

Model Illinois Government
Moot Court Competition

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R. Andrew Smith¹

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**IN THE ILLINOIS APPELLATE COURT,
FIFTH DISTRICT**

Case No. 08-332

JONATHAN BRISPING,)	
)	
)	Opinion and Order, February 15, 2009
Appellant,)	
)	Matter on appeal from the decision
v.)	of the First Judicial Circuit Court
)	
PEOPLE OF THE STATE OF ILLINOIS,)	Case No. below:
)	07 CR-MIG 04523
Appellee.)	
)	

MEMORANDUM AND ORDER

Justice Johnson Withers writing the majority, joined Justice Elaine Franks
Justice Francis Thomas, Dissenting

This matter comes on appeal from the District Court of Alexander County after bench trial upon the petition of the defendant in the proceedings below. The Appellant was convicted of two similar criminal charges regarding the possession of a handgun. On appeal, the Appellant asserts that the Trial Court erred in finding him guilty of Aggravated Unlawful Use of a Weapon pursuant to 720 ILCS 5/24-1.6 for carrying fire arm on his person at the time of arrest. For the reasons that follow, this Court reverses and dismisses all pending charges. However, prior to analyzing the legal issues presented, a restatement of the relevant facts is necessary.

FACTUAL AND PROCEDURAL BACKGROUND

Jonathan Brisping, the defendant in this case, is a 26 year old delivery driver for a general delivery business, On the Spot Delivery, located and primarily doing business in Cairo, Illinois. On the Spot Delivery works as a sub-contractor for a number of businesses in the regional area around Alexander County, where they deliver goods between retail locations for their customers and, upon occasion, perform personal delivery services for local retail

establishments such as grocery stores. Most of On the Spot's customers, though, are auto parts stores, hardware stores, and auto repair shops that move materials between stores and their vendors for the benefit of their customers.

On the Spot hires drivers who maintain their own vehicles, and are responsible for the maintenance of the vehicle. As such, On the Spot has no control over the contents of the vehicle with the exception of the cargo being carried by the courier for delivery.

Appellant drove a 2002 Ford F150 2-door pick-up truck with a cab cover for the rear bed of the vehicle. On the afternoon of July 14, 2007, the Appellant was driving his truck Eastbound on Illinois Route 146 when he was stopped by police for speeding. The record of the proceedings reflects that the arresting officer, Deputy Sean Taeger of the Alexander County Sherriff's Department, approached the vehicle after affecting the stop to issue a ticket. Deputy Taeger testified during the bench trial that upon approaching the vehicle he informed the Appellant why he had been stopped, and then asked if the Appellant had any weapons on his person or in his vehicle. The Appellant responded that he carried a handgun in a fanny pack that he wore on his person, and that the method in which he did so was in compliance with Illinois law as far as he was aware.

Upon hearing this, Deputy Taeger told the Appellant to place his hands firmly on the door in the open window, and opened the door, instructing the Appellant to exit the vehicle. After the door to the truck was open and the Appellant exited the vehicle, and while standing facing the door with his hands still on the door, Deputy Taeger unclipped the fanny pack and placed it on the ground outside of the vehicle. After removing the fanny pack, the Deputy handcuffed the Appellant, escorted him to his patrol vehicle where the Appellant was then locked in the back seat.

Deputy Taeger testified he returned to the Appellant's truck to perform an inventory search incident to the arrest. The Deputy also searched the fanny pack that he left laying on the ground. In the pack, the Deputy found case that contained a Glock 26 subcompact 9 mm handgun. The Deputy also found a loaded magazine for the pistol in the fanny pack, though outside the case holding the handgun.

Deputy Taeger testified concerning the exact dimensions of the case holding the handgun. During the examination, the case was described as being made of durable plastic, slightly larger than the weapon itself, folding open in a clamshell style, with foam insulation that fit the exact shape of the handgun. The box opened with a single plastic clip, and was situated in the fanny pack in such a way as to permit the wearer of the pack to open the case and remove the weapon with one hand. The handgun was resting in the case when found. In addition, the loaded magazine for the weapon was situated near the case so that the person wearing the fanny pack could remove the weapon with one hand and the magazine with the other.

Over the objection of the Appellant, Deputy Taeger then described, and the record notes he demonstrated, how the wearer of the fanny pack could remove the handgun and loaded magazine from the pack simultaneously, load the weapon, and then use the weapon within a matter of moments. In addition, the Officer noted that someone who was well practiced could remove the weapon, load it, and be ready to fire in approximately one to two seconds. Also over the Appellant's objection, Deputy Taeger testified that the purpose for the placement of the weapon in the bag is for the wearer to carry a concealed weapon for quick access and use if necessary.

During the defense case in chief, the Appellant testified that he always kept the weapon and ammunition in the bag as found, and carried the bag with him while working. He further

testified that, as far as he was aware, carrying the weapon in this form comported with the law on the transportation of weapons in Illinois, informed by websites like www.concealcarry.org. The Appellant testified that he carried the weapon for personal protection, noting that people in his line of work are often robbed for the cargo that they carry, and noting the increase in violent crime in the area surrounding Alexander County due to increased drug activity specifically involving methamphetamine.

The Trial Court took judicial note of the fact that the Alexander County area, and within East Cape Girardeau specifically, had seen an increase in drug, gang, and other criminal activity as the larger nearby City of Cape Girardeau, Kentucky, has seen an increase in the same activity. East Cape Girardeau is a small town of 437 residents situated near the City of Cape Girardeau, Missouri, which is a city with approximately 37,000 residents. The Appellant testified that the reason why he felt the need to carry a weapon was for his personal protection and the protection of his cargo. The Appellant indicated he had been robbed several times at gun point, and on one occasion was beaten so badly that he spent two weeks in the hospital. Though he stated he has never used the weapon in an offensive or defensive manner, the Appellant indicated at trial that he felt more secure having the weapon at his disposal. The Appellant also maintained for the entirety of the trial that the way in which he carried the weapon was not illegal in the State of Illinois; in that he carried the weapon in a manner that was permissible by state law and that he also had a Firearms Owners Identification Card, or FOID card.

The record also discusses websites like www.concealcarry.org, and notes that they specifically aim to inform their users how to carry a concealed weapon in the state in which they live. In Illinois, for example, the website discusses that someone could carry a weapon provided it is in a case, unloaded, and if she or he had been issued a FOID card. The Appellant testified

that he used information from this and similar sources, and that is how he came up with the idea for the waist pack with the gun. He testified specifically that the purpose of the weapon was for his own protection, especially in light of his prior experiences with being robbed in the past.

The State charged the Appellant with two counts, one count for Unlawful Use of a Weapon pursuant to 720 ILCS 5/24-1, and one count for Aggravated Unlawful Use of a Weapon pursuant to 720 ILCS 5/24-1.6. The State of Illinois dismissed the count for Unlawful Use of a Weapon and chose to proceed under the statute for Aggravated Unlawful Use of a Weapon. The State chose this route due to the increase in gun violence in the Alexander County area in the last ten years, spurred largely by the increase in methamphetamine drug trafficking. Alexander County maintains clear policies regarding the enforcement of gun possession laws specifically because of the noted increase in criminal activity, which was acknowledged in the record by the attorney for the State and understood by the presiding judge.

Prior to trial, the Appellant filed a motion to quash arrest and concerning the finding of the weapon, asserting that no law was broken and that the arrest should not have occurred. In the motion, the Appellant asserted, *inter alia*, that no law violation occurred in light of standing Illinois precedent concerning the carrying of a hand gun. Specifically, the Appellant argued that because the handgun was being carried in a case, that the weapon was inoperable as it was not loaded, and because the Appellant had been issued a FOID card, the appropriate exceptions of both 720 ILCS 5/24-1 and 24-1.6 applied rendering the Appellant's actions in compliance with the lawful manner in which an individual may carry a handgun.

The Trial Court denied the Appellant's motion to quash, and the Appellant opted to proceed with a bench trial. At trial, the State presented a myriad of evidence regarding how the weapon was found and how the weapon was being kept as referenced above. After the trial

DISCUSSION

We note at the outset that the inquiry required by the Appellant's challenge to the trial court's ruling is necessarily factually sensitive. As a result, this Court will defer to the determination made by trier of fact as the trial judge was in the best position to determine the facts of the case when testimony was presented. However, the Appellant questions how the trial court applied the law to the facts before it, and as such, this Court may consider the matter *de novo*, considering all facts available in the record and the applicable law without being bound by the typical deference offered to the factual determinations made by the trial court. As such, this Court must review the relevant facts and law as permitted and where applicable will draw its own conclusions based on the facts and law available through the record where appropriate.

The applicable statute, 720 ILCS 5/24-1.6, makes it illegal for an individual to carry a gun or concealed gun in public when the weapon is immediately accessible for use, unless the weapon is broken down into a state in which it is unusable, not immediately accessible, or in a unloaded in a case where the person carrying the case has been issued a valid FOID card. In a related manner, 720 ILCS 5/24-1, makes similar actions a Class A misdemeanor instead of a class 4 felony. This Court understands that the motivation of the State for pursuing this route was to enforce a policy of the State's Attorney's Office to increase prosecution of gun crime in response to a growing problem with methamphetamine trafficking in the East Cape Girardeau, and with it, problems with drug related and gang related violence.

Appellant raises two issues regarding the application of the Aggravated unlawful Use of a Weapon statute. First, he argues that his arrest for possession of the weapon was unlawful because the gun he was carrying was unloaded and in a case in compliance with the exception to the statute, challenging the sufficiency of the evidence presented by the State. Second, the

Appellant contends that the trial court erred in construing his actions to be in violation of the law because it found he aimed to violate the purpose of the statute, thereby finding fault with the way the trial court chose to apply the law. In reviewing the issues raised by the Appellant, we must address the issues in reverse order in order to determine whether the arrest and subsequently recovered evidence should be quashed.

I. The Trial Court Erred In Finding That The Exceptions Did Not Apply.

The Appellant's primary contention is that his conduct did not violate the law. In reviewing the Appellant's contention, we note that finding that there is no law violation will not necessarily affect the validity of the arrest, though it will affect the application of the law to the Appellant upon remand in the sense that our ruling on the merits will be dispositive on the underlying case. If we find that there is no law violation and that the exception applies, then there is no way the trial court can find the Appellant guilty of the counts charged. However, if we find that the State's interpretation of the law is correct, then the matter will then be in the hands of the trial court to determine the guilt of the Appellant. As such, we consider the state of the law and whether the weapon transportation exceptions apply in such a way that conduct like the Appellant's would fall within conduct permitted by the statute.

Recently, the Illinois Appellate Court in the Third District considered the plain language of the statute at issue. In *People v. Diggins*, the Appellate Court was asked to determine the meaning of the word Case in the Statute for the purpose of applying the transportation exceptions to the charge of unlawful use of a weapon. *See generally* 379 Ill. App. 3d 994, 888 N.E.2d 129 (3d Dist. 2008). The defendant in *Diggins* was charged with aggravated unlawful use of a weapon after being pulled over for a traffic violation, and upon inquiry by the arresting officer, admitted to having an unloaded handgun in the locked center console of his vehicle. *Id.* at 995.

In determining whether a violation of the law occurred, the Court considered whether the center console of the vehicle constituted a “case” for the purpose of the transportation exception in the applicable statute. *Id.* at 996. In determining the Legislature’s intent when reviewing the construction of statutory language, the Court must consider the plain language of the statute. *Id.* In addition, we must construe the language in a statute such that it would not result in an absurd or unjust result. *See generally People v. Hanna*, 207 Ill. 2d 486, 800 N.E.2d 1201 (2003).

The statute is clear that the point of the exceptions is to permit the transport of an unloaded weapon by its owner provided it is unloaded and in a case. The facts of the present case, as determined by the trial court, clearly indicate that the weapon at issue was in a case and unloaded. In addition, the statute does not specifically delineate the intent of the transportation, but states very specifically the disjunctive nature of the exception. This is particularly the case when considering the language of 720 ILCS 5/24-1.6(c), which specifically states that the provision does not apply to the possession *or* transportation of a weapon that is unloaded and in a case. It is clear particularly in the case of the section charged that the exception was meant to apply in these circumstances.

We note, however, that the dissent specifically indicates the apparent absurdity of this finding in that it would effectively permit the frustration of a ban on concealed weapons in the State of Illinois. Contrary to the assertion of the dissent, if the legislature meant to ban the possession of concealed weapons, the language in each of the statutes would not provide a glaring potential for the frustration of that policy. Further, it is not for this Court to infer the intent of the Legislature in determining the exceptions of the law. Rather, our sole purpose is to determine how the law should apply as written and insure that the acts created in the Statehouse

do not run afoul of the Constitution. If the legislature intends to dictate a different policy it is incumbent upon them to amend the law as written.

For these reasons, we agree with the Third District Court in *Diggins* and find that the Appellant's actions did not violate the letter of the law in this case, and that the trial court erred in finding otherwise. The Appellant has also asserted that the trial court erred in denying his motion to quash arrest, and as set forth in the following, the majority of this Court agrees.

II. The Trial Court Erred In Finding That The Arrest Was Proper.

In considering whether the arrest was appropriate in this case, we note that if we find the arrest was improper and quash the arrest; all of the evidence following from searches performed incident to the arrest is necessarily quashed as well. Given the circumstances, this Court finds that the arrest at issue was improper for the following reasons.

The Appellant rightfully asserts that the standard that applies in determining whether an arrest is appropriate is that of the Fourth Amendment of the United States Constitution and its analogous provision under Section 6 of Article I of the Illinois Constitution. As a general principle, arrests and searches must result from a properly issued warrant with the requisite probable cause to effectuate the same. To that end, we must consider whether the officer had the requisite cause to affect the arrest and subsequent search at issue.

Initially, we note that the officer had probable cause to affect the traffic stop that gave rise to the facts resulting in the arrest and search at issue as it arose out of a valid traffic stop. The question raised by the Appellant, though, is whether the expansion of the temporary detention for the traffic stop could have reasonably been expanded under the circumstances to include the arrest for further illegal conduct, the alleged weapon possession. In reviewing whether the arrest was proper, we must consider whether the officer had the requisite probable

cause to perform the arrest for illegal conduct. *See generally City of Pekin v. Shindledecker*, 99 Ill. App. 3d 571, 426 N.E.2d 13 (3d Dist. 1981).

In *Shindledecker*, the Court found that the lack of a sufficient basis to arrest where no law violation under the unlawful use of a weapon statute. 99 Ill. App. 3d at 574. Based on the foregoing reasoning concerning whether the Appellant's conduct violated the law, we agree with the Appellant that the arrest subsequent to the traffic stop for the alleged felony law violation was improper as no violation of the applicable statute had occurred. As a result, this Court cannot uphold the arrest, and must thereby quash the arrest and all of the evidence collected in the search incident to the arrest.

CONCLUSION

In light of the foregoing, the statute as written qualifies the Appellant's actions in this case as within the confines of the law as written, and consequently, the arrest must be quashed. As a result, this Court reverses and remands this case to the trial court for a ruling not inconsistent with these findings.

IT IS SO ORDERED.

Justice Francis Thomas, Dissenting

After briefing and oral argument concerning the case at bar, I respectfully dissent from the opinion of the majority concerning the issues raised by the Appellant in the case herein. Appellee for the State points to law and arguments sufficient to demonstrate that this Court's holding concerning whether the conduct of the Appellant falls within the exceptions to the applicable law as written and whether the arrest in this case was proper. I dissent to voice the arguments raised in contention by the State in response to the Majorities holding in their opinion.

I. The Conduct does not Qualify for the Exception in the Statute.

The majority asserts anomalously that the conduct of the Appellant/Defendant comported with the exception for the transportation of weapons built into the Unlawful Use of a Weapon statutes. It is important to note the current argument concerning the definition of the word “case” in the statute, and further note that the majority rejects the language in the remainder of the statute in favor of a simplistic facial interpretation of the statute as applied in *Diggins*, when, rather, the interpretation provided by *Cameron* that was rejected by the *Diggins* court is more applicable.

In *People v. Cameron*, the appellate court considered whether the plain language of the applicable statute permitted the glove box of a vehicle as fitting the definition of a “case” to qualify for the transportation exception in the statute. 336 Ill. App. 3d 548, 549 (4th Dist. 2003). The goal in *Cameron*, as in *Diggins*, was to avoid an absurd result. However, the *Cameron* Court was very specific regarding the manner in which court should interpret the language of exceptions, notably that they should be strictly construed. 336 Ill. App. 3d at 550. To that end, it is impossible for the Majority to logically assert that the net result of the statute is to permit someone in the position of the Appellant/Defendant to effectively carry a concealed weapon.

I must point out also that the language prohibiting possession of a concealed weapon appears on the face of the statute. Further, it would lead to a terribly absurd result for this Court to rule that the law would prevent the possession of a concealed weapon provided the concealed weapon is unloaded and in a case. The facts as indicated at trial are very specific regarding the intent of the Appellant/Defendant, namely to carry a concealed weapon. While the statute is effectively inchoate in its nature, this Court should not blindly reject the intent of the Appellant/Defendant in his conduct as it was specifically intended to subvert the prohibitions of

the statute. As such, the Majority's conclusion concerning the interpretation of the statute is incorrect, and I cannot join in the Court's holding.

II. The Arrest Was Proper in Light of the Established Law.

What is more egregious in this case is this Court's holding that the arrest was improper. In finding so, the Majority willfully neglects established Illinois Supreme Court Jurisprudence regarding the application of the law regarding probable cause for arrest and search. The standard for the constitutional analysis of the search is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). More specifically, it is reasonable based on the circumstances presented to the arresting officer, and the warrant requirement may not apply provided the officer has the requisite level of suspicion required to permit a warrantless search. *Id.* at 269. Those were precisely the circumstances presented by the situation in this case.

The arresting officer inquired during a reasonable custodial detention predicated upon a lawful stop out of concern for his safety. In response, the Appellant/Defendant indicated very clearly to the arresting officer's query that he was carrying an unloaded gun in a case about his person. At trial, testimony demonstrated that what the officer found was a weapon, concealed in a bag, on the person of the Appellant/Defendant for the purpose of potential use for the harm of another. If this does not amount to a concealed weapon possessed for the purpose of the potential harm of another person, the statute bears no affect on the legality of the possession of a firearm or handgun and fails to meet the tangible result expected by the Legislature. To find otherwise is a gross misapplication of logic.

The arresting officer asked a standard question for his own protection. Upon learning that the Appellant/Defendant was armed, he arrested the Appellant/Defendant for unlawful use

of a weapon appropriately under the law. As such, the officer's actions were perfectly reasonable and the arrest in question should have been upheld.

It is for these reasons I respectfully dissent from the Majority's decision in this case.

SS: _____
Francis Thomas

**SUPREME COURT OF THE
MODEL ILLINOIS GOVERNMENT**

Case No.: 09-MIG-23387

PEOPLE OF THE STATE OF ILLINOIS,)
)
Petitioner,)
)
v.)
)
JONATHAN BRISPING,)
)
Respondent.)
)

ORDER GRANTING PETITION FOR LEAVE TO APPEAL

The Supreme Court of the Model Illinois Government hereby grants the petition for leave to appeal brought by the People of the State of Illinois from the decision of the Court of Appeals of Illinois, First District. The Supreme Court certifies the following two issues for argument, rejecting all other issues submitted for appeal:

1. Whether the Trial Court erred in denying the defendant’s motion to quash arrest on the basis that the officer lacked sufficient cause to effect the same based on the defendant’s admission that he possessed a weapon on his person at the time of the stop.

2. Whether the Aggravated Unlawful Use of a Weapon statute, 720 ILCS 5/24-1.6, was properly interpreted by the lower Court such that the applicable exception for transportation of an unloaded handgun in a case applied to the facts of this case rendering the subsequent conviction void.

RELEVANT AUTHORITY

Constitutional Provisions:

United States Constitution

AMENDMENT IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Illinois Constitution:

SECTION 6, SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS: The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Statutory Provisions:

720 ILCS 5/24-1, Unlawful Use of a Weapon (Applicable Sections)

- (a) A person commits the offense of unlawful use of weapons when he knowingly: ...
 - (1) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own 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, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a) (4) does not apply to or affect transportation of weapons that meet one of the following conditions:
 - (i) are broken down in a non-functioning state; or
 - (ii) are not immediately accessible; or
 - (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or ...
 - (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his own 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, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a)(10) does not apply to or affect transportation of weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; or

(ii) are not immediately accessible; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.

(b) Sentence. A person convicted of a violation of subsection 24-1(a)(1) through (5), subsection 24-1(a)(10), subsection 24-1(a)(11), or subsection 24-1(a)(13) commits a Class A misdemeanor. ...

720 ILCS 5/24-1.6, Aggravated Unlawful Use of a Weapon (applicable sections)

(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(2) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her 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, any pistol, revolver, stun gun or taser or other firearm; or

(3) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his or her own land or in his or her own 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, any pistol, revolver, stun gun or taser or other firearm; and

(4) One of the following factors is present:

(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense; or

(B) the firearm possessed was uncased, unloaded and the ammunition for the weapon was immediately accessible at the time of the offense; or

(C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card; or ...

- (c) This Section does not apply to or affect the transportation or possession of weapons that:
 - (i) are broken down in a non-functioning state; or
 - (ii) are not immediately accessible; or
 - (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.
- (d) Sentence. Aggravated unlawful use of a weapon is a Class 4 felony; ...

Decision(s) of the Illinois Courts:

People v. Diggins, Case No. 106367, slip op. (Ill. Oct. 8, 2009).....19

People v. Jones, 215 Ill. 2d 261, 830 N.E.2d 541 (2005).....23

People v. Diggins, 379 Ill. App. 3d 994, 888 N.E.2d 129 (3d Dist. 2008).....33

City of Pekin v. Shindledecker, 99 Ill. App. 3d 571, 426 N.E.2d 13 (3d Dist. 1981).....37

People v. Hesler, 289 Ill. App. 3d 1084, 682 N.E.2d 1224 (4th Dist. 1997).....40

People v. Cameron, 336 Ill. App. 3d 548, 784 N.E.2d 438 (4th Dist. 2003).....44

People v. Pulley, 345 Ill. App. 3d 916, 803 N.E.2d 953 (1st Dist. 2004).....47

People v. Smythe, 352 Ill. App. 3d 1056, 817 N.E.2d 1100 (1st Dist. 2004)54

People v. Galarza, 391 Ill. App. 3d 805, 910 N.E.2d 1160 (2d Dist. 2009)58

Supreme Court of Illinois.
The PEOPLE of the State of Illinois, Appellant,
v.
Michael DIGGINS, Appellee.
No. 106367.

Oct. 8, 2009.

Justice [BURKE](#) delivered the judgment of the court, with opinion.

*1 Section 24-1.6(c)(iii) of the Criminal Code of 1961 provides that a person is not guilty of aggravated unlawful use of a weapon if that weapon is “unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner’s Identification Card.” [720 ILCS 5/24-1.6\(c\)\(iii\)](#) (West 2006). In the case at bar, we are asked to determine whether the center console of a vehicle is a “case” within the meaning of this provision. For the reasons that follow, we conclude that it is.

Background

Following a jury trial in Peoria County, defendant Michael Diggins was convicted of aggravated unlawful use of a weapon in violation of section 24-1.6(a)(1) of the Criminal Code. Evidence presented at trial revealed the following.

Sergeant Michael Boland testified that on March 24, 2006, he was on patrol in Peoria, Illinois, with his partner Officer Lane, when he observed a black Chevrolet Suburban make a right turn without signaling. Boland directed the car, driven by defendant, to pull over. After defendant stopped, Boland asked defendant for his driver’s license and proof of insurance. Defendant retrieved his insurance card from the glove compartment and handed it to Boland. When Boland again asked defendant for his driver’s license, defendant replied that he had a Firearm Owner’s Identification Card (FOID) card. Boland then asked defendant if he had any guns in the vehicle, and defendant responded, “Yes, I do.” Defendant pointed to the center console of his vehicle and said they were “in there.” Boland testified that he told defendant not to reach into the console and then he and Lane handcuffed defendant and defendant’s passenger and removed them from the vehicle. Boland then entered the vehicle.

According to Boland, the lid to the center console was ajar, although there was a key in the console’s lock. When Boland opened the lid, he observed two unloaded handguns: a .45-caliber semiautomatic black pistol and a chrome .357 Magnum revolver. He also observed a magazine loaded with eight .45-caliber rounds and six rounds of .357 ammunition. A duffel bag, located in the rear compartment area of the vehicle, contained two boxes with 42 rounds of .45-caliber ammunition and 46 rounds of .357-caliber ammunition. Boland testified that he did not remove the guns at that time, but waited for other officers to arrive to take photographs. After photographs were taken, Boland removed the guns from the console and found defendant’s wallet, which contained his driver’s license and FOID card.

Defendant testified that the console was closed and locked when Sergeant Boland executed the traffic stop. According to defendant, when Boland asked him for his license, he went to the console to retrieve it, but the console was locked. Defendant asked his passenger to get the console keys from the glove compartment. His passenger got the keys and gave them to defendant. Defendant then unlocked the console, pushed the button, and raised the lid. At that time, defendant told Boland he had a FOID card and driver’s license, which were in his wallet in the console, but that he was not going to reach into the console because he had guns in there. According to defendant, he put his hand in the air, at which time Boland grabbed it, pulled it out the window, and handcuffed him. Defendant testified that, when he was pulled over, he was about to drive back to Florida, and that he carried his guns in the console when traveling because the highway was “dangerous.”

*2 Defendant’s passenger, Willie Moore, also testified. He confirmed that defendant asked him for the keys to the console, that he retrieved them from the glove compartment and gave them to defendant, and that defendant then unlocked the console. After defendant unlocked the console, Moore said, defendant advised Boland he had guns in the console.

At the close of the evidence, defense counsel sought a jury instruction, based on section 24-1.6(c)(iii), that a person is not guilty of aggravated unlawful use of weapons if the weapons are enclosed in a “case, firearm carrying box, shipping box, or other container” by a person who has been issued a currently valid FOID card. The trial judge refused the instruction.

The trial judge also prohibited defendant from asserting, in closing argument, that the console was a “case” or “other container” under section 24-1.6(c)(iii). However, the State was allowed to argue that the console was not a “case.”

During jury deliberations, the jury sent a note to the trial judge, asking, “What is the legal definition of a case?” Over defense objection, the trial judge instructed the jury that the console was not a “case” under Illinois law. Shortly thereafter, the jury returned its verdict, finding defendant guilty of aggravated unlawful use of weapons. The court sentenced defendant to 30 months' imprisonment.

On appeal, the appellate court reversed and remanded for a new trial, finding that the center console of a vehicle is a “case” within the meaning of section 24-1.6(c)(iii). [379 Ill.App.3d 994, 320 Ill.Dec. 912, 888 N.E.2d 129](#). In so holding, the appellate court rejected the finding in [People v. Cameron, 336 Ill.App.3d 548, 271 Ill.Dec. 220, 784 N.E.2d 438 \(2003\)](#), that a glove compartment was not a “case” or “other container” because it was not portable. The court below determined there is nothing in the plain language of any of the terms in section 24-1.6(c)(iii), whether considered separately or together, to indicate the legislature intended for the exception to apply only to portable receptacles. Relying on a standard dictionary, the appellate court defined the term “case” as “a box or receptacle to contain or hold something” that “completely encloses the weapon.” Based on this definition, the appellate court held that the center console was a “case” within the meaning of section 24-1.6.

We granted the State's petition for leave to appeal pursuant to [Supreme Court Rule 315 \(210 Ill.2d R. 315\)](#). We also granted leave to the Illinois State Rifle Association (ISRA) to file an *amicus curiae* brief on behalf of defendant.

Analysis

The statutory provision at issue, aggravated unlawful use of a weapon, provides in pertinent part:

“(a) A person commits the offense of aggravated unlawful use of a weapon when he or she

knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm; [and]

*3 * * *

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense; or

(B) the firearm possessed was uncased, unloaded and the ammunition for the weapon was immediately accessible at the time of the offense[.]

* * *

(c) This section does not apply to or affect the transportation or possession of weapons that:

* * *

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.” [720 ILCS 5/24-1.6 \(West 2006\)](#).

The legislature did not define the word “case” as used in section 24-1.6(c)(iii) and this appeal turns on the proper interpretation of that term. We review this question of law *de novo*. [Kankakee County Board of Review v. Property Tax Appeal Board, 226 Ill.2d 36, 51, 312 Ill.Dec. 638, 871 N.E.2d 38 \(2007\)](#).

[\[1\]\[2\]\[3\]\[4\]](#) The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. [King v. First Capital Financial Services Corp., 215 Ill.2d 1, 26, 293 Ill.Dec. 657, 828 N.E.2d 1155 \(2005\)](#). The best indicator of the legislature's intent is the language of the statute, which must be accorded its plain and ordinary meaning. [King, 215 Ill.2d at 26, 293 Ill.Dec.](#)

657, 828 N.E.2d 1155. “We construe statutes as a whole, so that no part is rendered meaningless or superfluous.” *People v. Jones*, 223 Ill.2d 569, 581, 308 Ill.Dec. 402, 861 N.E.2d 967 (2006). Where the language of the statute is clear and unambiguous, this court will apply the statute as written without resort to aids of statutory construction. *In re R.L.S.*, 218 Ill.2d 428, 433, 300 Ill.Dec. 350, 844 N.E.2d 22 (2006).

[5] Because the term “case,” used in section 24-1.6(c)(iii), is not defined, we assume the legislature intended the term to have its ordinary and popularly understood meaning. *People v. Ward*, 215 Ill.2d 317, 325, 294 Ill.Dec. 144, 830 N.E.2d 556 (2005). The plain and ordinary definition of “case” is: “a box or receptacle to contain or hold something (as for carrying, shipping, or safekeeping).” Webster’s Third New International Dictionary 346 (1993). Examples given in the dictionary included “a silver cigarette [case],” “12 bottles in a [case],” and “a display [case] in a meat market.” A “box” is defined as: “a rigid typically rectangular receptacle often with a lid or cover in which something nonliquid is kept or carried” (Webster’s Third New International Dictionary 263 (1993)) and a “receptacle” is defined as something that “receives and contains something” (Webster’s Third New International Dictionary 1894 (1993)).

In *Cameron*, the appellate court interpreted the phrase “other container” within section 24-1.6(c)(iii). The *Cameron* court found that not only were a “firearm carrying box” and “shipping box” portable receptacles, but a “case” was as well. Invoking the doctrine of *ejusdem generis*, the court concluded, based on the common element of portability among the items in section 24-1.6(c)(iii), that an “other container” must also be portable. Because a glove compartment is fixed, and not portable, the *Cameron* court held that it was not an “other container” within the meaning of section 24-1.6(c)(iii).

*4 We, like the appellate court, find the *Cameron* court’s analysis flawed. The *Cameron* court never attempted to define “case”; it merely assumed a “case” must be portable. While a firearm carrying box and shipping box might contain an inherent element of portability, under its plain and ordinary definition, “case” does not. For example, a display case in a meat market or elsewhere is not portable in

the commonly understood meaning of portability.^{FNI} Accordingly, not all “cases” are portable. Because there is no common attribute of portability amongst the terms utilized in section 24-1.6(c)(iii), the *Cameron* court’s analysis is incorrect.

[6] The State does not argue that portability is essential to the definition of “case” or that the doctrine of *ejusdem generis* applies. Rather, the State invokes other canons of statutory construction, primarily, the doctrine of *noscitur a sociis*. This doctrine provides that “[t]he meaning of questionable words or phrases in a statute may be ascertained by reference to the meaning of words or phrases associated with it.” *Hayes v. Mercy Hospital & Medical Center*, 136 Ill.2d 450, 477, 145 Ill.Dec. 894, 557 N.E.2d 873 (1990) (Calvo, J., dissenting, joined by Ward and Clark, JJ.). The State maintains that, under this doctrine, “case” is best defined as a container specific to a firearm since the other terms in the statute reference a firearm. The State’s use of this interpretative principle does not persuade us.

The State’s argument that *noscitur a sociis* resolves the case at bar fails for the same reason that *ejusdem generis* fails. There is nothing in the language of the statute from which one could conclude that the legislature intended the terms “shipping box” and “other container” to be interpreted only in reference to firearms. Thus, there is nothing in the overall statutory scheme to suggest that the legislature intended for the various types of receptacles to be firearm specific.

Moreover, the term “firearm” does not precede all of the terms or phrases, *i.e.*, the statute does not read “*firearm* case, carrying box, shipping box or other container.” Likewise, the statute does not read “case, carrying box, shipping box, or other *firearm* container.” Had section 24-1.6(c)(iii) been drafted in either of these ways, it might be reasonable to interpret it to require that all specified types of receptacles be interpreted only in reference to firearms. Based on the actual language of the statute, we conclude that the doctrine of *noscitur a sociis* simply does not apply here.

The State also argues that if we define “case” broadly to mean any receptacle which holds something, we would render “firearm carrying box” and “shipping box” superfluous since these terms would necessarily

fall within the definition of case. However, if we adopted the State's argument that all of the terms should be interpreted only in reference to firearms, the phrase "firearm carrying box" would be rendered superfluous. Thus, the State's argument is flawed.

*5 For its final argument, the State relies on the legislative history to give meaning to the term "case." However, we need not resort to the legislature history because we find the plain language of section 24-1.6(c)(iii) unambiguous.

[7] Unpersuaded by the State's arguments, we conclude that the legislature used the broad general term "case" unmodified. Giving the word "case" its plain and ordinary meaning, as we must, permits but one conclusion: the term "case" in section 24-1.6(c)(iii) includes any portable or nonportable receptacle and need not be interpreted only in reference to firearms.

[8] Based on the foregoing, we find, in the case at bar, that the center console of a vehicle falls within the ordinary definition of case. A center console is a receptacle that contains or holds something. As such, we find that defendant's conduct falls within the exception set forth in section 24-1.6(c)(iii). In so finding, we note that our result is controlled by the plain language of section 24-16(c)(iii) as enacted by the legislature. We are not at liberty to depart from the language employed. Whether the statute is wise or the best means to achieve the desired result are matters left to the legislature, not this court. Accordingly, we affirm the appellate court's conclusion that the trial court erred in refusing defendant's proposed jury instruction based on section 24-1.6(c)(iii) and erred in refusing to permit defendant to argue in closing argument that the center console was a "case" within the meaning of section 24-1.6(c)(iii).

Our determination that the center console is a "case" within the meaning of section 24-1.6(c)(iii) does not end this case. A factual question remains as to whether the exception is applicable based on whether the firearms at issue here were "enclosed" in the center console. For this reason, we remand the matter to the circuit court for a new trial.

[9] In light of our decision, we must consider whether a new trial would subject defendant to double

jeopardy. See *People v. Jones*, 175 Ill.2d 126, 134, 221 Ill.Dec. 843, 676 N.E.2d 646 (1997); *People v. McDonald*, 125 Ill.2d 182, 201, 125 Ill.Dec. 781, 530 N.E.2d 1351 (1988). Officer Boland testified that the console was ajar; defendant and his passenger testified it was closed. Viewing the evidence in the light most favorable to the prosecution, it is possible that the jury could have believed Officer Boland's testimony over that of defendant and his passenger. Accordingly, we find there was sufficient evidence from which the jury could have found defendant guilty beyond a reasonable doubt and, thus, double jeopardy does not preclude a new trial. See *People v. Hope*, 116 Ill.2d 265, 279, 108 Ill.Dec. 41, 508 N.E.2d 202 (1986). However, we note that nothing in our opinion should be construed as a finding regarding defendant's guilt that would be binding upon remand.

Conclusion

We affirm the judgment of the appellate court, which reversed the judgment of the circuit court and remanded the cause for further proceedings.

Affirmed.

Chief Justice [FITZGERALD](#) and Justices [FREEMAN](#), [THOMAS](#), [KILBRIDE](#), [GARMAN](#), and [KARMEIER](#) concurred in the judgment and opinion.

FN1. "Portable" means "capable of being carried: easily or conveniently transported." Webster's Third New International Dictionary 1768 (1993).

Ill.,2009.
People v. Diggins
--- N.E.2d ----, 2009 WL 3212447 (Ill.)

Supreme Court of Illinois.
 The PEOPLE of the State of Illinois, Appellant,
 v.
 Carlos JONES, Appellee.
No. 97683.

Cite as: 215 Ill. 2d 261, 830 N.E.2d 541

May 19, 2005.

Background: Defendant was convicted after stipulated bench trial in the Circuit Court, St. Clair County, [Robert P. LeChien, J.](#), of aggravated **unlawful use of a weapon**. He appealed. The Appellate Court, [344 Ill.App.3d 413, 279 Ill.Dec. 255, 800 N.E.2d 97](#), reversed. The state petitioned for leave to appeal.

Holdings: The Supreme Court, [Freeman, J.](#), held that:

- (1) law enforcement officer had probable cause that defendant was driving vehicle in violation of traffic law and, thus, was justified in making traffic stop;
- (2) officer had probable cause to associate small wooden box in defendant's shirt pocket with criminal activity and, thus, was justified in seizing box under plain-view doctrine;
- (3) law enforcement experience is relevant in determining probable cause to search; overruling [People v. Evans, 259 Ill.App.3d 650, 197 Ill.Dec. 650, 631 N.E.2d 872](#);
- (4) officer was justified in conducting warrantless search of box;
- (5) officer had probable cause to arrest defendant for contraband;
- (6) officer was authorized to order defendant out of vehicle to effectuate arrest; and
- (7) officer was authorized to conduct search of entire passenger compartment of vehicle as search incident to arrest.

Appellate Court judgment reversed; Circuit Court judgment affirmed.

****545 *263 ***133** Lisa Madigan, Attorney General, Springfield, and [Robert Haida](#), State's Attorney, Belleville ([Gary Feinerman](#), Solicitor General, and [Linda D. Woloshin](#) and David H. Iskowich, Assistant Attorneys General, Chicago, and [Norbert J. Goetten](#), Stephen E. Norris and Sharon Shanahan, of the Office of the State's Attorneys Appellate Prosecutor,

Mt. Vernon, of counsel), and Jonathan Shih, law student, for the People.

[Herbert J. Lantz, Jr.](#), Belleville, for appellee.

Justice [FREEMAN](#) delivered the opinion of the court:

Defendant, Carlos Jones, was charged in the circuit court of St. Clair County with one count of aggravated **unlawful use of a weapon**. [720 ILCS 5/24-1.6\(a\)\(1\), \(a\)\(3\)\(A\)](#) (West 2000). The circuit court denied defendant's motion to suppress evidence. Following a stipulated bench trial, defendant was convicted as charged. The appellate court reversed defendant's conviction, holding that the circuit court erred in denying defendant's motion to suppress. [344 Ill.App.3d 413, 279 Ill.Dec. 255, 800 N.E.2d 97](#). We allowed the State's petition for leave to appeal (177 Ill.2d R. 315(a)), and now reverse the judgment of the appellate court.

BACKGROUND

The record contains the following pertinent facts. Defendant was charged with one count of aggravated **unlawful use of a weapon**, in that defendant knowingly carried in a vehicle a revolver when he was not on his own land, or in his own abode, or in his fixed place of business, and the revolver was uncased, loaded, and immediately accessible at the time of the offense. See [720 *264 ILCS 5/ 24-1.6\(a\)\(1\), \(a\)\(3\)\(A\)](#) (West 2000). Defendant filed a motion to suppress evidence. The circuit court held ****546 ***134** a suppression hearing. The only witnesses who testified were Illinois State Trooper Christopher Gebke and defendant. The hearing adduced the following testimony.

At approximately 10:35 p.m. on February 18, 2001, defendant was driving an older model pickup truck east on Route 15 in Belleville. With defendant was his son, whom the record indicates was 11-year-old Carlos Junior. On Route 15 near 59th Street, defendant drove past Gebke, who observed that defendant's tail lights were not operating. Gebke initiated a traffic stop. He approached defendant's vehicle and informed defendant that his tail lights were not working. Gebke asked defendant for his driver's license, and defendant complied. According to his testimony, Gebke at this point did not suspect

defendant of any crime other than having inoperable tail lights.

After defendant handed his driver's license to Gebke, defendant's front shirt pocket opened. Defendant had a small wooden box in the pocket. Based on his training and experience, Gebke recognized that type of box as an item of drug paraphernalia known as a "one-hitter" box, which is commonly used to carry cannabis. Gebke asked defendant what he had in his pocket and defendant replied that he had cigarettes. The testimony conflicts at this point. According to Gebke, he asked defendant for the box and defendant voluntarily handed it to Gebke. However, according to defendant, Gebke took the box from defendant's pocket as defendant attempted to button the pocket closed.

The remaining evidence is uncontradicted. The box was approximately two inches wide, four inches tall, and less than an inch thick. Gebke opened the box and saw what he believed to be cannabis and a pipe. Gebke asked defendant to step out of the vehicle. Gebke testified that *265 his purpose in so doing was to arrest defendant for a drug offense and to handcuff defendant. After Gebke asked defendant to step out of the vehicle, but before defendant complied, Gebke observed defendant's right hand move. It appeared to Gebke that defendant was pushing something between the vehicle seat cushions. As soon as defendant exited the vehicle, Gebke saw the butt of a handgun protruding from the front seat cushions.

Gebke handcuffed defendant, seized the handgun, which was a loaded .22-caliber revolver, and placed defendant in the squad car. Gebke returned to defendant's vehicle, where he encountered defendant's son crying. Gebke asked defendant's son if he would like to sit in the squad car with his father, and the son said yes. When defendant's son was secured, Gebke searched defendant's vehicle. Behind the rear seat, Gebke found a small bag containing a loaded .38-caliber revolver with 22 additional bullets. Gebke described this search both as a search incident to arrest and an inventory search, as he planned to have the vehicle towed.

On January 2, 2002, the circuit court entered a written order granting defendant's motion in part and denying it in part. The circuit court suppressed the box and its contents based on [People v. Evans, 259](#)

[Ill.App.3d 650, 197 Ill.Dec. 650, 631 N.E.2d 872 \(1994\)](#). The court in *Evans* described a single-purpose container as a container that by its nature cannot support a reasonable expectation of privacy because its contents can be inferred from its outward appearance and the container can reasonably have no legitimate purpose other than the concealment of contraband. [Evans, 259 Ill.App.3d at 655, 197 Ill.Dec. 650, 631 N.E.2d 872](#). The *Evans* court held that the small wooden box in that case, which was very similar to defendant's box in this case, was not a single-purpose container. Therefore, the box by itself **547 ***135 could not provide the officer with probable cause to search it. [Evans, 259 Ill.App.3d at 657, 197 Ill.Dec. 650, 631 N.E.2d 872](#).

*266 However, the circuit court denied defendant's motion to suppress regarding the two loaded handguns seized from defendant's vehicle. The court concluded that the weapons were not tainted under the "fruit of the poisonous tree" doctrine. The court noted that, based on defendant's traffic violation, Gebke had the right to remove defendant from his vehicle. Further, the circuit court found that once defendant was out of the truck, the seizure of the handguns was justified based on Gebke's plain view of the handgun between the seat cushions. The court reasoned: "It does not matter that the officer's reason for asking the defendant to get out of the truck was based upon his illegal seizure of the purported marijuana box, since the deputy's subjective intention is not the test to determine the constitutionality of a search."

Defendant waived his right to a jury trial and subsequently agreed that the evidence adduced at the suppression hearing would serve as the evidence at a stipulated bench trial. On March 25, 2002, the circuit court found defendant guilty as charged. On April 15, 2002, the court reversed its suppression of defendant's box and its contents. The court explained that "the one-hitter box is drug paraphernalia and criminal contraband under the Drug Paraphernalia Control Act [[720 ILCS 600/1 et seq.](#) (West 2000)]. As such, the arresting officer's plain view observation of the device and seizure thereof is permissible. The court repudiates its earlier reliance on the 'single-purpose' doctrine to support suppression of the cannabis." The circuit court denied defendant's motions to reconsider the court's suppression denial and the judgment finding defendant guilty as

charged.

On May 14, 2002, the circuit court held a sentencing hearing. Defendant had no prior criminal convictions, and received an honorable discharge from military service. The court allowed defendant to speak prior to *267 sentencing. Defendant acknowledged the seriousness of his conduct, and stated that he had learned a valuable lesson. Based on recommendations from defense counsel and the prosecution, the circuit court sentenced defendant to serve one year of conditional discharge and to pay a \$300 fine and court costs, and ordered that the handguns be destroyed.

Defendant timely appealed. The appellate court reversed defendant's convictions and sentence. [344 Ill.App.3d 413, 279 Ill.Dec. 255, 800 N.E.2d 97](#). The court held that defendant's box was not a single-purpose container and, consequently, could not, by itself, furnish probable cause to search and seize it. [344 Ill.App.3d at 425, 279 Ill.Dec. 255, 800 N.E.2d 97](#). Further, the court held that section 2 of the Drug Paraphernalia Control Act ([720 ILCS 600/2](#) (West 2000)) did not define "one-hitter" boxes as drug paraphernalia and, in any event, the Act did not add to a probable cause analysis. [344 Ill.App.3d at 425-26, 279 Ill.Dec. 255, 800 N.E.2d 97](#). The appellate court lastly concluded that the handguns and ammunition should be excluded from evidence because they were "fruit of the poisonous tree" and their discovery was not inevitable. [344 Ill.App.3d at 426-27, 279 Ill.Dec. 255, 800 N.E.2d 97](#).

[1] We allowed the State's petition for leave to appeal. 177 Ill.2d R. 315(a). We observe that defendant was sentenced in May 2002. Therefore, he could have already served his sentence of one year of conditional discharge. However, the probability that a criminal defendant may suffer collateral legal consequences from a sentence already served precludes a finding of mootness. **548**[136Minnesota v. Dickerson, 508 U.S. 366, 371 n. 2, 113 S.Ct. 2130, 2135 n. 2, 124 L.Ed.2d 334, 343 n. 2 \(1993\)](#) (and cases cited therein). Additional pertinent background will be discussed in the context of the analysis of the issues.

ANALYSIS

[2][3][4][5] In reviewing a circuit court's ruling on a

motion to suppress, mixed questions of law and fact are presented. *268 Findings of historical fact made by the circuit court will be upheld on review unless such findings are against the manifest weight of the evidence. This deferential standard of review is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony. However, a reviewing court remains free to undertake its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted. Accordingly, we review *de novo* the ultimate question of whether the evidence should be suppressed. [People v. Pitman, 211 Ill.2d 502, 512, 286 Ill.Dec. 36, 813 N.E.2d 93 \(2004\)](#); [People v. Sorenson, 196 Ill.2d 425, 430-31, 256 Ill.Dec. 836, 752 N.E.2d 1078 \(2001\)](#).

I. Reasonableness

The fourth amendment to the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." [U.S. Const., amend. V](#); see also [Elkins v. United States, 364 U.S. 206, 213, 80 S.Ct. 1437, 1442, 4 L.Ed.2d 1669, 1675 \(1960\)](#) (observing that fourth amendment applies to state officials through the fourteenth amendment). In this case, the State, as appellant, contends: "The appellate court's reversal of defendant's conviction rests upon a misapplication of the Fourth Amendment and should be reversed." Likewise, defendant bases his arguments solely on the fourth amendment.

[6][7][8][9] The central requirement of the fourth amendment is reasonableness. [Illinois v. McArthur, 531 U.S. 326, 330, 121 S.Ct. 946, 949, 148 L.Ed.2d 838, 847 \(2001\)](#). The touchstone of a fourth amendment analysis "is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *269[Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 332, 54 L.Ed.2d 331, 335 \(1977\)](#), quoting [Terry v. Ohio, 392 U.S. 1, 19, 88 S.Ct. 1868, 1878-79, 20 L.Ed.2d 889, 904 \(1968\)](#). Indeed, the "essential purpose" of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by government

officials, including law enforcement officers, to safeguard the privacy and security of individuals against arbitrary invasions. *Delaware v. Prouse*, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660, 667 (1979) (and cases cited therein). To enforce the fourth amendment requirement of reasonableness, the United States Supreme Court “has interpreted the Amendment as establishing rules and presumptions designed to control conduct of law enforcement officers that may significantly intrude upon privacy interests.” *McArthur*, 531 U.S. at 330, 121 S.Ct. at 949, 148 L.Ed.2d at 847. Generally, reasonableness under the fourth amendment requires a warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967).

[10] However, the United States Supreme Court has “made it clear that there are exceptions to the warrant requirement. When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court ****549 ***137** has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable.” *McArthur*, 531 U.S. at 330, 121 S.Ct. at 949, 148 L.Ed.2d at 847. Thus, the reasonableness of a particular law enforcement practice is judged by balancing its promotion of legitimate governmental interests against its intrusion on fourth amendment interests, *i.e.*, the individual's right to personal security free from arbitrary interference by law enforcement officers. *Prouse*, 440 U.S. at 654, 99 S.Ct. at 1396, 59 L.Ed.2d at 667-68 (and cases cited therein); ***270***Mimms*, 434 U.S. at 109, 98 S.Ct. at 332, 54 L.Ed.2d at 336, quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578-79, 45 L.Ed.2d 607, 614-15 (1975). Or, put more simply, a court balances “the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable.” *McArthur*, 531 U.S. at 331, 121 S.Ct. at 950, 148 L.Ed.2d at 848.

A. Traffic Stop

[11][12] The fourth amendment is implicated in this case because stopping a vehicle and detaining its occupants constitute a “seizure” within the meaning of the fourth amendment, even if only for a brief period and for a limited purpose. *Whren v. United States*, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 1772,

135 L.Ed.2d 89, 95 (1996) (and cases cited therein); *Prouse*, 440 U.S. at 653, 99 S.Ct. at 1396, 59 L.Ed.2d at 667. Therefore, a vehicle stop is subject to the fourth amendment requirement of reasonableness in all the circumstances. *Whren*, 517 U.S. at 810, 116 S.Ct. at 1772, 135 L.Ed.2d at 95.

[13][14] The United States Supreme Court has observed that the usual traffic stop is more analogous to a *Terry* investigative stop than to a formal arrest. *Knowles v. Iowa*, 525 U.S. 113, 117, 119 S.Ct. 484, 488, 142 L.Ed.2d 492, 498 (1998); *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317, 334 (1984). Accordingly, courts generally analyze fourth amendment challenges to the reasonableness of traffic stops under *Terry* principles. See, *e.g.*, *United States v. Sharpe*, 470 U.S. 675, 682, 105 S.Ct. 1568, 1573, 84 L.Ed.2d 605, 613 (1985). Pursuant to *Terry*, a law enforcement officer may, under appropriate circumstances, briefly detain a person for questioning if the officer reasonably believes that the person has committed, or is about to commit, a crime. *Terry*, 392 U.S. at 21-22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906. However, the investigative detention must be temporary and last no longer than is necessary to effectuate ***271** the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229, 238 (1983). This aspect of *Terry* has been codified in our Code of Criminal Procedure of 1963. 725 ILCS 5/107-14 (West 2000).

[15][16] In this case, Gebke observed that the vehicle which defendant was driving had inoperable tail lights, a clear violation of our vehicle code. See 625 ILCS 5/12-101, 12-201 (West 2000) (making it unlawful to drive vehicle without operable tail lights); 625 ILCS 5/3-833 (West 2000) (making it unlawful for any person to own or operate a vehicle on the public highways of this state without complying with the Illinois Vehicle Code). Thus, Gebke's initial stop of defendant's vehicle was supported by probable cause and, therefore, was justified at its inception. See, *e.g.*, *Mimms*, 434 U.S. at 109, 98 S.Ct. at 332, 54 L.Ed.2d at 336. At this point, without more, Gebke lacked the authority to search defendant. Stopping an automobile for a minor traffic violation does not, by itself, justify a search of the detainee's person or vehicle. The officer must reasonably believe that he or she is confronting a situation more serious than a routine ****550 ***138**

traffic violation. [Knowles](#), 525 U.S. at 116-18, 119 S.Ct. at 487-88, 142 L.Ed.2d at 498-99.

B. The “One-Hitter” Box

[\[17\]\[18\]\[19\]](#) It is uncontradicted that when defendant handed his driver's license to Gebke, the trooper saw a small wooden box in plain view in defendant's front shirt pocket. Further, Gebke recognized this type of box as an item of drug paraphernalia known as a “one-hitter” box. During a *Terry* investigative stop, police may seize an object without a warrant if the encounter meets the requirements of the plain view doctrine: (1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officers have a lawful right of access [*272](#) to the object. [Dickerson](#), 508 U.S. at 374-75, 113 S.Ct. at 2136-37, 124 L.Ed.2d at 344-45 (and cases cited therein). The “ ‘seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity.’ ” (Emphasis in original.) [Texas v. Brown](#), 460 U.S. 730, 741-42, 103 S.Ct. 1535, 1543, 75 L.Ed.2d 502, 513 (1983) (plurality op.), quoting [Payton v. New York](#), 445 U.S. 573, 587, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639, 651 (1980). “Plain view” requires probable cause to permit a seizure. [Arizona v. Hicks](#), 480 U.S. 321, 326, 107 S.Ct. 1149, 1153, 94 L.Ed.2d 347, 355 (1987). However, if police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object, *i.e.*, if the incriminating character of the object is not immediately apparent, the plain view doctrine cannot justify the seizure. [Dickerson](#), 508 U.S. at 374-75, 113 S.Ct. at 2136-37, 124 L.Ed.2d at 345 (and cases cited therein).

In this case, the circuit court ultimately found that the box was drug paraphernalia and, as such, Gebke's plain view observation and seizure thereof were permissible. The appellate court disagreed, holding that the box, by itself, could not furnish probable cause to seize and search it.

“With these considerations in mind, we find that the circumstances involved here do not show that Gebke had probable cause to search either the box observed in the defendant's front shirt pocket or the remainder of the vehicle's contents. The only

reason offered by Gebke justifying his search of the box was Gebke's conclusion that the box was ‘drug paraphernalia’ based upon his training and work experience. However, Gebke testified that this was only a suspicion that was confirmed after he had opened the box. Further, Gebke conceded that the box could contain a variety of nonillicit items and that it did not have only one purpose. There was no testimony showing that the box itself or the circumstances surrounding [*273](#) Gebke's view of it suggested that it contained contraband. Gebke believed that he was conducting a routine traffic stop. Gebke did not believe that the defendant's vehicle contained contraband at the time of the stop, nor did he suspect the defendant of committing any other crime other than inoperable taillights. Gebke had no reason to search the vehicle or to ask the defendant to step outside. In fact, the sole reason offered by Gebke for his search of the box was his belief that such boxes contain contraband based upon his training and work experience. This alone does not establish probable cause.” [344 Ill.App.3d at 425, 279 Ill.Dec. 255, 800 N.E.2d 97.](#)

The appellate court further held that the subsequent discovery of the handgun was not inevitable. [344 Ill.App.3d at 426-27, 279 Ill.Dec. 255, 800 N.E.2d 97.](#)

[**551 ***139](#) Assigning error to these holdings, the State asserts two alternative contentions. First, the State contends that there was no fourth amendment violation to taint the subsequent discovery of the handguns. The State argues that Gebke had probable cause to seize and search the box and to arrest defendant. Consequently, Gebke was entitled to order defendant out of the vehicle. Second, relying on [Pennsylvania v. Mimms](#), 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977), and [Whren v. United States](#), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), the State contends that, regardless of probable cause, Gebke was objectively authorized to order defendant to exit the vehicle during the traffic stop. The State argues that Gebke then would have seen the butt of the handgun protruding from the front seat cushions in plain view. See [United States v. Hensley](#), 469 U.S. 221, 235-36, 105 S.Ct. 675, 683-84, 83 L.Ed.2d 604, 616-17 (1985).

[\[20\]\[21\]\[22\]\[23\]\[24\]\[25\]](#) We agree with the State that

Gebke had probable cause to seize and search the box and to arrest defendant. Probable cause means more than bare suspicion. Probable cause exists where the arresting officer has knowledge of facts and circumstances that are sufficient to justify a reasonable person to believe that the defendant *274 has committed or is committing a crime. Brinegar v. United States, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 1310-11, 93 L.Ed. 1879, 1890 (1949), quoting Carroll v. United States, 267 U.S. 132, 162, 45 S.Ct. 280, 288, 69 L.Ed. 543, 555 (1925). Probable cause is a practical, nontechnical concept that deals with the factual and practical considerations of everyday life on which reasonable and prudent persons—not legal technicians—act. Probable cause is a fluid concept that turns on the assessment of probabilities in particular factual contexts; it is not readily, or usefully, reduced to a neat set of legal rules. The substance of all of the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized. Maryland v. Pringle, 540 U.S. 366, 371, 124 S.Ct. 795, 800, 157 L.Ed.2d 769, 775 (2003) (and cases cited therein).

[26][27] Further, in deciding whether probable cause exists, a law enforcement officer may rely on training and experience to draw inferences and make deductions that might well elude an untrained person. Ornelas v. United States, 517 U.S. 690, 700, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, 921 (1996); Brown, 460 U.S. at 746, 103 S.Ct. at 1545, 75 L.Ed.2d at 517 (Powell, J., concurring, joined by Blackmun, J.). “ [T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.” Brown, 460 U.S. at 742, 103 S.Ct. at 1543, 75 L.Ed.2d at 514 (plurality op.), quoting United States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 629 (1981). A court must examine the events leading up to the search or seizure, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable law enforcement officer, amount to probable cause. *275 Pringle, 540 U.S. at 371, 124 S.Ct. at 800, 157 L.Ed.2d at 775-76, quoting Ornelas, 517 U.S. at 696, 116 S.Ct. at 1661-62, 134 L.Ed.2d at 919.

In this case, Gebke testified as to his training and experience. Gebke's training to become a state

trooper included a weeklong course in drugs and drug detection. In this course, controlled substances were exhibited, along with drug paraphernalia that included containers such as “one-hitter” boxes. This course was similar to prior training he received. Further, in his experience as an Illinois state trooper and **552 ***140 previously as a Marissa police officer, Gebke had encountered “one-hitter” boxes at least 24 times. In each of these instances, the box was used as drug paraphernalia and for no other purpose.

[28] The appellate court's reasoning is mistaken in light of the above-stated precedents. We refuse to define the exact number of training hours or employment years necessary to render an officer's belief reliable. As stated earlier, what constitutes probable cause for searches and seizures must be determined from the standpoint of the officer, with the officer's *skill and knowledge* being taken into account. Ornelas, 517 U.S. at 696, 700, 116 S.Ct. at 1661-62, 1663, 134 L.Ed.2d at 919, 921. We agree with the State that perhaps a reasonable civilian could fail to recognize a “one-hitter” box as drug paraphernalia. However, civilians do not receive special training in drug paraphernalia and rarely encounter these boxes in their daily lives.

Further, the appellate court's above-quoted analysis inaccurately describes Gebke's trial testimony. According to the appellate court, Gebke conceded that he had only a suspicion that the box was drug paraphernalia and that the box did not have only one purpose, but that it could have contained a variety of nonillicit items. Defendant called Gebke as an adverse witness. During direct examination, Gebke's testimony included the following:

“Q. All right. Again, I ask you, what did you see in [defendant's] shirt pocket at that time?”

* * *

*276 A. I [saw] a small wooden box I readily identified as drug paraphernalia.

Q. Oh. Okay. Well, did it say on it ‘drug paraphernalia’?

A. No, it didn't.

THE COURT: The point is why do you conclude that the box was drug paraphernalia.

THE WITNESS: Well, the-my training and years of work, they're all the same. They're just a small wooden box, the top slides open, the pipe shoots out; and on the other side, there's a cavity inside the box that holds cannabis, or any other kind of controlled substance.

Q. Now Officer, isn't it true that these small wooden boxes that you just described are sold by tobacco shops that do not sell cannabis? Isn't that true?

A. I don't know where they buy them.

Q. You don't know where the boxes are bought? You don't know-Do you know where the boxes are made?

A. No, I don't.

Q. Do you know that if they're made solely for the purpose of concealing drug paraphernalia?

* * *

A. I don't know what they're made for.

* * *

Q. Well, excuse me, I'm jumping ahead here. Did you end up searching his vehicle?

A. After he handed me the wooden box, I opened up-

Q. But-

A. And I confirmed my suspicions. There was a pipe in there-

Q. A-hhh-

A. -and there was cannabis in there.

Q. -you confirmed your suspicions? So, you didn't really know what was in ****553 ***141** that box,

did you, Officer? It could have contained cigarettes, couldn't it?

A. I've never seen it contain cigarettes before.

Q. Well, I'm not asking you what you've never seen that it contained. But the fact of the matter is, it could have contained cigarettes? Or thumbtacks? Or chewing gum?

A. You can go on and on what it could contain.

Q. Yes, that's absolutely correct. This was not a single-purpose ***277** box, was it? It didn't serve just one purpose, did it?

A. I guess you could say that.

Q. Thank you. So, after you took the box from Mr. Jones, did you-you examined the contents, is that correct?

A. Yes, I did.

Q. And you confirmed your suspicions that it had cannabis in it, is that correct?

A. Yes, I did."

This colloquy simply indicates that Gebke did not know beyond a reasonable doubt that the box contained cannabis.

[29][30] Gebke was not called upon to determine whether an offense had in fact been committed. [*Dumbra v. United States*, 268 U.S. 435, 441, 45 S.Ct. 546, 548-49, 69 L.Ed. 1032, 1036 \(1925\)](#). Probable cause means less than evidence which would justify a conviction. [*Brinegar*, 338 U.S. at 175, 69 S.Ct. at 1310, 93 L.Ed. at 1890](#). The "immediately apparent" or "probable cause" element does not require a law enforcement officer to " 'know' that certain items are contraband or evidence of a crime." Probable cause, *i.e.*, sufficient evidence to justify the reasonable belief that the defendant has committed or is committing a crime, "does not demand any showing that such a belief be correct or more likely true than false." [*Brown*, 460 U.S. at 741-42, 103 S.Ct. at 1543, 75 L.Ed.2d at 513-14](#) (plurality op.). " 'Finely tuned standards such as proof beyond a reasonable doubt or

by a preponderance of the evidence, useful in formal trials, have no place in the [probable-cause] decision.’ ” [Pringle](#), 540 U.S. at 371, 124 S.Ct. at 800, 157 L.Ed.2d at 775, quoting [Illinois v. Gates](#), 462 U.S. 213, 235, 103 S.Ct. 2317, 2330, 76 L.Ed.2d 527, 546 (1983). We agree with the observation made by the United States Supreme Court in [Brinegar](#) regarding probable cause:

“These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also *278 seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.” [Brinegar](#), 338 U.S. at 176, 69 S.Ct. at 1311, 93 L.Ed. at 1890-91.

These principles confirm the reasonableness of Gebke's encounter with defendant and his “one-hitter” box.

Gebke's reasonable belief that the “one-hitter” box contained cannabis was not absolutely guaranteed to be correct. However, Gebke was trained to recognize “one-hitter” boxes. Also, he had encountered them over 24 times, in every instance finding**554 ***142 cannabis. Based on his training and experience, Gebke deduced that defendant's one-hitter box probably contained cannabis. Gebke's training as a law enforcement officer and his experience with other “one-hitter” boxes met the standard required for probable cause, which justified the seizure of the box.

[31][32] Having determined that Gebke's warrantless seizure of defendant's “one-hitter” box was lawful, we must next determine whether Gebke's warrantless search of the box was likewise lawful. Although the plain view doctrine may support the warrantless

seizure of a container believed to contain contraband, a subsequent search of its concealed contents must be either accompanied by a search warrant or justified by one of the exceptions to the warrant requirement. [Horton v. California](#), 496 U.S. 128, 141 n. 11, 110 S.Ct. 2301, 2310 n. 11, 110 L.Ed.2d 112, 126 n. 11 (1990); *279 [United States v. Jacobsen](#), 466 U.S. 109, 114, 104 S.Ct. 1652, 1657, 80 L.Ed.2d 85, 94-95 (1984); [Brown](#), 460 U.S. at 749-51, 103 S.Ct. at 1547-48, 75 L.Ed.2d at 518-20 (Stevens, J., concurring in the judgment, joined by Brennan and Marshall, JJ.) (plain view doctrine supports warrantless seizure of closed container but not warrantless search of its contents).

[33][34] However, where the contents of a seized container are a foregone conclusion, this prohibition against warrantless searches of containers under the plain view doctrine does not apply. Courts have held that when a container is “not closed,” or “transparent,” or when its “distinctive configuration proclaims its contents,” the container supports no reasonable expectation of privacy and the contents thereof can be said to be in plain view. Where law enforcement officers already possess knowledge as to the contents of the container, the search of the container does not unreasonably infringe upon the individual interest in preserving the privacy of those contents. [United States v. Williams](#), 41 F.3d 192, 197-98 (4th Cir.1994); [United States v. Corral](#), 970 F.2d 719, 725-26 (10th Cir.1992); [United States v. Eschweiler](#), 745 F.2d 435, 440 (7th Cir.1984); [Vassar v. State](#), 99 P.3d 987, 995 (Wyo.2004), quoting [Corral](#), 970 F.2d at 725-26.

For at least 20 years, the Illinois law enforcement community has had experience with “one-hitter” boxes. In [People v. Smith](#), 103 Ill.App.3d 430, 59 Ill.Dec. 198, 431 N.E.2d 699 (1982), rev'd, 95 Ill.2d 412, 69 Ill.Dec. 374, 447 N.E.2d 809 (1983), a police officer, during a routine traffic stop, saw in plain view a “one-hitter” box. He seized and opened it, revealing cannabis and a white substance. The circuit court denied the defendant's motion to suppress. The appellate court reversed defendant's resulting drug conviction, reasoning as follows:

“The closed wooden box found on the floor of the defendant's vehicle was undistinctive in its appearance. However, law enforcement officials apparently knew that this type of box was

commonly used for the transportation of marijuana. Their subjective knowledge, while relevant, is not ***280** conclusive. Rather, the container must be evaluated to determine whether society as a whole would recognize it as one commonly used to carry a controlled substance. One could not automatically conclude that marijuana was contained within that wooden box. Its shape did not imply its contents, nor was it in any way transparent or open, subjecting its contents to public view.” [Smith, 103 Ill.App.3d at 433, 59 Ill.Dec. 198, 431 N.E.2d 699.](#)

The appellate court held that the warrantless search of the defendant’s closed “one-hitter” box violated the fourth amendment.

****555 ***143** This court disagreed with the above-quoted reasoning and reversed the appellate court. Regarding the issue of probable cause to search the defendant’s vehicle, this court stated:

“In determining whether the officer had probable cause, his factual knowledge, based on law-enforcement experience, is relevant. [Citations.] Before entering the vehicle the officer observed the small wooden box with a sliding top. Based on his own knowledge and experience with such containers, the officer recognized it as a ‘one-hitter box’ commonly used to carry cannabis.” [Smith, 95 Ill.2d at 419-20, 69 Ill.Dec. 374, 447 N.E.2d 809.](#)

While this court decided *Smith* in the context of the automobile exception to the warrant requirement, this court nevertheless recognized the role of law enforcement experience in the probable cause determination. See [People v. Ward, 205 Ill.App.3d 439, 442-44, 150 Ill.Dec. 364, 562 N.E.2d 1167 \(1990\)](#) (explaining *Smith*).

In [People v. Evans, 259 Ill.App.3d 650, 197 Ill.Dec. 650, 631 N.E.2d 872 \(1994\)](#), as in the present case, a law enforcement officer observed a “one-hitter” box in plain view during a routine traffic stop. The officer took the box from the defendant, opened it, and found cannabis inside the box. The circuit court denied the defendant’s motion to suppress evidence. The appellate court reversed the defendant’s resulting drug conviction, holding that the warrantless search of the box violated the fourth amendment. The appellate court ***281** noted the significant training

and experience of the arresting officer. [Evans, 259 Ill.App.3d at 653, 197 Ill.Dec. 650, 631 N.E.2d 872.](#) However, the court reasoned:

“[D]espite the officer’s suspicion that the wooden box was likely to contain contraband, in the absence of additional incriminating circumstances, we are not persuaded that the box was sufficiently distinctive so as to announce its contents. While there was a chance that it could contain cannabis, there was also an equally plausible chance that it could have contained ‘innocent’ objects such as ordinary tobacco or even thumbtacks [citation].” [Evans, 259 Ill.App.3d at 657, 197 Ill.Dec. 650, 631 N.E.2d 872.](#)

The *Evans* court distinguished *Smith* “because in *Smith* there were other indices of unlawful activity or contraband in addition to the officer’s seeing the one-hitter box to support a finding of probable cause to search.” [Evans, 259 Ill.App.3d at 658, 197 Ill.Dec. 650, 631 N.E.2d 872.](#)

[\[35\]](#) The appellate court’s reasoning in *Evans* suffers from the same defect as the appellate court’s reasoning in *Smith*, which this court reversed. Law enforcement experience is relevant in determining probable cause, but the appellate court did not recognize such experience in its analysis. As this court reversed the appellate court’s judgment in *Smith*, we hereby overrule *Evans*.

In the present case, the appellate court stated that Gebke’s training and experience “alone does not establish probable cause” that defendant’s “one-hitter” box contained cannabis. [344 Ill.App.3d at 425, 279 Ill.Dec. 255, 800 N.E.2d 97.](#) This conclusion is erroneous based not only on *Smith*, decided 20 years ago, but also based on the law enforcement experience gained subsequent to *Smith*. As discussed during oral argument, the experience of the Illinois law enforcement community with respect to “one-hitter” boxes has grown in the decade subsequent to *Evans*. Indeed, we need not look far to see the continued recognition of “one-hitter” boxes as drug paraphernalia. See, e.g., [McArthur, 531 U.S. at 329, 121 S.Ct. at 949, 148 L.Ed.2d at 846](#) (“The officers found under the sofa a marijuana ***282** pipe, a box for marijuana ****556 ***144** (called a ‘one-hitter’ box), and a small amount of marijuana”).

Viewed from Gebke's standpoint, taking into account his training and experience, we conclude that defendant's "one-hitter" box proclaimed its contents. To a civilian, it is possible that Gebke's belief could seem to be a mere "suspicion." To Gebke, however, the contents of the box were a virtual certainty. See, e.g., [Vassar, 99 P.3d at 995](#) (upholding, under fourth amendment, warrantless search of "one-hitter" box during traffic stop where box in plain view, based on experience and training of arresting officer and distinctive configuration of box); [State v. Miles, 108 N.M. 556, 558-59, 775 P.2d 758, 760-61 \(1989\)](#) (same). We hold that Gebke's seizure and search of defendant's "one-hitter" box did not violate the fourth amendment.

C. *The Guns*

[\[36\]\[37\]\[38\]](#) Since Gebke had probable cause to seize and search defendant's box, and since the box contained what Gebke reasonably believed to be cannabis, Gebke had probable cause to arrest defendant. Accordingly, Gebke was authorized to order defendant out of the vehicle to effectuate the arrest. When defendant exited the vehicle, Gebke saw in plain view the butt of the handgun protruding from the front seat cushions. See [Dickerson, 508 U.S. at 375, 113 S.Ct. at 2136-37, 124 L.Ed.2d at 345](#). Further, when Gebke effectuated a lawful custodial arrest of defendant, Gebke was authorized, as a contemporaneous incident of that arrest, to search the entire passenger compartment of that vehicle, which produced the loaded handgun and additional bullets behind the rear seat. See [New York v. Belton, 453 U.S. 454, 460, 101 S.Ct. 2860, 2864, 69 L.Ed.2d 768, 775 \(1981\)](#). We hold that the discovery of the handguns was not tainted by any fourth amendment violation. Accordingly, we do not address the State's alternative contention that Gebke was objectively authorized to order defendant to exit the vehicle during the traffic stop.

*283 CONCLUSION

For the foregoing reasons, the judgment of the appellate court is reversed, and the judgment of the circuit court of St. Clair County is affirmed.

Appellate court judgment reversed; circuit court judgment affirmed.

Ill.,2005.

People v. Jones

215 Ill.2d 261, 830 N.E.2d 541, 294 Ill.Dec. 129

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Appellate Court of Illinois,
 Third District.
 The PEOPLE of the State of Illinois, Plaintiff-
 Appellee,
 v.
 Michael DIGGINS, Defendant-Appellant.
No. 3-07-0016.

Cite as: 379 Ill.App.3d 994, 888 N.E.2d 129

March 11, 2008.

Justice [HOLDRIDGE](#) delivered the opinion of the court:

***994 ***914** The defendant, Michael Diggins, was convicted of aggravated unlawful use of weapons following a jury trial and was sentenced to a term of 30 months imprisonment. On appeal, defendant maintains that the trial court erred: (1) in precluding defense counsel from arguing that the center console of the defendant's automobile was a "case" during closing arguments; (2) in instructing the jury that a center console is not a "case" under Illinois law; (3) in refusing defendant's proposed jury instruction defining aggravated unlawful use of weapons; (3) in refusing to allow defendant to argue that the laws of Florida and other states would allow defendant to transport guns and ammunition in the manner he was transporting them in Illinois; and in finding defendant guilty beyond a reasonable doubt. Because we ***995** find the trial court erred in holding that the center console was not a case, we reverse and remand for a new trial.

Peoria police officers stopped defendant's vehicle for making a right turn without signaling on March 24, 2006. An officer asked the defendant for his license and proof of insurance. The defendant obtained his insurance card for the glove box and handed it to the officer. When the officer asked about defendant's driver's license, defendant told the officer that defendant had a firearm owner's identification card. The officer asked the defendant if he had a gun, and defendant responded "Yes, I do." The defendant pointed to the center console of his vehicle and told the officer that there were two firearms in the console. The officer then told the defendant not to reach in the console and he and his partner handcuffed defendant and defendant's passenger and removed them from the vehicle.

One officer then entered the vehicle and observed that the lid on the center console was raised and that a key was inside the lock of the console. The officer lifted the console lid further and observed two handguns, a chrome revolver and a semiautomatic pistol. The officer also observed six rounds of .357 ammunition and a magazine loaded with .45 ammunition. On cross-examination, the officer confirmed that the lid of the console was open and that the key was in the locking mechanism of the console.

The defendant and his passenger each testified that the center console was locked and the keys thereto were kept in the *****915 **132** glove box of the car. Both described the center console as being a fully enclosed space between the driver and the passenger in the front seat of the vehicle.

Prior to trial, the court granted the People's motion in limine to prohibit any argument that the defendant was a resident of Florida and that the laws pertaining to the transportation of firearms was different in Florida and in every state between Florida and Illinois.

At the close of all the evidence, defense counsel sought a jury instruction, based upon section 24-1.9 of the Illinois Criminal Code ([720 ILCS 5/24-1.6](#) (West 2004)), to instruct the jury that under Illinois law a person is not guilty of aggravated unlawful use of weapons if the weapons are enclosed in a "case, firearm carrying box, shipping box, or other container" by a person who has been issued a currently valid Firearm Owner's Identification Card (FOID card). The record was uncontroverted that the defendant had a current valid FOID card, and that the weapons were unloaded.

The trial judge denied the jury instruction sought by the defendant.

On the People's motion, the defendant was prohibited from making arguments during closing argument that the location in which the ***996** officers found the firearms was a "case" or "other container" under section 24-1.6. During the People's closing argument, the prosecutor argued that the center console was not a "case."

During deliberations, the jury queried the trial judge, asking "what is the legal definition of a case?" Over defense objection, the trial judge to the jury that a center console was not a "case" under Illinois law. The jury then quickly returned a guilty verdict.

Defendant maintains on appeal that the trial court erred when it refused to allow him to argue and establish that the center console of his car was a "case" under an exception to the unlawful use of weapons statute. The question presented concerns the construction and application of a statute to undisputed facts and therefore raises a question of law. A question of law is considered *de novo*. [People v. Stanitz, 367 Ill.App.3d 980, 306 Ill.Dec. 195, 857 N.E.2d 288 \(2006\)](#).

Section 24-1.6 of the Illinois Criminal Code mandated that a person is not guilty of aggravated unlawful use of a weapon if that weapon is "unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card." [720 ILCS 5/24-1.6](#) (West 2004).

In the instant matter, the uncontested testimony revealed that the defendant owned the weapons, and the weapons were stored in the center console and were unloaded. The defendant provided a valid FOID card to the arresting officer. Thus, the only question remaining was whether the center console constituted a "case" under the statute.

In [People v. Cameron, 336 Ill.App.3d 548, 271 Ill.Dec. 220, 784 N.E.2d 438 \(2003\)](#), the Fourth District of this court affirmed a trial court's ruling that a glove compartment of the defendant's car was not a "case" or "other container" under section 24-1.6. According to the [Cameron](#) court:

"Under the doctrine of *eiusdem generis*, when a statutory clause specifically describes several classes of things and then includes "other things," the word "other" is interpreted as meaning 'other such like.' * * * [People v. Davis, 199 Ill.2d 130, 138 \[262 Ill.Dec. 721, 766 N.E.2d 641\] \(2002\)](#). * * * Applying the doctrine of *eiusdem generis* and strictly construing the container exemption, we determine that a vehicle's glove compartment **133 ***916 is not an "other container" under the

container exemption. A glove compartment is fundamentally different from a case, firearm carrying box, or shipping box because those receptacles are portable whereas a glove compartment is a fixed area in the dashboard of a vehicle. Therefore, a glove compartment is not an "other container" similar to the ones enumerated in the container exemption." [Cameron, 336 Ill.App.3d at 548, 271 Ill.Dec. 220, 784 N.E.2d 438](#).

[1] The [Cameron](#) court focuses its analysis on the fact that carrying *997 boxes and shipping boxes are portable. However, there is nothing in the plain meaning of the word "case" "firearm carrying box," "shipping box" or "other container" which when considered together indicate that the legislature intended the statutory exemption to apply only to portable carrying devices. There is nothing in the plain meaning of the statute to indicate a limitation on the definition of a case. The statute does not say "portable" case, firearm box, shipping box or other container.

If the legislature intended the word "case" to be limited to portable containers, it would have stated so in the statute. For example, in the Illinois Wildlife Code (520 ILCS 5) the legislature defined "case" for the purposes of describing a container used to contain a weapon as:

"Case. Case means a container specifically designed for the purpose of housing a gun or bow and arrow device which completely encloses such gun or bow and arrow device by being zipped, snapped, buckled, tied or otherwise fastened with no portion of the gun or bow and arrow device exposed." [520 ILCS 5/1.2b-1](#) (West 2004).

[2][3] When the legislature intended for the word "case" to have a special meaning, as in the Wildlife Code, it wrote that special meaning into the statute. In the Criminal Code, at issue in the instant matter, there is no special meaning attached to the word "case." The omission of a special meaning indicates that the term is to have its ordinary meaning. [People v. Smythe, 352 Ill.App.3d 1056, 1059, 288 Ill.Dec. 450, 817 N.E.2d 1100 \(2004\)](#).

[4] Webster's dictionary defines the term "case" as "a box or receptacle to contain or hold something." (Webster's Third New International Dictionary 346 (1986)). Further, the statute requires that the weapon

be "enclosed" in a "case." To "enclose" means "to envelop" (Webster's Third New International Dictionary 746 (1986)) and "envelop" means "to enclose completely within a garment or other covering" (Webster's Third New International Dictionary 759 (1986)). Thus, as the court noted in [Smythe](#), "given the plain meaning of term in light of all the relevant provisions of the statute, it is evident that the term "case" refers to an item that completely encloses the weapon in a firearm carrying box, shipping box, or other container." [Smythe](#), 352 Ill.App.3d at 1059, 288 Ill.Dec. 450, 817 N.E.2d 1100.

We note that the court in [Smythe](#) referred to the legislative history of this provision of the criminal code, wherein the sponsoring legislator referred to the Wildlife Code as his understanding of the meaning of the word "case" in Criminal Code. See, [Smythe](#), 352 Ill.App.3d at 1060, 288 Ill.Dec. 450, 817 N.E.2d 1100. However, we would not resort to legislative history, as we find the common definition of the term is sufficient and unambiguous. *998 Where the term is clear and unambiguous, there is no need to resort to legislative history for clarification. See, [People v. Hicks](#), 164 Ill.2d 218, 222, 207 Ill.Dec. 295, 647 N.E.2d 257 (1995).

134 *917 [5][6] Moreover, we see no logical reason to distinguish between portable and fixed containers, as the court did in [Cameron](#). Under the analysis articulated in [Cameron](#), the defendant could not keep his unloaded weapon locked in a fixed area such as a glove box or center console, yet he could keep the weapon in a duffel bag anywhere in the vehicle. The law is well established that "statutes are to be construed in a manner that avoids absurd or unjust results." [People v. Hanna](#), 207 Ill.2d 486, 279 Ill.Dec. 618, 800 N.E.2d 1201 (2003). Allowing drivers to hide weapons anywhere in the vehicle, so long as the case is portable, while prohibiting the storage of such weapon in a glove box or center console absurd, illogical and unjust.

The People submit that [People v. Williams](#), 368 Ill.App.3d 616, 306 Ill.Dec. 809, 858 N.E.2d 606 (2006) is on point. The [Williams](#) court, relying in part upon [Cameron](#) held that a zippered compartment that was attached to the back of the driver's seat was not a case under the statute at issue. Since [Williams](#) relies upon [Cameron](#), and we decline to follow [Cameron](#),

we also decline to follow [Williams](#).

[7][8] Having determined that the center console is a case as intended by the legislature in providing exceptions to the aggravated unlawful use of weapons statute, we must now determine the practical effect of the trial court's error in holding otherwise. First, we find the jury was improperly instructed as to the statutory exception. The defendant proposed instructing the jury on the exception for FOID card holders carrying firearms unloaded and cased. The defendant proposed the following instruction:

"A person commits the offense of Aggravated Unlawful Use of Weapons when he knowingly possesses an uncased and unloaded firearm with the ammunition immediately accessible, in a vehicle except when on his land, in his abode, or in his fixed place of business. A person does not commit the offense where the transportation or possession of a weapon that is not immediately accessible or is unloaded and enclosed in a case, firearm carrying box, shipping box, or other container, when that person has a currently valid firearms owner's identification card."

[9][10] A trial court's refusal to issue a specific instruction is reviewed under an abuse of discretion standard of review. [People v. Douglas](#), 362 Ill.App.3d 65, 298 Ill.Dec. 392, 839 N.E.2d 1039 (2005). We find the trial court abused its discretion in not giving this instruction. "Where an instruction is given in the language of a statute which is pertinent to the issues it must be regarded as sufficient. Laying down the law in the words of the law *999 itself ought not be pronounced as error." [Deming v. City of Chicago](#), 321 Ill. 341, 345, 151 N.E. 886 (1926).

[11] As it was error to instruct the jury without reference to the container exception, it was also error not to permit the defendant to argue in his closing argument that the console fit within the legislative exception for encased weapons. These errors require the matter to be reversed and remanded for a new trial.

[12] Prior to remand, we must address the defendant's contention that he was not proven guilty of the offense beyond a reasonable doubt. Where the sufficiency of the evidence is challenged on appeal, the relevant question is whether, after viewing the

evidence in the light most favorable to the prosecution, any rational trier of fact could have found all of the elements of the offense beyond a reasonable doubt. ****135**918**[People v. Collins, 106 Ill.2d 237, 87 Ill.Dec. 910, 478 N.E.2d 267 \(1985\).](#)

[13] Here, taking the evidence in the light most favorable to the prosecution, evidence was presented which, when taken in the light most favorable to the prosecution, would have shown that the console was open. Thus, even if the jury had been properly instructed as to the console being a case, it is possible that the jury could have found that the console was open, thus making the statutory exception inapplicable. Such factual question precludes our finding that the defendant was not proven guilty beyond a reasonable doubt. We must therefore remand for a new trial.

For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed and the matter is remanded for a new trial consistent with this decision.

Reversed and remanded.

[SCHMIDT](#) and O'BRIEN, JJ., concur.

379 Ill.App.3d 994, 888 N.E.2d 129, 320 Ill.Dec. 912

Appellate Court of Illinois, Third District.
 CITY OF PEKIN, Plaintiff-Appellee,
 v.
 Labana SHINDLEDECKER, Defendant-Appellant.
No. 81-43.

Cite as: 99 Ill.App.3d 571, 426 N.E.2d 13

Sept. 3, 1981.

Defendant was convicted in the Circuit Court, Tazewell County, Arthur Gross, J., of violating a municipal ordinance by possessing a controlled substance in form of cannabis, and he appealed. The Appellate Court, Heiple, J., held that a set of num-chucks or karate sticks which were observed protruding from underneath the driver's seat of defendant's automobile when he was stopped for a routine traffic violation, inoperable taillights, did not qualify as a "bludgeon" and, hence, did not support defendant's arrest for unlawful use of weapons and could not, therefore, be used as a basis for search of defendant and seizure of 2.05 grams of cannabis as an incident to an arrest.

Reversed.

HEIPLE, Justice:

The city of Pekin, plaintiff, sued defendant, Labana Shindledecker, for violating a municipal ordinance. Specifically, defendant was charged with possession of one gram of cannabis, a controlled substance. The defendant filed the instant appeal.

On April 28, 1980, at approximately 9:30 p. m., defendant was driving his car eastbound on Broadway in Pekin. He was going to work. Because the taillights of his auto were inoperable, a Pekin police car signalled him to pull into the parking lot of the Firestone Tire Store. Officers Bates and Williams exited the squad car. Bates informed the defendant of the taillight problem and asked for his driver's license. ****14 ***230** While this happened, Officer Williams went to the passenger side of the car. Looking inside the vehicle, he observed, protruding from underneath the driver's seat, a set of num-chucks or karate sticks. Williams proceeded to the driver's side of the vehicle and instructed Shindledecker to get out of the car. Defendant complied. Officer Williams arrested the defendant for

the unlawful use of weapons. Officer Bates then searched defendant and found on his person a small, amber vial containing one gram of a substance which later was proved to be cannabis. Williams seized the num-chucks from the automobile and then searched the entire car. No other incriminating evidence was found.

The officers drove defendant to the Pekin police station. He was charged with violating Pekin Ordinance Number 1397, which prohibits, inter alia, the possession of less than 2.5 grams of a substance containing cannabis. Penalties for violation of that ordinance are limited to fines between \$100 and \$500. No charges for unlawful use of weapons (Ill.Rev.Stat.1979, ch. 38, par. 24-1(a)(1)), or operating a motor vehicle without taillights (Ill.Rev.Stat.1979, ch. 951/2, par. 12-201(a)), were filed.

On July 2, 1980, defendant filed a motion to suppress the cannabis the search produced. He alleged the search was illegal since warrantless, not ***573** based on probable cause, and conducted without his consent. He also stated he was not violating any law at the time he was searched. An associate circuit judge entered an order denying this motion, indicating:

the motion to suppress is denied for the reason that the officer upon viewing the "Nun-Chuck" (sic), a form of club or bludgeon (sic) was justified in conducting (sic) the search of the defendant for his own safety to determine that the defendant was not armed

Following a bench trial, defendant was found guilty. He was fined \$100 and ordered to pay court costs.

Review is requested on two issues: (1) whether the police's search of the defendant's person was illegal; and, (2) whether Pekin Ordinance Number 1397 contravenes the city of Pekin's home rule powers under the Illinois Constitution (Ill.Const.1970, art. VII, s 6(d)(2)).

Defendant contends that num-chucks or karate sticks are not deadly or dangerous weapons. Since they are not, he urges, the police lacked authority to search his person when he was stopped for a routine traffic violation. Accordingly, the defendant concludes, all evidence seized pursuant to the search, was illegally

procured and should have been suppressed. In short, the denial of his pre-trial motion to suppress was error. We agree.

Officer Bates conducted a personal search of the defendant. He did so with the belief that Shindledecker had been lawfully arrested for a felony, namely the unlawful use of weapons. In other words, the num-chucks was thought to be a deadly weapon, the possession of which, violates the following statute:

(a) A person commits the offense of unlawful use of weapons when he knowingly:

(1) Sells, manufactures, purchases, possesses, or carries any bludgeon, black-jack, sling-shot, sand-club, sand-bag, metal knuckles, or any knife commonly referred to as a switchblade knife * * * (Ill.Rev.Stat.1979, ch. 38, s 24-1(a)(1))

The statute enumerates various devices, which if knowingly possessed, amount to misdemeanors or felonies (Ill.Rev.Stat.1979, ch. 38, s 24-1(b)). The trial judge said a set of num-chucks was a bludgeon and therefore a dangerous or deadly weapon. Thus, a search incident to a lawful arrest for the possession of such device was deemed permissible.

The prohibited devices the statute lists is by no means a complete compendium of every possible deadly weapon. Such an index, if it ever could be composed, might prove counter-productive to the legitimate aims of law enforcement. It is through interpretation of the statute's various terms that the flexibility necessary to assure the proper result, depending on the facts of the cause, occurs.

****15 ***231** Various viewpoints have emerged as to what constitutes a bludgeonso ***574** as to render the device a deadly weapon. Although we recognize a lack of unanimity on the subject, the Illinois Supreme Court, at least in the context of the armed robbery statute (Ill.Rev.Stat.1979, ch. 38, s 18-2(a)), has provided guidance for our answer in the case at bar. [People v. Skelton \(1980\), 83 Ill.2d 58, 66, 46 Ill.Dec. 571, 414 N.E.2d 455](#), citing [People v. Dwyer \(1927\), 324 Ill. 363, 364-365, 155 N.E. 316](#).

(1)(2) In light of this holding, we believe the unlawful weapons statute is not intended to make the possession of every tool, implement, or sporting device, which has the potential to inflict serious

bodily harm an unlawful weapon. Common sense must be the guide. Such an approach acknowledges the character of the device and its potential for harm, while not being oblivious to the article's everyday use, the circumstances of its discovery, and in certain cases, the person's explanation as to its presence or possession. If it were otherwise, a baseball bat, rolling pin, and perhaps a golf club could qualify as bludgeons if a strict definition of that word is employed (see, Webster's Third New International Dictionary, 240 (unabridged ed., 1976). This would lead to obviously absurd results.

(3) Following this analysis, we do not believe the set of num-chucks found in Shindledecker's car is a bludgeon. Therefore its mere possession cannot support the offense of unlawful use of weapons. At trial, defendant's un rebutted testimony revealed that over the previous four years he employed the num-chucks for personal exercise or sport. Nor do we find the circumstances of the search, or the device's possession to be indicative of an unlawful purpose, past or present, on the part of the possessor. Like the karate sticks confiscated in [\(People v. Tate \(1979\), 68 Ill.App.3d 881, 883, 25 Ill.Dec. 313, 386 N.E.2d 584\)](#), the num-chucks seized from Shindledecker are identical in description. Their respective nomenclature is immaterial. The karate sticks in Tate were not found to be a deadly weapon. We agree with reasoning and the result reached in that case and believe it wholly applicable here. Therefore, when defendant was arrested he was not in possession of a deadly weapon. His arrest was not based in law.

(4) When a felony arrest is made it is reasonable for an arresting officer to search the person arrested to remove weapons that could be used to effect an escape or resist arrest. However, where the basis for the arrest is not lawful, the authority to conduct a search incident thereto dissolves (W. LaFave, Search and Seizure (1978), Vol. II, s 5.2(h)). At trial, no evidence was presented which shows defendant was wanted for a crime, or that his automobile had been involved in, or was the object of a crime. Other than a search incident to a valid arrest, the police lacked probable cause to search defendant. Thus, since the arrest was illegal so was the search. And, all evidence produced by that search was inadmissible as evidence to prove defendant's violation of the ordinance [\(Wong Sun v. United States \(1963\), 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441\)](#). Because the ***575**

admission of such evidence occurred at defendant's trial, the judgment, as well as the fine imposed by the trial court, must be reversed.

In view of our disposition concerning the legality of the police search, we need not address the constitutional question the parties have argued at length and believe control this cause's outcome. In passing, we believe defendant's argument misleading. Whatever its theoretical value may encompass, such is pointless when not based on the facts of a given case. Shindledecker was charged with possession of a single gram of cannabis. He did not have thirty grams. Defendant could not have been charged with, or prosecuted by the State of Illinois for any felony of which we are aware. Even the statutes which defendant cites (Ill.Rev.Stat.1979, ch. 561/2, par. 704) make this plain.

For the reason stated, the judgment and fine imposed by the Circuit Court of Tazewell County is reversed.

REVERSED.

ALLOY and BARRY, JJ., concur.

99 Ill.App.3d 571, 426 N.E.2d 13, 55 Ill.Dec. 229

Appellate Court of Illinois,
 Fourth District.
 The PEOPLE of the State of Illinois, Plaintiff-
 Appellee,
 v.
 Greg A. HESLER, Defendant-Appellant.
No. 4-95-1005.

Cite as: 289 Ill.App.3d 1084, 682 N.E.2d 1224

July 17, 1997.

Defendant was convicted before the Circuit Court, Vermilion County, [Joseph P. Skowronski](#), J., of unlawful use of weapons, and he appealed. The Appellate Court, [Cook](#), J., held that evidence was sufficient to sustain conviction, notwithstanding defendant's contention that he fell within statutory "broken down" exemption.

Affirmed.

Justice [COOK](#) delivered the opinion of the court:

Defendant Greg Hesler was charged with unlawful use of weapons in violation of section 24-1(a)(4) of the Criminal Code of 1961 (Code) ([720 ILCS 5/24-1\(a\)\(4\)](#) (West 1994)). Following a bench trial, defendant was convicted. Defendant appeals, challenging the sufficiency of the evidence to sustain the conviction. We affirm.

On October 15, 1994, at about 10:40 p.m., Timothy Hetrick, a police officer for the City of Danville, was conducting roadside safety checks. The check involved stopping vehicles and checking for drivers with suspended licenses or who were intoxicated. Hetrick approached defendant's vehicle, a black Chevy pickup truck. As soon as he started talking to defendant, he noticed there was a revolver on the seat of the truck next to defendant's right leg. The cylinder of the revolver was missing.

Hetrick "drew [his] duty weapon. Ordered [defendant] to put his hands out the window." Defendant was cuffed and placed in the backseat of a squad car. Hetrick testified that "[a]fter [defendant] was removed [from his truck,] we done [*sic*] a further search of the vehicle. I found a cylinder, which was out of the revolver, laying [*sic*] on the

floor, which would have been underneath [defendant's] right leg. And it was loaded with six live rounds of .22 ammunition." Subsequently, Hetrick testified that he did not believe all six rounds were actually in the cylinder; he believed a couple of them had fallen out on the floor.

Hetrick was of the opinion that it would take less than 30 seconds *1086 to reassemble the **1226 ***149 gun, although he could not recall whether he actually attempted to do so himself. Hetrick did not see defendant remove the cylinder from the gun, nor did he see defendant make any movements that would suggest defendant was removing the cylinder. Nonetheless, Hetrick testified that it was his opinion that defendant had removed the cylinder only upon seeing the police officers. He based his opinion upon three facts: (1) the presence of only six rounds suggested to Hetrick that the gun was not going to be used for target practice; (2) that the weapon was on the seat next to defendant suggested to Hetrick that defendant carried the gun for protection; and (3) that the cylinder was found on the floorboard, "as if someone had just dropped it in the floorboard, it's just not--not any type of common sense way to be transported [*sic*]." At the end of the State's evidence, defendant asked for a "directed verdict." Defendant's motion was denied.

Defendant testified that the gun was not assembled while it was in his truck. Defendant said the revolver was wrapped in a towel and lying on the seat next to him. When he saw that he was being stopped, he unwrapped the disassembled revolver and placed it on the seat next to him so that it would be in plain sight. According to defendant, the cylinder and the six rounds were in a map pouch on the front of the driver's seat, near his legs. After his arrest, defendant said he borrowed a friend's gun, which is identical to his, and attempted to assemble the gun under like circumstances (in the dark). Defendant testified it took over four minutes to assemble and load the gun under those circumstances, but on cross-examination he admitted that his assembly of the gun included checking it for obstructions to make sure the gun could be properly fired.

Hetrick testified, upon rebuttal, that he did not recall seeing a towel or a map pouch in defendant's truck. After hearing argument, the trial court found defendant guilty. The trial court was of the opinion

that defendant failed to prove by a preponderance of the evidence that he is entitled "to the exception as far as transportation of weapons broken down in a non-functioning state or not immediately accessible to him." The trial court then concluded that, "[b]ased upon the testimony of the officer as to the position of the weapon and its accessory[,] it would appear to the court that this was immediately accessible to the defendant and could have been assembled * * * in a very brief period of time." Because defendant had no prior arrests or convictions, except for a speeding ticket, the court sentenced defendant to one year's conditional discharge and ordered defendant to pay \$150 plus costs. In addition, defendant was ordered to pay a \$100 public defender fee.

[1][2][3] *1087 Defendant's sole contention upon appeal is that he was not proved guilty beyond a reasonable doubt. Where a defendant raises the question of reasonable doubt on review, the relevant inquiry is whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Burrows*, 148 Ill.2d 196, 225, 170 Ill.Dec. 317, 329, 592 N.E.2d 997, 1009 (1992), quoting *People v. Steidl*, 142 Ill.2d 204, 226, 154 Ill.Dec. 616, 624, 568 N.E.2d 837, 845 (1991). This standard is applicable whether the evidence is direct or circumstantial. *People v. Ward*, 154 Ill.2d 272, 314, 181 Ill.Dec. 884, 901, 609 N.E.2d 252, 269 (1992). Circumstantial evidence is sufficient to sustain a conviction if it satisfies proof beyond a reasonable doubt of the elements of the crime charged. *People v. Gomez*, 215 Ill.App.3d 208, 216, 158 Ill.Dec. 709, 714, 574 N.E.2d 822, 827 (1991), citing *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). It is the function of the fact finder to weigh the evidence, judge the credibility of the witnesses, and resolve conflicts in the evidence. *People v. Neither*, 166 Ill.App.3d 896, 900, 117 Ill.Dec. 896, 898, 520 N.E.2d 1247, 1249 (1988).

[4] Defendant was convicted of unlawful use of weapons. 720 ILCS 5/24- 1(a)(4) (West 1994). In pertinent part, that statute reads:

"A person commits the offense of unlawful use of weapons when he knowingly:

* * *

1227 (4) *150 carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any * * * revolver * * *." 720 ILCS 5/24-1(a)(4) (West 1994).

There is no dispute that defendant possessed a revolver in his vehicle and that he was neither on his land, nor in his abode or fixed place of business. Rather the dispute in this case focuses upon whether defendant fell within a statutory exemption to the unlawful use of weapons charge. Section 24-2(b)(4) of the Code provides that section 24-1(a)(4) does not apply or affect the "[t]ransportation of weapons that are broken down in a non-functioning state or are not immediately accessible." 720 ILCS 5/24-2(b)(4) (West 1994). A person charged with unlawful use of weapons must prove, by a preponderance of the evidence, that he falls within one of the exemptions. 720 ILCS 5/24- 2(h) (West 1994); *People v. Smith*, 71 Ill.2d 95, 109, 15 Ill.Dec. 864, 870, 374 N.E.2d 472, 478 (1978); cf. 720 ILCS 5/3-2 (West 1994) (affirmative defenses).

Defendant relies upon *People v. Freeman*, 196 Ill.App.3d 370, 143 Ill.Dec. 73, 553 N.E.2d 780 (1990). In *Freeman*, the defendant's car was stopped because it did not have a functioning license plate light. The police officer claimed that, as he approached the car, he saw the defendant *1088 making movements that suggested to the police officer that the defendant was sticking something in his pocket. When the officer found that the defendant did not have a valid driver's license, the defendant was arrested and searched. The cylinder to a revolver was found in the defendant's left pants pocket, and a revolver was found under a cardboard box on the front seat. The trial court did not believe the police officer's testimony that the defendant disassembled the gun upon the officer's approach. Nonetheless, the trial court convicted the defendant because of the court's belief that the pistol was within the defendant's immediate control. The appellate court reversed because a "broken down, cylinderless pistol, incapable of being fired, not in immediate operating condition, and not immediately accessible" does not fall within the purview of the unlawful use of weapons statute. *Freeman*, 196 Ill.App.3d at 373, 143 Ill.Dec. at 75, 553 N.E.2d at 782.

Freeman is confusing, as it seems to mix the exemptions found in section 24-2(b)(4) of the Code.

As noted, however, that subsection states that section 24-1(a)(4) does not apply or affect the "[t]ransportation of weapons that are broken down in a non-functioning state *or* are not immediately accessible." (Emphasis added.) [720 ILCS 5/24-2\(b\)\(4\)](#) (West 1994). Whether the weapon is broken down and whether the weapon is inaccessible constitute separate exceptions.

There are at least three ways an average citizen can legally transport a firearm. First, the possessor of a valid firearm owner's identification card (FOID card) can legally transport an unloaded firearm so long as it is enclosed in a container. [720 ILCS 5/24-2\(i\)](#) (West 1994); [People v. Bruner, 285 Ill.App.3d 39, 42-43, 221 Ill.Dec. 459, 461, 675 N.E.2d 654, 656 \(1996\)](#). Second, a person can legally transport a firearm by placing it in an area that is not immediately accessible, such as a locked trunk. [720 ILCS 5/24-2\(b\)\(4\)](#) (West 1994). Finally, a person can legally transport a firearm that is "broken down in a non-functioning state." [720 ILCS 5/24-2\(b\)\(4\)](#) (West 1994). The first two methods are inapplicable to the instant case, and defendant does not argue otherwise. Rather, defendant argues that he proved, by a preponderance of the evidence, that he was entitled to the "broken down" exemption.

Under the "broken down" exemption, removing the cylinder from a revolver or the bolt from a rifle would render the weapon legal for transportation purposes, even if the two parts were sitting next to each other on the front seat of the vehicle. *Cf. People v. White, 253 Ill.App.3d 1097, 1098, 194 Ill.Dec. 267, 268, 627 N.E.2d 383, 384 (1993)* (suggesting that, in a prosecution for possession of firearms by a felon, "temporarily inoperable firearms which can be made operable within a reasonable time fall within the purview of the statutes governing use and possession *1089 of firearms"). The statute requires only that the weapon be broken down and in a nonfunctioning state, and nothing more. Any other conclusion would make it difficult for ****1228 ***151** owners of pickup trucks and vans to transport firearms.

[5] The evidence in this case establishes that defendant's revolver was broken down by the time Hetrick reached defendant's truck. However, that is not the only relevant time period: if defendant disassembled the weapon because he saw he was

being approached by the police, then defendant was guilty of unlawful use of a weapon in violation of section 24-1(a)(4) of the Code. [720 ILCS 5/24-1\(a\)\(4\)](#) (West 1994).

In the instant case, the trial court was somewhat unclear as to its rationale for finding guilt. Nonetheless, reading the comments of the trial judge in their entirety leads us to conclude that the judge disbelieved defendant's claim that he had removed the cylinder prior to transporting the weapon. First, the trial judge distinguished *Freeman* because the trial court there found the defendant had broken down the gun before transporting the weapon. Next, the trial court noted Hetrick's testimony regarding the position of the gun, the position of the cylinder, and the position of the ammunition and then stated that defendant had failed to prove by a preponderance of the evidence that "he is entitled to the exception as far as transportation of weapons broken down in a non-functioning state or not immediately accessible to him." In short, the trial court disbelieved defendant's claim that he had disassembled the revolver prior to putting it in his truck.

The trial court then concluded that, based upon the proximity of the revolver and the cylinder to defendant, the gun was "immediately accessible to the defendant and could have been assembled * * * in a very brief period of time." As noted, defendant was not required to show the parts of the gun were inaccessible, so long as he had shown the gun was broken down in a nonfunctioning state. Nonetheless, it was necessary for the court to address the revolver's accessibility. The determination of whether a defendant is entitled to the "broken down" exemption requires the trier of fact to make a single determination: was the firearm disassembled during the *relevant* time period? If the answer to the question is "yes," then the transportation was lawful. However, if the answer is "no," then the fact finder must determine whether the firearm was immediately accessible, because it is legal to transport a fully assembled firearm so long as it is not immediately accessible. In the instant case, the trial court rejected defendant's claim that the revolver was disassembled prior to his being stopped by the police. It is uncontroverted that the fully assembled ***1090** weapon would have been immediately accessible, and the trial court's comments on the accessibility of the revolver, in this respect, were proper.

Viewing the evidence in the light most favorable to prosecution, the cylinderless revolver was on the seat next to defendant, the cylinder and ammunition were on the floor at his feet. It is reasonable to infer from this evidence that defendant disassembled the weapon immediately prior to Hetrick's approach. The trial court could have reasonably concluded the State proved the essential elements of the crime beyond a reasonable doubt.

For the foregoing reasons, the judgment of the trial court is affirmed.

Affirmed.

McCULLOUGH and GREEN, JJ., concur.

Appellate Court of Illinois,
Fourth District.
The PEOPLE of the State of Illinois, Plaintiff-
Appellee,
v.
Breon P. CAMERON, Defendant-Appellant.
No. 4-01-0537.

Cite as: 336 Ill.App.3d 548, 784 N.E.2d 438

Feb. 7, 2003.

Defendant was convicted by a jury in the Circuit Court, Champaign County, [Jeffrey B. Ford](#), J., of unlawful use of weapons. Defendant appealed. The Appellate Court, [Knecht](#), J., held that the trial court's refusal to provide defendant's requested jury instruction relating to the container exception to the offense of unlawful use of weapons was not an abuse of discretion.

Affirmed.

[Steigmann](#), J., filed a specially concurring opinion.

Justice [KNECHT](#) delivered the opinion of the court:

***549** A jury convicted defendant, Breon P. Cameron, of unlawful use of weapons, a Class A misdemeanor ([720 ILCS 5/24-1](#)(a)(4), (b) (West 2000)), for transporting an unloaded semiautomatic pistol in the glove compartment of his vehicle. Defendant appeals, contending his conviction should be reversed because (1) the trial court erred by refusing his tendered jury instruction regarding the statutory exemption for unloaded weapons enclosed "in a case, firearm carrying box, shipping box, or other container" (container exemption) ([720 ILCS 5/24-1](#)(a)(4)(iii) (West 2000)) and (2) his trial counsel was ineffective for failing to request a jury instruction regarding the statutory exemption for weapons "broken down" in a nonfunctioning state (broken-down exemption) ([720 ILCS 5/24-1](#)(a)(4)(i) (West 2000)). We affirm.

I. BACKGROUND

The following evidence was presented at defendant's May 2001 jury trial. In January 2001, Urbana police officer Shawn Cook conducted a traffic stop of a vehicle driven by defendant. Cook arrested

defendant after learning he had a suspended driver's license. Cook searched defendant's car and found in the driver's door accessory compartment an ammunition magazine with six live rounds in it. Cook also recovered an unloaded .32-caliber semiautomatic pistol in the glove compartment. Cook testified the glove compartment was unlocked and within reach from the driver's seat. Defendant testified he unlocked the glove compartment after the traffic stop using a key ***550** from the ashtray to get his driver's license from his wallet. Defendant had a valid firearm owner's identification card.

Defense counsel tendered the following jury instruction:

****440 ***222** "A person may lawfully transport a firearm in a vehicle if the firearm is unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid [f]irearm [o]wner's [i]dentification [c]ard. The defendant has the burden of proving by a preponderance of the evidence that at the time of the offense charged the firearm was unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid [f]irearm [o]wner's [i]dentification [c]ard."

See Illinois Pattern Jury Instructions, Criminal, No. 18.01A (4th ed.2000). The trial court refused this instruction, reasoning as follows:

"[W]hen they say a case, that's something that we could pick up and carry it around. A carrying box assumes that is something you pick up and carry it around. A shipping box is something that you pick up and carry around. When they say, or other container, they then mean some sort of container that could be picked up and carried around. If it is in a glovebox in * * * a vehicle, * * * I haven't seen too many vehicles someone could pick up and carry around. You cannot take the glovebox out. That's part of the car. It's not removable. * * * [I]f they meant areas built into vehicles, the legislature would have put that in there. * * * [W]hen you read this section, * * * all of these are types of cases that can be picked up and carried around. * * * So there is no evidence that * * * the weapon was in that type of container or case."

The jury found defendant guilty of unlawful use of weapons. In June 2001, defendant filed a motion for

judgment notwithstanding the verdict or for a new trial. The trial court denied defendant's motion and sentenced him to 12 months' conditional discharge. This appeal followed.

II. ANALYSIS

A. Applicability of Container Exemption

Defendant was convicted of the offense of unlawful use of weapons under section 24-1(a)(4) of the Criminal Code of 1961 (Code) ([720 ILCS 5/24-1\(a\)\(4\)](#) (West 2000)), which applies when a person knowingly:

"[c]arries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol, revolver, stun gun[,] or taser or other firearm, except that this subsection (a)(4) does not apply to or affect transportation of weapons that meet one of the following conditions:

- *551 (i) are broken down in a non-functioning state; or
 - (ii) are not immediately accessible; or
 - (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid [f]irearm [o]wner's [i]dentification [c]ard[.]"
- (Emphases added.)

[1] Defendant first argues the trial court erred by refusing a jury instruction relating to the container exemption in section 24-1(a)(4)(iii) of the Code ([720 ILCS 5/24-1\(a\)\(4\)\(iii\)](#) (West 2000)). Defendant asserts he was entitled to this instruction because he transported the unloaded firearm enclosed in his vehicle's glove compartment, which defendant contends qualifies as an "other container" under the container exemption. We disagree.

[2] Ordinarily, we use an abuse of discretion standard when reviewing a trial court's decision to give a tendered jury instruction. **441**[223](#)[People v. Majors](#), 308 Ill.App. 3d 1021, 1034, 242 Ill.Dec. 474, 721 N.E.2d 753, 763 (1999). However, to the extent our analysis involves an issue of statutory interpretation, our review is *de novo*. [People v. Rivera](#), 198 Ill.2d 364, 368, 261 Ill.Dec. 336, 763 N.E.2d 306, 308 (2001).

[3] In regard to the specific statute at issue, the courts have found the legislature did not intend the statutory exemptions should be given a broad

interpretation, and thus, they must be strictly construed. [People v. Bruner](#), 285 Ill.App.3d 39, 42, 221 Ill.Dec. 459, 675 N.E.2d 654, 655 (1996). Under the doctrine of *ejusdem generis*, when a statutory clause specifically describes several classes of things and then includes "other things," the word "other" is interpreted as meaning "other such like." [People v. Davis](#), 199 Ill.2d 130, 138, 262 Ill.Dec. 721, 766 N.E.2d 641, 645 (2002).

Applying the doctrine of *ejusdem generis* and strictly construing the container exemption, we determine a vehicle's glove compartment is not an "other container" under the container exemption. A glove compartment is fundamentally different from a case, firearm carrying box, or shipping box because those receptacles are portable whereas a glove compartment is a fixed area in the dashboard of a vehicle. Therefore, a glove compartment is not an "other container" similar to the ones enumerated in the container exemption.

[4] A defendant is entitled to have the jury instructed on the law applicable to the theory of his case, provided evidence in the record supports that theory. [People v. Williams](#), 193 Ill.2d 306, 375, 250 Ill.Dec. 692, 739 N.E.2d 455, 491 (2000). However, defendant was not entitled to have the jury instructed on the container exemption because no evidence in the record suggests defendant's firearm was so enclosed. Therefore, the trial court did not abuse its discretion in refusing defendant's jury instruction.

*552 B. Applicability of Broken-Down Exemption

Defendant next contends his trial counsel was ineffective for failing to request a jury instruction regarding the exemption for weapons broken down in a nonfunctioning state ([720 ILCS 5/24-1\(a\)\(4\)\(i\)](#) (West 2000)).

We need not address this contention because no evidence or argument concerning this exemption was presented to the trial court. The adjudication of a claim of ineffective assistance of counsel is often better made in the context of a petition for postconviction relief where a complete record can be made. [People v. Kunze](#), 193 Ill.App.3d 708, 726, 140 Ill.Dec. 648, 550 N.E.2d 284, 296 (1990).

The nature and operation of defendant's pistol were not addressed at trial. We do not have the benefit of

trial counsel's or the trial court's discussion of what "broken down" might mean. We do not know why defendant's trial counsel did not raise this exemption. We could speculate and reach a conclusion, but we will not do so. We decline to address defendant's second contention.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.

TURNER, J., concurs.

[STEIGMANN](#), J., specially concurs.

Justice [STEIGMANN](#), specially concurring:

The legislature has provided in section 24-1(a)(4) of the Code that it is unlawful ****442 ***224** for a person to carry or possess a pistol in any vehicle, except under certain conditions. [720 ILCS 5/24-1\(a\)\(4\)](#) (West 2000). Because defendant has not challenged the authority of the legislature to so provide, this court's only role in this case is to conscientiously carry out the legislature's intention to the best of our ability. As we do so, we are constrained by the deference due to the policy-making body of the State of Illinois--namely, the General Assembly. The Supreme Court of Illinois recently discussed this deference, as follows:

" ' "The only legitimate function of the courts is to declare and enforce the law as enacted by the legislature, to interpret the language used by the legislature where it requires interpretation, and not to annex new provisions or substitute different ones, or read into a statute exceptions, limitations, or conditions which depart from its plain meaning." ' " [People ex rel. Department of Professional Regulation v. Manos](#), 202 Ill.2d 563, 568-69, 270 Ill.Dec. 43, 782 N.E.2d 237, 241 (2002), quoting ***553**[Bronson v. Washington National Insurance Co.](#), 59 Ill.App. 2d 253, 261-62, 207 N.E.2d 172, 176 (1965), quoting [Belfield v. Coop](#), 8 Ill.2d 293, 307, 134 N.E.2d 249, 256 (1956).

With the foregoing limitation in mind, I agree with the majority that the legislature, when it set forth the following exemptions to the general prohibition on

carrying a pistol in a vehicle--that is, when an unloaded pistol is "enclosed in a case, firearm carrying box, shipping box, or other container"--did not intend to include a vehicle's glove compartment. [720 ILCS 5/24-1\(a\)\(4\)\(iii\)](#) (West 2000). To hold otherwise would be to distort the clear meaning of that legislative exemption.

336 Ill.App.3d 548, 784 N.E.2d 438, 271 Ill.Dec. 220

Appellate Court of Illinois,
 First District, Third Division.
 The PEOPLE of the State of Illinois, Plaintiff-
 Appellee,
 v.
 Rickey PULLEY, Defendant-Appellant.
No. 1-02-2023.

Cite as: 345 Ill.App.3d 916, 803 N.E.2d 953

Jan. 21, 2004.

Background: Defendant was convicted in the Circuit Court, Cook County, [Ralph Reyna, J.](#), of aggravated unlawful use of a weapon (U UW). Defendant appealed.

Holdings: The Appellate Court, [South, J.](#), held that:
 (1) evidence was sufficient to establish that defendant was not on his own land at time defendant possessed weapon while standing next to building, for purposes of "on his land" exception to unlawful use of weapon statute;
 (2) penalty for offense of aggravated U UW was not unconstitutionally disproportionate;
 (3) statute governing offense of aggravated U UW did not violate due process by failing to require proof of culpable mental state; and
 (4) statute governing offense of aggravated U UW did not violate equal protection by permitting property owners to carry weapons anywhere on their own land while restricting renters from carrying weapons in the common area of their residences.
 Affirmed

[Hall, J.](#), dissented and filed a separate opinion.

****956 ***335** Justice [SOUTH](#) delivered the opinion of the court:

This appeal arises from defendant's conviction for aggravated unlawful use of a weapon (U UW) ([720 ILCS 5/24-1.6](#)(a)(1), (a)(3)(A) (West 2000)) following a jury trial. Defendant was sentenced to Cook County boot camp.

At trial, Chicago police officer Alan Hadac testified that for the past three years he had been assigned to the Chicago Housing Authority (CHA) and worked at a police building located at 365 West Oak Street,

which is part of the Cabrini Green housing complex. He described the duties of a Chicago police officer assigned to CHA public housing as being "strictly assigned to patrol housing sites federally funded throughout * * * Chicago, whether it be Cabrini Green, Rockwell Gardens, Robert Taylor."

In the early morning hours of July 30, 2001, Officer Hadac was standing in a large parking lot behind 365 West Oak, commonly referred to as the "Blacktop," where police officers often parked their vehicles. The Blacktop was bordered by four buildings and a youth center. Two of the buildings, 911-23 Sedgwick Avenue and 929-939 Hudson Avenue, are CHA buildings. According to Officer Hadac, the CHA had recently installed new lighting in the area. As he conversed with Officers Simon, McCormick and Carroll, Officer Hadac heard gunfire and turned to look in the direction of where the shots had been fired. He saw defendant standing at the rear of 929 Hudson with his right arm extended and a gun in his hand. Defendant fired the weapon several times. Officer Hadac ran towards defendant, who went into 929 Hudson, while Officers McCormick and Carroll entered a nearby vehicle.

A chase ensued when defendant ran through the building at 929 Hudson and out onto the street. As defendant and Officer Hadac turned the corner onto Locust Street, Officer Hadac observed defendant toss the gun over a nearby fence. Hadac alerted Officers McCormick and Carroll that he had seen defendant throw the weapon to the ground and continued his pursuit until he apprehended him as he was attempting to enter an apartment on the seventh floor of the CHA building at 939 Hudson Avenue.

Chicago police officer Thomas Carroll testified that he also worked out of the CHA police district at 365 West Oak. He corroborated Officer ***920** Hadac's testimony regarding the events surrounding the firing of the gun and the subsequent apprehension of defendant.

Chicago police officer Brennan McCormick testified that on the morning of July 30, 2001, he was in the CHA parking lot behind 365 West Oak with two CHA police officers when he heard gunshots. He observed defendant "with a gun in his hand outside of the housing project [at] * * * 929." Officer McCormick identified defendant as the shooter and

subsequently recovered a 9-millimeter automatic weapon that defendant had thrown to the ground.

At the conclusion of the trial, the jury found defendant guilty of aggravated UUW and he was sentenced to Cook County boot camp.

On appeal, defendant has raised the following issues for our review: (1) whether he was proven guilty of the offense beyond a reasonable doubt; (2) whether the penalty for aggravated UUW is unconstitutionally disproportionate to the penalty for UUW; (3) whether the aggravated UUW statute violates due process by allowing a felony conviction based upon innocent conduct; and (4) whether the aggravated UUW statute violates due process and equal protection in the absence of a rational ****957 ***336** basis to differentiate between property owners and renters.

[1] Defendant initially contends that his conviction for aggravated UUW must be reversed because the State failed to prove an essential element of the offense, *i.e.*, that he was not on his own land at the time that he possessed the firearm.

[2] When a defendant challenges the sufficiency of the evidence, the question on review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Smith*, 185 Ill.2d 532, 541, 236 Ill.Dec. 779, 708 N.E.2d 365 (1999). A court of review may not substitute its judgment for that of the trier of fact and will not reverse a conviction unless the evidence is so unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Lundy*, 334 Ill.App.3d 819, 825, 268 Ill.Dec. 790, 779 N.E.2d 404 (2002).

The aggravated UUW statute provides, in pertinent part:

"(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person *except when on his or her land or in his or her abode or fixed place of business* any pistol, revolver, stun gun or taser or other firearm; * * * * *
* * *; and

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded and immediately ****921** accessible at the time of the offense[.]" (Emphasis added.) 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2000).

[3][4] As the above-italicized exception exists as part of the body of this offense, the State bears the burden of disproving beyond a reasonable doubt the existence of this exception in order to sustain the defendant's conviction. *People v. Laubscher*, 183 Ill.2d 330, 335, 233 Ill.Dec. 639, 701 N.E.2d 489 (1998). In meeting this burden, the State may rely upon circumstantial evidence if it provides proof beyond a reasonable doubt that the defendant was not on his land or in his abode or fixed place of business at the time of the offense. *Laubscher*, 183 Ill.2d at 335, 233 Ill.Dec. 639, 701 N.E.2d 489. However, there must be some evidence to create a reasonable inference that the exception exists as the State may not leave essential elements of the offense to conjecture or assumption. *Laubscher*, 183 Ill.2d at 335-36, 233 Ill.Dec. 639, 701 N.E.2d 489.

In *Laubscher*, a case relied upon by defendant, the complainant and defendant resided in different units of the same apartment building. *Laubscher*, 183 Ill.2d at 333, 233 Ill.Dec. 639, 701 N.E.2d 489. The defendant, who had a gun on his person, had an argument with two men on the lawn area of the apartment complex. *Laubscher*, 183 Ill.2d at 333-34, 233 Ill.Dec. 639, 701 N.E.2d 489. The complainant intervened and seized a handgun from the defendant's waistband, the police were called, and defendant was arrested. *Laubscher*, 183 Ill.2d at 333-34, 233 Ill.Dec. 639, 701 N.E.2d 489. The supreme court affirmed the appellate court's reversal of the defendant's UUW conviction after concluding that there was no evidentiary basis for the trial court to infer that the defendant did not have an ownership interest in the premises. *Laubscher*, 183 Ill.2d at 336, 233 Ill.Dec. 639, 701 N.E.2d 489. Although the complainant loosely referred to occupants of the building as "tenants," the only evidence offered by the State of the defendant's connection with the property ****958 ***337** was that he "lived in the building." *Laubscher*, 183 Ill.2d at 336, 233 Ill.Dec. 639, 701 N.E.2d 489. That evidence was insufficient to establish beyond a reasonable doubt the defendant's particular interest in the premises. *Laubscher*, 183 Ill.2d at 336, 233 Ill.Dec. 639, 701 N.E.2d 489. The supreme court affirmed the appellate court's finding

that "although it was not unreasonable for the trial court to assume defendant had no ownership interest in the premises, permitting such an inference without any evidentiary basis would effectively shift the burden to defendant to prove that he was on his land." [Laubscher, 183 Ill.2d at 336, 233 Ill.Dec. 639, 701 N.E.2d 489.](#)

Applying the principles set forth above, we find that the State presented sufficient evidence to establish that defendant was not on his own land at the time of the offense. Officers Hadac and Carroll, both assigned to the CHA for a period of years, testified that defendant was standing at 929 Hudson when he fired several shots from a gun. Defendant subsequently ran through 929 Hudson with the gun in his hand and was ultimately apprehended when he attempted to gain access *922 to an apartment on the seventh floor of the CHA building located at 939 Hudson. Unlike in *Laubscher*, Officer Hadac specifically identified the premises at 929 and 939 Hudson as CHA buildings. Officer Hadac further testified that he was assigned to a nearby police station which was part of a CHA public housing complex and described for the jury the duties of a CHA police officer as being responsible for "strictly patrolling federally funded housing sites." Moreover, Officer McCormick testified that defendant was standing with a gun in his hand outside of the housing project at 929 Hudson. Viewing the evidence in the light most favorable to the State, we find that a reasonable trier of fact could have inferred that defendant was not on his own land at the time of the offense.

[5] Next, defendant contends that the penalty for aggravated UUW, based on the conduct described in sections 24.1.6(a)(1) and (a)(3)(A) of the aggravated UUW statute, is unconstitutionally disproportionate to the penalty for UUW.

[6][7] Although defendant failed to raise this issue in the trial court, he has the right to challenge the constitutionality of a statute for the first time on appeal. [People v. Christy, 139 Ill.2d 172, 176, 151 Ill.Dec. 315, 564 N.E.2d 770 \(1990\).](#) It is well settled that statutes are presumed to be constitutional and that the party challenging the statute has the burden of clearly showing the alleged constitutional violation. [People v. Moss, 206 Ill.2d 503, 519-20, 276 Ill.Dec. 855, 795 N.E.2d 208 \(2003\).](#) It is our

responsibility to construe a statute in a manner that upholds its validity and constitutionality if it can reasonably be done. [Moss, 206 Ill.2d at 520, 276 Ill.Dec. 855, 795 N.E.2d 208.](#) Here, we will only consider those sections of the aggravated UUW statute that apply to this defendant, and not those that might apply to others in different circumstances. See [People v. McGee, 341 Ill.App.3d 1029, 1032, 276 Ill.Dec. 605, 794 N.E.2d 855 \(2003\).](#)

[Article I, section 11, of the Illinois Constitution](#), commonly referred to as the proportionate penalties clause, provides, in pertinent part, that "[a]ll penalties shall be determined * * * according to the seriousness of the offense." [Ill. Const.1970, art. I, § 11.](#)

Our supreme court has identified three ways in which a violation of the proportionate penalties clause may occur. First, where the punishment for a particular offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community. Second, ****959 ***338** where similar offenses are compared and conduct that creates a less serious threat to the public health and safety is punished more harshly. Third, where identical offenses result in different sentences. [People v. Davis, 177 Ill.2d 495, 503-04, 227 Ill.Dec. 101, 687 N.E.2d 24 \(1997\).](#) Defendant's challenge is based on the second and third types of violation.

We begin our analysis by setting forth the UUW statute, a Class A misdemeanor ([720 ILCS 5/24-1\(b\)](#) (West 2000)), which provides that a person commits the offense when he:

*923 "Carries or possesses in any vehicle or concealed on or about his person except when on his own land or in his own abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a)(4) does not apply to or affect transportation of weapons that meet one of the following conditions: (i) are broken down in a non-functioning state; or (ii) are not immediately accessible; or (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card[.]" [720 ILCS 5/24-1\(a\)\(4\)](#) (West 2000).

Defendant committed the offense of aggravated UUW, a Class 4 felony, when he "knowingly carried

on or about his person, a firearm, at a time when he was not on his own land or in his own abode or fixed place of business and the firearm was uncased, loaded and immediately accessible at the time of the offense."

We initially address defendant's contention that the constitutional infirmity of the aggravated U UW statute is that it provides a harsher penalty for conduct that is identical to that proscribed by the U UW statute.

An individual who has in his possession a gun that is unloaded but not in a case and readily accessible could be charged with U UW but could not be charged with aggravated U UW unless the gun was accessible, uncased, and loaded. Here, had defendant's gun not been loaded, he could only have been charged with U UW, not aggravated U UW. Therefore, we find that the statutes are not identical. See [McGee, 341 Ill.App.3d at 1035, 276 Ill.Dec. 605, 794 N.E.2d 855](#) (where the aggravated U UW statute was found not to be identical to the U UW statute for purposes of the proportionate penalties clause).

Likewise, we find defendant's contention that the aggravated U UW statute punishes more severely conduct that creates a less serious threat to public health and safety than U UW to be without merit.

[8] When a defendant raises a proportionality challenge to a statute based upon a lesser penalty imposed for a similar but allegedly more serious offense, a court of review must conduct a cross-comparison analysis involving a two-step inquiry: (1) whether the purposes of the compared offenses are similar such that a comparative analysis is appropriate; and (2) if the purposes are related, whether the offense with the harsher penalty is more serious than the offense with the less severe penalty. [Moss, 206 Ill.2d at 522-23, 276 Ill.Dec. 855, 795 N.E.2d 208](#), citing [Davis, 177 Ill.2d at 506, 227 Ill.Dec. 101, 687 N.E.2d 24](#).

The legislative intent behind the U UW statute was to regulate *924 the possession and use of weapons for the safety and good order of society. See [People v. Williams, 60 Ill.App.3d 726, 727, 18 Ill.Dec. 132, 377 N.E.2d 285 \(1978\)](#). The "legislature's purpose in enacting the [aggravated U UW] ***960 ***339 statute was to prevent any person from carrying a

loaded weapon on his person or in his vehicle due to 'the inherent dangers to police officers and the general public.' " [People v. Marin, 342 Ill.App.3d 716, 724, 277 Ill.Dec. 285, 795 N.E.2d 953 \(2003\)](#), quoting [People v. Grant, 339 Ill.App.3d 792, 806, 274 Ill.Dec. 304, 791 N.E.2d 100 \(2003\)](#), and citing [McGee, 341 Ill.App.3d at 1037, 276 Ill.Dec. 605, 794 N.E.2d 855](#).

Therefore, the purpose of both the U UW statute and the aggravated U UW statute is the same, *i.e.*, the protection of the police and the public from dangerous weapons.

Next, we must consider whether the aggravated U UW is a more serious offense than U UW to merit a harsher punishment.

Under the aggravated U UW statute the weapon must be loaded, uncased and easily accessible to the defendant, whereas under the U UW statute, possession of an unloaded weapon which is accessible and uncased is sufficient to violate the statute. Unarguably, the potential for harm is greater for the police and the general public when one is confronted with a loaded, uncased and accessible weapon as contemplated under the aggravated U UW statute. We conclude, as our court did in [McGee](#), that the conduct to be deterred under the aggravated U UW statute is more serious, thereby justifying a higher sentence. [McGee, 341 Ill.App.3d at 1035, 276 Ill.Dec. 605, 794 N.E.2d 855](#). For all of the foregoing reasons, we find that the aggravated U UW statute does not violate the proportionate penalties clause of the Illinois Constitution.

[9] Defendant next contends that the aggravated U UW statute is unconstitutional because it potentially punishes wholly innocent conduct in violation of due process.

This issue was addressed by this court in [Grant, 339 Ill.App.3d at 802-03, 274 Ill.Dec. 304, 791 N.E.2d 100](#), where the defendant made the same allegation regarding the aggravated U UW statute. See also [McGee, 341 Ill.App.3d 1029, 276 Ill.Dec. 605, 794 N.E.2d 855](#); [Marin, 342 Ill.App.3d 716, 277 Ill.Dec. 285, 795 N.E.2d 953](#). This court first noted that the standard of review when legislation is being challenged as failing to comply with substantive due process requirements, and that legislation does not

involve a fundamental right, is whether the statute bears a rational relationship to a legitimate state goal. Grant, 339 Ill.App.3d at 803, 274 Ill.Dec. 304, 791 N.E.2d 100.

As in *Grant*, defendant in the case at bar suggests that similar to the statutes invalidated in People v. Wick, 107 Ill.2d 62, 89 Ill.Dec. 833, 481 N.E.2d 676 (1985), People v. Zaremba, 158 Ill.2d 36, 196 Ill.Dec. 632, 630 N.E.2d 797 (1994), and People v. Wright, 194 Ill.2d 1, 251 Ill.Dec. 469, 740 N.E.2d 755 (2000), sections 24-1.6(a)(1) and (a)(3)(A) of the aggravated UUV statute, as set out above, require a "knowing" mental state without further requiring any culpable mental state and are, therefore, unconstitutional. The *Grant* court found, and we agree, that contrary *925 to defendant's assertion, the statute in question does, in fact, require a mental state. Section 24-1.6(a)(1) expressly provides that the mental state for aggravated UUV is knowledge. Grant, 339 Ill.App.3d at 805, 274 Ill.Dec. 304, 791 N.E.2d 100. Also contrary to defendant's assertions in both the present case and in *Grant*, the purpose of the statute is to allow the State to seek a harsher penalty for any person in the State of Illinois who does not fall under a specific exemption from carrying a loaded weapon on or about his person or in any vehicle because of the inherent dangers to police officers and the general public, even if the person carrying the weapon has no **961 ***340 criminal objective. Grant, 339 Ill.App.3d at 806, 274 Ill.Dec. 304, 791 N.E.2d 100. The *Grant* court found, and we again agree, that the statute in question is reasonably designed to achieve its stated purpose. See Grant, 339 Ill.App.3d at 806-07, 274 Ill.Dec. 304, 791 N.E.2d 100. Accordingly, we hold that sections 24-1.6(a)(1) and (a)(3)(A) of the aggravated UUV statute are constitutional in that they bear a rational relationship to the public interest served, and the means adopted are reasonably designed to accomplish the desired objective.

[10] Finally, defendant contends that section 24-1.6(a)(1) violates due process and equal protection because it permits property owners to carry weapons anywhere on their own land while restricting renters from carrying weapons in the common areas of their residences.

[11][12] The guarantee of equal protection does not deny the State the power to draw lines which result in

different treatment for different classes of individuals. People v. Reed, 148 Ill.2d 1, 7, 169 Ill.Dec. 282, 591 N.E.2d 455 (1992). It does, however, prohibit the State from according unequal treatment to persons placed by a statute into classes for reasons wholly unrelated to the purpose of the legislation. Reed, 148 Ill.2d at 7, 169 Ill.Dec. 282, 591 N.E.2d 455. Two standards of review are applied to review of equal protection arguments. Strict scrutiny is necessary if the statute contains a suspect classification such as one based upon race or if the statute infringes upon a fundamental right. Reed, 148 Ill.2d at 7, 169 Ill.Dec. 282, 591 N.E.2d 455. If, as in the instant case, the defendant contends that a statute violates his or her substantive due process rights and no fundamental right is implicated, that party must show that the statute is not rationally related to a legitimate government interest. People v. Lindner, 127 Ill.2d 174, 188, 129 Ill.Dec. 64, 535 N.E.2d 829 (1989).

[13][14][15] Under the rational basis test, a court's review of a legislative classification is limited and generally deferential. People v. Shephard, 152 Ill.2d 489, 502, 178 Ill.Dec. 724, 605 N.E.2d 518 (1992). The legislature, under the State's police power, has wide discretion to classify offenses and prescribe penalties for those offenses. Shephard, 152 Ill.2d at 502, 178 Ill.Dec. 724, 605 N.E.2d 518. Whether a statute is wise or unwise, and whether it is the best means to achieve the desired results, are among the matters for the legislature and not the courts. Shephard, 152 Ill.2d at 503, 178 Ill.Dec. 724, 605 N.E.2d 518.

*926 In exempting property owners or persons in their fixed place of business, the legislature was mindful of the need of people to defend their homes and businesses from unlawful intruders and the fact that the police cannot protect every home and every business 24 hours a day. The renter also has this right insofar as his apartment is concerned. However, to allow all of the renters of one apartment complex to carry or possess a weapon in the common areas would be to invite the situation that the legislature sought to prevent, *i.e.*, the mass possession of weapons, which would pose a danger to the public and the police alike. In limiting the allowable possession of weapons to property in which one has ownership, the legislature has balanced a person's need to protect his home or business with the need of

the general public and the police to be protected from potential use of weapons in situations unrelated to protecting one's property or business. We conclude, therefore, there is a rational basis for denying renters the right to possess weapons in the common areas of apartment buildings and find that the aggravated UUW statute does not violate equal protection.

****962 ***341** Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

[HOFFMAN](#), P.J., concurs.

[HALL](#), J., dissents.

Justice [HALL](#) dissenting.

I respectfully dissent from the majority in this case because I am of the opinion that the State failed to prove beyond a reasonable doubt that the defendant was not on his own land at the time of the offense in this case.

The majority concludes that the testimony of the police officers that the buildings were CHA buildings and that their duties as CHA police officers were to patrol federally funded housing sites was sufficient evidence from which the trier of fact could infer that the defendant was not on his own land at the time of the offense in this case.

At the outset, I agree that the State may rely on circumstantial evidence to prove that the defendant was not on his own land at the time of the offense. [People v. Laubscher](#), 183 Ill.2d 330, 335, 233 Ill.Dec. 639, 701 N.E.2d 489, 491 (1998). However, "there must be *some* evidence giving rise to a reasonable inference of defendant's guilt; the State may not leave to conjecture or assumption essential elements of the crime. [Citation.]" (Emphasis in original.) [Laubscher](#), 183 Ill.2d at 335-36, 233 Ill.Dec. 639, 701 N.E.2d at 491.

***927** In *Laubscher*, the defendant, who had a gun on his person, had a confrontation with a Mr. Darwin on the lawn area of an apartment complex where they both resided. Subsequently, the defendant, armed with an SKS rifle, pursued Mr. Darwin, who

eventually sought refuge in his apartment. The police were called and arrested the defendant.

The supreme court upheld the appellate court's decision reversing the defendant's conviction, stating as follows:

"In reversing defendant's conviction, the appellate court noted a complete lack of evidence regarding the nature of defendant's interest in the land encompassing the apartment building. The court concluded that, although it was not unreasonable for the trial court to *assume* defendant had no ownership interest in the premises, permitting such an inference without any evidentiary basis would effectively shift the burden to defendant to prove that he was on his land or that he otherwise fell within an exception to section 24-1(a)(4). We agree with the appellate court's reasoning. The sole evidence offered by the State regarding defendant's connection with the property was that he 'lived in the building.' There was no proof of his interest in his unit or the surrounding land, or as to the ownership of the property in general. Although on one occasion, Darwin loosely referred to occupants of the building as 'tenants,' this was insufficient to establish beyond a reasonable doubt defendant's particular interest in the premises." [Laubscher](#), 183 Ill.2d at 336, 233 Ill.Dec. 639, 701 N.E.2d at 491-92.

The majority does not address the decision in [People v. Hayes](#), 308 Ill.App.3d 194, 241 Ill.Dec. 511, 719 N.E.2d 372 (1999). In that case, defendant was found guilty of unlawful use of weapons. The reviewing court, relying on *Laubscher*, concluded that the State had failed to prove that the defendant was not on his own land. The defendant, whose detached garage faced an alley, was arrested in the alley, which was open to the public. Neither party presented any evidence as to whether the defendant owned any part of the alley. The court concluded that, as in *Laubscher*, ****963 ***342** the State failed to introduce evidence of the defendant's ownership interest in the alley and, as the trier of fact, the jury improperly inferred the negation of the " 'on his land' " exception from the absence of evidence regarding it. [Hayes](#), 308 Ill.App.3d at 197, 241 Ill.Dec. 511, 719 N.E.2d at 375.

The only evidence of "ownership or ownership interest" in this case, was the testimony that the

property was a CHA building. From that evidence, the majority concludes that it can be inferred that the CHA owned the property on which the offense in this case was committed. However, in *Hayes*, the court found that the State had failed to introduce evidence of the defendant's ownership interest in the alley, even in light of testimony that the alley was referred to as "Tye *928 Court" and that several businesses abutted the alley. [308 Ill.App.3d at 196, 241 Ill.Dec. 511, 719 N.E.2d at 374.](#)

In the absence of testimony explaining who or what "CHA" was, merely referring to the property as "CHA" buildings or that they were federally funded does not denote ownership in any way and therefore, is not evidence from which ownership could be inferred. [\[FN1\]](#)

[FN1.](#) Under that logic, our former governor is the owner of the "James R. Thompson Center" building.

There is no evidence as to the defendant's ownership interest in the property. The State offered no proof of the defendant's interest in the land. The State merely argued that it was unreasonable to assume that an 18-year-old, such as the defendant, would have had an interest in the property in this case. Instead, the majority finds the inference that CHA owned the property sufficient to exclude the defendant from ownership.

However, as the court in *Laubscher* observed, while it would not be unreasonable for the trier of fact to assume that an 18-year-old defendant did not have an interest in the property, permitting such an inference without any evidentiary basis effectively shifts the burden to the defendant to prove that he was on his own land.

That, in effect, is what has happened in this case. Since it cannot be inferred that the CHA owned or had an ownership interest in the property in this case, there is no evidence from which the extent of the defendant's ownership interest in the property could be inferred. The State offered no evidence that an 18-year-old could not own property or would be otherwise barred from having an interest in property, either public or private. While it might be reasonable to assume that an 18-year-old, such as the defendant, would not have an ownership interest in the property

in this case, there has to be *evidence* to support such an inference.

As in both *Laubscher* and *Hayes*, there is a complete lack of evidence regarding the nature of the defendant's interest in the property on which the offense in this case took place. Therefore, "the jury improperly inferred the negation of the 'on his land' exception from the absence of evidence regarding it." [Hayes, 308 Ill.App.3d at 197, 241 Ill.Dec. 511, 719 N.E.2d at 375.](#)

Since the State failed to prove beyond a reasonable doubt that the defendant was not on his own land at the time of the offense in this case, the defendant was not proved guilty beyond a reasonable doubt. *929 The defendant's conviction and sentence should be reversed. The remaining issues **964 ***343 raised by the defendant need not be addressed. [\[FN2\]](#)

[FN2.](#) I note that the State did not argue that the defendant's possession of the gun while he was on Locust Street would have been sufficient to convict him of the offense in this case. See [People v. Kelley, 338 Ill.App.3d 273, 273 Ill.Dec. 184, 788 N.E.2d 775 \(2003\)](#) (the defendant was guilty of aggravated unlawful use of a weapon where circumstantial evidence proved that, while driving to the location where the shooting ultimately took place, the defendant carried a revolver on or about his person).

Therefore, I respectfully dissent.

345 Ill.App.3d 916, 803 N.E.2d 953, 281 Ill.Dec. 332

Appellate Court of Illinois,
 First District, Fourth Division.
 The PEOPLE of The State of Illinois, Plaintiff-
 Appellee,
 v.
 Anthony SMYTHE, Defendant-Appellant.
No. 1-03-1888.

Cite as: 352 Ill.App.3d 1056, 817 N.E.2d 1100

Sept. 30, 2004.

Background: Defendant was convicted in the Circuit Court, Cook County, [Camille E. Willis, J.](#), of aggravated unlawful use of weapon (UUW). He appealed.

Holdings: The Appellate Court, [Theis, J.](#), held that:
 (1) gun found in snapped-shut holster under seat of defendant's vehicle was not enclosed in "case" as matter of law within meaning of statute governing aggravated UUW, which exempted weapons that were unloaded and enclosed in case, and
 (2) compulsory extraction of DNA from defendant pursuant to statute requiring any person convicted of felony to provide specimen did not constitute unreasonable search.

Affirmed.

Justice [THEIS](#) delivered the opinion of the court:

Following a jury trial, defendant Anthony Smythe was convicted of aggravated unlawful use of a weapon (UUW) and sentenced to one-***1057** year probation.^{[FN1](#)} On appeal, he contends (1) he was not proven guilty beyond a reasonable doubt where the statute requires proof that the weapon was "uncased" ([720 ILCS 5/24-1.6\(a\)\(1\)/\(3\)\(A\)](#) (West 2002)), and the evidence submitted demonstrated that the handgun was cased; and (2) pursuant to section 5/5-4-3 of the Unified Code of Corrections (the Code) ([730 ILCS 5/5-4-3](#) (West 2002)), the compulsory extraction and perpetual storing of his DNA violated his fourth amendment right to be free from unreasonable searches and seizures. For the following reasons, we affirm.

[FN1.](#) Defendant's original trial on January 29, 2003, ended in a mistrial because the

jury failed to reach a verdict. He was subsequently re-tried on May 7, 2003.

BACKGROUND

At trial, Officer Paul Morache testified that at approximately 4:30 p.m. on May 19, 2002, he was patrolling in a marked squad car at the intersection of 162nd and Ellis Street in South Holland. Morache explained that he was running registration checks on the license plates of random vehicles when he determined that the license plate of the Ford Expedition located in front of him was registered to a Porsche. Morache questioned the driver, whom he later identified in court as defendant. Morache asked defendant for his driver's license and proof of insurance. After handing over his license, defendant told Morache that he was a Cook County sheriff police deputy, although he failed to produce a badge or other proof of identification. Morache then determined that defendant had a suspended driver's license. Accordingly, he re-approached the vehicle, asked defendant to step out, informed him of the status of his suspended driver's license, and took him into custody.

At that point, Morache asked defendant if there were any weapons in the vehicle, and defendant affirmatively replied. Morache****1102 ***452** testified that he placed defendant in the back seat of the squad car and returned to the vehicle to find what would later be identified in court as a SIG Sauer nine-millimeter automatic pistol. The gun was located underneath the driver's seat of the Expedition in a snapped holster. The holster did not fully enclose the gun, but rather left portions of the gun exposed. Upon returning to the squad car, Morache unsnapped the holster to remove the gun, emptied a bullet from the gun's chamber, removed the gun's ammunition (the clip), and determined that the gun was not stolen. After retrieving the gun, Morache transported defendant to the police station, determined that he was not a Cook County sheriff police deputy, and read defendant his *Miranda* rights. ***1058** At that point, defendant admitted to Morache that he was not a Cook County police deputy but, rather, he was an armed security officer on suspension.

Defendant testified that he became an armed security guard in 1996. At that time, he purchased a gun and stored it in several places including under his

mattress, in his nightstand, and then in his basement. After his basement had been broken into in March 2002, he stored the gun in his Expedition. From March 2002 until May 19, 2002, defendant did not move the gun from its location underneath the driver's seat of the Expedition. Defendant testified that the gun was unloaded, inside of a snapped-shut holster, and the gun's clip was inside the center console between the driver and passenger seats. Defendant further testified that the only way to get the gun out from underneath the seat would have been to take it out from the backseat.

Defendant further testified that, on May 19, 2002, he was driving the Expedition in South Holland when Officer Morache pulled him over and told him his driver's license was suspended. Defendant stated that he had forgotten that the gun was underneath the seat, but remembered that there was a weapon in the car when Morache began questioning him. From the backseat of the squad car, defendant saw Morache pull an object out from underneath the driver's seat, and as Morache was walking back to the squad car, defendant identified the object as his gun. Defendant believed that all of the bullets were in the clip at the time Morache brought the gun back to the squad car.

The jury then found defendant guilty of one count of aggravated UUV. After the court denied defendant's motion for judgment notwithstanding the jury's verdict and motion for a new trial, the court sentenced defendant to one-year probation.

ANALYSIS

Defendant contends that he was not proven guilty beyond a reasonable doubt of aggravated UUV because the evidence was insufficient to show that his gun was "uncased" where it was undisputed that the police discovered the gun inside of a holster that was snapped-shut. Specifically, defendant argues that the failure to show that the gun was uncased requires that we reduce defendant's felony conviction to the misdemeanor and lesser-included offense of UUV (720 ILCS 5/24-1 (West 2002)), and remand for re-sentencing within the Class A misdemeanor range.

In resolving a challenge to the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt. *1059 *People v. Evans*, 209 Ill.2d 194, 209, 283 Ill.Dec. 651, 808 N.E.2d 939, 948 (2004). However, to the extent that we are asked to interpret the meaning of the statutory term "uncased" (720 ILCS 5/24-1.6(a)(1)/(3)(A) (West 2000)), we apply **1103 ***453 a *de novo* standard of review to that determination. *People v. Lamborn*, 185 Ill.2d 585, 590, 236 Ill.Dec. 764, 708 N.E.2d 350, 354 (1999).

[1] A person commits the offense of aggravated UUV in Illinois by knowingly carrying a firearm in a vehicle that was uncased, loaded, and immediately accessible at the time of the offense, unless the person was carrying the firearm on his or her land, abode, or fixed place of business. 720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2002). In the present case, defendant does not dispute that the gun was loaded and immediately accessible. Rather, the question here is whether defendant's gun was "uncased." The term "uncased" is not explicitly defined in the statute, and therefore the court will assume that the word has its ordinary and popularly understood meaning. *People v. Bailey*, 167 Ill.2d 210, 229, 212 Ill.Dec. 608, 657 N.E.2d 953, 962 (1995). We are also mindful that our primary objective when construing the meaning of a statute is to ascertain and give effect to the true intent of the legislature. *In re Detention of Lieberman*, 201 Ill.2d 300, 308, 267 Ill.Dec. 81, 776 N.E.2d 218, 223 (2002). All provisions of a statute are to be viewed as a whole, and words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Lieberman*, 201 Ill.2d at 308, 267 Ill.Dec. 81, 776 N.E.2d at 223.

[2] Webster's dictionary defines the term "case" as "a box or receptacle to contain or hold something." Webster's Third New International Dictionary 346 (1986). Additionally, in subsection (c)(iii) of the statute, the legislature specifically provided that the offense of aggravated UUV does not apply to the transportation or possession of weapons that are "unloaded and enclosed in a case, firearm carrying box, shipping box, or other container." 720 ILCS 5/24-1.6(c)(iii) (West 2002). To "enclose" means "to envelop" (Webster's Third New International Dictionary 746 (1986)), and to "envelop" means "to enclose completely with a garment or other covering" (Webster's Third New International Dictionary 759 (1986)). Thus, given the plain meaning of the term in light of all of the relevant provisions of the statute, it

is evident that the term “case” refers to an item that completely encloses the weapon in a firearm carrying box, shipping box, or other container.

[3] Here, the evidence revealed that the gun was found underneath the driver's seat in a holster that was snapped-shut and partially exposed. A holster is traditionally defined as “a leather case for a pistol that is often open at the top to facilitate quick withdrawal, that often conforms to the pistol's shape, and that is usually carried at *1060 the belt or under one arm or often at the front of a saddle.” Webster's Third New International Dictionary 1081 (1986). Accordingly, a rational trier of fact could have found that defendant's holster was “uncased,” as the butt of the gun was left exposed for ease of access and did not completely enclose the gun.

[4] Moreover, defendant's argument that a holster is a “case” lacks merit because it is antithetical to the purpose of the aggravated UUW statute. The legislature's purpose in enacting the aggravated UUW statute was to prevent any person from carrying a loaded weapon on his person or in his vehicle due to “the inherent dangers to police officers and the general public.” *People v. Grant*, 339 Ill.App.3d 792, 806, 274 Ill.Dec. 304, 791 N.E.2d 100, 111 (2003); See also *People v. Marin*, 342 Ill.App.3d 716, 724, 277 Ill.Dec. 285, 795 N.E.2d 953, 959 (2003); **1104***454* *People v. McGee*, 341 Ill.App.3d 1029, 1037, 276 Ill.Dec. 605, 794 N.E.2d 855, 861 (2003); *People v. Pulley*, 345 Ill.App.3d 916, 281 Ill.Dec. 332, 803 N.E.2d 953 (2004); *People v. Spivey*, 351 Ill.App.3d 763, 286 Ill.Dec. 699, 814 N.E.2d 925 (2004). As discussed in *Grant*, this statute was designed to prevent the situation where one has a loaded weapon that is immediately accessible, and thus can use it at a moment's notice and place other unsuspecting citizens in harm's way. *Grant*, 339 Ill.App.3d at 807, 274 Ill.Dec. 304, 791 N.E.2d at 112.

Defendant's interpretation of the statute would permit citizens to carry loaded, immediately accessible guns in holsters on the public streets of Illinois. This scenario out of the Wild West is not what the legislature had in mind when seeking to *prevent* the felony situation where a loaded, immediately accessible weapon could be used at a moment's notice and place other unsuspecting citizens in harm's way. *Grant*, 339 Ill.App.3d at 807, 274 Ill.Dec. 304,

[791 N.E.2d at 112.](#)

Even if we were to concede that the term “uncased” is ambiguous, defendant's argument lacks merit when examining the legislative history. When the language used is susceptible to more than one equally reasonable interpretation, the court may look to additional sources to determine the legislature's intent. *People v. Hicks*, 164 Ill.2d 218, 222, 207 Ill.Dec. 295, 647 N.E.2d 257, 260 (1995). It is evident from the legislative history that the legislature intended “uncased” to mean that the weapon is not completely enclosed in a container. During the legislative debate on Public Act 91-690, Representative Cook specifically defined the term “case” as follows:

REPRESENTATIVE COOK: “* * * And, John, why don't I go ahead and give you a definition of what ‘case’ is. Case is defined in the Wildlife Code, Chapter 520, ‘case means a container specifically designed for the purpose of housing a gun or bow and arrow device which completely encloses such gun or bow and arrow device by being zipped, snapped, buckled, tied or otherwise fashioned *with no *1061 portion of the gun or bow and arrow device exposed.*’ ” 91st Ill. Gen. Assem., House Proceedings, April 10, 2000, 50-51 (statements of Representative Cook) (Emphasis added).

Therefore, the legislative history also establishes that the legislature intended for the gun to be enclosed in a container specifically designed for the purpose of housing a gun and that leaves no part of the gun exposed.

We further reject defendant's reliance on the dissent in *People v. Bartimo*, 345 Ill.App.3d 1100, 1104, 281 Ill.Dec. 192, 803 N.E.2d 596, 601 (2004). In *Bartimo*, the defendant's conviction for UUW was affirmed by the majority where the gun was in a nylon holster that had a full clip of ammunition in its front pocket and was located in a laundry basket in the back seat of the car. The defendant did not argue that the gun was not “uncased” but, rather, argued that it was not immediately accessible due to its placement underneath a pile of clothes in a laundry basket. The dissent, *sua sponte*, raised the issue of whether the gun was cased, and furthermore, the dissent has no precedential value. Accordingly, we need not consider it.

[5] We next address defendant's contention that the compulsory extraction of his DNA pursuant to section 5-4-3 of the Code ([730 ILCS 5/5-4-3](#) (West 2002)) constitutes an unreasonable search, violating his fourth amendment rights. We recently rejected a similar challenge to this statute and held that section 5-4-3 is constitutional in [People v. Ramos, 353 Ill.App.3d 133, 288 Ill.Dec. 460, 817 N.E.2d 1110, 2004 WL 2192412 \(Ill.App.Ct. September 30, 2004\)](#). We continue to adhere***455 **1105 to the holding of *Ramos* and similarly reject defendant's argument.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.

[GREIMAN](#) and [QUINN](#), JJ., concur.

Ill.App. 1 Dist.,2004.

People v. Smythe

352 Ill.App.3d 1056, 817 N.E.2d 1100, 288 Ill.Dec.

450

Appellate Court of Illinois,
 Second District.
 The PEOPLE of the State of Illinois, Plaintiff-
 Appellant,
 v.
 Miguel A. GALARZA, Defendant-Appellee.
 No. 2-04-1075.

Cite as: 391 Ill.App.3d 805, 910 N.E.2d 1160

May 19, 2009.

Background: Defendant charged with unlawful possession of weapon by a felon moved to quash his arrest and suppress the evidence seized. The Circuit Court, Kendall County, [M. Karen Simpson](#), J., quashed defendant's arrest and suppressed the statements defendant made to officer, but did not suppress gun. State filed a certificate of impairment and appealed suppression order. The Appellate Court affirmed. The Supreme Court entered supervisory order directing Appellate Court to vacate judgment and reconsider.

Holding: The Appellate Court, [Burke](#), J., held that continued detention of defendant passenger after driver was stopped and arrested on traffic charges was not unreasonable.

Reversed and remanded.

****1161** [Melissa S. Barnhart](#), Yorkville, [Martin P. Moltz](#), Deputy Director, [Gregory L. Slovacek](#), State's Attorneys Appellate Prosecutor, Elgin, for Plaintiff-Appellant.

[G. Joseph Weller](#), Deputy Defender, Kathleen J. Hammill, Office of the State Appellate Defender, Elgin, for Defendant-Appellee.

Justice [BURKE](#) delivered the opinion of the court:

*****405 *806** In the early morning of July 11, 2004, defendant, Miguel A. Galarza, was eating a Taco Bell meal while sitting in the front passenger seat of a vehicle driven by Scott Valencia. After the vehicle drifted ***807** over the center line of the road ([625 ILCS 5/11-701](#)(a) (West 2004)), Officer John Collins stopped it and asked Valencia for his driver's license.

Because Valencia's driving privileges were suspended, he was arrested. After Valencia's arrest, Collins approached defendant, whom the officer did not see doing anything unusual, and asked him whether he could drive. Defendant replied that he could not. Collins then asked defendant for his driver's license or identification card, because the officer needed to record defendant's information in case he was needed as a witness to Valencia's arrest. Defendant produced an Illinois identification card, and Collins returned to his squad car and asked his dispatcher to investigate defendant. The dispatcher informed the officer that there was a warrant for defendant's arrest. Collins arrested defendant and proceeded to inventory the vehicle pursuant to the police department's tow policy. In the trunk of the vehicle was a bowling bag that contained a gun. Valencia denied ownership of the weapon; however, defendant allegedly made statements to Collins that connected defendant to the weapon. Defendant was subsequently charged by information with unlawful **possession of a weapon** by a felon ([720 ILCS 5/24-1.1](#)(a) (West 2004)), and he moved to quash his *****406 **1162** arrest and suppress the evidence seized. Following a hearing, the trial court quashed defendant's arrest and suppressed the statements defendant made to Collins, but the court did not suppress the gun. The State filed a certificate of impairment and appealed the suppression order pursuant to [Supreme Court Rule 604\(a\)\(1\)](#) ([210 Ill.2d R. 604\(a\)\(1\)](#)).

In a prior decision, we affirmed. *People v. Galarza*, No. 2-04-1075 (2006) (unpublished order under [Supreme Court Rule 23](#)). The Illinois Supreme Court has entered a supervisory order directing us to vacate our judgment and reconsider our decision in light of [People v. Harris](#), [228 Ill.2d 222](#), [319 Ill.Dec. 823](#), [886 N.E.2d 947](#) (2008), and [People v. Cosby](#), [231 Ill.2d 262](#), [325 Ill.Dec. 556](#), [898 N.E.2d 603](#) (2008). [People v. Galarza](#), [229 Ill.2d 677](#), [324 Ill.Dec. 839](#), [896 N.E.2d 1058](#) (2008). After reconsideration, we reverse and remand.

BACKGROUND

At the suppression hearing, Collins was the only witness who testified. He stated that on July 11, 2004, at approximately 1:09 a.m., he was on duty when he saw a 2004 Toyota Camry pull off to the side of the road. The Camry's headlights were on, but

not its hazard lights. Although Collins did not observe anything unusual inside the vehicle, he decided that he would check on the driver's well-being. Before the officer could do so, the Camry pulled back onto the road. Collins followed the vehicle and soon observed the car swerve to the left and over the dotted center line. Collins subsequently activated his overhead lights and stopped the Camry.

***808** When Collins approached the driver's side of the Camry, he observed two men sitting inside the vehicle. Collins illuminated the inside of the Camry with his flashlight and saw defendant sitting in the front passenger seat, eating a Taco Bell product. Collins asked the driver, Valencia, for proof of insurance and his driver's license. Although Valencia was able to produce proof of insurance, he did not have a driver's license, and, instead, he gave Collins his state identification card.

Collins took those documents back to his squad car, and, using his mobile data computer, he learned that Valencia's driving privileges were suspended. Collins informed Valencia about the status of his driving privileges and arrested him. Defendant remained seated in the vehicle, and Collins did not observe defendant doing anything unusual.

Collins informed Valencia that the Camry would be towed, and Valencia asked if he could call his mother to see if she could retrieve the vehicle. Collins allowed Valencia to contact his mother on a cellular phone, and his mother declined to come get the Camry. While Valencia phoned his mother, defendant remained seated in the vehicle. Collins then handcuffed Valencia, and, after approaching defendant, Collins inquired whether defendant could drive the Camry. Defendant replied, "I can't drive," and Collins asked defendant for a driver's license or other form of identification. Defendant produced an Illinois state identification card, which listed defendant's name, address, and date of birth and had a picture of defendant on it. Defendant remained seated in the Camry during this exchange.

Collins returned to his squad car with Valencia, seated Valencia in the backseat of the squad car, and contacted his dispatcher. After verifying defendant's information, the dispatcher informed Collins that there was a warrant for defendant's arrest for failing to appear in court in Aurora. Collins testified that,

from the time he obtained defendant's identification through the time he contacted his dispatcher, *****407**1163** defendant remained seated in the Camry and he never observed defendant exhibiting any unusual or suspicious behavior.

Collins then approached the passenger side of the Camry, informed defendant about the outstanding warrant, handcuffed defendant, and placed him in the rear seat of the squad car. Although defendant did not make a statement at that time, he did make statements to Collins at some point thereafter.

After defendant was taken into custody, Collins proceeded to search the vehicle pursuant to the police department's tow policy. That policy also requires an officer to identify a vehicle's passengers in the event that the passengers need to be located to serve as witnesses to the arrest. Collins testified that, once defendant produced ***809** his state identification card, he possessed the information he needed to identify defendant as a witness.

During the search of the Camry, Collins found a bowling bag in the trunk of the vehicle. The bag contained a bowling ball, bowling shoes, and a handgun. Pursuant to a firearm owner's identification card check, Collins learned that Valencia was authorized to own a firearm, but defendant was not. Collins asked Valencia about the firearm, and Valencia, who appeared confused, asked, "[W]hat firearm?"

The trial court quashed defendant's arrest and suppressed the statements defendant made to Collins after he was taken into custody. In reaching this conclusion, the trial court found that Collins could properly ask defendant for his identification, but the officer could not investigate defendant via dispatch because, when that investigation occurred, Collins did not possess reasonable and articulable suspicion that defendant was involved in any criminal activity. Because defendant made the statements at issue after he was improperly detained, the trial court suppressed them. Nevertheless, the trial court did not suppress the weapon, as it was found solely as a result of the proper inventory search.

The State moved to reconsider, contending that defendant made his statements to Collins after the officer had probable cause to support an arrest for

unlawful **possession** of a **weapon** by a felon. Thus, the State claimed, the statements were sufficiently attenuated from any improper detention. The trial court denied the motion, and the State appealed.

On appeal, the State advanced two alternative reasons why defendant's motion to quash and suppress should have been denied *in toto*. First, the State claimed that conducting a warrant check on a passenger is permissible if such investigation does not prolong the passenger's detention. The State then contended that, if the warrant check was improper, the subsequent statements could nevertheless be used in prosecuting defendant for unlawful **possession** of a **weapon** by a felon, because intervening probable cause attenuated the taint of the unlawful detention. In February 2006, we determined that the warrant check was unreasonable and that no attenuation arose. *People v. Galarza*, No. 2-04-1075 (2006) (unpublished order under [Supreme Court Rule 23](#)). The State appealed to our supreme court.

In a supervisory order issued November 26, 2008, the Illinois Supreme Court denied the State's petition for leave to appeal but remanded the case to this court for reconsideration in light of [Harris](#) and [Cosby](#).

*810 ANALYSIS

On appeal, we consider whether the warrant check of defendant was proper and, if not, whether intervening probable cause ***408 **1164 attenuated the taint of the unlawful detention. However, before addressing those issues, we reexamine defendant's claim that this court lacks jurisdiction over the appeal, and then we address defendant's motion to cite additional authority.

1. Jurisdiction

[1] Defendant contends that, because the substance of the statements defendant made to Collins is unknown, an appeal pursuant to [Rule 604\(a\)\(1\)](#) is improper because it is not known whether the suppression of those statements substantially impaired the State's ability to prosecute this case. See [People v. Young](#), 82 Ill.2d 234, 247, 45 Ill.Dec. 150, 412 N.E.2d 501 (1980). We find defendant's argument unpersuasive. [Rule 604\(a\)\(1\)](#) provides that the State may appeal from an order the substantial effect of which results in, among other things,

suppressing evidence. 210 Ill.2d R. 604(a)(1). In determining whether that threshold has been met, courts focus on the effect of the suppression order, not the nature of the evidence suppressed. [People v. Drum](#), 194 Ill.2d 485, 491, 252 Ill.Dec. 470, 743 N.E.2d 44 (2000). Thus, if the trial court's order precludes the State from presenting evidence to the fact finder, the State may appeal the order pursuant to [Rule 604\(a\)\(1\)](#). [Drum](#), 194 Ill.2d at 492, 252 Ill.Dec. 470, 743 N.E.2d 44 (in murder prosecution where the codefendants refused to testify against the defendant at trial and the trial court denied the State's pretrial motion to admit the codefendants' statements pursuant to residual hearsay exception, our supreme court concluded that the State could appeal denial of pretrial motion under [Rule 604\(a\)\(1\)](#), because "the [pretrial] order prevent[ed the codefendants' statements] from being presented to the fact finder").

Here, the trial court's suppression order prevented the State from presenting at trial the statements defendant made to Collins after he was arrested. Although it is true that, at the hearing on the motion to quash and suppress, neither party elicited testimony from Collins concerning the content of defendant's statements, it would be ludicrous to conclude that those statements did not substantially implicate defendant in the offense with which he was charged, *i.e.*, unlawful **possession** of a **weapon** by a felon. Indeed, in his motion to quash and suppress, defendant intimated that he made statements that "connect [him] with the crime * * * and which the [State] intends to employ in the prosecution of this cause." Thus, we deem satisfied the requirement of substantial impairment.

[2] Moreover, at a hearing on a motion to suppress, the content of a defendant's statements is immaterial. The purpose of a motion to suppress*811 is to decide whether a defendant's rights were violated so as to taint any subsequent statements or other evidence. See [In re Bizzle](#), 36 Ill.App.3d 321, 328, 343 N.E.2d 633 (1976). If, as defendant urges, the specific content of a defendant's statements were significant in deciding whether the State could appeal, then the State would most likely insist that a recitation of those statements be presented at every suppression hearing. Such insistence would alter the scope of those hearings and possibly taint them, as error arises when a trial court considers the content of the statements as it rules on a motion to suppress. See

[People v. Torres](#), 200 Ill.App.3d 253, 264, 146 Ill.Dec. 682, 558 N.E.2d 645 (1990). Given the above, we find defendant's jurisdictional argument meritless.

2. Motion to Cite Additional Authority

In his motion to cite additional authority, defendant asks us to consider the recent decision of ***409**1165 [People v. Oliver](#), 387 Ill.App.3d 1045, 327 Ill.Dec. 154, 901 N.E.2d 482 (2009). In [Oliver](#), the defendant, a driver, was stopped for following another vehicle too closely. [Oliver](#), 387 Ill.App.3d at 1046, 327 Ill.Dec. 154, 901 N.E.2d 482. Because the defendant did not have a valid driver's license, the officer asked Orlando James, a passenger in the car, whether his driving privileges were intact. In response, James verbally gave the officer his identification. The officer's dispatcher advised the officer that, although James was on mandatory supervised release, his driving privileges were not impaired. The officer then told the defendant and James that they were free to go as long as James drove. However, because a strong odor emanating from inside the car aroused the officer's suspicions, the officer asked the defendant and James whether he could search the car. The defendant and James consented to a search of the car's interior, which uncovered a liquor bottle that smelled like the odor the officer detected. The officer then asked the defendant and James whether he could search the trunk of the car. Both men consented. That search uncovered cocaine. [Oliver](#), 387 Ill.App.3d at 1047, 327 Ill.Dec. 154, 901 N.E.2d 482.

The defendant moved to suppress the evidence, and the trial court denied the motion, finding that the officer did not illegally detain the defendant and James before requesting consent to search. [Oliver](#), 387 Ill.App.3d at 1049, 327 Ill.Dec. 154, 901 N.E.2d 482. The trial court then determined that the men voluntarily consented to the search of the car. [Oliver](#), 387 Ill.App.3d at 1049, 327 Ill.Dec. 154, 901 N.E.2d 482. On appeal, the reviewing court considered “whether [the officer's] request for consent to search the trunk constituted a new seizure of the defendant.” [Oliver](#), 387 Ill.App.3d at 1051, 327 Ill.Dec. 154, 901 N.E.2d 482. The court found that it did, noting that a reasonable person in the position of the defendant or James would not have felt free to leave when the officer asked for consent to search the trunk. [Oliver](#),

387 Ill.App.3d at 1051, 327 Ill.Dec. 154, 901 N.E.2d 482. And, because the officer lacked reasonable and articulable *812 suspicion of criminal activity when he asked for consent to search the trunk, the appellate court concluded that the new seizure of the defendant and James was unlawful. [Oliver](#), 387 Ill.App.3d at 1052, 327 Ill.Dec. 154, 901 N.E.2d 482.

Although we grant defendant's motion to cite [Oliver](#), we fail to see its relevance to this case. As noted, in contrast to [Oliver](#), the warrant check of defendant occurred *during* the traffic stop, before the tow truck arrived. Thus, unlike in [Oliver](#), no new seizure occurred. Because no new seizure occurred, we, in contrast to [Oliver](#), need not consider whether the warrant check would have been justifiable as such.

For similar reasons, even though our supreme court has directed us to reconsider this appeal in light of [Cosby](#), we fail to see how that case is applicable here. In [Cosby](#), a consolidated case, the court emphasized:

“The requests for consent to search in both of the instant cases followed the officers' returning of the defendants' paperwork. At that point, the traffic stops came to an end. The relevant question is whether the officers' actions after the initial traffic stops had concluded constituted a second seizure of either defendant.” [Cosby](#), 231 Ill.2d at 276, 325 Ill.Dec. 556, 898 N.E.2d 603.

Here, in contrast to [Cosby](#), Collins performed the warrant check *during* the traffic stop, and he arrested defendant immediately thereafter. Thus, unlike in either [Cosby](#) or [Oliver](#), our focus is on whether the traffic stop, including the warrant check, was reasonable, not whether there ***410 **1166 was a second seizure. See [Harris](#), 228 Ill.2d at 247, 319 Ill.Dec. 823, 886 N.E.2d 947 (noting that a passenger in a stopped vehicle is seized as an incident to the traffic stop).

3. Reasonableness of Detention

[\[3\]\[4\]\[5\]\[6\]](#) An examination of the reasonableness of Collins' actions begins with addressing the applicable standard of review. When we review a ruling on a motion to quash an arrest and suppress the evidence seized, our standard of review is usually twofold. We accord great deference to the trial court's factual findings and credibility determinations and reverse

those conclusions only if they are against the manifest weight of the evidence. [*People v. Gherna*, 203 Ill.2d 165, 175, 271 Ill.Dec. 245, 784 N.E.2d 799 \(2003\)](#); [*People v. Sorenson*, 196 Ill.2d 425, 431, 256 Ill.Dec. 836, 752 N.E.2d 1078 \(2001\)](#). After reviewing the trial court's factual findings, we review de novo the trial court's ultimate legal ruling. [*Sorenson*, 196 Ill.2d at 431, 256 Ill.Dec. 836, 752 N.E.2d 1078](#). Here, because the facts are not in dispute and the trial court did not make any credibility assessments, our review is *de novo*. [*People v. Mitchell*, 355 Ill.App.3d 1030, 1032, 291 Ill.Dec. 786, 824 N.E.2d 642 \(2005\)](#).

[7] Reasonableness pursuant to the fourth amendment generally requires a warrant supported by probable cause. [*People v. Love*, 199 Ill.2d 269, 275, 263 Ill.Dec. 808, 769 N.E.2d 10 \(2002\)](#). However, there are exceptions to the warrant *813 requirement. For example, after effecting a traffic stop, an officer may, without first obtaining a warrant, ask a passenger in the vehicle for identification and use the furnished information to run a warrant check on the passenger, as long as (1) the stop was initially lawful; (2) an innocent person in the passenger's position would have felt free to refuse to tender his identification to the officer; (3) the duration of the stop was not unreasonably prolonged; and (4) the warrant check did not infringe upon a constitutionally protected privacy interest. [*Harris*, 228 Ill.2d at 237-38, 248, 319 Ill.Dec. 823, 886 N.E.2d 947](#).

In assessing whether Collins acted reasonably, we are guided by [*Harris*](#), which is factually similar to this case. In [*Harris*](#), the defendant was a passenger in a vehicle that was stopped for making an illegal left turn. [*Harris*, 228 Ill.2d at 224, 319 Ill.Dec. 823, 886 N.E.2d 947](#). After trying to ascertain the identity of the driver, who told the officer that his driving privileges were either suspended or revoked, the arresting officer asked the defendant for identification. The officer testified that, pursuant to his usual practice, he would ask a passenger of a stopped vehicle for identification to determine whether the passenger could drive the stopped vehicle away from the scene once the driver is arrested. The defendant gave the officer his state identification card, and the officer investigated the defendant through the county dispatch, discovering that the defendant had an outstanding warrant for failing to appear in court. The defendant was

arrested, and a search conducted pursuant to that arrest revealed that the defendant was carrying cocaine and cocaine paraphernalia. At no time during the stop did the officer ask the defendant whether he could drive, and the defendant never exhibited any behavior that aroused the officer's suspicions or led the officer to believe that the defendant was involved in any wrongdoing.

In examining whether the warrant check of the defendant was proper, our supreme court first determined that the officer had probable cause to stop the car in which the defendant was a passenger, because the officer observed the driver make an illegal ***411 **1167 left turn. [*Harris*, 228 Ill.2d at 232, 319 Ill.Dec. 823, 886 N.E.2d 947](#). The court then found that the officer could ask the defendant, who was lawfully seized but about whom the police lacked individualized reasonable suspicion, for his identification, because such a request did not unduly prolong the stop and no additional fourth amendment justification was required. [*Harris*, 228 Ill.2d at 242-44, 246, 319 Ill.Dec. 823, 886 N.E.2d 947](#). Citing the fact that a warrant check does not infringe upon any legitimate privacy interest, as such a check does not reveal any private activity or information, the court held that the warrant check on the defendant did not infringe upon a constitutionally protected privacy interest. [*Harris*, 228 Ill.2d at 237-38, 319 Ill.Dec. 823, 886 N.E.2d 947](#). Lastly, the court concluded that an innocent person in the defendant's position, *814 though not free to terminate his encounter with the police, would have felt free to decline the officer's request for identification. [*Harris*, 228 Ill.2d at 248, 319 Ill.Dec. 823, 886 N.E.2d 947](#).

Here, as in [*Harris*](#), the stop of Valencia's car was supported by probable cause, as the car swerved over a road's dotted center line. See [*People v. Sorrells*, 209 Ill.App.3d 1064, 1069, 154 Ill.Dec. 497, 568 N.E.2d 497 \(1991\)](#). Further, as in [*Harris*](#), asking defendant for his identification and then checking the information provided against the information in the police department's computer system did not unduly prolong the stop. When Collins asked for defendant's identification and checked the information, he was waiting for a tow truck to remove Valencia's car from the road. Thus, the stop would have continued even without that inquiry. In any event, nothing in the record indicates that the inquiry took an unreasonable time. Because defendant bore the burden of

establishing that the continued detention was unreasonable (see [People v. Williams](#), 164 Ill.2d 1, 12, 206 Ill.Dec. 592, 645 N.E.2d 844 (1994)), we must conclude that the stop was not unreasonably prolonged.

Moreover, as in [Harris](#), validating the information on defendant's identification card with Collins' dispatcher did not infringe on any privacy interest, because, absent facts to the contrary, any information contained in the police department's computer system concerned matters of public record. Finally, as in [Harris](#), an innocent passenger in defendant's position would have felt free to decline to give Collins his identification. A request for identification is facially innocuous and does not allude to any official interrogation or increase the confrontational nature of the encounter with the police. [Harris](#), 228 Ill.2d at 248, 319 Ill.Dec. 823, 886 N.E.2d 947. As noted in [Harris](#), we would be presented with quite a different situation if defendant had refused to give his identification to Collins and the officer had insisted that defendant comply. [Harris](#), 228 Ill.2d at 249, 319 Ill.Dec. 823, 886 N.E.2d 947.

4. Attenuation

Having concluded that the warrant check on defendant was reasonable, we need not address whether intervening probable cause attenuated any taint arising from any illegal detention of defendant.

For these reasons, the judgment of the circuit court of Kendall County is reversed, and this cause is remanded for further proceedings.

Reversed and remanded.

[ZENOFF](#), P.J., and [HUDSON](#), J., concur.
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