical ban on carrying firearms in public, Illinois residents could preserve undiminished right of self-defense by not entering public housing, there was a realistic concern for the safety of residents of public housing and their guests, and there was more than a rational fit between protecting the safety of residents, guests, and others present at housing facilities and limiting number of guns on public housing properties*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4), 5/24-1(c)(1.5). **FINDINGS #2:**  Record contained no facts from which to reasonably infer that defendant consciously disregarded a substantial and unjustifiable risk to the bodily safety of an individual, and, therefore, evidence was insufficient to establish that defendant acted recklessly when he shot himself, in prosecution for reckless discharge of a firearm; **WHY:** *witness testified that she had never seen the gun before the night in question and on that night she never saw defendant pointing or aiming the gun, sergeant testified that defendant told him he shot himself, and there was no evidence as to how defendant shot himself*. 720 Ill. Comp. Stat. Ann. 5/24-1.5(a). **FINDINGS #3:**  Evidence was insufficient to prove that the bodily safety of an individual was threatened when defendant shot himself, in prosecution for reckless discharge of a firearm. **WHY:** *there was no evidence in record of when shot was fired or that any individual was present in apartment at moment defendant shot himself*. 720 Ill. Comp. Stat. Ann. 5/24-1.5(a).

### 8. People v. Heitmann, 2017 IL App (3d) 160527,  October 02, 2017

**CRIMINAL JUSTICE — Weapons**. Applicant whose gun rights were revoked due to domestic battery conviction could not seek relief under safety valve provision of the Gun Control Act.

**Background:** Applicant sought judicial review of the denial of relief from the revocation of his firearm owner's identification (FOID) card. The Circuit Court granted the State Police's motion to dismiss, and applicant appealed.

**Holdings**: The Appellate Court held that:

1 the Circuit Court could not reinstate applicant's firearms owner's identification card on the basis of the Gun Control Act's restoration of rights exemption;

2 applicant could not seek relief under the safety valve provision of the Gun Control Act; and

3 applicant's as applied constitutional challenge to the Illinois Firearms Owner's Identification Card Act and the federal Gun Control Act was premature.

Affirmed.

**COURT’S EXPLANATION** Joseph Lane Heitmann (petitioner) appeals the dismissal of his petition for judicial review of the denial of his firearm owner’s identification (FOID) card, arguing the court erred in (1) concluding that granting petitioner a FOID card was contrary to federal law and the Firearms Owners Identification Card Act (FOID Card Act) (430 ILCS 65/10 (West 2014)) \*131 \*\*490 and (2) dismissing his as-applied constitutional challenge. We affirm.

**RULE A:** For the conviction to be considered a domestic battery for purposes of the Firearm Owner's Identification Card Act's prohibition against issuance of a card if the applicant had been convicted of domestic battery, it is not necessary for the domestic relationship to be an element of the offense charged; instead, any conviction for battery against a spouse or child is considered a domestic battery for purposes of the Act. 430 Ill. Comp. Stat. Ann. 65/8(l). **RULE B:** Under the Firearm Owner's Identification Card Act, to remove a federal firearm disability that bars an applicant from obtaining, possessing, or using a firearm under federal law, and thus, be eligible for obtaining a firearm owner's identification card in Illinois, one of the federal avenues of relief under the Gun Control Act has to apply. 18 U.S.C.A. § 921(a)(33)(B)(ii); 430 Ill. Comp. Stat. Ann. 65/10(b). **RULE C:** Under the Federal Gun Control Act provision that makes it unlawful for anyone who has been convicted in any court of a misdemeanor crime of domestic violence to possess a firearm, the domestic relationship need not be an element of the offense the petitioner is convicted of; for example, a conviction of simple battery where the victim is the petitioner’s spouse or child is considered a crime of domestic violence. 18 U.S.C.A. § 922(g)(9).

**FINDINGS #1:**  Even if gun rights could be considered to be civil rights, because Illinois did not allow for restoration of such a right, the circuit court could not reinstate applicant's firearms owner's identification card on the basis of the Gun Control Act's restoration of rights exemption. **WHY:** *the exemption referred only to restorations of civil rights by the convicting jurisdiction; applicant's card had been revoked because of a battery conviction in Illinois that constituted a crime of domestic violence under federal law*. 18 U.S.C.A. §§ 921(a)(33)(B)(ii), 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/10(c). **FINDINGS #2:**  Applicant for reinstatement of his firearm owner's identification card, which had been revoked because, under the Gun Control Act, he had been convicted of a crime of domestic violence, could not seek relief under the safety valve provision of the Gun Control Act, under which persons subject to federal firearms disabilities may apply for relief; **WHY:** *because Congress barred the Attorney General/Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from using funds to investigate or act upon relief applications, the Supreme Court held that federal courts had been stripped of the jurisdiction to review any such claim, making the safety valve provision a nullity for persons barred from owning a firearm due to a domestic crime conviction*. 18 U.S.C.A. § 925. **FINDINGS #3:**  Applicant's as applied constitutional challenge to the Illinois Firearms Owner's Identification Card Act and the federal Gun Control Act, under which applicant was banned from possession of firearms because of a conviction for domestic battery, was premature, **WHY:** *the Governor had the authority to grant pardons after conviction, and applicant had not attempted to avail himself of that potential remedy*. 18 U.S.C.A. § 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/8(l).

**9. Brown v. Illinois State Police, 2020 IL App (3d) 180409,  April 30, 2020.**

**GOVERNMENT — Weapons.** Gun owner's conviction of a domestic violence misdemeanor prohibited his possession of a **firearm** under federal law, absent expungement or pardon.

**Background:** Gun owner petitioned for relief from a decision of the State Police revoking his Firearm Owners Identification Card, under the Firearm Owners Identification Card (FOID) Act, on the basis of his conviction in another state of a misdemeanor offense of inflicting corporal injury on a spouse. The Circuit Court granted petition. State Police appealed.

**Holdings**: The Appellate Court held that:

1. gun owner's conviction was a misdemeanor crime of domestic violence for purposes of the Federal Gun Control Act (FGCA), thus prohibiting him from possessing a firearm, and

2. gun owner was required to pursue available remedies of pardon or expungement before challenging the as-applied constitutionality of the provisions of the FGCA and FOID Act prohibiting him from possessing a firearm.

**COURT’S EXPLANATION** a. Petitioner, Thomas Brown, filed a petition in the trial court seeking relief from a decision of the Illinois State Police (ISP) revoking his Firearm Owners Identification (FOID) Card. After an evidentiary hearing, the trial court granted the petition and directed the ISP to issue Brown a FOID card. The ISP appeals. We reverse the trial court's judgment.

**RULE A:** For an offense to qualify as a misdemeanor crime of domestic violence under the Federal Gun Control Act (FGCA), such as would make it unlawful for the offender to possess a firearm, the existence of a domestic relationship between the offender and the victim does not have to be a required element of the offense; thus, a conviction of simple battery is a misdemeanor crime of domestic violence under the FGCA if the victim of the offense was the offender's spouse or child. 18 U.S.C.A. § 922(g)(9). **RULE B:** The Federal Gun Control Act (FGCA) provides a limited exception to the federal prohibition on firearm possession for those persons convicted of a misdemeanor crime of domestic violence, which applies if the misdemeanor conviction is expunged or set aside or if the offender is pardoned or has his civil rights restored, unless such pardon, expungement, or restoration of civil rights expressly provides that the offender may not ship, transport, possess, or receive firearms. 18 U.S.C.A. §§ 921(a)(33)(B)(ii), 922(g)(9).

**FINDINGS #1:**  Gun owner's conviction in another state of inflicting corporal injury on a spouse was a misdemeanor crime of domestic violence for purposes of the Federal Gun Control Act (FGCA), thus prohibiting him from possessing a firearm, absent a showing that such conviction was expunged or set aside, or that he had been pardoned or had his civil rights revoked and restored in the convicting jurisdiction. 18 U.S.C.A. §§ 921(a)(33)(A), 921(a)(33)(B)(ii), 922(g)(9). **FINDINGS #2:**  Gun owner was required to pursue available remedies of pardon or expungement of his conviction in another state of a misdemeanor crime of domestic violence before challenging the as-applied constitutionality of the provision of the Federal Gun Control Act (FGCA) prohibiting him from possessing a firearm due to such conviction and the provision of the Firearm Owners Identification Card Act precluding relief from a firearm prohibition when contrary to federal law. 18 U.S.C.A. § 922(g)(9); 430 Ill. Comp. Stat. Ann. 65/10(c)(4).

### 10. People v. Lewis, 2019 IL App (1st) 160864,  March 29, 2019.

**CRIMINAL JUSTICE — Evidence.** Expert's surrogate testimony regarding conclusions of scientist who completed **firearms** identification examination was inadmissible hearsay.

**Background:** Defendant was convicted of aggravated discharge of a firearm. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 firearms identification expert's surrogate testimony regarding conclusions of state forensic scientist who completed firearms identification examination violated defendant's right to confrontation under the Sixth Amendment of the United States Constitution;

2 expert's surrogate testimony was inadmissible hearsay;

3 even though trial court improperly admitted expert's surrogate testimony, error did not rise to the level of plain error; and

4 defendant could not show that but for his attorney's failure to object to expert's surrogate testimony the outcome of his trial would have been different, as required to support ineffective assistance of counsel claim.

Affirmed.

**COURT’S EXPLANATION** Defendant Juan Lewis was convicted of aggravated discharge of a firearm and sentenced to 16 years in prison. On appeal, Mr. Lewis argues that his right to confront witnesses was violated when the State presented the conclusions of one firearms identification expert through the testimony of another expert, who did not do the testing that led to those conclusions. Mr. Lewis did not object to the testimony at trial but asks us to reverse for plain error. We agree with Mr. Lewis that this testimony was improper but agree with the State that an objection to this testimony was required, and therefore, we affirm.

**FINDINGS #1:**  Firearms identification expert's surrogate testimony regarding conclusions of state forensic scientist who completed firearms identification examination, in prosecution for aggravated discharge of a firearm, violated defendant's right to confrontation under the Sixth Amendment of the United States Constitution; **WHY:** *scientist's report was prepared after defendant was arrested for the primary purpose of obtaining evidence to be used against defendant to prove his guilt at trial, expert never saw handgun scientist analyzed, and never analyzed fit between handgun and cartridge case, and the purpose of expert's testimony was to present conclusions of firearms identification report as to the condition of handgun and the fact that one of the recovered cartridge cases was fired from it*. U.S. Const. Amend. 6. **FINDINGS #2:**  Firearms identification expert's surrogate testimony regarding conclusions of state forensic scientist who completed firearms identification examination, in prosecution for aggravated discharge of a firearm, was inadmissible hearsay, **WHY:** *expert was clearly testifying to scientist's opinions and conclusions and offering those for the truth of the matter asserted*. Ill. R. Evid. 801(c). **FINDINGS #3:**  Even though trial court improperly admitted firearms identification expert's surrogate testimony regarding conclusions of state forensic scientist who completed firearms identification examination, which was hearsay, in prosecution for aggravated discharge of a firearm, error did not rise to the level of plain error since evidence was not closely balanced; **WHY:** *police officers' accounts of their interactions with defendant were generally consistent, in that they identified defendant as the individual they chased, who fired a gun in their direction, and whom they eventually arrested, the court specifically found their testimony to be credible, and physical evidence corroborated their testimony*. **FINDINGS #4:**  Defendant in prosecution for aggravated discharge of a firearm could not show that but for his attorney's failure to object to firearms identification expert's surrogate testimony regarding conclusions of state forensic scientist who completed firearms identification examination the outcome of his trial would have been different, as required to support ineffective assistance of counsel claim, **WHY:** *evidence presented at trial, including police officers' testimony, and uncontested physical evidence, was not closely balanced such that the introduction of expert's testimony prejudiced him*. U.S. Const. Amend. 6.

### 11. People v. Kelly, 2018 IL App (1st) 162334,  December 12, 2018.

**CIVIL RIGHTS** **— Right to Bear Arms**. Defendant's conviction under a statute which prohibited public possession of a **firearm** while possessing cannabis did not violate the Second Amendment.

**Background:** Defendant pled guilty to aggravated unlawful use of a weapon while in misdemeanor violation of the Cannabis Control Act. Defendant later withdrew his guilty plea, challenging constitutionality of the charge under the Second Amendment to the United States Constitution. After a bench trial, the Circuit Court denied the challenge and convicted defendant. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 defendant failed to establish that statute constituted a violation of the Second Amendment under the overbreadth doctrine;

2 statute was subject to intermediate scrutiny review; and

3 evidence was sufficient to establish that simultaneous possession of a firearm and possession of cannabis was a public safety concern.

Affirmed.

**COURT’S EXPLANATION:** Following a bench trial, defendant, David Kelly, was convicted of possession of a firearm while in violation of the Cannabis Control Act (720 ILCS 5/24-1.6(a)(1), (a)(3)(E) (West 2012); 720 ILCS 550/1 et seq. (West 2012) ) and sentenced to probation. On appeal, he argues that his conviction for aggravated unlawful use of a weapon (AUUW) under sections 24-1.6(a)(1), (a)(3)(E), and 24-1.6(a)(2), (a)(3)(E) (720 ILCS 5/24-1.6(a)(1), (a)(3)(E); (a)(2), (a)(3)(E) (West 2012) ),1 should be reversed because these provisions impermissibly criminalize the possession of a firearm for self-defense while simultaneously in possession of a misdemeanor amount of cannabis.

**RULE:** The government inherently possesses and may lawfully exercise such power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety and welfare of society and may enact prohibitions to promote the general welfare even though the prohibition invades the right of liberty or property of an individual.

**FINDINGS #1:**  Defendant failed to establish that statute criminalizing firearm possession while engaged in a misdemeanor violation of the Cannabis Control Act constituted a violation of the Second Amendment to the United States Constitution under the overbreadth doctrine, **WHY** *As a matter of law, this doctrine was limited to cases involving the First Amendment*. U.S. Const. Amend. 1; Amend. 2; Amend. 14; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(E), 5/24-1.6(a)(2); 720 Ill. Comp. Stat. Ann. 550/1 et seq. **FINDINGS #2:**  Statute which criminalized firearm possession in a public area while also in possession of marijuana was subject to intermediate scrutiny review, rather than strict scrutiny; **WHY:** *the statute only operated when an individual engaged in a misdemeanor violation of the Cannabis Control Act outside of the home and the statute did not present a complete ban on the right to bear arms or on conduct corollary to that right, such that the burden imposed on the Second Amendment was moderate to minimal*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(E), 5/24-1.6(a)(2); 720 Ill. Comp. Stat. Ann. 550/1 et seq. **FINDINGS #3:**  Evidence was sufficient to establish that simultaneous possession of a firearm and cannabis was a public safety concern, supporting defendant's conviction for aggravated unlawful use of a weapon while in violation of the Cannabis Control Act; **WHY:** *State cited multiple studies and journal articles suggesting that cannabis use could cause or intensify paranoia, possibly leading to unnecessary and reckless shootings, and that use of cannabis impaired motor skills, and, furthermore, common sense dictated that those possessing cannabis were likely to use it, as demonstrated by defendant's DUI for cannabis use in connection with his arrest*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(E), 5/24-1.6(a)(2); 720 Ill. Comp. Stat. Ann. 550/1 et seq.

### 12. People v. Green, 2018 IL App (1st) 143874,  June 14, 2018.

**EDUCATION — Civil Rights.** Provisions in statute prohibiting possession of a **firearm** within 1,000 feet of a school were facially unconstitutional under the Second Amendment.

**Background:** Defendant, who was a security guard in possession of a firearm owner's identification card, was convicted of unlawful use of a weapon for carrying a loaded, accessible firearm while on a public street and while in a vehicle.

Defendant appealed.

**Holdings:** The Appellate Court held that:

1 provisions in statute prohibiting possession of a firearm within 1,000 feet of a school were facially unconstitutional under the Second Amendment, and

2 provisions were severable from the remaining provisions of the statute.

Reversed.

**COURT’S EXPLANATION:** a. Defendant Quovadis Green, a security guard who possessed a valid Firearm Owner's Identification Card, was observed with a holstered weapon across the street from Senn High School on November 12, 2012. He was convicted of two counts of unlawful use of a weapon (UUW) for carrying a loaded, accessible firearm while on a public street and while in a vehicle. 720 ILCS 5/24–1(a)(4), (a)(10) (West 2010). Because he committed those offenses within 1000 feet of a school, he was sentenced on a Class 3 felony. Id. § 24–1(c)(1.5).

b. On appeal, Green argues that (1) the statute under which he was convicted is unconstitutional on its face under Moore v. Madigan, 702 F.3d 933 (7th Cir. 2012), People v. Aguilar, 2013 IL 112116, 377 Ill.Dec. 405, 2 N.E.3d 321, and People v. Chairez, 2018 IL 121417, 423 Ill.Dec. 69, 104 N.E.3d 1158; (2) the evidence was insufficient to convict; and (3) one of his convictions should be vacated under the one-act, one-crime rule.

**RULE A:** When analyzing a Second Amendment challenge, first, the court must consider whether the restricted activity is protected by the Second Amendment; if the court answers this question in the affirmative, only then does it proceed to the second step of the inquiry, which involves applying the appropriate level of scrutiny and considering the strength of the state's justification for regulating or restricting the activity. U.S. Const. Amend. 2. **RULE B:** Generally, the burden of proving unconstitutionality rests with the party challenging the constitutionality of the statute, but where the statute implicates a core right, such as the right of law-abiding citizens to bear arms in public for self-defense, the State has the burden to show the necessary justification for the restriction on that right; and the State must satisfy that burden regardless of whether it is the appellant or appellee in the case. U.S. Const. Amend. 2. **RULE C:**  Provisions in statute prohibiting possession of a firearm within 1,000 feet of a school which were facially unconstitutional under the Second Amendment were severable from the remaining provisions of the statute. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4),(10), (c)(1.5).

**FINDINGS:**  Provisions in statute prohibiting possession of a firearm within 1,000 feet of a school were facially unconstitutional under the Second Amendment, even though there was data relating to gun violence in schools and even though laws forbidding firearms in sensitive places such as schools were presumptively lawful; **WHY:** *there was no showing that gun violence was perpetrated within 1,000 of the schools or that the perpetrators were the law-abiding adults whose conduct the statute regulated and statute effectively operated as a total ban on the carriage of weapons for self-defense outside of the home in one of the State's cities and not just in schools*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4),(10), (c)(1.5).

### 13. People v. Bell, 2018 IL App (1st) 153373, June 29, 2018.

**CRIMINAL JUSTICE — Weapons**. Provision of statute of unlawful use of a weapon (UUW) prohibiting possession of a **firearm** within a public park did not violate Second Amendment.

**Background:** Following a bench trial, defendant was convicted of unlawful use of a weapon (UUW) in a public park. Defendant appealed.

**Holding:** The Appellate Court held that UUW statute's provision prohibiting possession of a firearm in a public park did not violate Second Amendment on its face.

Affirmed; mittimus corrected.

**COURT’S EXPLANATION:** Following a bench trial, defendant Armani Bell was found guilty of unlawful use of a weapon in a public park and sentenced to two years in the Illinois Department of Corrections. On appeal, defendant claims that the unlawful use of a weapon in a public park provision of the unlawful use of a weapon (UUW) statute is facially unconstitutional and that his mittimus should be corrected to accurately reflect the trial court's pronouncement that defendant was only to be sentenced on one conviction. For the following reasons, we affirm the conviction and order the mittimus to be corrected.

**RULE A:** A blanket prohibition on carrying guns in public prevents a person from defending himself anywhere except inside his home, and such a substantial curtailment of the Second Amendment right of armed self-defense requires a greater showing of justification than merely that the public might benefit on balance from such a curtailment. U.S. Const. Amend.

**RULE B:** When a state bans guns merely in particular places, such as public schools, a person can preserve an undiminished right of self-defense by not entering those places; since that is a lesser burden, the state, in response to a challenge under the Second Amendment, does not need to prove so strong a need to secure public safety as it does for a blanket ban. U.S. Const. Amend.

**FINDINGS:**  Provision of statute governing unlawful use of a weapon (UUW) prohibiting possession of a firearm in a public park did not violate Second Amendment on its face; **WHY:** *public parks were areas where large numbers of people, including children, congregated for recreation, provision accomplished statute's purpose of protecting police and public from dangerous weapons, and a person could preserve undiminished right of self-defense by simply not entering a public park*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1(c)(1.5).

### 14. People v. Robinson, 2018 IL App (1st) 153319,  May 08, 2018.

**CRIMINAL JUSTICE — Habitual Offenders.** Defendant's prior convictions for armed robbery could be used as qualifying convictions under Habitual Criminal Act.

**Background:** Defendant was convicted of attempted first-degree murder and he appealed.

**Holdings:** The Appellate Court held that:

1 defense counsel's inability to put firearm examiner through her paces did not make the foundation for examiner's expert testimony inadequate, and

2 defendant's prior convictions for armed robbery, under the pre-amended version of armed robbery statute, could be used as qualifying convictions under Habitual Criminal Act.

**COURT’S EXPLANATION:** a. Two police officers saw a masked man committing an armed robbery and tried to stop him. The man opened fire on the officers, who responded in kind and chased him for several blocks. Along the way, the man fired shots at other police officers. At the end of the chase, discarded beside a house, the police found a handgun and a mask. Nearby, defendant Glenn Robinson lay with bullet wounds. A jury convicted Robinson of several counts of attempted first-degree murder.

b. Robinson argues that a state ballistics expert laid an insufficient foundation for her expert opinion linking several cartridge casings found along the masked man's route to the handgun found near Robinson. But any weakness in that testimony could have been brought out on cross-examination, and goes to the weight of the evidence, not its admissibility. Robinson also challenges his sentence as a habitual criminal, arguing that his earlier convictions for armed robbery consist of elements different than the current armed robbery statute. We reject this as overly formalistic and affirm the conviction and sentence.

c. Whether firearm examiner from the state police gave sufficient foundation for her expert conclusions, linking cartridge casings found at the scene to particular firearms, was an evidentiary question, left to the trial court's discretion.

**FINDINGS #1:**  Defense counsel's inability (or unwillingness) to put firearm examiner from the state police through her paces did not make the foundation for firearm examiner's expert testimony inadequate, and instead, the lack of detail in examiner's testimony, about reasons for her conclusions linking cartridge casings found at the scene to particular firearms, went to its weight, not its admissibility. **FINDINGS #2:**  Any error as to whether firearm examiner from the state police sufficiently disclosed the reasons for her expert conclusions, linking cartridge casings found at the scene to particular firearms, was harmless; **WHY:** *examiner's testimony established that gun found in the gangway had fired number of the cartridge casings found in the area, an incidental part of State's case against defendant, State could not link defendant to the gun through fingerprints or DNA, bullets found in defendant's body constituted the strongest evidence against him, revealing defendant as masked man who had engaged in a shootout with police, and that evidence had nothing to do with examiner's ballistics evidence*. **FINDINGS #3:**  Defendant's prior convictions for armed robbery, under the pre-amended version of armed robbery statute, could be used as qualifying convictions under Habitual Criminal Act; **WHY:** *for purposes of the Habitual Criminal Act, the amendment to armed robbery statute split the old element of “dangerous weapon” into two possible categories (firearm or not-firearm), but did not change the element itself, armed robbery in both the early and later versions was classified as a Class X felony, and there was no indication that legislature wanted to remove armed robbery from the list of possible qualifying convictions for habitual criminal*. 720 Ill. Comp. Stat. Ann. 5/18-2, 5/18-2(a), 5/18-2(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-95(a)(1).

### 15. People v. Calloway, 2019 IL App (1st) 160983, May 29, 2019.

**CRIMINAL JUSTICE — Weapons.** Defendant did not have immediate access to **firearm**, thus he was not “otherwise armed” within meaning of armed violence statute.

**Background:** Defendant was convicted in the Circuit Court of armed violence, the predicate offense of possession of cannabis with intent to deliver, and being an armed habitual criminal. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 defendant's claim that the state failed to prove that he was armed within the meaning of the armed-violence statute was a factual dispute, not a pure question of law, and thus the Appellate Court would review defendant's conviction under the Jackson v. Virginia standard, not de novo;

2 defendant was not “otherwise armed” within meaning of armed violence statute when police officers entered his apartment;

3 defense counsel's failure to file discovery motion did not prejudice defendant; and

4 defense counsel's reference to “several” prior felony convictions did not prejudice defendant.

Affirmed in part and reversed in part.

**COURT’S EXPLANATION:** The police entered an apartment to execute a search warrant and found defendant Nicholas Calloway running toward the back exit, carrying two bags of cannabis. There was a gun on the couch, immediately inside the front door, about 15 feet away from where defendant was seen running when the first officer entered. The police secured the gun on the couch, pursued defendant out the back, and arrested him in another apartment downstairs. A jury convicted defendant of armed violence, the predicate offense of possession of cannabis with intent to deliver, and armed habitual criminal.Defendant raises several issues on appeal. We reverse his conviction for armed violence based on one of them. Defendant argues, and we agree, that the State failed to prove that he was “armed,” within the meaning of the statute, because the gun on the couch was not immediately accessible to him when the police entered the apartment. We affirm defendant's convictions for possession of cannabis and armed habitual criminal over his contentions of ineffective assistance of counsel.

**RULE A:** The purpose of the armed-violence statute is to minimize the risk of spontaneous violence by disarming felons, thus eliminating the need for them to decide, in the heat of the moment, whether to resort to deadly force. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE B:** Armed violence statute prohibits a felon from being armed at any point that creates an immediate potential for violence. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE C:** “Immediate potential for violence” which armed violence statute attempts to prevent by disarming felons may be present because the felon is armed during, or while en route to, the underlying felony—for example, when a drug dealer brings a gun to a transaction. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE D:** “Immediate potential for violence” which armed violence statute attempts to prevent by disarming felons may be present because the felon is armed when confronted by the police during the course of, or while fleeing from, the underlying felony. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE E:** Merely being armed while possessing drugs, alone in one's home, does not create any potential for a violent confrontation, and thus it is not the kind of conduct that armed violence statute was enacted to deter. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE F:** Until the police cross the threshold of the front door of home being searched, the subject of the search can still distance himself from any weapons inside, for purpose of armed violence statute, and thus defuse any risk that the impending search will escalate into a shootout. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE G:** Imposing liability against a defendant who no longer has his weapon at hand when the police enter the home would frustrate, rather than serve, the armed violence statute's purpose of deterring criminals from involving themselves and others in potentially deadly situations. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **RULE H:** Because armed violence statute applies to a person who is “otherwise armed”—that is, someone who is not carrying a weapon—it does not require actual or physical possession of a weapon. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2). **RULE I:** Armed violence statute requires more than mere constructive possession. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2). **RULE J:** Armed violence statute does not require a defendant to be armed when he is arrested. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2).

**FINDINGS #1:**  Defendant's claim that the state failed to prove that he was armed within the meaning of the armed-violence statute was a factual dispute, not a pure question of law, and thus the Appellate Court would review defendant's conviction under the Jackson v. Virginia standard, not de novo, **WHY:** *the facts were not undisputed as the parties disagreed as to whether defendant was armed when police entered his apartment*. **FINDINGS #2:**  Defendant was not “otherwise armed” within meaning of armed violence statute when police officers entered his apartment; **WHY:** *testimony of police officers suggested defendant did not have immediate access to firearm when they entered, as officers testified that defendant was running toward rear exit of apartment, and firearm was on couch in very front of apartment*. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2).

### 16. People v. Balark, 2019 IL App (1st) 171626,  November 20, 2019.

**CRIMINAL JUSTICE — Weapons.** Sufficient evidence supported defendant's conviction of unlawful use or possession of a weapon by a felon.

**Background:** Defendant was convicted, following a bench trial, of unlawful use or possession of a weapon by a felon and sentenced to a term of six years in prison. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 law enforcement officers had sufficient probable cause to arrest defendant, and

2 sufficient evidence supported defendant's conviction of unlawful use or possession of a weapon by a felon.

Affirmed.

**COURT’S EXPLANATION:** Following a bench trial, defendant Deric Balark was found guilty of unlawful use or possession of a weapon by a felon (UUWF). The trial court subsequently sentenced defendant to a term of six years in prison. Defendant appeals, arguing that (1) his trial counsel was ineffective for failing to file a motion to quash arrest and suppress evidence because the police lacked probable cause to arrest defendant and (2) the State failed to prove defendant guilty of UUWF beyond a reasonable doubt.

**RULE A:** In the context of statute governing possession of weapons by felons, possession may be actual or constructive. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **RULE B:** In the context of statute governing possession of weapons by felons, actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **RULE C:** In the context of statute governing possession of weapons by felons, actual possession is proven by testimony that shows that the defendant exercised some form of dominion over the weapon, such as trying to conceal it or throwing it away. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **RULE D:** Where possession of a weapon has been shown in a prosecution under statute governing possession of weapons by felons, an inference of culpable knowledge can be drawn from the surrounding facts and circumstances. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **RULE E:** In a prosecution under statute governing possession of weapons by felons, whether there is knowledge and whether there is possession or control are questions of fact to be determined by the trier of fact. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a).

**FINDINGS:**  Sufficient evidence supported defendant's conviction of unlawful use or possession of a weapon by a felon, though defendant argued law enforcement officer's testimony was improbable, illogical, and contrary to human experience; **WHY*:*** *it was undisputed that defendant had prior felony conviction, trial court heard officer's testimony that he observed defendant possess a firearm with an extended clip and saw him place firearm in glove compartment of vehicle, officer found handgun with extended magazine in glove compartment during subsequent search of vehicle, officer's testimony established that defendant exercised dominion over weapon, and trial court found officer's testimony to be credible and sufficient proof of possession of weapon*. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a).

### 17. People v. McLaurin, 2020 IL 124563, March 19, 2020

**CRIMINAL JUSTICE — Weapons.** Evidence that officer saw defendant carrying handgun was sufficient find he possessed **firearm**, as required for armed habitual criminal conviction.

**Background:** Following bench trial, defendant was of being an armed habitual criminal. Defendant appealed. The Appellate Court reversed. State petitioned for leave to appeal and petition was allowed.

**Holdings:** The Supreme Court held that:

1 first police officer's unimpeached testimony that she observed defendant exit apartment building “carrying a silver handgun” was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal, and

2 second officer's testimony concerning gun recovered from scene of traffic stop was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal.

Appellate Court judgment reversed; Circuit Court judgment affirmed.

**COURT’S EXPLANATION:** This appeal arises from defendant Jasper McLaurin's conviction of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)), following a bench trial. The appellate court reversed defendant's conviction, holding that the evidence was insufficient to prove that he possessed a firearm as defined by the Criminal Code of 2012 (id. § 2-7.5; 430 ILCS 65/1.1 (West 2014)), an element of the convicted offense. 2018 IL App (1st) 170258, ¶ 31, 428 Ill.Dec. 527, 122 N.E.3d 788. For the reasons that follow, we reverse the appellate court judgment and affirm defendant's conviction.

**RULE A:** The due process clause of the Fourteenth Amendment to the United States Constitution requires that a defendant may not be convicted except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. U.S. Const. Amend. 14. **RULE B:** When a court reviews a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **RULE C:** The Jackson v. Virginia formulation of the standard of review for claims that the evidence was insufficient to sustain a conviction, which applies in all criminal cases, regardless of the nature of the evidence, gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. **RULE D:** In reviewing the evidence for purposes of a challenge to the sufficiency of the evidence, an appellate court will not retry the defendant, nor will it substitute its judgment for that of the trier of fact.

**FINDINGS #1:**  Police officer's unimpeached testimony that she observed defendant exit apartment building “carrying a silver handgun” was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal, although gun recovered from scene of crime was not introduced into evidence, **WHY***police officer testified that she was approximately 50 feet away from defendant and nothing was obstructing her view, that she immediately called for backup after observing defendant with gun, that defendant entered white van, which drove away, that she followed van, that other officers stopped van, that she was asked to identify gun found at scene of stop, and that gun was same color and size as gun she saw in defendant's hand when he entered van***:** . 720 Ill. Comp. Stat. Ann. 5/24-1.7(a). **FINDINGS #2:**  Police officer's testimony concerning gun recovered from scene of traffic stop was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal, **WHY:** *officer testified that he was among officers who stopped van, that another officer had observed defendant enter while carrying handgun, that he looked under vehicle close to door defendant exited, that he saw weapon matching description of size and color given by observing officer, and that weapon was fully loaded*. 720 Ill. Comp. Stat. Ann. 5/24-1.7(a).

### 18. People v. Horton, 2019 IL App (1st) 142019-B September 23, 2019.

**CRIMINAL JUSTICE — Weapons.** Police officer lacked probable cause to believe defendant was violating statute prohibiting possession of **firearms** outside the home.

**Background:** Defendant was convicted in the Circuit Court of being an armed habitual criminal. After his motion for new trial was denied, defendant appealed. The Appellate Court reversed trial court's denial of defendant's motion to quash arrest and suppress gun found during search, based on void ab initio doctrine. The Supreme Court denied petition for leave to appeal and ordered Appellate Court to vacate its judgment and reconsider without applying void ab initio doctrine.

**Holdings:** On denial of rehearing, the Appellate Court held that:

1 police officer lacked probable cause to believe defendant was violating statute prohibiting possession of firearms outside the home;

2 Appellate Court could consider evidence from defendant's trial in reviewing denial of suppression motion;

3 defendant's flight immediately upon seeing police officers did not establish probable cause for arrest;

4 defendant's action of crouching down behind bed did not constitute probable cause for arrest; and

5 gun was suppressible as direct product of unlawful arrest.

Reversed.

**COURT’S EXPLANATION:** a. Pivotal changes in Illinois law dealing with the carrying of firearms, partly mandated by United States Supreme Court rulings, have exacerbated legal and practical issues for police. Foremost, police still must enforce the mandate to reduce gun violence and remove illegal firearms from the streets. Presumably acting on that laudable desire, an officer had a hunch, based on seeing “a metallic object” in Markell Horton's waistband, and pursued him. Eventually, police found a handgun hidden under a mattress in the bedroom where they found Horton and charged him with the handgun's possession.

b. In our initial decision, issued in the aftermath of People v. Aguilar, 2013 IL 112116, 377 Ill.Dec. 405, 2 N.E.3d 321, we reversed the trial court's denial of Horton's motion to quash his arrest and suppress a gun found during the search. People v. Horton, 2017 IL App (1st) 142019, 413 Ill.Dec. 497, 78 N.E.3d 489. In Aguilar, the court declared facially unconstitutional a portion of the aggravated unlawful use of a weapon statute under which Horton had been convicted. Then, our supreme court issued People v. Holmes, 2017 IL 120407, 418 Ill.Dec. 254, 90 N.E.3d 412, finding that the void ab initio doctrine applied in Aguilar did not retroactively invalidate probable cause to arrest. We were ordered to vacate our decision and reconsider. To this end, we requested the parties submit supplemental briefs on the impact of Holmes. Under Holmes, the void ab initio doctrine no longer factors into our analysis. Nonetheless, our decision today reaches the same result.

**FINDINGS #1:**  Police officer lacked probable cause to believe defendant was violating statute generally prohibiting possession of ready-to-use firearms, **WHY:** *officer noticed defendant had a “metallic object in his waistband” that officer had a hunch might be a handgun, defendant was standing in a residential yard and holding a conversation with people on the porch, supporting conclusion that he either lived on the property or was there with residents' permission, and firearm possession statute did not apply to possession of a gun while on one's own land or on the land of another as an invitee*. U.S. Const. Amend. 4; **FINDINGS #2:**  Defendant's flight from yard into house immediately upon seeing police officers did not establish probable cause to arrest defendant; **WHY:** *defendant did not interact with police officers until officers entered house to arrest him, officers were not investigating crime, and did not see any indications of criminal behavior, and pattern of negative interactions between police and certain communities gave rise to noncriminal reason for many members of those communities to avoid police interactions*. U.S. Const. Amend. 4. **FINDINGS #3:**  Defendant's action of crouching down behind bed, which was concealing his hands, did not provide police officer with probable cause to arrest defendant, **WHY:** *police officer had a mere hunch that defendant was possessing a gun, possession of a gun within a house did not in and of itself constitute a crime, defendant immediately put his hands up on police orders, and at least five minutes passed between defendant fleeing into house to avoid police interaction and police entry into house*. U.S. Const. Amend. 4. **FINDINGS #4:**  Defendant's arrest occurred when police officer placed handcuffs on defendant in upstairs room of house, not when police officers exited vehicle and defendant, immediately upon seeing them, fled into house. U.S. Const. Amend. 4. **FINDINGS #5:**  Gun found in bedroom where defendant was arrested was a direct product of defendant's unlawful arrest, and, therefore, was suppressible under exclusionary rule, even though defendant did not reside in bedroom and had no privacy interest there; **WHY:** *police officers searched bedroom after and because of defendant's arrest, for which they lacked probable cause*. U.S. Const. Amend. 4.

### 19. People v. Webb, 2019 IL 122951, March 21, 2019.

**CRIMINAL JUSTICE — Weapons.** Ban on publicly carrying on possessing stun guns violates Second Amendment.

**Background:** Defendants in separate cases were charged by misdemeanor complaints with unlawful use of weapons based on possession of stun gun in jacket pocket while in vehicle on public street and in backpack in forest preserve. The Circuit Court held unlawful use of weapons statute unconstitutional under the Second Amendment. State appealed.

**Holding:** The Supreme Court held that statute imposes complete ban on public carriage of stun guns and facially violates Second Amendment.

Affirmed.

**COURT’S EXPLANATION:** Section 24-1(a)(4) of the unlawful use of weapons (UUW) statute (720 ILCS 5/24-1(a)(4) (West 2016) ) provides, in part, that it is unlawful for a person to possess or carry a stun gun or taser in a vehicle or in public. In two separate cases, the circuit court of Du Page County held this provision unconstitutional under the second amendment to the United States Constitution (U.S. Const., amend. II). The State appealed both judgments directly to this court pursuant to Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013), and we consolidated the cases for review. For the reasons that follow, we affirm the judgments of the circuit court.

**RULE A:** In determining whether a statutory provision violates the Second Amendment, courts first consider whether the provision imposes a burden on conduct that falls within the scope of the amendment. U.S. Const. Amend. 2. **RULE B:** Stun guns are “bearable arms” within the meaning of the Second Amendment. U.S. Const. Amend. 2.

**FINDINGS:**  Statute that prohibits carrying or possessing pistol, revolver, stun gun, or other firearm in vehicle or in public, unless carried or possessed in accordance with Firearm Concealed Carry Act by person with license, does not merely regulate carriage of stun guns in public, but imposes complete ban on carriage in public, and facially violates Second Amendment; **WHY:** *stun guns cannot be carried or possessed “in accordance” with the Carry Act because a concealed carry license cannot be issued for those weapons*. U.S. Const. Amend. 2; 430 Ill. Comp. Stat. Ann. 66/10; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4).

### 20. People v. Loggins, 2019 IL App (1st) 160482,  May 29, 2019.

**CRIMINAL JUSTICE — Weapons.** There was sufficient evidence that defendant was “otherwise armed” with a handgun to support conviction for armed violence.

**Background:** Defendants in separate cases were charged by misdemeanor complaints with unlawful use of weapons based on possession of stun gun in jacket pocket while in vehicle on public street and in backpack in forest preserve. The Circuit Court held unlawful use of weapons statute unconstitutional under the Second Amendment. State appealed.

**Holding:** The Supreme Court held that statute imposes complete ban on public carriage of stun guns and facially violates Second Amendment.

Affirmed.

**COURT’S EXPLANATION:** Defendant's claim that the state failed to prove that he was armed within the meaning of the armed-violence statute was a factual dispute, not a question of law, and thus the Appellate Court would review defendant's conviction under the Jackson v. Virginia standard, not de novo, where the facts were not undisputed as the parties disagreed about the inferences that could be drawn from the trial evidence, defendant claimed that he was never armed, not when he was arrested outside the residence nor when he was inside the residence, and the state claimed that defendant was armed when the police entered the residence but was no longer armed when he was arrested. U.S. Const. Amend. 4.

**RULE A:** Because the armed-violence statute applies to a person who is otherwise armed, that is, someone who is not carrying a weapon, it does not require actual or physical possession of a weapon; rather, it requires more than mere constructive possession. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2). **RULE B:** A person is “otherwise armed,” as element of offense of armed violence, if he or she has immediate access to or timely control over a weapon. 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2). **RULE C:** Possession is “constructive,” as element of offense of possession of a controlled substance with intent to deliver, when a defendant has the intent and capability to maintain control and dominion over an item of contraband, though he does not have immediate personal control of it. 720 Ill. Comp. Stat. Ann. 570/402.

**FINDINGS:**  There was sufficient evidence that defendant was “otherwise armed” with a handgun to support conviction for armed violence, even though defendant distanced himself from the handgun in an effort to abandon it, and even though defendant was not armed when he was arrested. **WHY:** *evidence indicated that the handgun was within defendant's reach when police entered the premises to execute a search warrant, and handgun was immediately assessable despite being partly covered by a hat and coat as defendant could have easily grabbed the handle of the gun that was sticking out*. U.S. Const. Amend. 4; 720 Ill. Comp. Stat. Ann. 5/33A-1(c)(1)-(2).

**21. People v. Baxton, 2020 IL App (5th) 150500, July 07, 2020.**

**CRIMINAL JUSTICE — Drugs.** Aggravated unlawful use of a weapon statute, prohibiting **firearm** possession while violating Cannabis Control Act, was constitutional as applied.

**Background:** Defendant was convicted after a bench trial of aggravated unlawful use of a weapon (AUUW), for possessing a firearm while committing misdemeanor possession of cannabis. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 AUUW statute was facially constitutional;

2 AUUW statute was constitutional as applied to defendant; and

3 statutory amendment reclassifying cannabis possession offense from a misdemeanor to a civil law violation was a substantive change that did not retroactively apply on appeal to defendant's conviction.

Affirmed.

**COURT’S EXPLANATION:** Baxton was convicted of aggravated unlawful use of a weapon (AUUW) based on misdemeanor possession of cannabis (720 ILCS 5/24-1.6(a)(1), (a)(3)(E) (West 2014)). He was sentenced to 30 months of probation under the election-of-treatment provisions set forth in section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS 301/40-10 (West 2014)). On appeal, he contends that section 24-1.6(a)(1), (a)(3)(E) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(E) (West 2014)) is facially unconstitutional because it violates the second amendment (U.S. Const., amend. II) and that the statute is unconstitutional as applied to him. He further challenges various fines and assessments that were imposed by the circuit clerk but were not ordered by the circuit court.1 For the reasons that follow, we affirm.

**RULE A:** When analyzing the constitutionality of a restriction on the right to bear arms, the court should conduct a textual and historical inquiry to determine whether the challenged law imposes a burden on conduct that was understood to be within the scope of the second amendment's protection at the time of ratification. U.S. Const. Amend. 2. **RULE B:** A regulated activity is categorically unprotected if the challenged law applies to conduct falling outside the scope of the Second Amendment right to bear arms. U.S. Const. Amend. 2. **RULE C:** If the historical evidence is inconclusive or suggests that a regulated activity is not categorically unprotected by the Constitution, then the court, applying the appropriate level of scrutiny, looks at the strength of the government's justification for restricting or regulating the Second Amendment rights. U.S. Const. Amend. 2. **RULE D:** In determining whether regulated activity infringes on Second Amendment rights, the court must first examine whether that conduct is at the core of the right to bear arms. U.S. Const. Amend. 2. **RULE E:** The Second Amendment right to possess firearms is still subject to meaningful regulation. U.S. Const. Amend. 2. **RULE F:** When a controlled substance user chooses to carry those substances out into public with a firearm, there are many ways in which the weapon can facilitate the drug offense and dangerously embolden the offender.

**FINDINGS:**  Aggravated unlawful use of a weapon statute, which prohibited possession of a firearm while committing a misdemeanor violation of the Cannabis Control Act, was facially constitutional; **WHY:** *statute was limited to a particular subset of persons and restricted conduct that fell outside the Second Amendment's protections*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(E), 550/1 et seq. **FINDINGS:**  Aggravated unlawful use of a weapon statute, which prohibited possession of a firearm while committing a misdemeanor violation of the Cannabis Control Act, was constitutional as applied to defendant, who was arrested while in possession of cannabis and a handgun, although defendant possessed a relatively small amount of cannabis; **WHY:** *Cannabis Control Act made possession of any amount of cannabis unlawful, and neither Cannabis Control Act nor the aggravated unlawful use of a weapon statute provided an exception for an individual who only possessed a small amount of cannabis*. U.S. Const. Amend. 2; 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(E), 550/4(a). **FINDINGS:**  Statutory amendment reclassifying cannabis possession offense identified in Cannabis Control Act from a misdemeanor to a civil law violation was a substantive change that did not retroactively apply on appeal to defendant's conviction for possession of a small amount of cannabis; **WHY:** *general savings clause for substantive changes to statutes expressly stated that its application extended to all repeals*. 5 Ill. Comp. Stat. Ann. 70/4; 720 Ill. Comp. Stat. Ann. 550/4(a).

### 22. People v. Peel, 2018 IL App (4th) 160100,  August 20, 2018.

**CRIMINAL JUSTICE — Weapons.** Evidence was sufficient to support defendant's conviction for reckless discharge of **firearm**.

**Background:** Defendant was convicted in the Circuit Court of reckless discharge of a firearm. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 evidence was sufficient to support defendant's conviction;

2 defendant forfeited right to complain on appeal that trial court erred by not answering explicit question from jury;

3 trial court did not commit coercion by hastening jury's deliberations;

4 defendant's claim that trial court erred by not answering explicit question posed by jury constituted invited error; and

5 defendant's claim for ineffective assistance of counsel regarding counsel's failure to request the trial court inform jury defendant himself could not be an individual was forfeited under plain error analysis.

**COURT’S EXPLANATION:** In February 2014, Peel was arrested and charged with reckless discharge of a firearm. In September 2015, a jury found defendant guilty. At the January 2016 sentencing hearing, the trial court sentenced defendant to 30 months' probation and 4 days' imprisonment, with 4 days of presentence credit for time served.

On appeal, defendant argues (1) this court should overturn his conviction because the evidence shows the handgun was fired into the ground; (2) the trial court erred in not answering the jury's explicit question; (3) the court erred by hastening the jury deliberations; and (4) he was denied effective assistance of counsel due to counsel not requesting an explicit answer to the jury's question, not requesting a limiting instruction for evidence, not objecting during the State's closing arguments, and not presenting evidence promised in opening statements. We affirm.

**RULE A:** A person commits the offense of reckless discharge of a firearm when he: (1) recklessly discharges a firearm, and (2) endangers the bodily safety of an individual. 720 Ill. Comp. Stat. Ann. 5/24-1.5(a). **RULE B:** A person is reckless or acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. **RULE C:** In order to satisfy the element of endangerment contained in the reckless discharge of firearm statute, the State must establish that a defendant's reckless conduct created a dangerous situation, such that an individual was in peril of probable harm or loss. **RULE D:** Part of the danger inherently caused by a reckless discharge of a firearm is the ricochet effect when bullets hit the ground. **RULE E:** The term “an individual” as used for reckless discharge of a firearm refers to someone other than the defendant. 720 Ill. Comp. Stat. Ann. 5/24-1.5(a). **FINDINGS:**  Evidence was sufficient to support defendant's conviction for reckless discharge of a firearm; **WHY:** defendant claimed he fired weapon at an angle he estimated between 30 and 40 degrees at recently snow-covered ground in the immediate vicinity of a number of neighbors' houses, location of shell casings demonstrated he fired a number of rounds off his front porch, and he fired from at least two different locations based on neighbors not seeing first two series of shots and were not as loud as those off the porch. 720 Ill. Comp. Stat. Ann. 5/24-1.5(a).

**FINDINGS #1:**  Defendant forfeited right to complain on appeal that trial court erred by not answering an explicit question posed by jury regarding whether endangering the bodily safety of an individual included defendant in prosecution for reckless discharge of a firearm, **WHY:** *defendant affirmatively acquiesced in court's response to jury that “you have received all of the jury instructions in this matter*.” **FINDINGS #2:**  Defense counsel did not render ineffective assistance at trial in limiting testimony it promised in opening statements regarding defendant's military training in firearms to simply defendant's rank as a sergeant in prosecution for reckless discharge of a firearm; **WHY:** *counsel's decision to limit testimony was a matter of trial strategy in order to preclude the State from calling their own rebuttal expert with military firearms training after defendant testified*. U.S. Const. Amend. 6. **FINDINGS #3:**  Defense counsel did not render ineffective assistance at trial in failing to object to prosecutor's statements in closing arguments regarding the evidence that defendant was not firing the gun into the ground in prosecution for reckless discharge of a firearm; **WHY:** *prosecutor's statements were drawn from reasonable inferences based on the testimony of neighbors when compared to that of defendant and jury was instructed both opening statements and closing arguments were not evidence and told to disregard any statement or argument made by counsel that did not comport with their recollection of the evidence*. U.S. Const. Amend. 6. **FINDINGS: #4**  Defense counsel did not render ineffective assistance at trial by not objecting to the trial court's instruction counsel contributed to regarding how long it would take for the clerk to transcribe her notes from defendant's expert testimony and whether jury still wanted the transcript after being so informed in prosecution for reckless discharge of a firearm; **WHY:** *counsel's failure to object could have been a trial strategy, as transcript contained, in addition to things defendant might consider beneficial, expert also testified he would never allow someone who smelled of alcohol to handle a firearm and he would not recommend firing a firearm in a residential area, and jury concluded at some point the testimony was not necessary to their deliberations*. U.S. Const. Amend. 6.

### 23. People v. Lee, 2019 IL App (1st) 162563, February 27, 2019

**CRIMINAL JUSTICE — Evidence.** Evidence in prosecution for defacing identification marks of **firearm** was closely balanced as element required for claim of first-prong plain error.

**Background:** Defendant was convicted of defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW). Defendant appealed.

**Holdings:** The Appellate Court held that:

1 the state was not required to establish that defendant knew the character of the firearm in his possession in order to prove offense of defacing identification marks of a firearm;

2 trial court's jury instruction on offense of possession of a firearm with defaced identification marks correctly stated the law;

3 trial court's answer to the jury's question did not deprive defendant of a fair trial;

4 there was sufficient evidence that defendant knowingly possessed a firearm whose identification marks were defaced to support conviction for defacing identification marks of a firearm;

5 probative value of testimony describing area of confrontation with defendant as known for high volume narcotics sales was not substantially outweighed by unfair prejudice;

6 probative value of testimony regarding dangerous nature of type of bullets found in recovered gun was substantially outweighed by danger of unfair prejudice; and

7 evidence presented was closely balanced, as element required for defendant's claim of first-prong plain-error for admission of prejudicial testimony.

Reversed and remanded.

**COURT’S EXPLANATION:** Following a jury trial, the circuit court convicted Lee, of defacing identification marks of a firearm, aggravated unlawful use of a weapon (AUUW) based on not having a currently valid license under the Firearm Concealed Carry Act (430 ILCS 66/1 et seq. (West 2016) ), and aggravated unlawful use of a weapon based on not having a currently valid firearm owner's identification card. At defendant's trial, the court instructed the jury that the State was required to prove that defendant knowingly possessed the firearm. Over defendant's objection, the court further instructed the jury that the State was not required to prove defendant had knowledge of the defaced serial number. On appeal, defendant argues that the State did not provide sufficient evidence to prove beyond a reasonable doubt that defendant knowingly possessed a firearm with a defaced serial number and the trial court erred when it failed to instruct the jury that the State was required to prove defendant knew the firearm's serial number was defaced. Alternatively, defendant argues that he was deprived of a fair trial when the court answered a question from the jury and when the State introduced prejudicial testimony into evidence. For the reasons that follow we reverse the judgment of the trial court and remand for a new trial.

**RULE A:** Trial court's jury instruction on offense of defacing identification marks of a firearm correctly stated the law, where the jury instruction included the mens rea element, or implied mental state, of knowing possession. 720 Ill. Comp. Stat. Ann. 5/24-5(b). **RULE B:** For purposes of statute governing defacing identification marks on firearms, the state is only required to prove beyond a reasonable doubt that a defendant knowingly possessed a firearm and that the firearm's serial number was defaced. 720 Ill. Comp. Stat. Ann. 5/24-5(b). **RULE C:** For purposes of statute governing defacing identification marks on firearms, the state need not prove knowledge of the character of the firearm, though a defacement unmistakably bears upon the commission of the offense, it is not an element of the offense. 720 Ill. Comp. Stat. Ann. 5/24-5(b). **RULE D:** For purposes of statute governing defacing identification marks on firearms, the mens rea applicable is knowledge, and the knowledge required applies only to the possessory component of the offense; the mere possession of such weapons is the evil sought to be remedied by this offense to, inter alia, deter the possession of altered weapons. 720 Ill. Comp. Stat. Ann. 5/24-5(b).

**FINDINGS # 1:** The state was not required to establish that defendant knew the character of the firearm in his possession in order to prove offense of defacing identification marks of a firearm, **WHY:** *the state only needed to prove beyond a reasonable doubt that defendant knowingly possessed a firearm and that the firearm's identification number was defaced*. 720 Ill. Comp. Stat. Ann. 5/24-5(b). **FINDINGS #2:**  Trial court acted within its discretion in responding to the jury's question in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW), **WHY:** *the jury's question was explicit and was a question of law as it dealt with the mens rea requirement of offense of defacing identification marks of a firearm and the construction of the offense's jury instruction*. **FINDINGS #3:**  Trial court's answer to the jury's question did not deprive defendant of a fair trial in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW), even though defendant claimed trial court's answer deprived the jury of any meaningful role as factfinder; **WHY:** *trial court's answer did not express an opinion on an issue of fact, simply stated that knowledge requirement of offense or defacing identification marks of a firearm applied to the possession of the weapon and not to the defacement of the weapon's serial number, and trial court did not insert a new matter for the jury that deprived it of any meaningful role as factfinder*. **FINDINGS #4:**  There was sufficient evidence that defendant knowingly possessed a firearm whose identification marks were defaced to support conviction for defacing identification marks of a firearm, even though defendant claimed that he did not possess the firearm; **WHY:** *evidence indicated that first police officer saw defendant put a black handgun in his waistband, as defendant fled upon approach of first and second officers, officers saw defendant toss the handgun to the ground, second officer recovered a black revolver from where he saw defendant toss the handgun, and third officer, an evidence technician, noted that the recovered handgun's serial number was defaced*. 720 Ill. Comp. Stat. Ann. 5/24-5(b). **FINDINGS #5:**  Defendant failed to preserve argument for review that he was deprived of his right to fair trial because trial court allowed state to elicit prejudicial testimony from arresting officers that he was arrested in a high-crime area known for narcotics trafficking, in contravention of trial court's ruling on defendant's motion in limine excluding any reference to the area of the crime being a high-crime area, in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW); **WHY:** *defendant did not allege in posttrial motion that admission of testimony that he was arrested in a high-crime area was error*. Ill. R. Evid. 103(b). **FINDINGS #6:**  Defendant failed to preserve argument for review that law enforcement officer's testimony concerning the dangerous character of hollow point bullets found in defendant's gun was unduly prejudicial and that admission of such evidence deprived defendant of a fair trial in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW), **WHY:** *defendant failed to make a contemporaneous objection at trial when officer's testimony was elicited about the nature of bullets found in the gun*. Ill. R. Evid. 103(b)(1), 103(b)(4). **FINDINGS #7:**  Probative value of police officer testimony describing area of confrontation with defendant as known for high volume narcotics sales and explaining what a controlled buy consists of was not substantially outweighed by unfair prejudice in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW); **WHY*:*** *officer did not testify to anything that implied defendant engaged in a drug transaction beyond the coincidence of being in the area where the police were conducting their investigation, nothing in officer's testimony implied mere presence when deciding to follow or stop defendant, and testimony was brief and limited as to why the team of officers was in the area at the time of the incident*. **FINDINGS #8:**  Probative value of police officer testimony regarding the dangerous nature of type of bullets found in recovered gun defendant allegedly possessed was not substantially outweighed by danger of unfair prejudice in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW), although the state claimed testimony was to show motive for defendant to have bought a defaced and untraceable gun, **WHY:** *the character of the bullets found in the gun was not an element of any of the offenses the state charged defendant with violating, and the state failed to introduced facts showing that defendant knew what type of bullets were in the gun or knew the dangerous nature of the type of bullets*. **FINDINGS #9:**  Evidence presented in prosecution for defacing identification marks of firearm and aggravated unlawful use of a weapon (AUUW) was “closely balanced,” as element required for defendant's claim of first-prong plain-error for admission of prejudicial testimony regarding the dangerous nature of type of bullets found in recovered gun defendant allegedly possessed; **WHY:** *the state presented evidence that defendant placed in his waistband a firearm from his car and attempted to drop the defaced firearm upon fleeing from officers, defendant presented evidence that he was talking to friends when another vehicle sped towards them and caused everyone to flee, neither version of events was supported by corroborating evidence, and jury deliberated over nine hours before delivering verdict*. **FINDINGS #10:**  Evidence was sufficient for a trier of fact to conclude that defendant was guilty beyond a reasonable doubt of the charges against him, and thus remand following reversal, for admission of prejudicial testimony in a closely balanced case, would not cause double jeopardy impediment in prosecution for defacing identification marks of a firearm and aggravated unlawful use of a weapon (AUUW). U.S. Const. Amend. 5.

### 24. [People v. Smith](https://1.next.westlaw.com/Document/I005b96804d3111eab72786abaf113578/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad73aa700000174a764b29a9bcacb69%3FNav%3DCASE%26fragmentIdentifier%3DI005b96804d3111eab72786abaf113578%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.History*oc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c7caea6f1f80f7b60f10374c8566625f&list=CASE&rank=31&sessionScopeId=b05f9575648d58bc2c33fbc093323d7bccd7d5f051508fc5af56ab0ca35b6151&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.History*oc.Search%29), 2020 IL App (3d) 160454,  February 11, 2020.

**CRIMINAL JUSTICE — Weapons.** Sufficient evidence supported finding that defendant had constructive possession of weapons thrown from automobile he was driving.

**Background:** Defendant was convicted of forgery, possession of a weapon by a felon, and aggravated fleeing and eluding. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 sufficient evidence supported finding that defendant had constructive possession of weapons thrown from automobile he was driving;

2 trial court's colloquial delivery of admonishments in which it asked jurors whether they agreed with and accepted principles and whether they would apply them violated rule governing questions which must be asked during voir dire examination;

3 defendant failed to establish that evidence was so closely balanced as to require reversal under plain error due to trial court's failure to ask if jurors understood principles;

4 defendant did not effectuate a valid waiver of his right to counsel;

5 Appellate Court would not excuse defendant's forfeiture of his claim that closure of courtroom during jury selection violated his constitutional right to a public trial; and

6 trial court's complete closure of courtroom during voir dire without any findings as to why courtroom was being closed violated defendant's constitutional right to a public trial and constituted reversible plain error.

Reversed and remanded.

**COURT’S EXPLANATION:** Following a jury trial, defendant, Andrew Smith, was convicted of forgery (720 ILCS 5/17-3(a)(3) (West 2014)), possession of a weapon by a felon (id. § 24-1.1(a)), and aggravated fleeing and eluding (625 ILCS 5/11-204.1(a)(4) (West 2014)). Defendant appeals his convictions and argues that the trial court erred by (1) failing to admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), (2) failing to properly admonish jurors during voir dire, and (3) closing the courtroom during voir dire. Additionally, the defendant challenges the sufficiency of the evidence relating to his conviction of unlawful possession of a firearm by a felon. In the alternative, if we affirm his convictions, defendant argues his sentence was improper. We reverse and remand for a new trial.

**RULE A:** Where the possession is constructive in a prosecution for unlawful possession of a firearm by a felon, the State must prove that defendant (1) had knowledge of the presence of the weapon and (2) had immediate and exclusive control over the area where the weapon was found. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **RULE B:** In prosecutions for unlawful possession of a firearm by a felon, the element of knowledge may, and most often must, be proved by circumstantial evidence. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **RULE C:** In a prosecution for unlawful possession of a firearm by a felon in which weapons are found in vehicle with defendant, defendant's knowing possession may be inferred from several factors, including: (1) the visibility of the weapon from defendant's location in the vehicle, (2) the amount of time in which defendant had an opportunity to observe the weapon, (3) gestures or movements made by defendant that would suggest an effort to retrieve or conceal the weapon, and (4) the size of the weapon. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a).

**FINDINGS #1:**  Sufficient evidence supported finding that defendant had constructive possession of weapons thrown from automobile he was driving, in prosecution for possession of a weapon by a felon, though passenger in automobile testified that weapons were his and defendant did not know weapons were in automobile; **WHY:** *it was highly unlikely defendant would not have come across weapons, which were full-sized, pump-action shotguns, given that defendant and passenger were driving cross-country and spending a significant amount of time in car, automobile did not have trunk where weapons could be hidden, weapons were stored in open ended bags which would not have obscured their identity, and passenger admitted that he had consumed copious amounts of alcohol on day of incident and did not remember incident*. 720 Ill. Comp. Stat. Ann. 5/24-1.1(a). **FINDINGS #2:**  Defendant failed to establish that evidence was so closely balanced as to require reversal under plain error due to trial court's failure to ask if jurors understood principles as required under rule governing questions which must be asked during voir dire examination, in prosecution for forgery, possession of a weapon by a felon, and aggravated fleeing and eluding; **WHY:** *defendant did not point to anything that would tend to show evidence was closely balanced with regard to possession of a firearm by a felon charge aside from his own testimony and that of his inebriated brother, and defendant pointed to no reason why evidence was closely balanced with regard to forgery or aggravated fleeing and eluding charges*. 625 Ill. Comp. Stat. Ann. 5/11-204.1(a)(4); 720 Ill. Comp. Stat. Ann. 5/17-3(a)(3), 5/24-1.1(a); Ill. Sup. Ct. R. 431(b).

### 25. People v. McCurine, 2019 IL App (1st) 160817, March 29, 2019.

**CRIMINAL JUSTICE — Weapons.** Sufficient evidence supported finding that defendant constructively possessed **firearm**, in prosecution for offense of being an armed habitual criminal.

**Background:** Defendant was convicted of one count of being an armed habitual criminal. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 evidence was sufficient to support finding that defendant constructively possessed firearm, and

2 statute setting forth offense of armed habitual criminal did not violate due process.

Affirmed.

**COURT’S EXPLANATION:** After a jury trial, defendant Nathaniel McCurine was convicted of one count of armed habitual criminal and sentenced to nine years with the Illinois Department of Corrections (IDOC).

On appeal, defendant claims, first, that the State's evidence that he constructively possessed a gun was insufficient, where the gun was found in the smaller bedroom of defendant's two-bedroom apartment and defendant's girlfriend testified that defendant shared the apartment with another tenant who occupied the smaller bedroom. Second, although this court has found the armed habitual criminal statute constitutional in three prior opinions, defendant claims that these opinions failed to adequately address the due process concerns inherent in labeling a defendant a “habitual” criminal and that the statute thereby creates an unfair prejudice against the accused in the eyes of the jury, thereby violating due process. In his initial brief, defendant also claimed that he was entitled to 253 days of sentencing credit, rather than the 250 days that he received at sentencing. However, in his reply brief, he withdrew this third claim.

For the following reasons, we affirm.

**RULE A:** To establish constructive possession, the State must prove that the defendant (1) had knowledge of the presence of the weapon and (2) exercised immediate and exclusive control over the area where the weapon was found. **RULE B:** Evidence of both knowledge and control is often entirely circumstantial for purposes of establishing constructive possession of firearm. **RULE C:** A defendant has control over firearm, for purposes of constructive possession, when he has the intent and capability to maintain control and dominion over the item, but does not have immediate personal control of it. **RULE D:** In proving constructive possession of a firearm, control over the area where the contraband was found gives rise to an inference that the defendant possessed the contraband. **RULE E:** In proving constructive possession of a firearm, knowledge may be shown by circumstantial evidence of the defendant's acts or conduct, from which it may be inferred that he knew the contraband existed in the place where it was found. **RULE F:** In proving constructive possession of a firearm, knowledge and possession are factual issues, and the trier of fact's findings on these questions will not be disturbed unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of the defendant's guilt.

**FINDINGS #1:**  Evidence was sufficient to support finding that defendant had control over apartment where firearm was found, and had knowledge of the firearm's presence, supporting finding that defendant constructively possessed firearm, which satisfied the element of possession for the offense of armed habitual criminal; **WHY:** *defendant's control was shown by defendant admitting residence was his apartment, and that he was the only person in the apartment at the time the police entered, and inferred knowledge showed defendant's motive and opportunity to conceal the firearm after he heard police knocking at the door, and there was triple concealment of the firearm, when it was found in an opaque bag, in a basket, under clothes*. 720 Ill. Comp. Stat. Ann. 5/24-1.7(a). **FINDINGS #2:**  Statute setting forth offense of armed habitual criminal, which required jury being presented with qualifying prior convictions, did not unduly prejudice defendant, and thus did not violate due process, although defendant argued that he was prejudiced by making his prior convictions an element of the offense submitted to the jury and by being labeled as an “habitual” criminal; **WHY:** *determination that two felonies qualified a person as a habitual offender was a policy determination left to the legislature, and jury would have known that defendant committed prior felony because they would need explanation of why officers were at defendant's door, and stipulation did not inform the jury what the prior felonies were or if they were forcible felonies*. U.S. Const. Amend. 14; Ill. Const. art. 1, § 2; 720 Ill. Comp. Stat. Ann. 5/24-1.7(a).

### 26. Pournaras v. People, 2018 IL App (3d) 170051, November 13, 2018

**GOVERNMENT — Weapons.** By completing sentence, petitioner had his civil rights restored within meaning of Gun Control Act, and as such, he should be allowed to obtain FOID card.

**Background:** Petitioner, who had been convicted of burglary, filed petition to obtain a firearm owner's identification (FOID) card. The Circuit Court denied the petition, and he appealed.

**Holding:** The Appellate Court held that by completing his sentence, petitioner had his civil rights restored within meaning of Gun Control Act, and as such, he should be allowed to obtain FOID card.

Reversed and remanded.

**COURT’S EXPLANATION:** Petitioner, Kostantino S. Pournaras, appeals the trial court's denial of his petition to obtain a Firearm Owner's Identification Card (FOID card). Petitioner filed his petition pursuant to the Firearm Owners Identification Card Act (FOID Act). 430 ILCS 65/10(c) (West 2016). He asserts the trial court erred in finding he did not meet all of the qualifications required by the FOID Act due to the trial court's erroneous interpretation of the Federal Gun Control Act. He argues he has had his “civil rights restored” within the meaning of the Gun Control Act so as to allow him to regain the privilege of having a FOID card. We reverse the judgment of the trial court and remand with instructions.

**FINDINGS #1:**  Because petitioner, who had been convicted of burglary, would not have been able to hold office while on probation and that right was automatically restored upon successful completion of his sentence, this was a civil right restored within the meaning of Gun Control Act, providing that the defendant's conviction for which his civil rights have been restored shall not be considered a “conviction” under the Act, for purposes of determining if petitioner could obtain a firearm owner's identification (FOID) card. Ill. Const. art. 13, § 1; 18 U.S.C.A. §§ 921(20), 922(g)(1); 430 Ill. Comp. Stat. Ann. 65/10(c); 730 Ill. Comp. Stat. Ann. 5/5-5-5(b). **FINDINGS #2:**  Petitioner's completion of probation removed his obstacle to serving on a jury, thus restoring his civil rights, within the meaning of Gun Control Act, providing that the defendant's conviction for which his civil rights have been restored shall not be considered a “conviction” under Act, for purposes of determining if petitioner could obtain a firearm owner's identification (FOID) card. 18 U.S.C.A. §§ 921(20), 922(g)(1); 430 Ill. Comp. Stat. Ann. 65/10(c).; Ill. Const. art. 13, § 1; 730 Ill. Comp. Stat. Ann. 5/5-5-5(b). **FINDINGS #3:**  By virtue of completing his sentence, petitioner had his civil rights restored within the meaning of the Gun Control Act, and therefore, petitioner utilized an exception to remove himself from disqualification under federal law, and as such, he should be allowed to obtain firearm owner's identification (FOID) card. 18 U.S.C.A. §§ 921(20), 922(g)(1); 430 Ill. Comp. Stat. Ann. 65/10(c).

**27. People v. Murray, Ill., 2019 IL 123289, October 18, 2019.**

**CRIMINAL JUSTICE — Weapons.** Unlawful possession of a **firearm** by a street gang member statute did not unconstitutionally criminalize a defendant's status as a street gang member.

**Background:** Defendant was convicted of first-degree murder and unlawful possession of a firearm by a street gang member. Defendant appealed, and the Appellate Court affirmed. Defendant sought leave to appeal, which was allowed.

**Holdings:** The Supreme Court held that:

1 under due process, burden was on State to prove that organization of which defendant was a member was a street gang as defined by Streetgang Terrorism Omnibus Prevention Act, in order to support conviction for unlawful possession of firearm by street gang member;

2 expert's testimony was insufficient to support verdict that organization of which defendant was a member was a street gang;

3 testimony regarding specific crimes committed by the organization is required to establish that organization is a street gang as defined by Streetgang Terrorism Omnibus Prevention Act, in order to support conviction for unlawful possession of firearm by street gang member; overruling People v. Jamesson, 329 Ill.App.3d 446, 263 Ill.Dec. 736, 768 N.E.2d 817, and People v. Berrios, 422 Ill.Dec. 442, 103 N.E.3d 574;

4 evidence of defendant's own behavior on day of charged offense was insufficient to support verdict that organization of which defendant was a member was a street gang; and

5 evidence of defendant's alleged creation of graffiti, purportedly including gang symbols, was insufficient to support verdict that organization of which defendant was a member was a street gang.

Reversed in part and remanded with directions.

**COURT’S EXPLANATION:** Following a jury trial, defendant Deontae X. Murray was convicted of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2012)) and unlawful possession of a firearm by a street gang member (id. § 24-1.8(a)(1)). The circuit court sentenced defendant to consecutive terms of 50 years and 10 years respectively. On appeal, defendant argued that the evidence was insufficient to establish that he committed the firearm offense. The appellate court affirmed defendant's conviction. 2017 IL App (2d) 150599, 419 Ill.Dec. 674, 94 N.E.3d 212. We allowed defendant's petition for leave to appeal. Ill. S. Ct. R. 315 (eff. Nov. 1, 2017). For the reasons that follow, we reverse the judgment of the appellate court.

**FINDINGS #1:**  State's expert's testimony was insufficient to support verdict that organization of which defendant was a member was a street gang as defined by Streetgang Terrorism Omnibus Prevention Act, as required to support conviction for unlawful possession of firearm by street gang member, **WHY:** *expert generally described in broad terms the types of information and facts on which his opinion was based but never explained his reasons as to why that information supported his opinion and never connected reasons or information and facts to the defendant*. (Per Neville, J., with one justice concurring in judgment and opinion and two justices specially concurring.) 740 Ill. Comp. Stat. Ann. 147/10; Ill. R. Evid. 705. **FINDINGS #2:**  Evidence of defendant's own behavior on day of charged offense, which constituted basis for other offenses charged against defendant, was insufficient to support verdict that organization of which defendant was a member was a street gang as defined by Streetgang Terrorism Omnibus Prevention Act, as required to support conviction for unlawful possession of firearm by street gang member; **WHY:** *at time evidence was presented to jury, there had yet to be any determination whether defendant committed those other offenses as charged or that they related in any way to organization*. (Per Neville, J., with one justice concurring in judgment and opinion and two justices specially concurring.) 740 Ill. Comp. Stat. Ann. 147/10. **FINDINGS #3:**  Evidence of defendant's alleged creation of graffiti, purportedly including gang symbols, was insufficient to support verdict that organization of which defendant was a member was a street gang as defined by Streetgang Terrorism Omnibus Prevention Act, as required to support conviction for unlawful possession of firearm by street gang member, **WHY*:*** *State did not present testimony as to who created the graffiti or when it was created.* (Per Neville, J., with one justice concurring in judgment and opinion and two justices specially concurring.) 720 Ill. Comp. Stat. Ann. 5/21-1.3; 740 Ill. Comp. Stat. Ann. 147/10.

### 28. People v. Cavette, 2018 IL App (4th) 150910, October 23, 2018

**CRIMINAL JUSTICE — Weapons.** Defendant's vacated conviction for aggravated unlawful use of a weapon (AUUW) was not a predicate felony conviction for being an armed habitual criminal.

**Background:** Defendant was convicted, following jury trial, in the Circuit Court of being an armed habitual criminal, and unlawful possession of cannabis. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 defendant's vacated conviction for aggravated unlawful use of a weapon (AUUW) was not a predicate felony conviction for being an armed habitual criminal;

2 trial court made erroneous statement of law, in its jury instruction; and

3 trial court's erroneous jury instruction constituted plain error warranting new trial on possession of cannabis charge.

Reversed and remanded.

**COURT’S EXPLANATION:** a. In October 2015, a jury found defendant, Justin E. Cavette, guilty of armed habitual criminal (720 ILCS 5/24-1.7(a)(1) (West 2014) ) and unlawful possession of cannabis (720 ILCS 550/4(c) (West 2014) ). Defendant appealed his convictions and sentence.

b. In June 2017, while defendant's appeal was pending, defendant's 2011 aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010) ) conviction, a predicate offense to the armed habitual criminal conviction, was vacated. The statute by which defendant had been convicted was declared by the Illinois Supreme Court to be facially unconstitutional. On appeal, defendant argues, in part, his armed habitual criminal conviction must be reversed as his AUUW conviction, a predicate offense, is void ab initio. Defendant further argues the trial court improperly instructed the jury regarding evidence of the predicate offenses, undermining the guilty verdict on both charges. We agree and reverse and remand for a new trial.

**FINDINGS:**  Defendant's vacated conviction for aggravated unlawful use of a weapon (AUUW) was not a predicate felony conviction for being an armed habitual criminal, in prosecution of defendant for being an armed habitual criminal, and cannabis offense, **WHY:** *statutory sections on which AUUW conviction was based had been declared unconstitutional, and void ab initio*. 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(A), 5/24-1.7(a)(1).

### 29. People v. Gullens, 2017 IL App (3d) 160668,  October 24, 2017.

**CRIMINAL JUSTICE — Necessity.** Affirmative defense of necessity applied to theft defendant's conduct of briefly possessing stolen **firearm** in order to return it to guns store.

**Background:** After defendant pled guilty to theft in exchange for sentence involving conditional discharge, the Circuit Court granted state's petition to revoke conditional discharge for committing offense of being a felon in possession of a weapon. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 affirmative defense of necessity applied to defendant's conduct, and

2 fundamental fairness demanded denial of state's petition to revoke defendant's conditional discharge.

Reversed and remanded.

**COURT’S EXPLANATION:** This case exemplifies the adage: “No good deed goes unpunished.” Defendant, Keith R. Gullens, argues that the circuit court erred in revoking his conditional discharge for committing the offense of being a felon in possession of a weapon. The evidence at the revocation hearing showed that defendant possessed a firearm, which either his younger brother or a friend (the record is unclear which) had stolen, for approximately 10 minutes for the purpose of returning the firearm to the store. Defendant argues that the affirmative defense of necessity applied to him or, alternatively, fundamental fairness required that the court deny the State's petition to revoke defendant's conditional discharge. We agree.

**RULE A:** The defense of necessity is viewed as involving the choice between two admitted evils where other optional courses of action are unavailable, and the conduct chosen must promote some higher value than the value of literal compliance with the law. **RULE B:** The issue in a probation revocation proceeding is two-fold: first, whether a probation violation actually occurred, and second, whether the purposes of defendant's probation are being served by his continued liberty.

**FINDINGS #1:**  Affirmative defense of necessity applied to defendant's conduct of briefly possessing stolen firearm in order to return it to gun store, and thus, conditional discharge could not be revoked for being a felon in possession of a firearm, **WHY:** *defendant did not know that his brother and another person had stolen gun until after they left store, store employee said that video footage from store's security camera gave him no reason to believe defendant saw brother take gun and hand it to the other person, defendant explained that he returned gun immediately in order to avoid getting into trouble for theft of gun and to avoid gun being sold in Chicago streets for use in crime, defendant testified that he did not believe the other person would return gun on his own since the other person helped steal it, and defendant did not know anyone available with a valid firearms owner's identification card to return gun*. **FINDINGS #2:**  Purposes of rehabilitation of defendant and protection of public were served by continued conditional discharge of theft defendant arrested for being a felon in possession of a firearm, and thus, fundamental fairness demanded denial of state's petition to revoke defendant's conditional discharge, **WHY:** *defendant possessed firearm, stolen by his brother and another person, for approximately 10 minutes, defendant testified that his only intent in possessing gun was to return it to gun store from which it was stolen, and defendant acted to avoid greater harm of stolen firearm being sold on street and used for criminal purposes*.

### 30. Fuller v. Department of State Police, 2019 IL App (1st) 173148,  February 15, 2019.

**GOVERNMENT — Weapons.** Department of State Police's denial of application for **firearm** owners' identification card was not “final administrative decision.”

**Background:** Convict filed motion to restore firearm rights. State filed a motion to dismiss, arguing circuit court lacked jurisdiction over the matter because Department of State Police's denial of application for a firearm owners' identification card was a final administrative decision that had to be appealed within 35 days. The Circuit Court granted the motion. Convict appealed.

**Holdings:** The Appellate Court held that:

1 denial of application was not “final administrative decision” and, thus, did not trigger 35-day period in which to appeal denial with circuit court, and

2 Appellate Court would not affirm circuit court's dismissal of motion on the alternative basis that convict was prohibited from possessing a firearm under federal law.

Reversed and remanded.

**COURT’S EXPLANATION:** Petitioner, David K. Fuller, appeals the order of the circuit court dismissing his motion to restore his firearm rights, where the motion was filed more than 35 days after the Department of State Police (ISP) denied Fuller's application for a Firearm Owners Identification (FOID) Card. On appeal, Fuller contends the court erred in finding it had no jurisdiction over the matter pursuant to Administrative Review Law (Law) (735 ILCS 5/3-101 et seq. (West 2016) ), where the 35-day period within which to file an appeal from a final administrative order did not apply in his case. For the following reasons, we reverse and remand for further proceedings.

**FINDINGS:**  Department of State Police's denial of application for firearm owners' identification card was not “final administrative decision” and, thus, did not trigger 35-day period in which to appeal denial with circuit court, even though State's attorney argued that a person whose application was denied would have no deadline for challenging the denial; **WHY*:*** *denial did not follow an adversarial proceeding in which contested facts were heard by an impartial fact finder given that Department simply denied application based on applicant's status as convicted felon, Firearm Owners Identification Card Act provided for adversarial hearings after an application had been denied, and other limitations relevant to civil actions, as well as equitable doctrine of laches, could apply to challenges to the denial*. 430 Ill. Comp. Stat. Ann. 65/8(c), 65/11(a). **FINDINGS:**  Appellate Court would not affirm circuit court's dismissal of convict's motion to restore firearm rights on the alternative basis that convict was prohibited from possessing a firearm under federal law; **WHY:** *circuit court did not have occasion to consider the motion on the merits.*

### 31. People v. Norwood, 2018 IL App (4th) 150883, May 09, 2018.

### CRIMINAL JUSTICE — Weapons. Evidence was sufficient to support inference rifle was accessible to defendant, as element of armed violence charge.

### Background: Following a bench trial, defendant was convicted of two counts of armed violence. Defendant appealed.

### Holdings: The Appellate Court held that:

### 1 evidence was sufficient to support a reasonable inference that an assault rifle found in defendant's bedroom was immediately accessible to defendant during the period between the police officers entering the home and opening the bedroom door, as required to support defendant's convictions on two counts of armed violence, but

### 2 remand was required for the circuit court to vacate fines improperly imposed on defendant by the circuit clerk.

### Affirmed as modified and remanded with directions.

**COURT’S EXPLANATION:** On August 20, 2015, after a bench trial, the trial court found defendant guilty of two counts of armed violence. In October 2015, the court sentenced defendant to concurrent 16–year prison sentences. Defendant appeals, arguing the court erred in finding him guilty of armed violence because the State did not establish beyond a reasonable doubt the rifle found in his bedroom was immediately accessible to him when the police entered his bedroom. He also argues the circuit clerk erred in imposing fines on him. We affirm defendant's armed violence convictions but remand this case for the trial court to vacate the fines improperly imposed by the circuit clerk.

**FINDINGS** #1**:**  Evidence was sufficient to support a reasonable inference that an assault rifle found in defendant's bedroom was immediately accessible to defendant during the period between the police officers entering the home and opening the bedroom door, as required to support defendant's convictions on two counts of armed violence**.** **WHY:** *defendant's fiancee told police defendant slept on the same side of the bed as where the rifle was found, defendant was still in bed when defendant's fiancee got up to let the dog out, when police officer opened the bedroom door and ordered defendant to get on the ground, he instead laid down on the bed, decreasing the distance between himself and the rifle, and did not tell the officer anything about the rifle being in the room*. 720 Ill. Comp. Stat. Ann. 5/33A-2(a). **FINDINGS** #2**:**  Remand was required for the circuit court to vacate fines improperly imposed on defendant by the circuit clerk; **WHY:** *following defendant's convictions on two counts of armed violence, the circuit clerk improperly imposed fines on defendant for state police operations assessment, drug court assessment, court finance assessment, youth diversion assessment, child advocacy assessment, medical assessment, anti-crime assessment, lump-sum surcharge, violent crime victims assistance assessment, juvenile records expungement assessment, state's attorney assessment, state police services assessment, and court appointed special advocates assessment*. 55 Ill. Comp. Stat. Ann. 5/5-1101(f-10).

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**32. People v. Anderson, 2018 IL App (4th) 160037,  May 30, 2018.**

**CRIMINAL JUSTICE — Weapons.** Evidence was sufficient to demonstrate defendant had constructive possession of gun found near him during arrest, so as to support weapons conviction.

**Background:** Following a bench trial, defendant was convicted of two counts of armed violence. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 evidence was sufficient to support a reasonable inference that an assault rifle found in defendant's bedroom was immediately accessible to defendant during the period between the police officers entering the home and opening the bedroom door, as required to support defendant's convictions on two counts of armed violence, but

2 remand was required for the circuit court to vacate fines improperly imposed on defendant by the circuit clerk.

Affirmed as modified and remanded with directions.

**COURT’S EXPLANATION:** On August 20, 2015, after a bench trial, the trial court found defendant guilty of two counts of armed violence. In October 2015, the court sentenced defendant to concurrent 16–year prison sentences. Defendant appeals, arguing the court erred in finding him guilty of armed violence because the State did not establish beyond a reasonable doubt the rifle found in his bedroom was immediately accessible to him when the police entered his bedroom. He also argues the circuit clerk erred in imposing fines on him. We affirm defendant's armed violence convictions but remand this case for the trial court to vacate the fines improperly imposed by the circuit clerk.

**FINDINGS:**  Evidence was sufficient to support a reasonable inference that an assault rifle found in defendant's bedroom was immediately accessible to defendant during the period between the police officers entering the home and opening the bedroom door, as required to support defendant's convictions on two counts of armed violence; **WHY:** defendant's fiancee told police defendant slept on the same side of the bed as where the rifle was found, defendant was still in bed when defendant's fiancee got up to let the dog out, when police officer opened the bedroom door and ordered defendant to get on the ground, he instead laid down on the bed, decreasing the distance between himself and the rifle, and did not tell the officer anything about the rifle being in the room. 720 Ill. Comp. Stat. Ann. 5/33A-2(a).

### 33. People v. McLaurin, 2020 IL 124563, March 19, 2020

**Background:** Following bench trial, defendant was convicted of being an armed habitual criminal. Defendant appealed. The Appellate Court reversed. State petitioned for leave to appeal and petition was allowed.

**Holdings:** The Supreme Court held that:

1 first police officer's unimpeached testimony that she observed defendant exit apartment building “carrying a silver handgun” was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal, and

2 second officer's testimony concerning gun recovered from scene of traffic stop was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal.

Appellate Court judgment reversed; Circuit Court judgment affirmed.

**COURT’S EXPLANATION:** This appeal arises from defendant Jasper McLaurin's conviction of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)), following a bench trial in the circuit court of Cook County. The appellate court reversed defendant's conviction, holding that the evidence was insufficient to prove that he possessed a firearm as defined by the Criminal Code of 2012 (id. § 2-7.5; 430 ILCS 65/1.1 (West 2014)), an element of the convicted offense. 2018 IL App (1st) 170258, ¶ 31, 428 Ill.Dec. 527, 122 N.E.3d 788. For the reasons that follow, we reverse the appellate court judgment and affirm defendant's conviction.

**FINDINGS #1:**  Police officer's unimpeached testimony that she observed defendant exit apartment building “carrying a silver handgun” was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal, although gun recovered from scene of crime was not introduced into evidence, **WHY:** *police officer testified that she was approximately 50 feet away from defendant and nothing was obstructing her view, that she immediately called for backup after observing defendant with gun, that defendant entered white van, which drove away, that she followed van, that other officers stopped van, that she was asked to identify gun found at scene of stop, and that gun was same color and size as gun she saw in defendant's hand when he entered van*. 720 Ill. Comp. Stat. Ann. 5/24-1.7(a). **FINDINGS #2:**  Police officer's testimony concerning gun recovered from scene of traffic stop was sufficient to support finding that defendant possessed firearm, as required for conviction for being an armed habitual criminal, **WHY:** *officer testified that he was among officers who stopped van, that another officer had observed defendant enter while carrying handgun, that he looked under vehicle close to door defendant exited, that he saw weapon matching description of size and color given by observing officer, and that weapon was fully loaded*. 720 Ill. Comp. Stat. Ann. 5/24-1.7(a).

### 34. People v. Ames, 2020 IL App (2d) 160722,  July 17, 2020

**CRIMINAL JUSTICE — Weapons.** Evidence was insufficient to establish defendant's conviction for unlawful possession of a **firearm** by a street gang member.

**Background:** Defendant was convicted of unlawful possession of a firearm by a street gang member and aggravated unlawful use of a weapon and sentenced to concurrent prison terms of six and nine years. Defendant appealed.

**Holdings:** The Appellate Court held that:

1 evidence was insufficient to support jury finding that defendant was a member of a street gang engaged in a course or pattern of criminal activity, thus precluding defendant's conviction for unlawful possession of a firearm by a street gang member;

2 double jeopardy barred retrial of defendant, following vacatur of his conviction for unlawful possession of a firearm by a street gang member; and

3 trial court's use of one of defendant's previous felonies to both elevate defendant's aggravated unlawful use of a weapon conviction and to punish him amounted to an impermissible double enhancement.

Vacated in part and sentence reduced.

**COURT’S EXPLANATION:** After a jury trial, defendant, Troyan D. Ames, was convicted of unlawful possession of a firearm by a street gang member and aggravated unlawful use of a weapon. He received concurrent prison terms of six and nine years. His appeal presents the following issues for review: (1) whether the State's evidence established that defendant was a member of a street gang and (2) whether the trial court improperly enhanced the sentence for aggravated unlawful use of a weapon. For the reasons that follow, we vacate defendant's conviction of and sentence for unlawful possession of a firearm by a street gang member and reduce his sentence for aggravated unlawful use of a weapon from nine to seven years.

**RULE:** Fifth Amendment prohibition against double jeopardy barred retrial of defendant, following vacatur of defendant's conviction for unlawful possession of a firearm by a street gang member as a result of insufficient evidence to prove the course or pattern of criminal activity element of the offense. U.S. Const. Amend. 5; 740 Ill. Comp. Stat. Ann. 147/10.

**FINDINGS #1:**  Any inference that defendant created the graffiti that was found in his jail cell, which expert testified depicted symbols and language used by members of alleged street gang, was insufficient to support jury finding that defendant was a member of a street gang that was engaged in a course or pattern of criminal activity, thus precluding defendant's conviction for unlawful possession of a firearm by a street gang member; **WHY:** *expert admitted he had no idea whether the graffiti was there before defendant's move into that cell and acknowledged that it was possible that the graffiti was present before defendant's assignment to that cell, and no witness testified as to who created the graffiti or when it was created*. 740 Ill. Comp. Stat. Ann. 147/10. **FINDINGS #2:**  Trial court's use of one of defendant's previous Class 2 felonies to both elevate defendant's aggravated unlawful use of a weapon conviction and to punish him under the Unified Code of Corrections amounted to an impermissible double enhancement, thus, warranting reduction of defendant's nine-year sentence to seven years. 720 Ill. Comp. Stat. Ann. 5/24-1.6(d)(3); 730 Ill. Comp. Stat. Ann. 5/5-5-3(c)(2)(F); Ill. Sup. Ct. R. 615(b)(4).

**35. People v. Wise, 2019 IL App (3d) 170252, September 18, 2019.**

**CRIMINAL JUSTICE — Weapons.** Evidence was insufficient to establish that gun, which was located on back seat of car driven by defendant, was “on or about” defendant's person.

**Background:** Defendant was convicted of unlawful possession of a weapon by a felon. Defendant appealed.

**Holding:** The Appellate Court held that evidence was insufficient to establish that firearm was “on or about” defendant's person, as necessary to support conviction.

Vacated.

**COURT’S EXPLANATION:** Defendant was charged with several offenses and, pertinent to this case, was found guilty of unlawful possession of a weapon by a felon. The trial court based its verdict on testimony that defendant was aware that the gun was in the vehicle and that, at some point, defendant was seated near the firearm. On appeal, defendant argued that the State failed to prove beyond a reasonable doubt that the firearm was “on or about his person” as required by the offense charged. We agree and vacate defendant's conviction.

**RULE:** Although a finding of inaccessibility of a weapon does not prevent a finding of constructive possession of weapon, it does prevent a finding of guilt based on such possession.

**FINDINGS:**  Evidence was insufficient to establish that firearm found on back seat of vehicle in which defendant was driving was “on or about” defendant's person, as necessary for defendant to be convicted of unlawful possession of a weapon by a felon; **WHY:** *firearm was located five to ten feet behind driver's seat, and arresting officer testified that he did not believe it was possible for defendant to reach firearm from driver's seat, and although passenger testified that defendant, at beginning of trip, had briefly sat in back seat, that occurred in different state*. 720 Ill. Comp. Stat. Ann. 5/1-5(a)(1), 5/24-1.1(a).

### 36. People v. Campbell, 2019 IL App (1st) 161640, April 09, 2019.

**CRIMINAL JUSTICE — Evidence.** Police officers' observation that defendant tossed the gun into the vehicle was not untruthful “dropsy” testimony.

**Background:** Following a bench trial, defendant was convicted of aggravated unlawful use of a weapon (AUUW). Defendant appealed.

**Holding:** The Appellate Court held that police officers' observation that defendant tossed a gun into the vehicle was not untruthful “dropsy” testimony.

Affirmed.

**COURT’S EXPLANATION:** DeAngelo Campbell was found guilty of aggravated unlawful use of a weapon and sentenced to one year in prison. On appeal, Campbell contends that the State failed to prove him guilty beyond a reasonable doubt because the police officers' testimony was not credible and there was no physical evidence linking him to the gun. Specifically, Campbell argues that it is inherently incredible that he would have dropped the gun he was accused of possessing in plain view of the officers.

While we are not insensitive to Campbell's claim about the systemic credibility problems created by this so-called “dropsy” testimony, we affirm because, after viewing the evidence in the light most favorable to the State, we conclude that the officers' testimony was not so unworthy of belief as to render the trial court's finding of guilt unreasonable.

**RULE A:** A case involving “dropsy” testimony is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped contraband in plain view. U.S. Const. Amend. 4. **RULE B:** Critical whenever an officer testifies that a defendant dropped contraband in plain view, is the question, would the officer's detention or search of the defendant have violated the Fourth Amendment if he or she had not seen the defendant drop the contraband in plain view; if the answer is no, there is far less reason to doubt the credibility of the officer's testimony because the officer has nothing to gain by lying about the drop, if, however, the answer is yes, both trial courts and courts of review should take care to analyze the credibility of the officer because the incentive to lie to avoid suppression of the evidence is at its highest. U.S. Const. Amend. 4. **RULE C:** A police officer who sees contraband in a car from a lawful vantage point can then search the passenger compartment. U.S. Const. Amend. 4. **RULE D:** For purposes of offense of aggravated unlawful use of a weapon (AUUW), if witnesses' testimony is otherwise credible, the state is not required to present additional physical evidence that linked defendant to the gun. 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), 5/24-1.6(a)(3)(C).

**FINDINGS:**  Police officers' observation that defendant tossed the gun at issue into the vehicle was not untruthful “dropsy” testimony, and thus was sufficient to support conviction in prosecution for aggravated unlawful use of a weapon (AUUW), even though the idea that a person in presence of police officers would throw contraband in view of the officers was skeptical; **WHY:** *excluding officers' observation, officers' conduct in conducting a Terry stop likely comported with the Fourth Amendment as the vehicle defendant was in was illegally double-parked, thereby giving the officers little incentive to fabricate a “dropsy” narrative*. U.S. Const. Amend. 4.

**WEAPONS OFFENSES CASE LAW**

**SPRING ISSUE – 2019**

**(Jan – Mar Cases – 2019)**

**1. People v. Rodney Burnett, 2019 IL APP (1st) 163018, (1st Dist., March 29, 2019)** Weapons Violation - - Affirmed**. ISSUE: COUNSEL (Effectiveness):** Did the defense counsel provide ineffective assistance by failing to move to suppress evidence based upon the illegal arrest of this defendant**? (No).**

**2. People v. Daekwon Cunningham, 2019 IL App (1st) 160709, (1st Dist., March 29, 2019)** UUW and Aggravated Discharge of a Firearm - - Affirmed in Part and Reversed in Part; Mittimus Corrected**. ISSUES: 1) CONSTITUTIONALITY OF STATUTE (UUW):** Was the UUW statute unconstitutional**? (No); 2) REASONABLE DOUBT (Aggravated Discharge of a Firearm):** Did the People prove all of the elements of this offense**? (No).**

**3. People v. Courtney Lewis, 2019 IL APP (1st) 160705, (1st Dist., March 29, 2019)** AUUW - - Affirmed; Fees and Fines Corrected. **ISSUES: 1) TRIAL PROCEDURE (Impeachment):** Did the People fail to complete their impeachment of a witness for the defendant**? (No); 3) DUE PROCESS (Fingerprint Testing):** Was the defendant denied due process when the trial court refused to order fingerprint testing on a firearm**? (No); 4) FEES AND FINES (Correction):** Should various fees and fines imposed upon this defendant be corrected**? (Yes).**

**4. People v. Juan Lewis, 2019 IL APP (1st) 160864, (1st Dist. March 29, 2019)** Aggravated Discharge of a Firearm - - Affirmed**. ISSUE: DUE PROCESS (Confrontation):** Was this defendant denied due process when he was denied his right to confront witnesses**? (Perhaps, but he forfeited any complaint by failing to object.).**

**5. People v. Nathaniel McCurine, 2019 IL App (1st) 160817, (1st Dist., March 29, 2019)** Armed Habitual Criminal - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (Armed Habitual Criminal):** Did the People fail to prove that the defendant had constructive possession of a firearm**? (No); 1) CONSTITUTIONALITY OF STATUTE (Armed Habitual Criminal):** Was the Armed Habitual Criminal statute unconstitutional**? (No).**

**6. People v. Robert Schultz, 2019 IL APP (1st) 163182, (1st Dist., March 29, 2019)** UUWF - - Affirmed**. ISSUE: REASONABLE DOUBT (UUWF):** Did the People fail to prove that the defendant had a prior conviction for a “forcible felony**?” (No).**

**7. People v. Cedric Johnson, 2019 IL APP (1st) 162517, (1st Dist. March 25, 2019)** Armed Violence, Possession of a Controlled Substance and Unauthorized Possession of a Firearm by a Felon - - Reversed and Remanded**. ISSUE: DUE PROCESS (Jury Trial):** Was this defendant denied due process when he did not waive his right to a jury trial in open court**? (Yes).**

**8. People v. Derrick Macklin, 2019 IL APP (1st) 161165, (1st Dist., March 5, 2019)** Armed Robbery - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (Armed Robbery):** Did the People fail to present sufficient evidence to support this defendant’s conviction for Armed Robbery**? (No); 2) COUNSEL (Effectiveness):** Did the defense counsel provide ineffective assistance by failing to use an expert witness to show the unreliability of eyewitness testimony**? (No).**

**9. People v. Brandon Meyers, 2019 IL APP (1st) 140891, (1st Dist., ~~December 3, 2018~~)** Aggravated Discharge of a Firearm - - Affirmed**. (MODIFIED upon denial of Rehearing; March 4, 2019) ISSUES: 1) DUE PROCESS (Cross-examination):** Was this defendant denied due process when the trial court limited his cross-examination**? (No); 2)** **EVIDENCE (Relevance):** Did the trial court err in allowing evidence of bullet holes in buildings to be introduced**? (No); 3) REASONABLE DOUBT (Aggravated Discharge):** Did the People fail to present sufficient evidence to support this defendant’s convictions**? (No); 4) PROSECUTOR CONDUCT (Misstatement of Evidence):** Did the prosecutor deny this defendant a fair trial my misstating evidence**? (No).**

**10. In re J.P., 2019 IL APP (1st) 181087, (1st Dist., March 1, 2019)** UUW - - Affirmed and Remanded with Directions**. ISSUE: 1) SENTENCES (Constitutionality):** Were the conditions of this defendant’s probation unconstitutional**? (No).**

**11. People v. Bill Lee, 2019 IL APP (1st) 162563, (1st Dist., February 27, 2019)** AUUW and Possession of a Firearm with a Defaced Serial Number - - Reversed and Remanded**. ISSUES: 1) REASONABLE DOUBT (AUUW):** Did the People to present sufficient evidence to prove this defendant’s knowing possession of a firearm**? (Yes); 2) TRIAL PROCEDURE (Jury Question):** Did the trial court err in answering the jury’s question**? (No);** **3) EVIDENCE (Prejudicial):** Did the trial court err in allowing the People to introduce evidence that the defendant possessed hollow-point ammunition**? (Yes).**

**12. People v. Willie Wise, 2019 IL APP (2nd) 160611, (2nd Dist., February 27, 2018)** Armed Violence - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (Armed Violence):** Did the People to present sufficient evidence to prove this defendant’s conviction for Armed Violence where his weapon and his illegal drugs were in difference locations**? (Yes); 2) SEARCH AND SEIZURE (Warrant):** Was the warrant that the police used to search the defendant’s property invalid**? (No).**

**13. People v. Jasper Lawrence, 2018 IL APP (1st) 161267, (1st Dist., December 27, 2018)** Unlawful Possession of a Firearm by a Felon - - Affirmed**. ISSUES: 1) SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to justify the arrest of this defendant**? (Yes); 2) JUDICIAL CONDUCT (Jury Deliberation):** Did the trial court coerce the jury into finding the defendant guilty by instructing them to continue to deliberate after they informed the Court that they were deadlocked**? (No);** **3) SENTENCING (Enhancement):** Did the trial court use an incorrect sentencing range when sentencing this defendant and did it impermissibly enhance his sentence by using an element of his offense as an aggravating factor**? (No).**

**14. People v. Jamaal Charles, 2018 IL APP (1st) 153625, (1st Dist., December 26, 2018)** Aggravated Criminal Sexual Assault and Aggravated Kidnapping - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (Aggravated Criminal Sexual Assault):** Did the People to present sufficient evidence to prove this defendant’s possession of a firearm during his offenses**? (Yes); 2) EVIDENCE (Prior Bad Acts):** Did the trial court err in allowing the defendant to be impeached with his prior convictions**? (No);** **3) COUNSEL (Effectiveness):** Did the defendant’s counsel provide ineffective assistance by failing to object to the use of his prior convictions for impeachment purposes**? (No); 4) SENTENCES (Excessive):** Was this defendant’s 44-year sentence excessive**? (No).**

**15. People v. David Kelly, 2018 IL APP (1st) 162334, (1st Dist., December 12, 2018)** Unlawful Possession of a firearm - - Affirmed**. ISSUES: CONSTITUTIONALITY OF STATUTE (Sentencing):** Was the statute that criminalizes the possession of a firearm for self-defense while the defendant is in possession of a firearm unconstitutional**? (No).**

**16. People v. Jasper McLaurin, 2018 IL APP (1st) 170258, (1st Dist., December 4, 2018)** Armed Habitual Criminal - - Reversed**. ISSUE: REASONABLE DOUBT (AHC):** Did the People fail to present sufficient evidence to support this defendant’s conviction for being an Armed Habitual Criminal**? (Yes).**

**17. People v. David Lundy, 2018 IL APP (1st) 162304, (1st Dist., December 4, 2018)** Armed Robbery - - Affirmed**. ISSUE: SENTENCES (Excessive):** Was this defendant’s 10-year sentence excessive**? (No).**

**SUMMER ISSUE – 2019**

**(April-June Cases – 2019)**

**1. People v. Alvis Holley, 2019 IL APP (1st) 161326, (1st Dist., May 13, 2019)** Attempted First-Degree Murder. Sentence Vacated. **ISSUE: SENTENCES (Statutory Construction):** Did the firearm enhancement provisions properly apply to convictions for attempted first-degree murder**? (No).**

**2. People v. Clarence Clifton, 2019 IL APP (1st) 151967, 1st Dist., April 16, 2019)** Armed Robbery - - Reversed and Remanded**. ISSUE: REASONABLE DOUBT (Armed Robbery):** Did the People fail to present sufficient evidence to prove that the defendant brandished a firearm during this robbery**? (No).**

**3. People v. Keith L. Starks, 2019 IL APP (2nd) 160871, (2nd Dist., June 28, 2019)** Possession of a Controlled Substance with the Intent to Deliver and Unlawful Possession of a Weapon by a Felon - - Affirmed**. ISSUES: 1) REASONABLE DOUBT (Possession of a Controlled Substance with the Intent to Deliver):** Did the People present sufficient evidence to support this defendant’s conviction for possession with the intent to deliver**? (Yes). 2) STATUTORY CONSTRUCTION (Bludgeon):** Was the expandable baton possessed by this defendant a “bludgeon” for purposes of the weapons offense**? (Yes).**

**4. People v. Anterius Beck, 2019 IL APP (1st) 161626, (1st Dist., June 18, 2019)** Unlawful Possession of a Firearm by a Street Gang Member and 10 counts of Aggravated Unlawful Use of a Weapon (AUUW) - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing**. ISSUE: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member):** Did the People fail to present sufficient evidence to support this defendant’s conviction for the Unlawful Possession of a Firearm by a Street Gang Member**? (Yes).**

**5. People v. Nicholas Calloway, 2019 IL APP (1st) 160983, (1st Dist., May 29, 2019)** Armed Violence - - Reversed**. ISSUE: REASONABLE DOUBT (Armed Violence):** Did the People fail to present sufficient evidence to support this defendant’s conviction for Armed Violence by failing to prove that the defendant was otherwise armed when the police entered his apartment**? (Yes).**

**6. People v. Danny Loggins, 2019 IL APP (1st) 160482, (1st Dist., May 29, 2019)** Armed Violence - - Affirmed and Remanded**. ISSUES: 1) REASONABLE DOUBT (Armed Violence):** Did the People fail to present sufficient evidence to support this defendant’s conviction for Armed Violence by failing to prove that the defendant was otherwise armed when the police entered his apartment**? (No); 2)** **EVIDENCE (Expert Testimony):** Did an investigator properly testify concerning the use of drug paraphernalia found in the defendant’s apartment**? (Yes).**

**7. People v. Markeese Thomas, 2019 IL App (1st) 170474, (1st Dist., ~~March 19, 2019~~)** Suppression of Evidence - - Reversed and Remanded**. MODIFIED UPON DENIAL OF REHEARING – May 14, 2019. ISSUE: SEARCH AND SEIZURE (Probable Cause):** Did the police err in placing this defendant under arrest after they saw him possessing a firearm in an apartment building**? (No).**

**8. People v. Juan Lewis, 2019 IL APP (1st) 160864, (1st Dist. ~~March 29, 2019~~)** Aggravated Discharge of a Firearm - - Affirmed**. MODIFIED AFTER DENIAL OF REHEARING – May 6, 2019. ISSUE: DUE PROCESS (Confrontation):** Was this defendant denied due process when he was denied his right to confront witnesses**? (Perhaps, but he forfeited any complaint by failing to object.).**

**9. People v. Terrell Phagan, 2019 IL APP (1st) 153031, (1st Dist., April 30, 2019)** Attempted Murder of a Peace Officer (Firearm) and numerous other offenses - - Affirmed**. ISSUES: 1) PROSECUTOR CONDUCT (Closing Argument):** Did the prosecutor’s closing argument deny this defendant a fair trial**? (No). 2) STATUTORY CONSTRUCTION (Firearm Enhancement):** Did the firearm enhancement apply to the offense of Attempted Murder of a Peace Officer**? (Yes); 3)** **SENTENCING (Consecutive):** Did the trial court err by imposing discretionary consecutive sentences**? (No); 4) SENTENCES (Excessive):** Was this defendant’s 71-year sentence excessive**? (No).**

**10. People v. DeAngelo Campbell, 2019 IL APP (1st) 161640, (1st Dist., April 9, 2019)** AUUW - - Affirmed**. ISSUE: REASONABLE DOUBT (AUUW):** Did the People fail to prove that the defendant actually possessed the firearm he was accused of possessing**? (No).**

**FALL ISSUE – 2019**

**(July - September Cases – 2019)**

**1. People v. Anterius Beck, 2019 IL APP (1st) 161626, (1st Dist., ~~June 18, 2019~~)** Unlawful Possession of a Firearm by a Street Gang Member and 10 counts of Aggravated Unlawful Use of a Weapon (AUUW) - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing**. MODIFIED UPON DENIAL OF REHEARING – July 16, 2019. ISSUE: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member):** Did the People fail to present sufficient evidence to support this defendant’s conviction for the Unlawful Possession of a Firearm by a Street Gang Member**? (Yes).**

**2. People v. Johnnie Lee Sims, 2019 IL APP (3rd) 170417, (3rd Dist., August 5, 2019)** Unlawful Possession of a Weapon by a Felon - - Affirmed**. ISSUES: 1) EVIDENCE (Other Bad Acts):** Did the trial court err in allowing evidence of the defendant’s prior possession of a firearm**? (No); 2) JURY INSTRUCTIONS (Date of Offense):** Was this defendant’s jury improperly instructed that the People need not prove the exact date of the offense**? (No); 3) PROSECUTOR CONDUCT (Closing Arguments):** Did the prosecutor deny this defendant a fair trial when he asked the jury to determine whether the defendant was the type of person who walked the street while carrying a firearm and he committed on gun violence**? (No).**

**3. People v. Orlando Charles Alexander, 2019 IL APP (3rd) 160709, (3rd Dist., August 27, 2019)** Unlawful Possession of a Weapon by a Felon - - Reversed and Remanded**. ISSUE: JURY INSTRUCTIONS (Possession):** Did the trial court err in instructing the defendant’s jury on the definition of possession after it began its deliberations**? (Yes).**

**4. People v. Lewis C. McKelvy and Fabian T. Harden, 2019 IL App (2nd) 180630, (2nd Dist., September 3, 2019)** Suppression of Evidence - - Reversed and Remanded**. ISSUE: SEARCH AND SEIZURE (Extended Duration):** Did the police unreasonably extend the duration of this defendant’s traffic stop**? (No).**

**5. People v. Giovanni Salgado, 2019 IL App (1st) 171377, (1st Dist., September 9, 2019)** Denial of Motion to Suppress - - Affirmed**. ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion):** Was the arresting officer justified in detaining this defendant**? (Yes).**

**6. People v. Wendell S. Frazier, 2019 IL APP (1st) 172250, (1st Dist., September 12, 2019)** First-Degree Murder, Aggravated Discharge of a Firearm and Aggravated Unlawful Use of a Weapon - - Affirmed. **ISSUES: 1) EVIDENCE (Expert Opinion):** Did the trial court err in refusing to allow the defendant’s expert to testify that PTSD caused his criminal conduct**? (No); 2) DUE PROCESS (Judicial Conduct):** Did the trial court err by using its own person knowledge in convicting this defendant**? (No).**

**7. People v. Charles P. Wise, 2019 IL APP (3rd) 170252, (3rd Dist., September 18, 2019)** Unlawful Possession of a Firearm by a Felon - - Vacated**. ISSUE: REASONABLE DOUBT** (Unlawful Possession of a Firearm by a Felon):Did the People fail to present sufficient evidence to prove Wise possessed the firearm**? (Yes).**

**WINTER ISSUE – 2020**

**(Oct - Dec Cases – 2019)**

**1.** **People v. Patrick Hood, 2019 IL App (1st) 162194, (1st Dist., December 31, 2019)** AUUW - - Affirmed in Part, Remanded with Directions. **ISSUES #1: 1a) SEARCH AND SEIZURE (Reasonable Suspicion):** Did the People present sufficient evidence to support the detention of the defendant**? (Yes); 1b) FEES AND FINES (Imposition):** Should this case be remanded for a hearing on the propriety of the fees and fines imposed upon the defendant**? (Yes).**

**2. People v. Steven Spain, 2019 IL App (1st) 163184, (1st Dist., December 27, 2019)** AUUW - - Affirmed. **ISSUE #2: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient reasonable suspicion to justify stopping the defendant and sufficient probable cause to arrest him**? (Yes).**

**3. People v. Jamal Braswell, 2019 IL App (1st) 172810, (1st Dist., December 26, 2019)** Armed Robbery with a Firearm and Unlawful Restraint - - Affirmed. **ISSUES #2: 3a) SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to arrest the defendant**? (Yes); 3b) REASONABLE DOUBT (Armed Robbery):** Did the People fail to prove that the defendant was armed when he committed his robbery**? (No).**

**4. People v. Telly Flunder, 2019 IL App (1st) 171635, (1st Dist., December 26, 2019)** UUWF - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Frisk):** Did the police legally frisk the defendant during a consensual encounter**? (No).**

**5. People v. James Thomas, 2019 IL APP (1st) 162791, (1st Dist., November 15, 2019)** AUUW - - Reversed**. ISSUES: 1)** **SEARCH AND SEIZURE (Probable Cause):** Did the police have probable cause to place this defendant under arrest simply because they discovered that he possessed a firearm**? (No); 2) REASONABLE DOUBT (AUUW):** Did the People present sufficient evidence to prove that this defendant actually possessed the firearm they seized from his car**? (No).**

**6. People v. Deontae X. Murray, 2019 IL 123289, (Ill. Sup. Ct., October 18, 2019)** Unlawful Possession of a Firearm by a Street Gang Member - - Reversed**. ISSUE: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member):** Did the People present sufficient evidence to support this defendant’s convictions for Unlawful Possession of a Firearm by a Street Gang Member**? (No).**

**7. People v. Aloysius A. Alexander., 2019 IL APP (3rd) 170168, (3rd Dist., October 1, 2019)** First-Degree Murder; Aggravated Battery with a Firearm; Unlawful Use of a Weapon by a Felon - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing**. ISSUE: 1) OFFENSES (UUWF):** Was this defendant properly convicted of the Unlawful Use of a Weapon by a Felon where his prior felony conviction was declared to be void**? (No).**

**WINTER ISSUE – 2020**

**(Oct - Dec Cases – 2019)**

**1.** **People v. Patrick Hood, 2019 IL App (1st) 162194, (1st Dist., December 31, 2019)** AUUW - - Affirmed in Part, Remanded with Directions. **ISSUES #1: 1a) SEARCH AND SEIZURE (Reasonable Suspicion):** Did the People present sufficient evidence to support the detention of the defendant**? (Yes); 1b) FEES AND FINES (Imposition):** Should this case be remanded for a hearing on the propriety of the fees and fines imposed upon the defendant**? (Yes).**

**2. People v. Steven Spain, 2019 IL App (1st) 163184, (1st Dist., December 27, 2019)** AUUW - - Affirmed. **ISSUE #2: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient reasonable suspicion to justify stopping the defendant and sufficient probable cause to arrest him**? (Yes).**

**3. People v. Jamal Braswell, 2019 IL App (1st) 172810, (1st Dist., December 26, 2019)** Armed Robbery with a Firearm and Unlawful Restraint - - Affirmed. **ISSUES #2: 3a) SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to arrest the defendant**? (Yes); 3b) REASONABLE DOUBT (Armed Robbery):** Did the People fail to prove that the defendant was armed when he committed his robbery**? (No).**

**4. People v. Telly Flunder, 2019 IL App (1st) 171635, (1st Dist., December 26, 2019)** UUWF - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Frisk):** Did the police legally frisk the defendant during a consensual encounter**? (No).**

**5. People v. James Thomas, 2019 IL APP (1st) 162791, (1st Dist., November 15, 2019)** AUUW - - Reversed**. ISSUES: 1)** **SEARCH AND SEIZURE (Probable Cause):** Did the police have probable cause to place this defendant under arrest simply because they discovered that he possessed a firearm**? (No); 2) REASONABLE DOUBT (AUUW):** Did the People present sufficient evidence to prove that this defendant actually possessed the firearm they seized from his car**? (No).**

**6. People v. Deontae X. Murray, 2019 IL 123289, (Ill. Sup. Ct., October 18, 2019)** Unlawful Possession of a Firearm by a Street Gang Member - - Reversed**. ISSUE: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member):** Did the People present sufficient evidence to support this defendant’s convictions for Unlawful Possession of a Firearm by a Street Gang Member**? (No).**

**7. People v. Aloysius A. Alexander., 2019 IL APP (3rd) 170168, (3rd Dist., October 1, 2019)** First-Degree Murder; Aggravated Battery with a Firearm; Unlawful Use of a Weapon by a Felon - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing**. ISSUE: 1) OFFENSES (UUWF):** Was this defendant properly convicted of the Unlawful Use of a Weapon by a Felon where his prior felony conviction was declared to be void**? (No).**

**SPRING – 2020**

**(Oct - Dec Cases – 2019)**

**1.** **People v. Patrick Hood, 2019 IL App (1st) 162194, (1st Dist., December 31, 2019)** AUUW - - Affirmed in Part, Remanded with Directions. **ISSUES #1: 1a) SEARCH AND SEIZURE (Reasonable Suspicion):** Did the People present sufficient evidence to support the detention of the defendant**? (Yes); 1b) FEES AND FINES (Imposition):** Should this case be remanded for a hearing on the propriety of the fees and fines imposed upon the defendant**? (Yes).**

**2. People v. Steven Spain, 2019 IL App (1st) 163184, (1st Dist., December 27, 2019)** AUUW - - Affirmed. **ISSUE #2: SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient reasonable suspicion to justify stopping the defendant and sufficient probable cause to arrest him**? (Yes).**

**3. People v. Jamal Braswell, 2019 IL App (1st) 172810, (1st Dist., December 26, 2019)** Armed Robbery with a Firearm and Unlawful Restraint - - Affirmed. **ISSUES #2: 3a) SEARCH AND SEIZURE (Probable Cause):** Did the police have sufficient probable cause to arrest the defendant**? (Yes); 3b) REASONABLE DOUBT (Armed Robbery):** Did the People fail to prove that the defendant was armed when he committed his robbery**? (No).**

**4. People v. Telly Flunder, 2019 IL App (1st) 171635, (1st Dist., December 26, 2019)** UUWF - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Frisk):** Did the police legally frisk the defendant during a consensual encounter**? (No).**

**5. People v. James Thomas, 2019 IL APP (1st) 162791, (1st Dist., November 15, 2019)** AUUW - - Reversed**. ISSUES: 1)** **SEARCH AND SEIZURE (Probable Cause):** Did the police have probable cause to place this defendant under arrest simply because they discovered that he possessed a firearm**? (No); 2) REASONABLE DOUBT (AUUW):** Did the People present sufficient evidence to prove that this defendant actually possessed the firearm they seized from his car**? (No).**

**6. People v. Deontae X. Murray, 2019 IL 123289, (Ill. Sup. Ct., October 18, 2019)** Unlawful Possession of a Firearm by a Street Gang Member - - Reversed**. ISSUE: REASONABLE DOUBT (Unlawful Possession of a Firearm by a Street Gang Member):** Did the People present sufficient evidence to support this defendant’s convictions for Unlawful Possession of a Firearm by a Street Gang Member**? (No).**

**7. People v. Aloysius A. Alexander., 2019 IL APP (3rd) 170168, (3rd Dist., October 1, 2019)** First-Degree Murder; Aggravated Battery with a Firearm; Unlawful Use of a Weapon by a Felon - - Affirmed in Part; Reversed in Part; Case Remanded for Resentencing**. ISSUE: 1) OFFENSES (UUWF):** Was this defendant properly convicted of the Unlawful Use of a Weapon by a Felon where his prior felony conviction was declared to be void**? (No).**

**SUMMER – 2020**

**(Apr-June Cases – 2020)**

**1. People v. Shaquille Stitts, 2020 IL App (1st) 171723, (1st Dist., June 29, 2020)** Attempted First-Degree Murder, Aggravated Battery with a Firearm, and Unlawful Possession of a Firearm by a Felon - - Reversed and Remanded. **ISSUE:** **EVIDENCE (Photographs):** Did the trial court fail to follow proper procedures when it allowed a detective to testify about the contents of a video**? (Yes).**

**2. People v. Jonathon A. Carter, 2020 IL App (3rd) 170745, (3rd Dist., June 9, 2020)** Possession of a Stolen Firearm and Possession of a Firearm by a Felon - - Affirmed. **ISSUES: 1) COUNSEL (Effectiveness):** Did the defense counsel provide ineffective assistance by failing to object to evidence concerning the defendant’s drug use**? (No); 2) TRIAL PROCEDURE (Jury Poling):** Did the trial court improperly poll the defendant’s jury**? (No).**

**3. People v. Robert B. Womack, 2020 IL App (3rd) 170208, (3rd Dist., April 3, 2020)** Denial of motion for leave to file successive PCP (Weapons) - - Reversed and Remanded. **ISSUE: POST-CONVICTION PETITION (Successive Petition):** Did the trial court err in denying this defendant’s motion for permission to file a successive PCP where he argued that his sentence violated the disproportionate penalties provisions of the Illinois Constitution**? (Yes).**

**4. People v. Vivian Claudine Brown, 2020 IL 124100, (Ill. Sup. Ct., April 2, 2020)** Dismissal of Charges (Weapons) - - Vacated. **ISSUE: CONSTITUTIONALITY OF STATUTE (Possession of a Firearm without an FOID):** Did the trial court improperly declared this weapons provision unconstitutional**? (Yes).**