APPENDIX A

2025 IL 129965

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 129965)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v.
TYSHON THOMPSON, Appellant.

Opinion filed June 26, 2025.—Modified upon denial of rehearing September 22, 2025.

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.

Chief Justice Theis and Justices Neville, Holder White, and Cunningham concurred in the judgment and opinion.

Justice Overstreet dissented, with opinion.

Justice O'Brien took no part in the decision.

OPINION

¶ 1 Defendant, Tyshon Thompson, was convicted of violating section 24-1.6(a)(1), (a)(3)(A-5) of the aggravated unlawful use of a weapon statute (AUUW). 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2020). On appeal, he claims the judgment must be reversed outright because he was convicted under a statute that is facially unconstitutional. Defendant asserts section 24-1.6(a)(1), (a)(3)(A-5) violates the second amendment (U.S. Const., amend. II) by categorically banning law-abiding citizens from openly carrying a handgun in public and enforcing an ahistorical double licensing process that mandates both a concealed carry license (CCL) and a Firearm Owner's Identification (FOID) card.

¶ 2 Defendant contends the appellate court committed reversible error when it upheld section 24-1.6(a)(1), (a)(3)(A-5) without applying the text-and-history test for assessing the constitutionality of modern firearm regulations as set forth in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). Defendant concludes section 24-1.6(a)(1), (a)(3)(A-5) fails the *Bruen* test because his public carriage of a ready-to-use handgun for self-defense is presumptively protected by the second amendment and there are no historical analogues to Illinois's double licensing regime for carrying firearms in public.

¶ 3 Although defendant is correct that his public carriage of a handgun is presumptively protected, *Bruen* itself stands for the proposition that Illinois's nondiscretionary, "shall-issue" firearm licensing regime does not violate the second amendment. For the following reasons, we hold that the AUUW statute's ban on unlicensed public carriage, coupled with the requirements to obtain CCLs and FOID cards, is not facially unconstitutional under the second amendment. We affirm the judgments of the Cook County circuit court and the appellate court, accordingly.

¶ 4 ### I. BACKGROUND

¶ 5 On the evening of March 25, 2020, an altercation at a gas station in Forest Park escalated into an exchange of gunfire between two vehicles on a highway. The police pulled over one of the vehicles and found defendant in the driver's seat and an uncased, loaded handgun inside the glove compartment. Chemical testing

revealed gunshot residue on defendant's hands, and ballistics evidence established that the handgun was used in the shooting.

¶ 6 A Cook County grand jury indicted defendant on one count of AUUW, alleging that defendant

> "carried on or about his person, in any vehicle, when not on his land or in his abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, a handgun, pistol or revolver, and the handgun, pistol or revolver, possessed was uncased, loaded, and immediately accessible, and he had not been issued a currently valid license under the firearm concealed carry act, at the time of the offense, in violation of [section 24-1.6 of the Criminal Code of 2012 (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2020))]."[1]

¶ 7 Defendant does not contest that he possessed the handgun within the vehicle while on the highway or that the handgun was uncased, loaded, and immediately accessible. Moreover, the State presented evidence at trial that, although defendant had been issued a valid FOID card at the time of the incident, he had not applied for a CCL. Defendant was convicted of AUUW and sentenced to 30 months in prison.

¶ 8 On appeal, defendant argued, *inter alia*, that the text-and-history standard set forth in *Bruen* establishes that section 24-1.6(a)(1), (a)(3)(A-5) impermissibly infringes on an individual's second amendment right to bear arms. 2023 IL App (1st) 220429-U, ¶ 51. Although defendant's conviction is based on possession of a handgun within a vehicle, he asserted the statute impermissibly criminalizes open carriage. *Id.*

¶ 9 The appellate court accepted defendant's framing of the issue as one of open carriage, rather than concealed carriage, but the court affirmed the AUUW conviction anyway. The court concluded that *Bruen* "explicitly held that open carry without a license was not mandated under the second amendment." *Id.* ¶ 58 (citing *Bruen*, 597 U.S. at 38 n.9). The appellate court stated: "Thus, the *Bruen* [C]ourt upheld Illinois's laws providing for a CCL application. Nothing in *Bruen* suggests

[1]Defendant was also indicted on two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2020)), but those charges are not at issue in this appeal.

that open carry is required under the second amendment." *Id.* The appellate court continued that, because Illinois's Firearm Concealed Carry Act (Concealed Carry Act) (430 ILCS 66/1 *et seq.* (West 2020)) is not unconstitutional under *Bruen*, defendant's AUUW conviction for possession of a firearm within a vehicle without a CCL is not unconstitutional. 2023 IL App (1st) 220429-U, ¶ 60.

¶ 10 The appellate court also concluded that defendant lacks standing to challenge the constitutionality of the firearm licensing requirements because defendant did not submit to the challenged policy. *Id.* ¶ 59. The court noted that defendant did not offer any evidence that he attempted to apply for a CCL and was denied one. *Id.*

¶ 11 We granted defendant's petition for leave to appeal pursuant to Illinois Supreme Court Rule 315(a) (eff. Oct. 1, 2021), to consider his constitutional claim.[2] We also granted the Cook County State's Attorney's Office leave to submit a brief *amicus curiae* in support of the Attorney General's position, pursuant to Illinois Supreme Court Rule 345 (eff. Sept. 20, 2010).

¶ 12 II. ANALYSIS

¶ 13 Defendant renews his second amendment challenge to the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2020)) as impermissibly restricting law-abiding citizens' right to openly carry handguns in public and enforcing an ahistorical double licensing regime that mandates CCLs and FOID cards. Statutes are presumed constitutional, and the party challenging the constitutionality of a statute carries the burden of proving that the statute is unconstitutional. *People v. Aguilar*, 2013 IL 112116, ¶ 15. Moreover, this court has a duty to construe the statute in a manner that upholds the statute's validity and constitutionality, if reasonably possible. *Id.* The constitutionality of a statute is a question of law that we review *de novo*. *Id.*

[2]The State no longer disputes defendant's standing to raise his facial constitutional challenge. As standing is an affirmative defense and is forfeited when not raised, we need not consider it. *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 22; see, *e.g.*, *People v. Kuykendoll*, 2023 IL App (1st) 221266-U, ¶ 17 (where the State initially argued that the defendant lacked standing because there was no evidence that he attempted to procure either a FOID card or CCL; however, at oral argument, the State conceded that defendant had standing).

¶ 14 Defendant mounts a facial challenge, which is the most difficult type of constitutional challenge. An enactment is invalid on its face only if no set of circumstances exists under which it would be valid. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20. A facial challenge requires a showing that the statute is unconstitutional under any set of facts; the specific facts related to the challenging party are irrelevant. *People v. Garvin*, 219 Ill. 2d 104, 117 (2006).

¶ 15 As a threshold matter, we note that defendant, by mischaracterizing his firearm possession as open carriage, is attempting to challenge the constitutionality of a statute unrelated to his conviction. The State is correct that concealed carriage, not open carriage, is at issue because the AUUW provisions under which defendant was convicted do not implicate Illinois's ban on open carriage.

¶ 16 Open carriage of a ready-to-use firearm is illegal in Illinois, regardless of licensure. The unlawful use of a weapon (UUW) statute, for example, requires that a firearm be "carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act." 720 ILCS 5/24-1(a)(10)(iv) (West 2020). To carry a firearm in accordance with the Concealed Carry Act, a licensee must completely or mostly conceal the firearm or carry it in a vehicle. 430 ILCS 66/5 (West 2020). (" 'Concealed firearm' means a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle."); *id.* § 10(c) (CCL licensee may carry concealed firearm).

¶ 17 Defendant's possession of the handgun in the vehicle without a valid CCL constitutes unlicensed concealed carriage and is punishable under section 24-1.6(a)(1), (a)(3)(A-5). 430 ILCS 66/10 (West 2020) (CCL holder may keep or carry a loaded or unloaded concealed firearm on or about his person in a vehicle); 720 ILCS 5/24-1.6(a)(1) (West 2020) (a person commits AUUW when he or she knowingly "[c]arries *** in any vehicle" without a CCL). By contrast, a person who carries a firearm openly in public, with or without a CCL, commits UUW (720 ILCS 5/24-1(a)(10) (West 2020) but not AUUW (*id.* § 24-1.6(a)(1), (a)(3)(A-5)). Because defendant was convicted of violating section 24-1.6(a)(1), (a)(3)(A-5), the issue properly before the court is the constitutionality of the AUUW statute's enforcement of the CCL licensing regime, which incorporates FOID card licensure. See, *e.g.*, *People v. Chairez*, 2018 IL 121417, ¶ 13.

¶ 18 The Firearm Owner's Identification Card Act (FOID Card Act) authorizes a licensee to "acquire or possess any firearm." 430 ILCS 65/2(a)(1) (West 2020). Every FOID card applicant "found qualified under Section 8 of [the FOID Card] Act by the Department *shall be entitled* to a [FOID card] upon the payment of a $10 fee." (Emphasis added.) *Id.* § 5(a). Section 8, in turn, provides, "The Department of State Police has authority to deny an application for or to revoke and seize a [FOID card] previously issued" if one of several objective factors, such as age or criminal history, disqualifies the person for FOID licensure. *Id.* § 8.[3]

¶ 19 For example, a FOID card applicant must submit proof that he or she is a citizen who has not been convicted of a felony and does not suffer from narcotics addiction or mental health issues. *Id.* § 4. The applicant must facilitate certain disclosures by "sign[ing] a release on a form prescribed by the Department of State Police waiving any right to confidentiality and requesting the disclosure to the Department of State Police of limited mental health institution admission information from another state." *Id.* § 4(a)(3). The applicant must also submit a photograph or seek a religious exemption from the photograph requirement. *Id.* § 4(a-20). The processing fee for a FOID card is $10. *Id.* § 5(a).

¶ 20 Only those who are at least 21 years old and who already possess or are applying for a FOID card may apply for a CCL. 430 ILCS 66/25(1), (2), 30(b)(4) (West 2020). However,

> "[t]he Department *shall issue* a [CCL] to an applicant *** if the person:
>
> ***
>
> *** has a currently valid [FOID card] and at the time of application meets the requirements for the issuance of a [FOID card] and is not prohibited under the [FOID Card Act] or federal law from possessing or receiving a firearm." (Emphasis added.) *Id.* § 25(2).

[3]Since the events at issue in this case, the Department of State Police has been officially renamed the Illinois State Police, and the language of the statutes has been updated accordingly. Pub. Act 102-538 (eff. Aug. 20, 2021); Pub. Act 102-813 (eff. May 13, 2022).

Thus, CCL licensure effectively incorporates FOID card licensure by reference, and the State must issue a CCL if the applicant meets the requirements of both the FOID Card Act and the Concealed Carry Act.

¶ 21 The application requirements of the Concealed Carry Act and the FOID Card Act are similar. For example, a CCL applicant must submit proof that he or she has not been convicted of a felony or certain other offenses. *Id.* §§ 25(3), 30(b)(5). An applicant must waive "privacy and confidentiality rights and privileges under all federal and state laws, including those limiting access to juvenile court, criminal justice, psychological, or psychiatric records or records relating to any institutionalization of the applicant." *Id.* § 30(b)(3). The applicant must submit his or her fingerprints if they are not already on file as part of the FOID card application. *Id.* § 30(b)(8).

¶ 22 The fee for a new CCL application by an Illinois resident is $150. *Id.* § 60(b). CCL applicants must also pay a fee for a criminal background check, including under the National Instant Criminal Background Check System of the Federal Bureau of Investigation. *Id.* § 35.

¶ 23 A significant difference between FOID card and CCL licensure involves firearms training. A CCL applicant must undergo at least 16 hours of firearms training and must submit a certificate of completion. *Id.* §§ 25(6), 30(b)(10), 75.

> "A certificate of completion for an applicant's firearm training course shall not be issued to a student who:
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> (1) does not follow the orders of the certified firearms instructor;
>
> (2) in the judgment of the certified instructor, handles a firearm in a manner that poses a danger to the student or to others; or
>
> (3) during the range firing portion of testing fails to hit the target with 70% of the rounds fired." *Id.* § 75(e).

¶ 24 With this licensure framework in mind, we address whether the AUUW statute's prohibition of unlicensed concealed carriage in public is facially unconstitutional under the second amendment. The second amendment of our federal constitution states, in full, "A well regulated Militia, being necessary to the

security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II.

¶ 25 The United States Supreme Court explained in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), that the phrase "the right of the people to keep and bear Arms, shall not be infringed" sets out the "textual elements" of the clause that "guarantee the individual right to possess and carry weapons in case of confrontation." *Heller* interpreted the second amendment as codifying a preexisting individual right, unconnected with service in the militia (*id.* at 583-84), for "law-abiding, responsible citizens to use arms in defense of hearth and home" (*id.* at 635). Accordingly, individual self-defense is "the central component" of this second amendment right to keep and bear arms. (Emphasis omitted.) *Id.* at 599; *Bruen*, 597 U.S. at 29. Two years later, the Court applied its second amendment ruling in *Heller* to the states under the fourteenth amendment (U.S. Const., amend. XIV). *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).[4]

¶ 26 The second amendment has a "historically fixed" meaning (*Bruen*, 597 U.S. at 28), but "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791" (*United States v. Rahimi*, 602 U.S. 680, 691-92 (2024)). *Heller* held that applying the second amendment to modern firearms regulations "demands a test rooted in the Second Amendment's text, as informed by history." *Bruen*, 597 U.S. at 19 (discussing *Heller*). Thus, *Heller* established a text-and-history standard for determining the scope of the second amendment. *Id.* at 19-21, 39. Many lower courts misinterpreted *Heller* by incorporating means-end scrutiny into their analyses. *Id.* at 18-20; *Range v. Attorney General United States*, 124 F.4th 218, 224 (3d Cir. 2024) (*en banc*). So, the *Bruen* Court explained that *Heller* had adopted a "methodology centered on constitutional text and history" rather than on strict or intermediate scrutiny. *Bruen*, 597 U.S. at 22; see *McDonald*, 561 U.S. at 790-91 (the second amendment does not permit "judges to assess the costs and benefits of firearms restrictions" under means-end scrutiny).

[4]The United States Constitution's Bill of Rights applies to the states through the fourteenth amendment. *Bruen*, 597 U.S. at 37; *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) ("incorporated provisions of the Bill of Rights bear the same content when asserted against States as they do when asserted against the federal government"). So, defendant technically is asserting a violation of the fourteenth amendment, not the second. See *Bruen*, 597 U.S. at 37, 71.

¶ 27 *Bruen* clarified and applied the text-and-history standard in the context of a second amendment challenge to New York's firearm licensing regime, which regulated law-abiding citizens' ability to carry concealed firearms in public. *Bruen*, 597 U.S. at 11-12. Two citizens applied for unrestricted licenses to carry concealed handguns in public, and New York's licensing officials denied their applications. *Id.* at 15-16.

¶ 28 The New York regime made it a crime to possess a firearm without a license, whether inside or outside the home. But an individual who wished to carry a firearm outside the home could obtain an unrestricted license to " 'have and carry' " a concealed " 'pistol or revolver' " by proving that " 'proper cause exist[ed]' " for doing so. *Id.* at 12 (quoting N.Y. Penal Law § 400.00(2)(f) (McKinney 2022)). This "proper cause" requirement obligated the citizen to show a special need for self-protection distinguishable from that of the general community. Without showing a special need, citizens were banned from publicly carrying a firearm for self-protection against conflict. *Id.* Merely living in an area noted for criminal activity was not enough for a license; a citizen was required to show " ' "extraordinary personal danger" ' " with documented threats. *Id.* at 13 (quoting *In re Kaplan*, 673 N.Y.S.2d 66, 68 (App. Div. 1998), quoting 38 N.Y. Comp. Codes R. & Regs. tit. 38, § 5-03(b) (2012)).

¶ 29 The *Bruen* Court described New York's firearm licensing regulations as a " 'may issue' " regime that granted the government discretion to deny licenses based on a perceived lack of need or suitability. *Id.* at 13-14. In addition to New York, five states and the District of Columbia had "may issue" regimes that required citizens to show " 'proper cause' " to carry a handgun in public for self-protection. *Id.* at 15.

¶ 30 In contrast to "may issue" jurisdictions, 43 other states had what the Court described as " 'shall issue' " licensing regimes "where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *Id.* at 13. The Court accurately identified Illinois's Concealed Carry Act as a "shall issue" licensing statute. *Id.* at 13 n.1.

¶ 31 *Bruen* emphasized that, when a court considers whether a modern firearm regulation violates the second amendment, judicial application of the text-and-history standard is mandatory:

> "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government *must* then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the second amendment's unqualified command." (Emphasis added and internal quotation marks omitted.) *Id.* at 24.

¶ 32 Thus, the text-and-history standard—adopted in *Heller* and clarified in *Bruen*—requires courts faced with second amendment challenges to "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at 26. Applying the test to New York's licensing regime, the *Bruen* Court observed that the two applicants were within the second amendment's definition of "people" because there was no dispute that they were ordinary, law-abiding citizens. *Id.* at 31-32. The Court explained that the right to "bear" arms referred to the right to publicly wear, bear, or carry firearms " 'upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.' " *Id.* at 32 (quoting *Heller*, 554 U.S. at 584). In defining the right to "bear" as one of "public carry," the Court explained that people "keep" firearms in their homes but do not usually "bear" arms or carry them in their homes. *Id.* As the central component of the right is self-defense against confrontation, the Court stated, "confrontation can surely take place outside the home." *Id* at 32-33. The Court concluded that the second amendment's plain text presumptively guaranteed the applicants' right to bear arms in public for self-defense, not just at home. *Id.* at 33.

¶ 33 The *Bruen* Court held that the second amendment protected the applicants' right to public carriage unless the government could carry its burden to show that New York's proper-cause requirement was consistent with the nation's historical tradition of firearm regulation. *Id.* at 33-34. The government submitted a variety of historical precedents as evidence of the constitutionality of New York's concealed carry licensing regulations. *Id.* at 34. The Court categorized the precedents by historical period: "(1) medieval to early modern England; (2) the American

Colonies and the early Republic; (3) antebellum America; (4) Reconstruction; and (5) the late-19th and early-20th centuries." *Id.* But the Court emphasized that the five categories did not deserve equal weight. Because the second amendment was adopted in 1791 and the fourteenth amendment was adopted in 1868, the Court reasoned that historical precedent that long predates or postdates either time is less likely to reflect the understanding of the rights when the amendments were adopted. *Id.* at 34-36. Temporal proximity to the adoption of the second and fourteenth amendments provides a framework for assessing the precedents' relative weight because, "when it comes to interpreting the Constitution, not all history is created equal." *Id.* at 34.

¶ 34 The *Bruen* Court determined that none of the cited historical evidence established a tradition of broadly prohibiting the public carriage of commonly used firearms for self-defense as did New York's proper-cause requirement. *Id.* at 38-39. The Court explained that it was "not obliged to sift the historical materials for evidence to sustain" the challenged law, because that is the government's burden. *Id.* at 60.

¶ 35 *Bruen* teaches that courts are not tasked with addressing historical questions in the abstract. Instead, courts resolve the "legal questions presented in particular cases or controversies." *Id.* at 25 n.6. This legal inquiry is " 'a refined subset' " of a broader historical inquiry based on evidentiary principles and default rules to resolve uncertainties, such as the principle of party presentation, which entitles the courts to decide a case based on the historical record compiled by the parties. *Id.* (quoting William Baude & Stephen Sachs, *Originalism and the Law of the Past*, 37 L. & Hist. Rev. 809, 810 (2019)).

¶ 36 The *Bruen* Court undertook what it described as a "long journey through the Anglo-American history of public carry" to reach its conclusion that the government failed to prove that New York's proper-cause requirement was consistent with the second and fourteenth amendments. *Id.* at 70. The Court concluded that "American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense" and have not required law-abiding, responsible citizens to demonstrate a special need for self-protection distinguishable from the general community to carry arms in public. *Id.* The *Bruen* Court held the proper-cause requirement is unconstitutional under

Heller's text-and-history standard because the regulation prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. *Id.* at 39, 70.

¶ 37 Defendant cites *Bruen* for the proposition that the appellate court committed reversible error by omitting from its analysis any discussion of the constitutional text and regulatory history of shall-issue licensing regimes. Indeed, the United States Supreme Court has repeated that courts must apply *Heller*'s text-and-history standard to second amendment challenges to modern firearm regulations. *Id.* at 17 (when the plain text of the second amendment covers an individual's conduct "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation"); *Rahimi*, 602 U.S. at 692 (when analyzing firearm regulations under the second amendment, "[a] court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit" (citing *Bruen*, 597 U.S. at 29)).

¶ 38 Defendant correctly observes that the *Bruen* Court undertook extensive analysis of the cited historical precursors as they related to New York's may-issue regime, without undertaking the same analysis for shall-issue regimes. See *Bruen*, 597 U.S. at 38-71. However, the *Bruen* Court went out of its way to address the precise issue presented in this appeal: whether shall-issue firearm licensing regimes, like those set forth in Illinois's Concealed Carry Act and FOID Card Act, comport with the second amendment.

¶ 39 The foundation of *Bruen*'s holding is the difference between the proper-cause requirements in may-issue licensing regimes and the objective requirements in shall-issue licensing regimes. Licensing decisions in shall-issue states, like Illinois, turn on objective criteria, not on a licensing official's subjective opinion or an applicant's showing of some additional need for self-defense. The *Bruen* Court expressly declared shall-issue licensing regimes facially constitutional under the second amendment *because* they neither give officials licensing discretion nor require the applicant to show an atypical need for self-defense:

> "To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which 'a general desire for self-defense is sufficient to obtain a [permit].' [Citation.] Because these licensing regimes do not require applicants to show

> an atypical need for armed self-defense, they do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry. [Citation.] Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.' *Ibid.* And they likewise appear to contain only 'narrow, objective, and definite standards' guiding licensing officials [citation], rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion' [citation]—features that typify proper-cause standards like New York's. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Id.* at 38 n.9.

¶ 40 Defendant attempts to diminish the significance of the above-quoted language because it appears in a footnote. However, "the location, whether in the text or in a footnote, of something which the writer of an opinion thinks should be said, is a matter of style which must be left to the writer." *Phillips v. Osborne*, 444 F.2d 778, 782 (9th Cir. 1971).

¶ 41 Moreover, in case there was any doubt about the Court's view of the constitutional validity of shall-issue licensing regimes, Justice Kavanaugh reinforced the majority opinion by elucidating the crucial difference between proper-cause and shall-issue regulations:

> "First, the Court's decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense. In particular, the Court's decision does not affect the existing licensing regimes—known as 'shall-issue' regimes—that are employed in 43 States.
>
> The Court's decision addresses only the unusual discretionary licensing regimes, known as 'may-issue' regimes, that are employed by 6 States including New York. As the Court explains, New York's outlier may-issue regime is constitutionally problematic because it grants open-ended discretion to licensing officials and authorizes licenses only for those applicants who can show some special need apart from self-defense. Those features of New York's

> regime—the unchanneled discretion for licensing officials and the special-need requirement—in effect deny the right to carry handguns for self-defense to many 'ordinary, law-abiding citizens.' [Citations.] The Court has held that 'individual self-defense is "the central component" of the Second Amendment right.' [Citation.] New York's law is inconsistent with the Second Amendment right to possess and carry handguns for self-defense.
>
> By contrast, 43 States employ objective shall-issue licensing regimes. Those shall-issue regimes may require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements. [Citation.] Unlike New York's may-issue regime, those shall-issue regimes do not grant open-ended discretion to licensing officials and do not require a showing of some special need apart from self-defense. As petitioners acknowledge, shall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice. [Citation.]
>
> Going forward, therefore, the 43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so. Likewise, the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall-issue States." (Emphases omitted.) *Bruen*, 597 U.S. at 79-80 (Kavanaugh, J., concurring, joined by Roberts, C.J.).

¶ 42 Thus, the United States Supreme Court expressly held in *Bruen* that shall-issue firearm licensing regimes, like the one enacted in Illinois, comport with the second amendment because they do not contain the problematic features of New York's licensure regime—the unchanneled discretion for licensing officials and the special-need requirement—which effectively deny the right to carry handguns for self-defense to many ordinary, law-abiding citizens. Illinois's CCL and FOID card regulations do not have a special-need requirement and contain only narrow, objective, and definite standards guiding licensing officials rather than requiring the appraisal of facts, the exercise of judgment, and the formation of an opinion. Contrary to defendant's assertion, *Bruen*'s juxtaposition of may-issue and shall-

issue regimes was deliberate, and it illustrates why the former are facially unconstitutional and the latter are not. *Id.* at 80 ("States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so.").

¶ 43 Consistent with *Bruen*, we hold that, when the second amendment's plain text covers an individual's conduct, that conduct is presumptively protected. The State must then justify its regulation by demonstrating that it is consistent with this nation's historical tradition of firearm regulation.

¶ 44 Here, defendant's possession of a ready-to-use firearm in his vehicle constitutes public concealed carriage, which is presumptively protected under *Bruen*. See *People v. Burns*, 2015 IL 117387, ¶ 21 (second amendment prohibits absolute ban on carrying ready-to-use guns outside the home for self-defense). However, under the unique circumstances presented here, the United States Supreme Court's express endorsement of shall-issue licensure obviates the need for this court to apply the historical-tradition component of the *Bruen* analysis to defendant's facial challenge to section 24-1.6(a)(1), (a)(3)(A-5) and its enforcement of CCL and FOID card licensure.

¶ 45 Defendant seeks reversal based on the appellate court's failure to undertake the text-and-history analysis, arguing that *Bruen*'s invalidation of may-issue licensure is simply not relevant to shall-issue licensure. However, *Bruen* itself demonstrates that applying the text-and-history standard to Illinois's shall-issue regime is unnecessary. Specifically, *Bruen* advises that the constitutional defects of a may-issue regime can be cured by stripping the statute of its problematic features, which are what distinguish may-issue regimes from shall-issue regimes in the first place. *Bruen*, 597 U.S. at 80 (states affected by the *Bruen* decision may continue to require licenses for carrying handguns for self-defense so long as the states employ objective licensing requirements). Defendant's ultimate argument is that Illinois's shall-issue regime is unconstitutional. But one cannot reconcile his position with *Bruen*'s pronouncement that a may-issue regime will pass constitutional muster if it is amended to operate like a shall-issue regime. For the reasons expressed in *Bruen*, Illinois's shall-issue regime does not violate the second amendment.

¶ 46 We note that our interpretation of *Bruen* is consistent with appellate court decisions that have cited footnote 9 correctly for the proposition that Illinois's shall-

issue licensing regulations are not facially unconstitutional under the second amendment. See, *e.g.*, *People v. Gunn*, 2023 IL App (1st) 221032, ¶ 28 (Concealed Carry Act's 90-day waiting period and 5-year validity period are constitutional); *People v. Burns*, 2024 IL App (4th) 230428, ¶¶ 37, 41; *People v. Harris*, 2024 IL App (1st) 230122-U, ¶¶ 44, 48 ("We reject defendant's contention that the AUUW statute is unconstitutional on its face due to the statutory schemes for the issuance of a FOID card and a CCL when the *Bruen* [C]ourt endorsed such regulations."); *People v. Noble*, 2024 IL App (3d) 230089, ¶ 16; *People v. Paramo*, 2024 IL App (1st) 230952-U, ¶ 39 (*Bruen* explicitly recognized that "shall-issue" licensing regimes such as Illinois's FOID Card Act were permissible under the second amendment).

¶ 47 We also distinguish this decision from *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023), where the Seventh Circuit Court of Appeals reached a different result on a similar issue. *Atkinson* involved a second amendment challenge to a federal "felon-in-possession" statute (*id.* at 1019) that banned gun possession by anyone who has been convicted in any court of " 'a crime punishable by imprisonment for a term exceeding one year' " (*id.* at 1022 (quoting 18 U.S.C. § 922(g)(1) (2018)). Atkinson argued the statute was unconstitutional as applied to him because his felony conviction of mail fraud was 24 years old and he otherwise had a clean record. *Id.* at 1021-22. The government cited *Bruen*'s footnote 9 as part of its basis to bypass the text-and-history analysis. *Id.* at 2022. The Seventh Circuit stated the text-and-history test was necessary because the constitutionality of barring felons from possessing firearms was not addressed by *Bruen*. However, the Seventh Circuit conceded our point that "the [*Bruen*] Court seemed to find no constitutional fault with a state requiring a criminal background check before issuing a public carry permit." *Id.* Therefore, *Atkinson* does not support defendant's assertion that the appellate court erred in declining to apply the text-and-history standard here.

¶ 48 Defendant alternatively argues that Illinois's firearm licensure is not really a shall-issue regime at all, because the Concealed Carry Act gives the government too much discretion to deny applications. First, he contends the firearms training requirement for a CCL allows the government to deny licensure by arbitrarily withholding a certificate of completion. However, defendant concedes that the Concealed Carry Act provides an "objective description of the required training" and provides that instructors "shall" issue certificates when the required training

has been completed or satisfied. 430 ILCS 66/75 (West 2020). Furthermore, the *Bruen* Court expressly authorized requirements for training in firearm handling to ensure that the applicant is, in fact, responsible and law-abiding. *Bruen*, 597 U.S. at 38 n.9 (majority opinion).

¶ 49 Second, defendant contends the regime is impermissibly discretionary because any law enforcement agency may object to a CCL application based on a reasonable suspicion that the applicant is a danger to himself or herself or others, or a threat to public safety. 430 ILCS 66/15(a) (West 2020). An objection tolls the 90-day period for the Department of State Police to issue or deny the license until a review on the objection is completed and a decision is issued. 430 ILCS 66/15(b) (West 2020). However, as in the case of firearm training, *Bruen* permits mental health checks to ensure that the applicant is not a threat to harm himself or herself or others. The checks do not require the applicant to show a special need for armed self-defense. *Bruen*, 597 U.S. at 38 n.9.

¶ 50 Third, defendant asserts section 24-1.6(a)(1), (a)(3)(A-5) nevertheless violates the second amendment because requiring the dual issuance of a FOID card and a CCL is distinguishable from the shall-issue regimes discussed in *Bruen*. He claims that only about one-third of Illinoisans who possess FOID cards undertake the application process for a CCL. He claims, "Illinoisans want to legally carry ready-to-use handguns outside the home for self-defense but are unable to afford the timely and costly CCL application process and most of the time only undergo the FOID process." The fees and approval process to obtain a CCL comport with the second amendment because they do not require applicants to show an atypical need for armed self-defense and are designed to ensure that only those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens. See *Id.* at 80 (Kavanaugh, J., concurring, joined by Roberts, C.J.). Illinois's licensure regime does not operate like the may-issue regimes declared facially unconstitutional in *Bruen*. The processing of any given application in Illinois might give rise to an as-applied challenge but not a facial challenge like the one defendant raises here. See *id.* ("[S]hall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice.").

¶ 51 Finally, defendant points to states that allow unlicensed concealed carriage or that recognize vehicle exceptions to carriage restrictions. However, another state's legislative decision to relax or eliminate licensure does not render Illinois's regime facially unconstitutional under the second amendment.

¶ 52 III. CONCLUSION

¶ 53 When the second amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and the State must then justify its restriction by demonstrating that it is consistent with this nation's historical tradition of firearm regulation. Defendant's possession of a handgun within his vehicle constitutes concealed carriage and is presumptively protected. Ordinarily, the government then would need to affirmatively prove that its modern firearms regulations are part of the historical tradition that delimits the outer bounds of the right to keep and bear arms. However, *Bruen*'s express endorsement of shall-issue licensure obviates the need for this court to apply the historical-tradition component of the *Bruen* analysis to defendant's facial challenge to the enforcement of CCL and FOID card licensure through section 24-1.6(a)(1), (a)(3)(A-5). For the reasons expressed in *Bruen* itself, Illinois's shall-issue regime is not facially unconstitutional under the second amendment.

¶ 54 Judgments affirmed.

¶ 55 JUSTICE OVERSTREET, dissenting:

¶ 56 I respectfully disagree with my colleagues' conclusion that, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 38 n.9 (2022), the United States Supreme Court "expressly" held that shall-issue firearm licensing regimes, like Illinois's firearm licensing requirements, pass constitutional muster under second amendment (U.S. Const., amend. II) standards. On the contrary, I believe the majority's conclusion contradicts the *Bruen* Court's express holding, which sets out the required analysis for resolving defendant's constitutional claim. Accordingly, I dissent.

¶ 57 The issue before this court is defendant's facial constitutional challenge to section 24-1.6(a)(1), (a)(3)(A-5) of the Criminal Code of 2012, which defines the offense of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(A-5) (West 2020)). A jury found that defendant committed this criminal offense by having a loaded, immediately accessible handgun in his vehicle at a time when he had not been issued a then-valid concealed carry license (CCL) under Illinois's Firearm Concealed Carry Act (Concealed Carry Act) (430 ILCS 66/1 *et seq.* (West 2016)).[5] Defendant challenged his conviction on direct appeal by asserting that the conviction violates his second amendment rights.

¶ 58 The appellate court affirmed defendant's conviction, concluding that Illinois's firearm licensing scheme is permissible under the second amendment standards set out in *Bruen*. Specifically, the appellate court interpreted footnote 9 of the *Bruen* decision as explicitly upholding Illinois's Concealed Carry Act under second amendment standards. 2023 IL App (1st) 220429-U, ¶ 58. The majority agrees with this interpretation of *Bruen*'s footnote 9. However, I dissent from the majority's opinion because I believe the majority has reached an incorrect and unsupported conclusion with respect to the significance of footnote 9 in *Bruen*. My interpretation of *Bruen* is founded in the elementary principle that, when our country's highest court issues crucial, landmark rulings that define the basic meaning of our Bill of Rights, it does so with clear, direct, and express language, not with hints or indirect suggestions hidden in a vague footnote in a case where the issue was not raised. See *District of Columbia v. Heller*, 554 U.S. 570, 625 n.25 (2008) ("It is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted *dictum* in a case where the point was not at issue and was not argued."). Accordingly, I believe the majority has resolved defendant's constitutional challenge in this appeal by reading a holding into *Bruen*'s footnote 9 that simply does not exist.

[5]The Concealed Carry Act incorporates the additional requirement of a firearm owner's identification (FOID) card under the Firearm Owner's Identification Card Act (430 ILCS 65/0.01 *et seq.* (West 2020)). As the majority notes, the State presented evidence that, at the time of the AUUW offense, defendant had been issued a valid FOID card but had not applied for a CCL.

¶ 59 The second amendment of our federal constitution endows all citizens with the fundamental right to keep and bear arms, and this right to do so plays a vital role in "our system of ordered liberty." *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). The right codified in the second amendment is deeply rooted in American history, and we inherited this right from our English ancestors. *Bruen*, 597 U.S. at 39.

¶ 60 The second amendment states, in full, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. The right to "bear arms" refers to the right to carry a weapon "for the purpose *** of being armed and ready for offensive or defensive action in a case of conflict with another person." (Internal quotation marks omitted.) *Heller*, 554 U.S. at 584.

¶ 61 The second amendment is simple in language terms, but its application in the face of modern challenges has been anything but simple, as the amendment's scope remains fiercely contested. This is true because the right to keep and bear arms is not a right without limitations. *Bruen*, 597 U.S. at 21; *United States v. Rahimi*, 602 U.S. 680, 690-91 (2024). Although the second amendment has a "historically fixed" meaning, the amendment allows more than just the firearm regulations that existed in 1791. *Bruen*, 597 U.S. at 28; *Rahimi*, 602 U.S. at 691-92.

¶ 62 Applying the second amendment's historical scope to "novel modern conditions can be difficult and leave close questions at the margins." (Internal quotation marks omitted.) *Bruen*, 597 U.S. at 31. Contemporary courts are charged with the challenging task of "consideration of modern regulations that were unimaginable at the founding." *Id.* at 28. "The regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Id.* at 27. Nonetheless, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 28.

¶ 63 In *Heller*, the United States Supreme Court made its first effort to reconcile modern firearm regulations with the right embodied within the language of the second amendment. To guide lower courts facing second amendment challenges to modern firearm regulations, the *Heller* Court defined specific considerations the courts must consider when addressing the scope of the second amendment in light

of such challenges, holding that the proper analysis "demands a test rooted in the Second Amendment's *text*, as informed by *history*." (Emphases added.) *Id.* at 19 (discussing *Heller*). The *Heller* Court, therefore, established a text-and-history standard for determining the scope of the second amendment. *Id.* at 19-21, 39. Applying this standard, the *Heller* Court held that the second amendment guarantees an individual right to keep and bear arms unconnected to miliary service and that this right applied to ordinary citizens within their homes. *Heller*, 554 U.S. at 583-84, 635. *Heller* was the Court's first in-depth examination of the scope of the second amendment. *Id.* at 635.

¶ 64 Following *Heller*, many lower courts incorrectly applied *Heller*'s text-and-history standard by including means-end scrutiny in their second amendment analyses. *Bruen*, 597 U.S. at 18-20; *Range v. Attorney General United States*, 124 F.4th 218, 224 (3d Cir. 2024) (*en banc*) (explaining how the courts misread a passing comment in *Heller*, which indicated that the challenged statute in *Heller* would be unconstitutional under any standard of scrutiny). Therefore, in *Bruen*, the Court set out to make *Heller*'s text-and-history standard more explicit to eliminate this misunderstanding. *Bruen*, 597 U.S. at 18-24, 31 (noting the lower courts' error in applying *Heller* and underscoring that it presented a detailed explanation of the text-and-history standard in *Bruen* to make the standard "endorsed in *Heller* more explicit").

¶ 65 The *Bruen* Court's occasion to expand on its discussion of this text-and-history standard arose in the context of a constitutional challenge by two citizens to New York's firearm licensing regulations, called the "Sullivan Law" (1911 N.Y. Laws 442), which regulated law-abiding citizens' ability to carry firearms in public. *Bruen*, 597 U.S. at 11-12. As noted by the majority in the present case (see *supra* ¶ 29), the Court identified New York's licensing statute as a "may issue" scheme that granted government authorities discretion to deny licenses based on a perceived need or suitability. *Bruen*, 597 U.S. at 13-15. At the time, New York, five other states, and the District of Columbia had "may issue" licensing schemes that required citizens to show "proper cause" to be able to carry a handgun in public for self-protection. *Id.*

¶ 66 To draw a contrast between New York's firearm licensing regulations that were at issue in *Bruen* against some of the other states' approach to firearm licensing,

the *Bruen* Court identified 43 states that had what it described as "shall issue" licensing regulations "where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *Id.* at 13. The Court identified Illinois's Concealed Carry Act as one of the "shall issue" licensing statutes. *Id.* at 13 n.1.[6]

¶ 67 Under New York's licensing scheme at issue in *Bruen*, an individual who wanted to carry a firearm outside his or her home could obtain an unrestricted license to " 'have and carry' " a concealed handgun only if that individual could prove that " 'proper cause exist[ed]' " for doing so (*id.* at 12) (quoting N.Y Penal Law § 400.00(2)(f) (McKinney 2022)), which required a showing of a special need for self-protection distinguishable from that of the general community. In *Bruen*, the United States Supreme Court was asked to determine whether New York's modern firearm licensing scheme passed constitutional muster under second amendment standards. *Id.* at 16-17.

¶ 68 The *Bruen* Court emphasized, expressly and in no uncertain terms, that when courts are faced with this constitutional question, the courts *must* apply the text-and-history analysis established in *Heller*. *Id.* at 24 (When the second amendment's plain text covers an individual's conduct, "[t]he government *must* then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." (Emphasis added.)). The *Bruen* Court expressly stated that it is only *after* the government meets its burden under the text-and-history test "may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

¶ 69 In *Bruen*, the Court explicitly demonstrated how the text-and-history standard applies by undertaking this analysis to determine the constitutionality of New York's licensing regulations. The Court first applied the text prong of the standard and concluded that the second amendment's plain text presumptively guaranteed the citizens' right to bear arms in public for self-defense, not just at home as

[6]The Court identified these "shall issue" licensing regimes merely as a descriptive contrast to the statute that was at issue in *Bruen*; the Court did *not* apply the required text-and-history standard to any of the identified shall-issue statutes to determine their constitutionality, as that issue was not before the Court in *Bruen*.

established in *Heller*. *Id.* at 33. Having concluded that New York's licensing scheme burdened the two complaining citizens' second amendment rights, the Court then turned to the historical prong of the standard, noting that the burden fell squarely on the government to show that New York's "proper-cause" requirement was consistent with our country's historical tradition of firearm regulation. *Id.* at 33-34. The Court again emphasized that the citizens' right to publicly carry is protected by the second amendment *unless* the government can carry its burden. *Id.* at 34.

¶ 70 In an effort to meet their burden with respect to the historical prong of this standard, the government respondents in *Bruen* directed the Court to consider an extensive array of historical precedents that spanned five different time periods, from medieval times to the late nineteenth and early twentieth centuries. *Id.* The Court, however, after an exhaustive analysis of the cited precedents, found that none of the cited historical precedents offered by the respondents were sufficiently analogous to justify New York's regulations, which denied citizens the right to publicly carry a firearm without a showing of proper cause. *Id.* at 38-39, 70.

¶ 71 To reach this conclusion, the *Bruen* Court undertook a comprehensive analysis of the cited historical precursors in light of New York's regulatory scheme. *Id.* at 38-71. The Court did *not* expressly consider any of this widespread historical evidence to determine the constitutionality of any other, alternative firearm licensing scheme. It applied the mandatory text-and-history test *only* to determine the constitutionality of New York's requirement that citizens show a special need to obtain a license to publicly carry a firearm for self-defense.

¶ 72 To complete its analysis, the *Bruen* Court undertook a "long journey through the Anglo-American history of public carry," reaching the conclusion that the *Bruen* respondents failed to meet their burden to show that New York's proper-cause regime met constitutional muster under the second and fourteenth amendments. *Id.* at 70. The *Bruen* Court, therefore, held that "[u]nder *Heller*'s text-and-history standard, the proper-cause requirement" is unconstitutional. *Id.* at 39.

¶ 73 Approximately two years after *Bruen*, in *Rahimi*, the Court again addressed a second amendment challenge to a modern gun regulation. The Court applied the same text-and-history standard to address a defendant's challenge to a federal statute (18 U.S.C. § 922(g)(8)(C)(i) (2018)) that prohibits citizens subject to a

domestic violence restraining order from possessing a firearm when they are a credible threat to the physical safety of a person. *Rahimi*, 602 U.S. at 688-90.

¶ 74 At the outset of its analysis, the *Rahimi* Court again reminded lower courts that they are directed to examine " 'constitutional text and history' " (*id.* at 691 (quoting *Bruen*, 597 U.S. at 22)) and consider our " 'historical tradition of firearm regulation' " to determine the contours of the second amendment when faced with a second amendment challenge to modern gun regulations (*id.* (quoting *Bruen*, 597 U.S. at 17)). The *Rahimi* Court explained, "if a challenged regulation fits within that tradition, it is lawful under the Second Amendment." *Id.* The court *must* determine whether the challenged regulation is consistent with the principles that underpin our regulatory traditions and determine whether the new law is relevantly similar to laws that our tradition is understood to permit. *Id.* at 692. Central to this inquiry is why and how the regulation burdens the right. *Id.*

¶ 75 After conducting the text-and-history analysis established in *Heller* and as made further explicit in *Bruen*, the *Rahimi* Court concluded that the federal statute that prohibits possession of handguns by citizens subject to domestic violence restraining orders is constitutional under the second amendment. *Id.* at 693. The Court held that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 702.

¶ 76 Importantly, for purposes of interpreting footnote 9 in the *Bruen* decision, the *Rahimi* Court did not short-circuit the text-and-history analysis merely because the end result of the analysis was consistent with "what common sense suggests." *Id.* at 698. Instead, the *Rahimi* Court required the government to meet its burden under the historical prong of the test. The Court analyzed the government's historical evidence, concluding that the government presented "ample" evidence that the second amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others. *Id.* at 693. Only *after* applying the text-and-history test did the Court reach the "common sense" conclusion that, if "an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 698.

¶ 77 *Bruen* and *Rahimi* unequivocally illustrate how the Supreme Court's mandated text-and-history inquiry, established in *Heller*, applies when parties raise second

amendment challenges to modern firearm regulations. The courts "must" conduct this analysis. *Bruen*, 597 U.S. at 17 (when the plain text of the second amendment covers an individual's conduct, "the government *must* demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation" (emphasis added)); *Rahimi*, 602 U.S. at 692 (to conduct the appropriate analysis, "[a] court *must* ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit" (emphasis added) (quoting *Bruen*, 597 U.S. at 29)).

¶ 78 Here, contrary to what *Heller*, *Bruen*, and *Rahimi* plainly require, the majority has bypassed all textual and historical considerations in relation to Illinois's firearm regulations by suggesting that *Bruen*'s footnote 9 embodies a holding that directly contradicts what *Heller*, *Bruen*, and *Rahimi* expressly state is required. However, nowhere in *Heller*, *Bruen*, or *Rahimi* does the Court analyze any aspect of Illinois's Concealed Carry Act or any other states' "shall issue" licensing statute under the text-and-history standard, and the Court offers no express language whatsoever stating that second amendment challenges to shall-issue licensing schemes are exempt from consideration of textual and historical issues. Instead, each time the Court has addressed a second amendment challenge to a modern firearm regulation, the Court has undertaken the full textual and historical analysis. See *Bruen*, 597 U.S. at 108, 111 (Breyer, J., dissenting, joined by Sotomayor and Kagan, JJ.) (noting that in *Heller* the majority "undertook 40 pages of textual and historical analysis" and, in *Bruen*, the majority's historical analysis consisted of 30 pages of review of "numerous original sources from over 600 years of English and American history").

¶ 79 Nothing in any of the Court's discussion of the text-and-history standard in *Bruen* leads to the conclusion that a majority of the Court has, *sua sponte*, completed this required comprehensive analysis with respect to shall-issue licensing regimes, with no post-*Heller* appeal before the Court raising a challenge to those licensing regimes. To reach this conclusion, one has to surmise that, at some point after *Heller* was decided, a majority of the Court conducted a nonpublic text-and-history analysis of shall-issue licensing, relieving the government of any burden of establishing that shall-issue regulations comport with our country's historical regulation of firearms and reaching the conclusion that shall-issue regimes are supported by some unnamed historical precursors. Moreover, in order

to do so, the Court would have had to seek out the relevant historical precursors from some undefined historical record, without the government's input or arguments from any citizen challengers.

¶ 80 Absent the above described absurd speculation, the obvious conclusion is that a majority of the Court has not conducted this required text-and-history analysis. The Court has not canvassed any historical record furnished by the government to determine if requiring *any* license, even one with objective criteria, has analogues in American history, and the *Bruen* Court went to great lengths to emphasize that this was the required inquiry before a court can conclude that any firearm regulations comply with our constitution's second amendment.[7]

¶ 81 Considering context, the *Bruen* Court inserted footnote 9 into its decision after the Court elaborated on *Heller*'s text-and-history analysis and just before the Court explained that applying these principles to New York's proper-cause requirement for public carry of a firearm revealed that New York's statute was unconstitutional. *Id.* at 38-39 (majority opinion). In this context, it becomes apparent that the Court added footnote 9 for the sole purpose of emphasizing that its analysis of New York's licensing regime was not applicable to other states' shall-issue licensing regimes because New York's statute was distinguishable. See *id.* at 38 n.9. Therefore, the only conclusion that can be reached from the content and context of footnote 9 is that the text-and-history analysis of "shall issue" licensing statutes will be different than the analysis set out in *Bruen* and that *Bruen* should not be interpreted as invalidating shall-issue gun licensing regulations that were not considered in that case. Nothing more can be gleaned from footnote 9.

¶ 82 The language of the footnote itself bears this out.[8] Footnote 9 begins with a citation of Justice Hardiman's dissent in *Drake v. Filko*, 724 F.3d 426, 442 (3d Cir.

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[7]The *Bruen* majority noted that, at the time of its decision, 25 states had eliminated firearm permit requirements altogether and have adopted "so-called '*constitutional carry*' *protections* that allow certain individuals to carry handguns in public within the State without *any* permit whatsoever." (Emphasis added and in original.) *Bruen*, 597 U.S. at 13 n.1.

[8]*Bruen*'s footnote 9 states, in full, as follows:

> "To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which 'a general desire for self-defense is sufficient to obtain a [permit].' *Drake v. Filko*, 724 F. 3d 426, 442 (CA3 2013) (Hardiman,

2012) (Hardiman, J., dissenting), where Justice Hardiman discusses the differences between may-issue licensing regimes and shall-issue licensing regimes. *Bruen*, 597 U.S. at 38 n.9. *Drake* is a pre-*Bruen* decision where the court addressed the constitutionality of the may-issue firearm licensing regulations of New Jersey. *Drake*, 724 F.3d at 428-30 (majority opinion). *Drake* did not address any shall-issue regulations, such as Illinois's. Importantly, like the majority in the present case, the *Drake* court majority declined to engage in a "full-blown historical analysis" (*id.* at 431) and arguably reached an *incorrect* conclusion concerning the requirements of the second amendment as later established in *Bruen* when the full historical analysis was conducted by the Court (see *id.* at 440 (the requirement that applicants demonstrate a " 'justifiable need' to publicly carry a handgun for self-defense" "does not burden conduct within the scope of the Second Amendment's guarantee")). Here, the majority makes the same mistake in refusing to conduct the required historical analysis. Therefore, the *Bruen* Court's citation of the dissent in *Drake* is only for purposes of distinguishing between the licensing regimes, not as a substitution for text-and-history analysis or a veiled message that the analysis is not necessary for challenges to shall-issue regulations, particularly where the majority in *Drake* declined to conduct historical analysis and reached an incorrect result.

¶ 83 Next in footnote 9, the Court cited *Heller* for the proposition that "shall-issue" licensing regimes do not require applicants to show an atypical need for armed self-defense and, therefore, do not necessarily prevent law-abiding, responsible citizens from exercising their second amendment right to public carry. *Bruen*, 597 U.S. at

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J., dissenting). Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry. *District of Columbia v. Heller*, 554 U. S. 570, 635 (2008). Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.' *Ibid*. And they likewise appear to contain only 'narrow, objective, and definite standards' guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U. S. 147, 151 (1969), rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion,' *Cantwell v. Connecticut*, 310 U. S. 296, 305 (1940)—features that typify proper-cause standards like New York's. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Bruen*, 597 U.S. at 38 n.9.

38 n.9. Again, the *Bruen* majority's fleeting mention of *Heller* in this footnote is a far cry from the lengthy historical analysis set forth within the body of the decision itself and set out in *Heller*. This is particularly true where the Court's analysis in *Heller* was *not* a textual and historical analysis of a "shall-issue" public carry firearm licensing statute, and the Court expressly clarified that in neither *Bruen* nor *Heller* did it undertake an exhaustive historical analysis of the full scope of the second amendment. *Id.* at 32; *Heller*, 554 U.S. at 635 (because *Heller* was the "Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field"). Again, in this context, the *Bruen* Court's citation of *Heller* in footnote 9 cannot be considered a substitution for the text-and-history analysis as the majority concludes in the present case.

¶ 84 With respect to the remaining cases the Court cited in footnote 9, *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), and *Cantwell v. Connecticut*, 310 U.S. 296 (1940), they do not address second amendment challenges under any standard, much less the required text-and-history standard. At most, these cases are cited in the footnote as principles that the courts may need to consider *when* faced with a second amendment challenge to shall-issue licensing schemes; they are not cited as justification for bypassing the text-and-history analysis that the Court went to great lengths to set out in detail in the body of the opinion along with repeated mandatory directives that the test must be used.

¶ 85 In concluding that footnote 9 in *Bruen* "expressly held" that Illinois's shall-issue licensing scheme complies with the second amendment, the majority gives considerable weight to Justice Kavanaugh's special concurrence joined by Chief Justice Roberts (*Bruen*, 597 U.S. at 79-81 (Kavanaugh, J., concurring, joined by Roberts, C.J.)). See *supra* ¶¶ 41-42. Undeniably, Justice Kavanaugh's concurrence contains the express statement that "shall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice." *Bruen*, 597 U.S. at 80. In addition, Justice Kavanaugh and Chief Justice Roberts provided two votes that were necessary to the six-justice majority in *Bruen*. However, those two justices' votes, standing alone, do not constitute the *Bruen* majority. If the *Bruen* majority had reached the conclusion that Justice Kavanaugh explicitly stated in his concurrence, that explicit language would be included within the body of the *Bruen* majority opinion, or even in footnote 9, but it is not. Accordingly, it cannot be said

that the *Bruen* majority reached this additional, unstated conclusion. See *Maryland v. Wilson*, 519 U.S. 408, 412-13 (1997) (concurrence is not binding precedent).

¶ 86 Furthermore, Justice Alito stated in his concurrence that *Bruen* "decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun." *Bruen*, 597 U.S. at 72 (Alito, J., concurring). Justice Alito's clarification is equally true concerning the scope of the second amendment as it relates to any aspect of Illinois's licensing scheme that was, likewise, *not* before the Court in *Bruen*. See *Atkinson v. Garland*, 70 F.4th 1018, 1022 (7th Cir. 2023) (noting that nothing in *Bruen* allows the court to sidestep the text-and-history analysis and emphasizing that the courts "must undertake the text-and-history inquiry the Court so plainly announced and expounded upon at great length").

¶ 87 Accordingly, I agree with defendant that the appellate court below erred in disregarding the textual and historical analysis. Because the appellate court did not properly conduct this analysis, I believe this court should vacate the appellate court's decision and remand this case to the appellate court with directions that it consider defendant's second amendment challenge by applying the textual and historical analysis mandated by our Supreme Court in *Heller*, *Bruen*, and *Rahimi* for analyzing second amendment challenges to modern firearms regulations. For these reasons, I respectfully dissent.

¶ 88 JUSTICE O'BRIEN took no part in the consideration or decision of this case.

APPENDIX B

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

September 22, 2025

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
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Eric E. Castaneda
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601

In re: People v. Thompson
129965

Dear Eric E. Castaneda:

The Supreme Court today entered the following order in the above entitled cause:

Petition for rehearing denied. Opinion modified upon denial of rehearing.

The mandate of this Court will issue to the Appellate Court and/or Circuit Court or other agency on 10/27/2025.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
Appellate Court, First District
Garson Steven Fischer
Jessica Lynn Wasserman
Katherine Marie Doersch
State's Attorney Cook County

APPENDIX C

2023 IL App (1st) 220429-U

THIRD DIVISION
June 21, 2023

No. 1-22-0429

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 16031
	)	
TYSHON THOMPSON,	)	Honorable
	)	Vincent Gaughan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and D. B. Walker concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty of aggravated unlawful use of a weapon beyond a reasonable doubt; (2) defendant's right to a speedy trial was not violated; (3) the aggravated unlawful use of a weapon statute does not violate the second amendment; and (4) no plain error occurred when the trial court inadvertently failed to poll one juror because the evidence was not closely balanced.

¶ 2 Following a jury trial, defendant Tyshon Thompson was convicted of aggravated unlawful use of a weapon (AUUW) and subsequently sentenced to 30 months in prison. On appeal, defendant argues that: (1) the State failed to prove him guilty of AUUW beyond a reasonable doubt; (2) defendant's right to a speedy trial was violated; (3) the AUUW statute is

unconstitutional; and (4) defendant's right to a unanimous verdict was violated when the trial court polled only 11 of the 12 jurors.

¶ 3 Defendant was arrested on March 25, 2020, and subsequently charged by indictment with two counts of aggravated discharge of a firearm and one count of AUUW. In July 2021, defendant's attorney filed a motion to withdraw. At the hearing on the motion, defendant indicated to the trial court that he wished to represent himself. The court allowed counsel to withdraw, but asked another attorney to talk to defendant about the "dangers of representing" himself. Defendant agreed but continued to assert that he wanted to represent himself and requested his discovery. The court informed defendant that he would receive discovery after the court determined defendant was qualified to represent himself. The case was continued.

¶ 4 On August 20, 2021, the court asked defendant if he still wished to represent himself and defendant responded that he did. Before the court would allow defendant to represent himself, the court ordered a behavioral clinical examination (BCX) to determine whether defendant understood the charges pending against him and whether he was capable of representing himself at trial. The court observed that defendant did not "seem to comprehend things" and they were having "difficulty communicating." The court stated that he wanted to get "some resolution" about defendant's ability to represent himself. Defendant objected to the court continuing the case to September 29, 2021.

¶ 5 The results of defendant's BCX, prepared by the forensic clinical services, were filed on September 28, 2021. Defendant was found both fit to stand trial and fit to stand trial *pro se*. The report provided that defendant was "aware of his right to self-representation and [was] not suffering from any mental illness which would impair his ability to stand trial [*pro se*]." At an October 1, 2021 hearing, the trial court again questioned defendant about appearing *pro se*.

Defendant again reiterated that he did not want a public defender to represent him and asserted that he had the right to a speedy trial. The court continued the case until December 2, 2021, "by agreement" to allow defendant time to think about his decision to represent himself and defendant interjected that "This isn't by agreement."

¶ 6 On December 2, 2021, the court asked defendant if he still wanted to represent himself and defendant responded that he did. The court then questioned defendant about his educational history and his understanding of courtroom procedures. The court advised defendant that while he has the right to an attorney, he does not have a right to a standby attorney. Defendant stated that he would need assistance to prepare his defense, but maintained that he wanted to represent himself. The court found that defendant could represent himself. Defendant informed the court that he had mailed motions to the clerk of the court and wanted to have them heard. At the conclusion of the hearing, the trial court continued the case by agreement to determine whether to appoint standby counsel. However defendant objected that he did not agree to a continuance. The court explained that if defendant wanted his motions to be heard, then he could not demand trial.

¶ 7 On December 28, 2021, the trial court again discussed the pitfalls of defendant appearing *pro se* but allowed defendant to represent himself. Defendant then asked for his motions to modify bail and for a speedy trial to be considered. In his motion alleging a speedy trial violation, defendant argued that he demanded trial between August 4, 2020, and February 3, 2021. The State responded that those continuances were all by agreement and that defendant had been represented by private counsel until July 21, 2021. The trial court denied defendant's motion and noted that the supreme court suspended the statutory speedy trial term during the pandemic. Defendant also filed a motion for discovery and requested standby counsel.

¶ 8 On January 5, 2022, the trial court appointed standby counsel to assist defendant. The State tendered approximately 300 pages of discovery to defendant. When the court continued the case by agreement, defendant objected and stated that he was ready for trial. The court noted that defendant demanded trial on the record and advised defendant that he needed to file a written demand for trial. On January 7, 2022, the parties appeared in court, but the State informed the court that it was not ready to proceed to a jury trial. The case was continued, and the court noted that defendant demanded trial.

¶ 9 On February 4, 2022, defendant's trial began with jury selection. The following evidence was presented at trial.

¶ 10 Charice Rush testified that at approximately 10:30 p.m. on March 25, 2020, she was in a vehicle with her niece and nephew near Forest Park, Illinois. Her nephew was driving, Rush was in the front passenger seat, and her niece was seated behind her. They were driving home. As the car was entering the Interstate 290 expressway, she noticed they were being chased. She saw a man pull out a firearm and start shooting at them on the expressway. Her nephew had to swerve out of the way, and they exited the expressway. Someone in the car called 911, but Rush could not remember who called. However, she stated that she thought they were all calling at the same time. She described the other car as a "darkish," SUV or van that was "tall." They were able to get in contact with the Illinois State Police while they were near the Laramie Avenue exit. She denied that she, her nephew, or her niece were armed with a firearm that day. Rush could not recall what kind of car her nephew had at that time.

¶ 11 On cross-examination, Rush stated that prior to the shooting someone was trying to harm her niece while her niece was at work at a gas station in Forest Park. Rush arrived at the gas station after someone "jumped on" her niece. The Forest Park police would not let Rush exit the

car and enter the gas station. Rush left the gas station with her niece and nephew. Another car followed them onto the expressway entrance ramp and was chasing them. Rush was arguing with the occupants of the other car and then someone in that car pulled out a firearm. The vehicle Rush was in sped away to avoid harm. Rush did not see the driver of the other car and did not know if defendant was the shooter. Rush testified that her niece was grazed by a bullet but she did not seek medical treatment, and there were bullet holes in the car from the shooting.

¶ 12 Forest Park Police Officer Benito Marti testified that at approximately 10:30 p.m. on March 25, 2020, he was on duty with Officer Jose Flores and Officer John Reilly when he received a call for a shooting near Harlem on Interstate 290 with the vehicle description. The officers then curbed a white Nissan Rogue off of Interstate 290 that matched the description. He could not identify the driver of that car in court but testified that the last name of the driver was Thompson. Officer Marti testified that the occupants of this vehicle were involved in a prior incident at a Thornton's gas station involving a battery. According to Officer Marti, a fight had occurred at the gas station between 10 and 10:15 p.m. in which a female subject spat at three of the clerks. After the shooting, the female involved in the battery was one of the occupants in the Nissan Rogue.

¶ 13 The officers received a second call of a shooting near Harlem Avenue and Interstate 290 with this vehicle's description. Officer Marti searched the vehicle and recovered a small silver handgun in the glove compartment with blood on the trigger. The vehicle and the firearm were subsequently turned over to the Illinois State Police as part of its investigation. The female passenger was taken into custody for battery and a prior warrant. Officer Marti testified that the Nissan Rogue was stopped twice, once outside the gas station, and later following the shooting. When the driver stepped out of the vehicle, there was a blue rag with blood on it from a cut on

his hand. The driver told the officer that he had been attempting to break up a fight between his girlfriend and the gas station employees.

¶ 14 Forest Park Police Officer John Reilly testified that he was on duty alone at around 11 p.m. on March 25, 2020, but another officer was in front of him in a different car. He curbed a vehicle near the 3600 block of West Chicago Avenue in Chicago. The occupants of this car had previously been involved in an incident at a Thornton's gas station. Officer Reilly had contact with the driver of the car but did not see him in court. He described the car as a white Nissan Rogue with plates "from like a rental car." There were three occupants in the car, two males and one female. The driver's last name was Thompson. A silver handgun was located in the glove compartment of the car and blood was on the trigger of the handgun.

¶ 15 Sergeant Daniel Garcia testified that he was employed as a crime scene investigator with the Illinois State Police. He received a call to the crime scene at approximately 1 a.m. on March 26, 2020, on eastbound Interstate 290, near the Central Avenue exit. Sergeant Garcia photographed the scene and then marked evidence he observed. During his search, he found two fired shell casings. He packaged the evidence and then went to process the victim's vehicle. At that location, he took pictures of the car. He observed a "perforating defect on the passenger side rear door," which meant the bullet "went through the door." Sergeant Garcia identified a photo showing a "trajectory rod" placed in the hole to determine the path of the bullet. In his analysis of the trajectory, he determined there was a "projectile" in the seat. Using a scalpel knife, the seat was cut, and he recovered the projectile.

¶ 16 Sergeant Garcia assisted another team in processing the white Nissan Rogue. From that search, a firearm was collected as well as cell phones and "red blood-like stains." He did not collect a blue rag, but he believed a blue rag which had blood on it was collected. He also

collected swabs from the blood on the interior driver's side door and for "touch DNA." The swabs were submitted to the lab.

¶ 17 Trooper Kenan Hasanbegovic testified that he was employed as a trooper with the Illinois State Police and was assigned to the crime scene investigation unit. He was assigned with Sergeant Garcia on March 26, 2020, when they were called to process a scene related to an interstate shooting. After they processed the original scene and the victim's car, they returned to the 11th district police station. At the police station, he administered gunshot residue (GSR) tests on three people in custody, including defendant. Trooper Hasanbegovic identified defendant in court. For the GSR kit, he swabbed the forehand on both hands and sealed it to be submitted to the lab. He then processed the white Nissan Rogue at the Illinois State Police headquarters in Des Plaines. He recovered a firearm and a blue towel with blood like stains. He swabbed the firearm for "touch DNA" and also a red blood-like stain on the trigger. The items were then packed and sealed to be sent to the lab. Trooper Hasanbegovic also created a computer-aided diagram of the scene depicting the eastbound lanes of Interstate 290.

¶ 18 Jennifer Belna testified as an expert in forensic DNA analysis. She was employed at the Illinois Police Forensic Science Center as a forensic scientist in the "bio/DNA" section. She receives evidence and conducts DNA analysis in "blood, semen, [and] saliva." She received the swabs from the firearm and a buccal standard from defendant and conducted a DNA analysis on both items separately. First, Belna confirmed that the firearm swab was blood. She then preserved that evidence and conducted a DNA analysis. After she conducted her analysis on the blood and the buccal standard, she compared the results. She determined that defendant could not be excluded as the major contributor from the swab on the trigger. This profile would occur in approximately 1 in 13 octillion unrelated individuals.

¶ 19 Marc Pomerance testified as an expert in firearms ballistics. He was employed at the Illinois Police Forensic Science Center as an analyst in the firearms and tool marks section. He received one firearm, two fired cartridge cases, and one fired bullet related to the March 25, 2020 shooting. He identified the firearm he examined in March 2020 as an AMT Model Backup .45-caliber semiautomatic handgun as well as the magazine and two unfired .45-caliber cartridges. In his analysis, he fired four test shots to confirm the firearm is working and the test fired bullets and cartridge cases are used for comparison. He did not use the unfired bullets from the firearm for the test shots. Based on his analysis, Pomerance concluded that the fired bullet and shell casings were fired from the recovered .45-caliber firearm. His conclusion was based on his observation of a "reproducing pattern of both class and individual characteristics between the test shots and the two fired cartridge cases."

¶ 20 Kevin Gillespie testified as an expert in trace microscopy and GSR residue. He was employed at the Illinois Police Forensic Science Center as an analyst in the trace chemistry section. He analyzed the GSR kits for defendant and the other occupants of the Nissan Rogue, William Johnson and Nesa Green. The results of Green's GSR test indicated that her left hand was in the environment of a discharged firearm. Johnson's GSR test indicated that his right hand had been in the environment of a discharged firearm. Defendant's GSR test indicated that both of his hands had been in the environment of a discharged firearm. Gillespie testified that while all three GSR kits were positive, the results could not determine which individual discharged a firearm. He further stated that it was possible for GSR to be deposited on multiple people in a close space, such as a sedan or SUV, if one person discharged the firearm.

¶ 21 Sergeant Lee Marks testified that he was assigned to the firearm services bureau with the Illinois State Police and assists with the recordkeeping for Firearm Owner Identification Cards

(FOID cards) and Concealed Carry Licenses (CCL). He explained that any adult over age 21 is eligible for a FOID card absent anything on their record to prohibit their application. An individual must have a valid FOID card to apply for a CCL. He conducted a search of the database for defendant's name and the results showed that defendant did not have a CCL in March 2020 and he had never applied for a CCL. Sergeant Marks found that defendant had applied for and received a FOID card, but it was no longer active due to the charges in this case. He did not search to see if defendant purchased a firearm.

¶ 22 The State then rested its case. Defendant moved for "a judgment of acquittal," which the trial court denied. Defendant indicated that he intended to call Johnson to testify, but Johnson's attorney informed the court that Johnson would be invoking his fifth amendment right to remain silent. Defendant then rested his case without presenting any additional evidence.

¶ 23 Following closing arguments and jury instructions, the jury began its deliberations. During deliberations, the jury sent out four notes. The first note stated, "In the course of securing the gun, were fingerprints taken by the [Illinois State Police] or Forest Park Police and were the fingerprints identified as being either of the two other occupants besides [defendant]?" After discussing the jurors' questions with the parties, the court responded, "Dear Jury, you have heard all of the evidence in this case. Please continue to deliberate." The second note stated, "Was the white Nissan Rogue rented by the defendant?" The court responded that the jury had "heard all of the evidence that was presented at trial." The third note stated, "We are in agreement on the third count and we are hung on the other two counts, one and two." Over defendant's objection, the court responded, "Dear Jury, you're doing a fine job. Again, please continue to deliberate." The fourth and final note indicated that the jury had made a decision on one count, but could not reach a decision on the other two counts. The court proposed calling the jury out and declare a

mistrial on those two counts. The court would then consider the other count. The parties agreed to this proposal.

¶ 24 The jury was called out into the courtroom and it found defendant guilty of AUUW, but did not reach a verdict on the two counts of aggravated discharge of a firearm. Defendant requested that the jurors be polled. The court polled 11 of the jurors and each confirmed the verdict. The court stated that the jury had been polled. The court declared a mistrial on the aggravated discharge of a firearm counts. Defendant asked for an attorney for posttrial motions and sentencing and the court appointed the public defender.

¶ 25 Defendant, through counsel, filed a motion for judgment notwithstanding the verdict and a motion for a new trial, which were denied by the court. Following a sentencing hearing, the trial court sentenced defendant to a term of 30 months in prison. The State moved to *nolle pros* the two counts of aggravated discharge of a firearm, which the court allowed.

¶ 26 This appeal followed.

¶ 27 Defendant first argues that the State failed to prove him guilty of AUUW beyond a reasonable doubt. Specifically, he contends that the State failed to show that defendant carried or otherwise possessed the handgun recovered from the vehicle. The State responds that the jury could have reasonably inferred from the evidence that defendant actually possessed the gun based on his blood on the trigger and the GSR on both of his hands.

¶ 28 When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our inquiry is limited to "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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307,

319 (1979); accord *People v. Cox*, 195 Ill. 2d 378, 387 (2001). It is the responsibility of the trier of fact to "fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. "The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). "Accordingly, a jury's findings concerning credibility are entitled to great weight." *Id*. The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who observed and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Testimony may be found insufficient under the *Jackson* standard but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id.* "A conviction will not be set aside on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt." *Wright*, 2017 IL 119561, ¶ 70.

¶ 29 To sustain a conviction for AUUW as charged, the State was required to show that the defendant knowingly carried a firearm on or about his or her person or in any vehicle; the firearm possessed was uncased, loaded, and immediately accessible; and the defendant lacked a CCL. See 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2018). Defendant only challenges whether the State proved that defendant carried or otherwise possessed the firearm recovered from the glove compartment of the vehicle.

¶ 30 Defendant first contends that the State's burden of proof to establish carrying a firearm is higher than its burden to establish possession. However, he fails to cite any relevant authority holding that such a difference exists. We are not persuaded by an out-of-context statement from a dissenting opinion relied on by defendant. See *People v. Wise*, 2021 IL 125392, ¶ 65 (Michael J.

Burke, J., dissenting) (in which the justice stated, "I believe there is a distinction between *carrying* and knowingly *possessing*.") (Emphasis in original.) In *Wise*, the defendant had been convicted of unlawful use of a weapon by a felon (UUWF) and argued that the State had failed to prove beyond a reasonable doubt that defendant knowingly possessed the firearm "on or about his person." *Id*. ¶ 22. Nothing in the majority opinion in *Wise* considered whether there is a different burden of proof between carrying versus possessing a firearm. Rather, the dissent was distinguishing the majority's reliance on *People v. Liss*, 406 Ill. 419 (1950), in which the defendant had been charged under a statute that provided, " 'No person shall carry concealed on or about his person a pistol, revolver or other firearm.' " *Id*. at 421 (quoting Ill. Rev. Stat. 1949, ch. 38, ¶ 155). The *Wise* dissent was distinguishing the different statutory language at issue in *Liss* and reasoned that it was not helpful or instructive because *Liss* did not involve constructive possession of a firearm, which was at issue in that case. *Wise*, 2021 IL 125392, ¶ 62. Similarly, defendant's reliance on *People v. Clodfelder*, 172 Ill. App. 3d 1030 (1988), is also misplaced for the same reason. In that case, the Fourth District also distinguished the applicability of *Liss* when considering whether the evidence established that the defendant constructively possessed a gun "on or about" his person. *Id*. at 1032-34. The court did not consider a difference between carrying and possessing a firearm, but observed that the evidence in *Liss* could not support constructive possession of a firearm "on or about" a person. *Id*. at 1033-34.

¶ 31 In his contention, defendant also conflates whether an individual carries or possesses a firearm with the right to keep and bear arms under the second amendment, but fails to cite any relevant authority connecting the second amendment with a different burden between carrying and possessing a firearm. See *People v. Aguilar*, 2013 IL 112116, ¶ 19 (quoting *Moore v. Madigan*, 702 F.2d 933, 936 (7th Cir. 2012) (" 'The right to "bear" as distinct from the right to

"keep" arms is unlikely to refer to the home. *** A right to bear arms thus implies a right to carry a loaded gun outside the home.' "). Further, *Berron v. Illinois Concealed Carry Licensing Review Board*, 825 F.3d 843 (7th Cir. 2016), also cited by defendant, does not support his position. In that case, individuals sued in federal court over the denial of their CCL applications. In rejecting the plaintiffs' argument that the CCL was redundant to the FOID card, the Seventh Circuit reasoned that "the different degrees of danger posed by possessing a weapon at home (the basic license) and carrying a loaded weapon in public (the concealed-carry license) justify different systems." *Id*. at 847. The court observed that the requirement that all CCL applicants complete a firearms-training course was "tailored to situations that those who carry guns in public may encounter" and was "just one of the differences between possessing guns at home and carrying guns in public." *Id*. The *Berron* court did not consider whether a difference existed between carrying and possessing a firearm under the AUUW statute. Moreover, *Berron* suggests that carrying a firearm, as would be permitted with a CCL, would be to possess the gun in public, rather than possessing a firearm in the home. Accordingly, we reject defendant's argument that the State's burden was higher to prove that he carried the firearm rather than he possessed it in a vehicle. Although we conclude that the pertinent issue is whether the State proved that defendant had possession of the firearm in the vehicle, we find that even if there was any distinction between carried or possessed, a reasonable jury would have found defendant guilty of AUUW under either theory.

¶ 32 Further, we observe that the legal definition of the term "carry" involves possession. "Carry," as defined in Black's Law Dictionary, means: "To possess and convey (a firearm) in a vehicle, including the locked glove compartment or trunk of a car." Black's Law Dictionary (11th ed. 2019). Similarly, "possess" is defined as: "To have in one's actual control; to have

possession of." *Id*. Thus, under these definitions, the terms "carry" and "possess" relate to the same action when involving a firearm. And the language of the AUUW statute bears out the same conclusion. 720 ILCS 5/24-1.6 (West 2018).

¶ 33 We therefore begin with the element of possession. Possession of a firearm may be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). "Actual possession is proved by testimony that the defendant exercised some form of dominion over the firearm, such as that he had it on his person, tried to conceal it, or was seen to discard it." *People v. Jones*, 2019 IL App (1st) 170478, ¶ 27. "[W]here possession has been shown, an inference of culpable knowledge can be drawn from the surrounding facts and circumstances." *Givens*, 237 Ill. 2d at 335. " 'Whether there is knowledge and whether there is possession or control are questions of fact to be determined by the trier of fact.' " *People v. Balark*, 2019 IL App (1st) 171626, ¶ 94 (quoting *People v. Schmalz*, 194 Ill. 2d 75, 81 (2000)).

¶ 34 Viewing the trial evidence in the light most favorable to the State, a rational jury could have found that defendant had carried or otherwise possessed the firearm. The evidence at trial established that defendant was the driver of a white Nissan Rogue at approximately 10:30 p.m. on March 20, 2020. Rush testified that she was a passenger in a vehicle on Interstate 290 when someone from another vehicle fired multiple shots at their vehicle. After police were notified of the shooting, the white Nissan Rogue driven by defendant was curbed by officers within minutes heading east on Interstate 290. Both Officer Marti and Officer Reilly testified that the last name of the Nissan Rogue's driver was Thompson and trial evidence disclosed that defendant was the only occupant with that last name. At the time of his arrest, defendant was bleeding from an injury on a finger. Defendant elicited testimony from Officer Marti that defendant told the officer he had cut his finger while attempting to break up the fight between his girlfriend and the gas

station employees. Blood was found on the interior driver's side of the car as well as on the trigger of the firearm recovered from the glove compartment. This blood on the recovered firearm was likely of recent origin as described in Officer Marti's testimony. DNA analysis established that defendant could not be excluded as the major contributor from the swab on the trigger and this profile would occur in approximately 1 in 13 octillion unrelated individuals. Defendant also tested positive for GSR on both hands, while the two other occupants only showed the presence of GSR on one hand. The recovered shell casings and fired bullet matched the firearm recovered from the Nissan Rogue. Based on this compelling evidence, the jury could have easily concluded that defendant carried or had actual possession of the firearm.

¶ 35 We are not persuaded by defendant's attempts to minimize his DNA on the gun and his positive GSR. Defendant also focuses on the lack of fingerprint testing as a way to contend that the evidence was not sufficient beyond a reasonable doubt that he physically touched the firearm. The jury heard this evidence, and it was within its role as factfinder to assess this evidence. Fingerprint evidence is not required to prove AUUW and its absence does not raise a reasonable doubt. See *People v. Loggins*, 2019 IL App (1st) 160482, ¶ 68; *People v. Hernandez*, 229 Ill. App. 3d 546, 551 (1992). As the supreme court has observed, " 'the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007) (quoting *Hall,* 194 Ill. 2d at 332). Further, " 'the trier of fact need not *** be satisfied beyond a reasonable doubt as to each link in the chain of circumstances.' " *Id*. (quoting *Hall*, 194 Ill. 2d at 330).

¶ 36 We also reject defendant's assertion that the State and the trial court "recognized the weakness of the State's evidence" based on the State's decision to *nolle* the aggravated discharge

of a firearm counts. Unlike AUUW, to prove aggravated discharge of a firearm, the State had to establish that defendant "knowingly discharged a firearm in the direction of a vehicle." See 720 ILCS 5/24-1.2(a)(2) (West 2018). The prosecutor stated on the record that after reviewing the trial testimony, "none of those witnesses were able to identify this defendant in possession of a firearm at the time of the discharge." As discussed above, possession for AUUW can be proven by circumstantial evidence, *i.e.*, DNA on the trigger of the firearm. Thus, the State's decision on the additional counts had no bearing on the evidence proving AUUW. Similarly, defendant's argument relating to the State's failure to establish constructive possession of the firearm is without merit because the State did not advance a theory of constructive possession. Accordingly, defendant's argument and his reliance on *People v. Wise*, 2021 IL 125392, ¶ 34 (in which the supreme court considered whether the State had proven that the driver of a van had constructive possession of a firearm recovered 5 to 10 feet away from him), is misplaced. Thus, we conclude that the State presented sufficient evidence for a rational jury to find defendant guilty of AUUW beyond a reasonable doubt. We affirm defendant's conviction for AUUW.

¶ 37 Defendant next asserts that his statutory right to a speedy trial was violated when more than 120 days of delay elapsed prior to trial. Specifically, defendant contends that the trial court abused its discretion when it *sua sponte* ordered a BCX to determine whether defendant was fit to represent himself at trial and none of the delays in the case were attributable to him.

¶ 38 The State initially responds that defendant has forfeited this claim by failing to raise it in a posttrial motion. To preserve an issue for review, defendant must object both at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, defendant did allege a speedy trial violation in one of his posttrial motions. Therefore, defendant preserved this claim on appeal.

¶ 39 "The right to a speedy trial is fundamental and guaranteed to a defendant under both the sixth amendment and the due process clause of the federal constitution (U.S. Const., amends. VI, XIV; *Klopfer v. North Carolina*, 386 U.S. 213 (1967)), and by article I, section 8, of our state constitution (Ill. Const. 1970, art. I, § 8 ('In criminal prosecutions, the accused shall have the right *** to have a speedy public trial ***.'))." *People v. Mayfield*, 2023 IL 128092, ¶ 18. The legislature has conferred an additional speedy trial right in section 103-5 of the Code, which specifies time periods within which an accused must be brought to trial. *Id*. ¶ 19; see 725 ILCS 5/103-5 (West 2020). Section 103-5(a) of the Code of Criminal Procedure of 1963 sets forth the calculation for the speedy trial term for incarcerated individuals as follows:

> "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act ***. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." 725 ILCS 103-5(a) (West 2020).

¶ 40 "The 120-day period in which a defendant must be tried runs during that time, but the period is tolled during any time when the defendant causes, contributes to, or otherwise agrees to a delay." *Mayfield*, 2023 IL 128029, ¶ 20. "A pretrial delay caused or contributed to by the defendant or otherwise agreed to by him is excluded from the computation of the 120-day period in which a trial must commence under section 103-5(a)." *Id*.

¶ 41 Here, defendant was arrested on March 25, 2020, and remained in custody prior to trial. While defendant was in custody, the Illinois Supreme Court entered administrative orders tolling

the statutory time restrictions during the COVID-19 pandemic. Ill. S. Ct., M.R. 30370 (eff. Apr. 7, 2020). In June 2021, the Illinois Supreme Court amended M.R. 30370 to provide that the statutory time restrictions in section 103-5 shall no longer be tolled beginning October 1, 2021. Ill. S. Ct., M.R. 30370 (eff. June 30, 2021). The order provided that "[a]ll days on and following October 1, 2021, shall be included in speedy trial calculations as contained in section 103-5 of the Code of Criminal Procedure of 1963." *Id*. Defendant does not challenge the time in which his speedy-trial term was tolled by the supreme court order. Thus, defendant's 120-day term began to run on October 1, 2021.

¶ 42 Defendant focuses much of his speedy trial argument on the trial court's decision to *sua sponte* order the BCX and not allow him to represent himself. However, the court ordered the BCX on August 20, 2021, and the results were filed with the court on September 28, 2021, both dates that occurred while the speedy trial term was tolled. Even if the trial court erred in ordering the BCX, which we do not find, the BCX report had no impact on the speedy-trial term and we need not consider this argument in defendant's speedy trial claim.

¶ 43 Instead, this court must review the time period from the beginning of defendant's speedy-trial term, October 1, 2021, until the day trial began, February 4, 2022. Since a total of 126 days elapsed between those dates, we must determine whether any of the delays were attributable to defendant. Defendant contends that because he objected to every continuance and demanded trial, none of the days are attributable to him. The State maintains that some of the days are chargeable to defendant because he filed motions and asked to have the motions considered.

¶ 44 Motions filed by a defendant before trial are ordinarily chargeable to the defendant. *People v. Jones*, 104 Ill. 2d 268, 277 (1984). "Delay has included not only the filing of the motion but also the time associated with processing the motion, including time for the State to

respond and for the court to hear and resolve the issues." *People v. Cross*, 2022 IL 127907, ¶ 21. "[U]nder the plain language of the statute, a delay occasioned by a defendant need not cause or contribute to the postponement of a date set for trial. Rather, any delay occasioned by a defendant causes a postponement of the 120-day speedy-trial term." *Id*. ¶ 23.

¶ 45 Turning to the time frame at issue here, defendant asserted his speedy trial rights at an October 1, 2021 hearing while maintaining his intention to represent himself. The court continued the case until December 2, 2021, "by agreement" to allow defendant time to think about his decision to represent himself and defendant interjected that "This isn't by agreement."

¶ 46 At the December 2, 2021 hearing, the court asked defendant if he still wanted to represent himself and defendant responded that he did, but wanted assistance. The court found that defendant could represent himself. Defendant asked the court if the motions he had filed could be heard. He informed the court that he had mailed the motions to the clerk of the court, but he did not have file stamped copies of the motions. The judge stated that he would continue the case by agreement to determine the standby counsel request and to have defendant's motions heard, but defendant objected that he did not agree. The court explained that if defendant wanted his motions to be heard, then he could not demand trial. At the conclusion of the hearing, the court continued the case "by order of court," and defendant interjected that the continuance was "not by agreement."

¶ 47 On December 27, 2021, defendant filed motions with the court, including a motion for discovery and a motion to dismiss based on a speedy trial violation. On December 28, 2021, the trial court again discussed the pitfalls of defendant appearing *pro se* but allowed defendant to represent himself. Defendant then asked for his motions to modify bail and for a speedy trial to be considered. The trial court denied defendant's motion and noted that the supreme court

suspended the statutory speedy trial term during the pandemic. Defendant discussed his discovery motion and stated that he needed the discovery to prepare his defense. Defendant again requested standby counsel to assist him.

¶ 48 On January 5, 2022, the trial court appointed standby counsel to assist defendant. The State tendered approximately 300 pages of discovery to defendant. When the court continued the case by agreement, defendant objected and stated that he was ready for trial. The court noted that defendant demanded trial on the record. On January 7, 2022, the parties appeared in court, but the State informed the court that it was not ready to proceed to a jury trial. The case was continued, and the court noted that defendant demanded trial. Defendant's trial began on February 4, 2022.

¶ 49 Even if we assume that the time from October 1, 2021, to December 1, 2021 is not attributable to defendant, there are more than six days of the 126-day term chargeable to defendant. The State contends that the time between December 1, 2021, and December 28, 2021, as well as the time between December 28, 2021, and January 5, 2022, are chargeable to defendant. We need not reach the time between December 1 and December 28 because we conclude that the 8-day time period from December 28, 2021, to January 5, 2022 is attributable to defendant.[1] As detailed above, at the December 28 hearing, defendant asked the court to

[1] Although we do not find defendant's request for discovery was routine in light of the significant amount of documents tendered by the State in response, we note that routine discovery requests generally do not toll the speedy trial term. See *People v. Stockett*, 355 Ill. App. 3d 523, 526 (2005); *People v. Cotledge*, 2022 IL App (1st) 201209-U, ¶ 91. However, even if defendant's request was considered to be routine, we would still find the delay attributable to defendant because of his request for standby counsel.

appoint standby counsel and moved for discovery.

¶ 50 While defendant argues that none of these periods were attributable to him, he fails to acknowledge that he filed a motion for discovery and requested the appointment of standby counsel. As noted above, a delay includes not only the filing of the motion but also time for the State to respond. *Cross*, 2022 IL 127907, ¶ 21. The State responded to defendant's motion for discovery in a timely manner on January 5, 2022, when it provided him with over 300 pages of discovery. The court also appointed standby counsel on the same date. Because the time between December 28, 2021, and January 5, 2022, concerned defendant's request for discovery and standby counsel, these days were attributable to him. This delay of eight days tolled his speedy trial term and thus, his trial began within the 120-day period. We find no speedy trial violation occurred.

¶ 51 Next, defendant contends that the AUUW statute is unconstitutional because it infringes on an individual's second amendment right to bear arms. Specifically, he asserts that under the United States Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, ____ U.S. ____, 142 S. Ct. 2111 (2022), the AUUW statute violates his right to open carry a handgun. The State maintains that *Bruen* did not prohibit the State from criminalizing the open carry of firearms without a CCL. We agree.

¶ 52 " 'Constitutional challenges carry the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional.' " *People v. Rizzo*, 2016 IL 118599, ¶ 23 (quoting *People v. Patterson*, 2014 IL 115102, ¶ 90). "That presumption applies with equal force to legislative enactments that declare and define conduct constituting a crime and determine the penalties imposed for such conduct." *Id.* " 'To overcome this presumption, the party challenging the statute must clearly establish that it violates the constitution.' " *Id.* (quoting *People v. Sharpe*,

216 Ill. 2d 481, 487 (2005)). "Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity." *Id.*

¶ 53 Defendant challenges the AUUW statute's ban on the open carry of firearms as unconstitutional on its face in violation of the second amendment. A facial constitutional challenge requires a showing that the statute is unconstitutional under any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant. *Rizzo*, 2016 IL 118599, ¶ 24. A facial challenge to the constitutionality of a statute is the most difficult challenge to mount. *People v. Davis*, 2014 IL 115595, ¶ 25. A statute is facially unconstitutional only if there are no circumstances in which the statute could be validly applied. *Id*. The fact that the statute could be found unconstitutional under some set of circumstances does not establish the facial invalidity of the statute. *Id*. Accordingly, a facial challenge must fail if any situation exists where the statute could be validly applied. *Id*.

¶ 54 At issue in *Bruen* was New York's requirement that a person seeking a pistol license to carry a loaded weapon for self-defense outside of one's home or business was required to show "proper cause," but the term "proper cause" was not defined in any statute. *Bruen*, 142 S. Ct. at 2123. In reviewing this licensing statute, the Court recognized New York as part of a small minority of states that allowed a licensing agency discretion to deny a "concealed-carry license" application, such that they "may issue" a license. *Id*., 142 S. Ct. at 2123-24. In contrast, Illinois falls in line with the majority of states as a "shall issue" jurisdiction, "where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *Id*., 142 S. Ct. at 2123, n.1 (recognizing Illinois as a "shall issue" jurisdiction in a footnote).

¶ 55 The Supreme Court concluded that the "proper cause" requirement violated the second and fourteenth amendments and re-affirmed that those amendments "protect an individual right to keep and bear arms for self-defense." *Id*., 142 S. Ct. at 2125 (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010)). Specifically, the court held:

> "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " *Id*. at 2126 (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50, n. 10 (1961)).

¶ 56 The Supreme Court reiterated that the second amendment does not grant an unrestricted right to carry firearms by all people and at all times.

> "The Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions. *Heller*, 554 U.S. at 581. Those restrictions, for example, limited the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms, such as before justices of the peace and other government officials." *Id*. at 2156.

¶ 57 Further, in a concurring opinion, Justice Alito observed: "Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in *Heller* or *McDonald* [], about restrictions that may be imposed on the possession or carrying of guns."

¶ 58 Turning back to the instant case, we find that defendant's facial challenge of the constitutionality of the AUUW statute is not supported by *Bruen*. The *Bruen* court explicitly held that open carry without a license was not mandated under the second amendment.

> "To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which 'a general desire for self-defense is sufficient to obtain a [permit].' *Drake v. Filko*, 724 F.3d 426, 442 (CA3 2013) (Hardiman, J., dissenting). Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry. [*Heller*, 554 U.S. at 635.] Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.' *Ibid*. And they likewise appear to contain only 'narrow, objective, and definite standards' guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969), rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion,'

> *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940)—features that typify proper-cause standards like New York's." *Bruen*, 142 S. Ct. at 2138, n.9.

Thus, the *Bruen* court upheld Illinois's laws providing for a CCL application. Nothing in *Bruen* suggests that open carry is required under the second amendment.

¶ 59 We further find defendant's assertion that Illinois is not a "shall issue" state lacks merit. He contends that some of the requirements under the Firearm Concealed Carry Act (CCL Act) (430 ILCS 66/1 *et seq.* (West 2016)), such as the completion of a firearm training course, are discretionary in nature. However, defendant lacks standing to challenge the requirements under the CCL Act. To establish standing to challenge the constitutionality of a statute, defendant must "submit to the challenged policy." *Jackson-Bey v. Hanslmaier*, 115 F.3d 1091, 1096 (1997). In other words, defendant must have attempted to comply with the Act. However, defendant has not offered any evidence that he attempted to apply for the license and was subsequently denied one. Thus, he does not have standing to challenge the CCL Act.

¶ 60 Since the Supreme Court found that Illinois is a "shall issue" state and the CCL Act comports with the second and fourteenth amendments under *Bruen*, defendant's facial challenge fails. Accordingly, defendant's AUUW conviction for possession of a firearm in a vehicle without a CCL is not unconstitutional.

¶ 61 Finally, defendant argues that his fundamental right to a unanimous jury verdict was violated when the trial court inadvertently failed to poll one juror. After the verdict had been announced, defendant requested the court poll each of the jurors and the court then only polled 11 of the 12 jurors, each of whom confirmed the verdict. The State responds there was no evidence that the jury's verdict was not unanimous and the inadvertent error did not prejudice defendant's right to a unanimous jury.

¶ 62 Defendant admits that he did not preserve this claim for our review. However, he asks this court to review the issue under the plain error doctrine. As previously stated, to preserve an issue for review, defendant must object both at trial and in a written posttrial motion. *Enoch*, 122 Ill. 2d at 186. Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). Supreme Court Rule 615(a) states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error rule "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *Herron*, 215 Ill. 2d at 186-87). However, the plain error rule "is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.' " *Herron*, 215 Ill. 2d at 177 (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)). Rather, "Illinois's plain error rule is a narrow exception to forfeiture principles." *People v. Jackson*, 2022 IL 127256, ¶ 18.

¶ 63 Defendant carries the burden of persuasion under both prongs of the plain error rule. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Defendant asserts that the evidence at trial was closely balanced and this alleged error would qualify as plain error under the first prong. However, "[t]he initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error at trial." *People v. Sebby*, 2017 IL 119445, ¶ 49.

¶ 64 Defendants have a right to have jurors polled. *Jackson*, 2022 IL 127256, ¶ 21. " '[W]hen a jury is polled, each juror should be questioned individually as to whether the announced verdict is his own.' " *Id*. (quoting *People v. Kellogg*, 77 Ill. 2d 524, 527-28 (1979)). Here, it is undisputed that the trial court polled only 11 of the 12 jurors. Thus, the court committed a clear or obvious error. See *id*. Since defendant has only alleged plain error under the first prong, we next determine whether the evidence was closely balanced such that the error could have tipped the scales.

¶ 65 "Under the first prong of the plain error rule, when the evidence of a defendant's guilt is closely balanced, there is the possibility that an innocent person may have been convicted because of some error which is obvious in the record, but which was not properly preserved for review." (Citation omitted.) *Jackson*, 2022 IL 127256, ¶ 23. "[E]rrors reviewable under the first prong of the plain error rule are the type of errors that are subject to harmless error analysis, and a defendant must establish prejudice resulting from the error to excuse his forfeiture of such an error." *Id*. "That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. The State, of course, can respond by arguing that the evidence was not closely balanced, but rather strongly weighted against the defendant." *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 66 In determining whether the evidence was closely balanced, a reviewing court evaluates the totality of the evidence and conducts a qualitative, commonsense assessment of the evidence within the context of the case. *Sebby*, 2017 IL 119445, ¶ 53. According to defendant, the evidence was closely balanced based on the jury notes "inquiring about evidence pertaining to who possessed and was in control of that weapon." He also relies on the jury's inability to reach a verdict on the aggravated discharge of a firearm counts and contends again that the State

conceded that it did not prove that defendant possessed the firearm at the time of the shooting. We have already considered and rejected defendant's argument relating to the aggravated discharge of a firearm counts and need not reach this claim again.

¶ 67 During deliberations, the jury sent out four notes. The first two involved questions about potential evidence: first asking if fingerprints were taken from the firearm and if the fingerprints matched either of the two other occupants besides defendant, and later asking if the white Nissan Rogue was rented by defendant. The final two notes reflected that the jury was deadlocked on two counts but were in agreement on the third count. Lengthy deliberations and jury notes do not require a finding that the evidence was closely balanced. *People v. Nugen*, 399 Ill. App. 3d 575, 584 (2010). We reject defendant's argument that the jury's notes alone indicated that the evidence was closely balanced on the AUUW count. Instead, we find that the jury's notes during deliberations merely reflect that the jury took its job seriously and conscientiously worked to come to a just decision. *People v. Minniweather*, 301 Ill. App. 3d 574, 580 (1998).

¶ 68 As thoroughly detailed above, the evidence at trial was not closely balanced. Defendant was the driver of a white Nissan Rogue at approximately 10:30 p.m. on March 20, 2020. Someone from the vehicle defendant was driving fired multiple shots at another car on Interstate 290. Multiple police officers curbed the Nissan Rogue driven by defendant within minutes of the shooting. Two officers identified the driver of the Nissan Rogue by the last name Thompson and trial evidence disclosed that defendant was the only occupant with that last name. Further, defendant was bleeding from an injury on a finger when he was arrested. He subsequently admitted to one of the officers that the blood was on his finger from the earlier altercation at the gas station. Blood was found on the trigger of the recovered firearm and defendant could not be excluded as the major contributor from the swab on the trigger. This profile would occur in

approximately 1 in 13 octillion unrelated individuals. Defendant also tested positive for GSR on both hands, while the two other occupants only showed the presence of GSR on one hand. The recovered shell casings from the interstate and a fired bullet from the victim's car matched the firearm recovered from the Nissan Rogue. This evidence overwhelmingly supports the jury's guilty verdict for the AUUW count. Since the evidence was not closely balanced, the trial court's error in failing to poll one juror was not plain error and defendant's claim fails. Because defendant did not challenge this error under the second prong of the plain error doctrine, we need not reach whether the record demonstrated a unanimous verdict.

¶ 69 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 70 Affirmed.